



## Request for City Council Committee Action from the Department of Community Planning & Economic Development

Date: September 12, 2006

To: Council Member Lisa Goodman, Community Development Committee

Referral to: MCDA Board of Commissioners

**Subject:** A Public Hearing and Request for Preliminary and Final Approval of up to \$900,000 in 501(c)(3) Bank Qualified Bank Direct Tax-exempt Minneapolis Community Development Agency Revenue Bonds for the Ascension Academy Charter School project.

**Recommendation:** Adopt the attached Resolution, giving Preliminary and Final Approval to the issuance of up to \$900,000 in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Minneapolis Community Development Agency Revenue Bonds, Series 2006 for the Ascension Academy Charter School Project.

**MCDA Board Recommendation:** Forward this report to the Minneapolis Community Development Agency Board of Commissioners for their approval and adoption of the attached Resolution giving Preliminary and Final Approval of up to \$900,000 in Tax-exempt 501(c)(3) Bank Qualified Bank Direct Revenue Bonds, Series 2006, for the Ascension Academy Charter School Project.

**Previous Directives:** CD Committee Approved the Preliminary and Final Approval of \$1.4 million in 501(c)(3) Tax-exempt Revenue Bonds for the Ascension Academy Charter School Project on August 8, 2006. Passed by full city council on August 18, 2006.

Prepared by: Becky Shaw 612-673-5066

Approved by: Chuck Lutz, Deputy Director CPED \_\_\_\_\_

Presenters in Committee: Becky Shaw

### Reviews

- Permanent Review Committee (PRC): Approval \_\_\_ Not Applicable X \_\_\_

Financial Impact

- Other financial impact: The issuance of revenue bonds for the Ascension Academy Charter School project will generate revenue bond administrative fees of approximately \$2,250 a year that are used to support the small business assistance programs of the City of Minneapolis.

### **Community Impact**

- Neighborhood Notification: The Near North Neighborhood has been notified.
- City Goals: The project promotes the city's 5 year goal to make lifelong learning second to none. It enhances the City of Minneapolis' goal to provide superior education for all students and to make educational resources a top priority.
- Comprehensive Plan: The proposed project is in compliance with the policies of the Minneapolis plan.
- Zoning Code: The proposed project is in compliance.
- Other:

### **Supporting Information**

#### **Project Location & Description:**

Church of the Ascension, on behalf of Ascension Academy. Is a Minnesota nonprofit corporation which expects to incur expenditures related to renovating and equipping of a school building located at 1704 Dupont Avenue North. Ascension Academy is a charter school which just completed its second year with 72 students in enrollment. Full capacity will be 140 students. The proposed financing will be used to cover expenditures relating to the school building. Approximately \$1.4 million will be needed in order to add elevators to the high school and add a stairwell to the outside of the facility to comply with city code. A portion of the issue will also be used to cover current debt related to the school building.

#### **Type of Financing:**

Industrial Development Bonds (commonly known as IDBs or tax-exempt revenue bonds) have been used by the City of Minneapolis since 1972 to finance the capital needs of many small companies and organizations. In 2003, City developed a financing program to provide cost-effective tax-exempt financing for small 501(c)(3) non profit organizations. Tax-exempt revenue bonds have often not been a practical financing option for small organizations in the past due to the high costs of borrowing. Providing a streamlined application and documentation process has resulted in lower borrowing costs for nonprofits.

Within the existing federal tax code, there is the ability to issue bank qualified debt that local lenders can purchase and take advantage of the partial tax deduction on the interest earnings. With the bank qualified status, banks are allowed to deduct 80% of their "carrying costs" (interest paid on borrowed funds like deposits to purchase bonds) associated with buying tax-exempt bonds. Banks therefore can get the dual benefits of tax-exemption and deductibility of carrying costs. This translates into lower borrowing costs for the nonprofit organizations that work with a city (issuer) on the issuance of bank qualified bank direct bonds. Tax-exempt revenue bonds are underwritten and collateralized just like any conventional bank loan. The bank approval process for the revenue bond program does not differ from conventional financing.

The issuance of bank qualified bank direct tax-exempt revenue bonds is limited to issuers who issue less than \$10 million a year in revenue bonds. Based on this limitation, the MCDA has the ability to issue bank qualified bank direct tax-exempt revenue bonds.

The MCDA has a remaining balance of \$870,000 on their bank qualified bank direct tax-exempt revenue bond program cap for 2006. Ascension Academy wished to utilize the

available funds and has requested an issuance of up to \$900,000 note in addition to a previous freestanding revenue bond from the City of Minneapolis for up to \$500,000.

Sources:

Bank Qualified Revenue Bonds	\$ 900,000
Freestanding Revenue Bonds	<u>500,000</u>
Total:	\$1,400,000

Uses:

Elevator	\$ 500,000
Debt related to building	700,000
Stairwell	185,000
Fees and expenses	<u>15,000</u>
Total:	\$1,400,000

**Present Employment:** Ascension Academy employs 11 individuals

**New Employment:** 2 new employees will be added to staff next year

**Assessor's Estimate Annual Tax Increase:** Tax-exempt facility

**Affirmative Action Compliance:** Ascension Academy is currently working with the City on their Affirmative Action plan.

**CITY IRB POLICIES:**

Job Component	Minimum standard of one (1) job per 1,000 square feet of building area. Ascension: N.A.
Property Improvements	No more than 25% of the bond proceeds may be used for land and acquisition. If purchasing an existing building, an amount equal to at least 15% of the acquisition cost must be spent on rehabilitation expenditures. Ascension: In compliance
Development Standards	Compliance with the Land Use Plan of the City's Comprehensive Plan. Ascension: In compliance

Equipment Financing

Limited to companies that create or preserve a significant number of jobs, and the equipment financed must be sufficiently secured. No more than 10% of the bond proceeds may be used to finance movable equipment not constituting a fixture.

Ascension: In compliance

Restaurant/Bank

IRB financing is allowed for a restaurant or a bank if it is built or rehabilitated in an CPED Redevelopment Area. No more than 25% of the bond proceeds can be used to finance retail food and beverage establishments, automobile dealerships or recreation or entertainment facilities.

Ascension: N.A.

Tax-exempt Institution

Refinancing is permitted when new jobs are created or when a significant number of jobs is preserved; any interest cost savings must directly reduce patient costs.

Ascension: N.A.

IRB CAP:

The project is not subject to the volume cap, in that the project is exempt from income tax under Internal Revenue Code Section 501(c)(3) for its exempt purposes and is classified thereunder as a non-profit organization.

BOND COUNSEL:

Briggs & Morgan, P.A.

UNDERWRITER:

Miller Johnson Steichen Kinnard

**RESOLUTION**  
**of the**  
**CITY OF MINNEAPOLIS**

**GIVING APPROVAL TO AND AUTHORIZING THE FINANCING OF A PROJECT ON BEHALF OF THE CHURCH OF THE ASCENSION OF MINNEAPOLIS, MINNESOTA, AND AUTHORIZING THE ISSUANCE OF A REVENUE NOTE OF THE MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY THEREFOR.**

WHEREAS, pursuant to Laws of Minnesota 1980, Chapter 595, as amended (“Chapter 595”), the City Council of the City of Minneapolis (the “City”) established the Minneapolis Community Development Agency (the “Agency”) and granted certain powers and duties to the Agency; and

WHEREAS, pursuant to such granted powers, the Agency has been authorized to issue revenue obligations for various purposes; and

WHEREAS, it has been proposed that the Agency issue a revenue note in an amount not to exceed \$900,000 (the “Note”) to finance renovation and equipping, including installation of an elevator, of an existing building located at 1704 DuPont Avenue North in the City (the “Project”); and

WHEREAS, the Project will be owned by The Church of the Ascension of Minneapolis, Minnesota, and leased to Ascension Academy, a Minnesota nonprofit corporation and a charter school; and

WHEREAS, the City has previously given approval to issuance of its revenue note(s) to finance a portion of the Project which note(s) would be additional to the Note; provided that revenue notes of the Agency and the City may not exceed an aggregate principal amount of \$1,400,000 for the Project; and

WHEREAS, the Agency expects to give approval to the issuance of the Note by a resolution to be adopted on the date hereof.

NOW, THEREFORE, be it resolved by the City Council of the City of Minneapolis:

That the City Council hereby gives approval to the issuance by the Agency of the Note in a principal amount not to exceed \$900,000 for the purpose of financing a portion of the Project

That the Note is hereby designated as a "Program Bond" and is determined to be within the "Economic Development Program" and the "Program," all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted December 12, 1997.

# RESOLUTION

of the

## MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY

### RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF UP TO \$900,000 COMMERCIAL DEVELOPMENT REVENUE NOTE (ASCENSION ACADEMY PROJECT), SERIES 2006

RESOLVED by the Board of Commissioners (the "Board") of the Minneapolis Community Development Agency (the "Agency"):

Section 1. Findings. The Board does hereby determine, as follows:

1.1. the Agency is authorized by Minnesota Statutes Sections 469.152 through 469.1651, as amended (the "Act"), to finance the proposal of the Church of the Ascension of Minneapolis, Minnesota (the "Borrower") to renovate and equip, including installation of an elevator, an existing building located at 1704 DuPont Avenue North in the City of Minneapolis (the "City") (the "Project"), which is leased by the Borrower to Ascension Academy, a charter school, and to enter into a Loan Agreement with the Borrower (the "Loan Agreement") for the public purposes expressed in the Act;

1.2. in authorizing the financing of the Project the Agency's purpose is, and in its judgment the effect thereof will be, to promote the public welfare by continuing to provide educational facilities and to provide employment opportunities for citizens of the City;

1.3. it is desirable, feasible and consistent with the objects and purposes of the Act to issue the Commercial Development Revenue Note, Series 2006 (Ascension Academy Project), in the aggregate principal amount of no more than \$900,000 (the "Note") to finance a portion of the Project; and

1.4. the Note and the interest accruing thereon do not constitute an indebtedness of the Agency or the City within the meaning of any constitutional or statutory limitation and do not constitute or give rise to a pecuniary liability or a charge against the general credit or taxing powers of the Agency or the City and neither the full faith and credit nor the taxing powers of the Agency or the City are pledged for the payment of the Note or interest thereon.

Section 2. The Note.

2.1. Authorized Amount and Form of Note. The Note issued pursuant to this Resolution shall be in substantially the form set forth on Exhibit A to the Loan Agreement, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof; and the

total principal amount of the Note that may be outstanding hereunder is expressly limited to \$900,000 unless a duplicate Note is issued pursuant to Section 3.7.

2.2. The Note. The Note shall be dated as of the date of delivery, shall be payable at the times and in the manner, shall bear interest at the rate not to exceed 6.5% per annum, and shall be subject to such other terms and conditions as are set forth therein.

2.3. Execution. The Note shall be executed on behalf of the Agency by the signature of the Executive Director and the Finance Officer and registered by the Finance Officer. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if it had remained in office until delivery. In the event of the absence or disability of the Executive Director or Finance Officer such officer of the Agency as, in the opinion of the City Attorney, may act in his behalf, shall without further act or authorization of the Board execute and deliver the Note.

2.4. Delivery of Note. Before delivery of the Note there shall be filed with the Purchaser of the Note (except to the extent waived by the Purchaser) the following items:

(a) an executed copy of each of the following documents:

(1) the Loan Agreement;

(2) the Pledge Agreement between the Agency and the Purchaser (the "Pledge Agreement");

(3) the Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Financing Statement from the Borrower to the Purchaser;

(4) such other security and disbursing agreements as required by the Purchaser.

(b) an opinion of Counsel for the Borrower as prescribed by Bond Counsel;

(c) the opinion of Bond Counsel as to the validity and tax exempt status of the Note; and

(d) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (c) above or that the purchasers may reasonably require for the closing.

2.5. Disposition of Note Proceeds. Upon delivery of the Note, the purchase price paid will be used together with other funds available to finance the Project.

2.6. Registration of Transfer. The Agency will cause to be kept at the office of the Finance Officer a Note Register in which, subject to such reasonable regulations as it may prescribe, the Agency shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the original purchaser and

shall be transferable upon the Note Register by the holder in person or by an agent duly authorized in writing, upon surrender of a Note together with a written instrument of transfer satisfactory to the Finance Officer, duly executed by the holder or its duly authorized agent. Upon such transfer the City Finance Officer shall note the date of registration and the name and address of the new holder in the Note Register and in the registration blank appearing on the Note.

2.7. Mutilated, Lost or Destroyed Note. In case any Note issued hereunder shall become mutilated or be destroyed or lost, the Agency shall, if not then prohibited by law, cause to be executed and delivered, a new Note of like outstanding principal amount, number and tenor in exchange and substitution for and upon cancellation of such mutilated Note, or in lieu of and in substitution for such Note destroyed or lost, upon the holder's paying the reasonable expenses and charges of the Agency in connection therewith, and in the case of a Note destroyed or lost, the filing with the Agency of evidence satisfactory to the Agency with indemnity satisfactory to it. If the mutilated, destroyed or lost Note has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Note prior to payment.

2.8. Ownership of Note. The Agency may deem and treat the person in whose name the Note is last registered in the Note Register and by notation on the Note whether or not such Note shall be overdue, as the absolute owner of such Note for the purpose of receiving payment of or on account of the principal balance, redemption price or interest and for all other purposes whatsoever, and the Agency shall not be affected by any notice to the contrary.

2.9. Limitation on Note Transfers. The Note has been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Note may not be assigned or transferred in whole or part, nor may a participation interest in the Note be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements.

2.10. Issuance of a New Note. Subject to the provisions of Section 2.9, the Agency shall, at the request and expense of a holder, issue a new note, in aggregate outstanding principal amount equal to that of the Note surrendered, and of like tenor except as to number, principal amount, and the amount of the monthly installments payable thereunder, and registered in the name of the holder or such transferee as may be designated by the holder.

2.11. Designation as a "Program Bond." The Note is hereby designated as a "Program Bond" and is determined to be within the "Economic Development Program" and the "Program," all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted August 12, 1997.

Section 3. General Covenants.

3.1. Payment of Principal and Interest. The Agency covenants that it will promptly pay or cause to be paid the principal of and interest on the Note at the place, on the dates, solely from the source and in the manner provided herein and in the Note. The principal and interest are payable solely from and secured by revenues and proceeds derived from the Loan Agreement, the Pledge Agreement, and the Mortgage (the "Security Documents"), which revenues and proceeds are hereby specifically pledged to the payment thereof in the manner and to the extent specified in the Note and the Security Documents; and nothing in the Note or in this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the Agency or the City.

3.2. Performance of and Agency for Covenants. The Agency covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Resolution, in the Note and in all proceedings of the Board pertaining thereto. The Agency agrees to enforce all covenants and obligations of the Borrower under the Loan Agreement, upon request of the holders of the Note and being indemnified to the satisfaction of the Agency for all expenses and claims arising therefrom, and to perform all covenants and other provisions pertaining to the Agency contained in the Note and the Loan Agreement and subject to Section 4.3.

3.3. Nature of Security. Notwithstanding anything contained in the Note, the Security Documents or any other document referred to in Section 2.4 to the contrary, under the provisions of the Act, the Note may not be payable from or be a charge upon any funds of the Agency or the Agency or the City other than the revenues and proceeds pledged to the payment thereof, nor shall the Agency or the City be subject to any liability thereon, nor shall the Note otherwise contribute or give rise to a pecuniary liability of the Agency or the City or, to the extent permitted by law, any of the Agency or the City's officers, employees and agents. No holder of the Note shall ever have the right to compel any exercise of the taxing power of the Agency or the City to pay the Note or the interest thereon, or to enforce payment thereof against any property of the Agency or the City other than the revenues pledged under the Pledge Agreement; and the Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Agency or the City; and the Note shall not constitute a debt of the Agency or the City within the meaning of any constitutional or statutory limitation; but nothing in the Act impairs the rights of the holders of the Note to enforce the covenants made for the security thereof as provided in this Resolution, the Loan Agreement and the Pledge Agreement, and in the Act, and by authority of the Act the Agency has made the covenants and agreements herein for the benefit of the purchasers; provided that in any event, the agreement of the Agency to perform or enforce the covenants and other provisions contained in the Note, the Loan Agreement and the Pledge Agreement shall be subject at all times to the availability of revenues under the Loan Agreement sufficient to pay all costs of such performance or the enforcement thereof, and neither the Agency nor the City shall be subject to any personal or pecuniary liability thereon.

Section 4. Bank Qualification. In order to qualify the Note as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), the Agency makes the following representations:

4.1. The Agency hereby designates the Note as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code;

4.2. The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which will be issued by the Agency (and all subordinate entities whose obligations will be aggregated with those of the Agency) during this calendar year 2006 will not exceed \$10,000,000; and

4.3. Not more than \$10,000,000 of tax-exempt obligations issued by the Agency during this calendar year 2006 have been designated as qualified tax-exempt obligations for purposes of Section 265(b)(3) of the Code.

#### Section 5. Miscellaneous.

5.1. Severability. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

5.2. Authentication of Transcript. The officers of the Agency are directed to furnish to Bond Counsel certified copies of this Resolution and all documents referred to herein, and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity of the Note. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the Agency as to the correctness of all statements contained therein.

5.3. Authorization to Execute Agreements. The forms of the proposed Loan Agreement and the Pledge Agreement are hereby approved in substantially the form heretofore presented to the Board, together with such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by Bond Counsel prior to the execution of the documents, and the Executive Director and Finance Officer are authorized to execute the Loan Agreement and the Pledge Agreement in the name of and on behalf of the Agency and such other documents as Bond Counsel consider appropriate in connection with the issuance of the Note. In the event of the absence or disability of the Executive Director or the Finance Officer, such officer of the Agency as, in the opinion of the City Attorney, may act in their behalf, shall without further act or authorization of the Board do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers. The execution of any instrument by the appropriate officer or officers of the Agency herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.

RECORD OF COMMISSIONER VOTE													
Commissioner	Aye	Nay	NV	Abs	Ovrd	Sust	Commissioner	Aye	Nay	NV	Abs	Ovrd	Sust
Benson							Lilligren						
Colvin Roy							Ostrow						
Glidden							Remington						
Gordon							Samuels						
Hodges							Schiff						
Hofstede							Goodman,						
Johnson							chair						
Vote: NV - Not Voting			Abs - Absent			Ovrd - Vote to Override			Sust - Vote to Sustain				

**ADOPTED** \_\_\_\_\_: \_\_\_\_\_  
**Chairperson**

**APPROVED**  
**NOT APPROVED** \_\_\_\_\_: \_\_\_\_\_  
**VETOED** **Mayor**