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

Date: May 6, 2008

To: Council Member Lisa Goodman, Community Development Committee

**Subject:** A Public Hearing and Request for Preliminary and Final Approval of up to $1.5 million in 501(c)(3) Tax-exempt Revenue Bonds for the Academy of Holy Angels Project in the City of Richfield.

**Recommendation:** **The CPED Director recommends that the City Council adopt the attached Resolution giving Preliminary and Final Approval to the issuance of up to $1.5 million in 501(c)(3) Tax-exempt Revenue Bonds for the Academy of Holy Angels Project.**

**Previous Directives: None. Project is requesting approval on the issuance of tax-exempt revenue bonds at this time.**

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| Prepared by: Bob Lind, Business Finance, 673-5068 | |
| Approved by: Charles T. Lutz, Deputy Director CPED | _____ |
| Catherine A. Polasky, Director, Economic Development | _____ |
| Presenters in Committee: Bob Lind | |

**Reviews**

- Permanent Review Committee (PRC): Approval _N.A.__ Date _____

Financial Impact

- Other financial impact: The issuance of revenue bonds for the Academy of Holy Angels Project will generate revenue bond administrative fees of approximately $3,750.00 a year that are used to support the small business assistance programs of the City of Minneapolis.

**Community Impact**

- Neighborhood Notification: The project is not located in Minneapolis, but is located at 6600 Nicollet Ave. S. in the City of Richfield.
- City Goals: The project is part of the City's efforts to develop partnerships with other public entities.
- Sustainability Targets: N.A.
- Comprehensive Plan: N.A.
- Zoning Code: N.A.
- Living Wage/Business Subsidy Agreement Yes ____ No __X__ All conduit revenue bonds allocated under State Statute 474A, refunding bonds and 501(c)(3) bonds are exempt from the State Act.
- Job Linkage Yes ____ No __X__

- Other

**Supporting Information:**

The City of Richfield and the Academy of Holy Angels School have requested that the City of Minneapolis be the issuer of the conduit tax-exempt revenue bonds for a project for the Academy of Holy Angels. The City of Richfield is unable to issue revenue bonds for the project in that the City of Richfield has used their $10 million limitation for City projects and are thus unable to issue any additional conduit revenue bonds for various nonprofits and industrial/manufacturing projects. The City of Minneapolis does not have this limit in that the City of Minneapolis uses the MCDA as its issuer of the $10 million a year in bank qualified revenue bonds for small nonprofits, leaving the City of Minneapolis to be the issuer of all the other revenue bonds.

The City of Minneapolis is routinely asked to be the issuer of revenue bonds for a number of joint issuance projects and other types of revenue bond projects outside the City of Minneapolis given the professional staff available to handle these transactions. The City of Minneapolis for its services collects annual on-going administrative fees that are used to support all the small business assistance programs available to businesses in the City of Minneapolis.

The project to be financed consists of the multi-purpose athletic facility of the school, including the costs of acquisition and installation of the forced-air inflation blower/heating system, the approximately 80,000 square feet of monofilament artificial turf and the air-supported seasonal fabric dome. The issue of separation of church and state has been addressed by bond counsel – Kennedy & Graven, and it is appropriate to finance the athletic facility for the school.

**Type of Financing:** It is anticipated that the 501(c)(3) tax-exempt revenue bonds will be privately placed by Wells Fargo Brokerage Services.

**CITY IRB POLICIES:**

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| Job Component | Minimum standard of one (1) job per 1,000 square feet of building area.<br><br>Holy Angels: 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.<br><br>Holy Angels: N.A. |
| Development Standards | Compliance with the Land Use Plan of the City's Comprehensive Plan.<br><br>Holy Angels: N.A. |
| Equipment Financing | Limited to companies that create or |

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| | 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.<br><br>Holy Angels: N.A. |
| 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.<br><br>Holy Angels: N.A. |
| Tax-exempt Institution | Refinancing is permitted when new jobs are created or when a significant number of jobs are preserved; any interest cost savings must directly reduce patient costs.<br><br>Holy Angels: 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: | Kennedy & Graven |
| UNDERWRITER: | Wells Fargo Brokerage Services |

**RESOLUTION**

**OF THE**

**CITY OF MINNEAPOLIS**

A resolution authorizing the issuance and sale of, and providing the form, terms, pledge of revenues, and findings, covenants, and directions relating to the Educational Facilities Revenue Notes (Academy of Holy Angels Project), Series 2008, to be issued by the City of Minneapolis under Minnesota Statutes, Sections 469.152-469.165, to finance improvements to the educational facilities of the Academy of Holy Angels, a parochial high school located in the City of Richfield

Resolved by the City Council of the City of Minneapolis:

Section 1. Background

1.01. Statutory Authorization. The City of Minneapolis (the "Issuer") is authorized by Minnesota Statutes, Sections 469.152 through 469.165, as amended (the "Act"), to issue revenue obligations to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of a "project," defined in the Act, in part, as any properties, real or personal, used or useful in connection with a revenue producing enterprise, whether or not operated for profit, and to pay, purchase or discharge all or any part of the outstanding indebtedness of a contracting party engaged in educational activities as an elementary, secondary or post-secondary school (as defined in the Act). Under Section 469.155, subdivision 9 of the Act, an issuer may enter into and perform contracts and agreements with other municipalities as the issuer may deem proper and feasible for the financing of a project, including an agreement whereby the issuer issues its revenue obligations in behalf of another municipality. Pursuant to Minnesota Statutes, Section 471.656, Subdivision 2(2), an issuer may issue obligations to finance the acquisition or improvement of real property located outside of its corporate boundaries for property constituting a single project located in a municipality if the governing body of the municipality consents, by resolution, to issuance of such obligations.

1.02. The Series 2008 Notes. Academy of Holy Angels, a Minnesota nonprofit corporation (the "Borrower"), currently owns and operates a high school (ninth through twelfth grade) in the City of Richfield. The Borrower has requested that the Issuer issue its Educational Facilities Revenue Notes (Academy of Holy Angels Project), Series 2008 (the "Notes"), in one or more series, in the original aggregate principal amount not to exceed $1,500,000, and loan the proceeds derived from the sale of the Notes to the Borrower pursuant to the terms of a Loan Agreement, to be dated on or after May 1, 2008 (the "Loan Agreement"), between the Issuer and the Borrower. The proceeds of the loan will be applied to finance the following costs associated with a multi-purpose athletic facility to be owned and operated by the Borrower: (i) acquisition and installation of (a) a forced-air inflation blower/heating system; (b) approximately 80,000 square feet of monofilament artificial turf; and (c) air-supported seasonal fabric dome (the "Project"); and (ii) the costs

of issuing the Notes. The Project is located at 6600 Nicollet Avenue South in the City of Richfield and is owned and operated by the Borrower. The Notes are proposed to be purchased by Wells Fargo Brokerage Services, LLC (the "Lender").

1.03. Cooperation Agreement. The City Council of the City of Richfield will conduct a public hearing on or after May 13, 2008 regarding the issuance of revenue obligations by the Issuer to finance the Project. Following the public hearing the City Council of the City of Richfield will consider a resolution approving the issuance of the Notes by the Issuer and authorizing the execution and delivery of a Cooperation Agreement, dated on or after May 1, 2008, between the Issuer and the City of Richfield (the "Cooperation Agreement") with respect to the Notes and the Project.

1.04. Tax-exempt Status of Borrower. The Borrower has represented to the Issuer that it is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), as a result of the application of Section 501(c)(3) of the Code.

1.05. Loan Repayments. The loan repayments to be made by the Borrower under the Loan Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Notes when due. The Issuer will assign its rights to the basic payments and certain other rights under the Loan Agreement to the Lender pursuant to the terms of an Assignment of Loan Agreement, to be dated on or after May 1, 2008 (the "Assignment of Loan Agreement"), between the Issuer, the Borrower and the Lender. The Borrower will secure its obligations to the Lender with a Security Agreement, to be dated on or after May 1, 2008 (the "Security Agreement").

1.06. Documents. Forms of the following documents have been submitted to the Issuer and are now on file with the Issuer: (i) the Notes; (ii) the Loan Agreement; (iii) the Assignment of Loan Agreement; (iv) the Security Agreement; and (v) the Cooperation Agreement.

1.07. Public Hearing. A notice of public hearing (the "Public Notice") was published in *Finance and Commerce*, the official newspaper and a newspaper of general circulation in the City of Minneapolis, and in the *Star Tribune*, a newspaper of general circulation in the City of Minneapolis, with respect to: (i) the required public hearing under Section 147(f) of the Code; (ii) the required hearing under Section 469.154, subdivision 4, of the Act; and (iii) approval of the issuance of the Notes. The Public Notice was published at least fourteen (14) days before a regularly-scheduled meeting of the Community Development Committee of the Minneapolis City Council conducted on Tuesday, May 6, 2008. On such date, the Community Development Committee conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing, with respect to the proposed issuance of the Notes, and the location and nature of the Project.

Section 2. Issuance of the Notes

2.01. Findings. The City Council hereby finds, determines, and declares that:

(a) The issuance and sale of the Notes, the execution and delivery by the Issuer of the Loan Agreement, the Assignment of Loan Agreement, and the Cooperation Agreement, and the performance of all covenants and agreements of the Issuer contained in the Loan Agreement, the Assignment of Loan Agreement, and the Cooperation Agreement are undertaken pursuant to the Act.

(b) The Project furthers the purposes stated in Section 469.152 of the Act and constitutes a "project," as defined in Section 469.153, subdivision 2(b) of the Act.

(c) The loan repayments to be made by the Borrower under the Loan Agreement are fixed to produce revenues sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Notes issued under this resolution when due, and the Loan Agreement also provides that the Borrower is required to pay all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all lawfully imposed taxes and special assessments levied upon or with respect to the Project and payable during the term of the Loan Agreement.

(d) As provided in the Loan Agreement, the Notes shall not be payable from nor charged upon any funds other than the revenues pledged to their payment, nor shall the Issuer be subject to any liability thereon, except as otherwise provided in this paragraph. No holder of the Notes shall ever have the right to compel any exercise by the Issuer of its taxing powers to pay any of the Notes or the interest or premium thereon, or to enforce payment thereof against any property of the Issuer except the interests of the Issuer in the Loan Agreement and the revenues and assets thereunder, which will be assigned to the Lender under the Assignment of Loan Agreement. The Notes shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Issuer, except the interests of the Issuer in the Loan Agreement, and the revenues and assets thereunder, which will be assigned to the Lender under the Assignment of Loan Agreement. The Notes shall recite that the Notes are issued pursuant to the Act, and that the Notes, including interest and premium, if any, thereon, are payable solely from the revenues and assets pledged to the payment thereof, and the Notes shall not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitations

2.02. Issuance and Sale of the Notes. The Issuer hereby authorizes the issuance of the Notes, in a principal amount, not to exceed $1,500,000, in one or more series, in the form, and with the terms set forth in the form of the Notes now on file with the Issuer. The aggregate principal amount of the Notes, the interest rate of the Notes, the terms for adjustment of the interest rate on the Notes, the date of the documents referenced in this resolution and the Notes, and the terms of redemption of the Notes may be established or modified with the approval of the Issuer. The execution and delivery of the Notes shall be conclusive evidence that the Issuer has approved such terms as subsequently established or

modified. The offer of the Lender to purchase the Notes at the price of par plus accrued interest, if any, to the date of delivery at the interest rate or rates specified in the Notes, is hereby accepted. Upon approval of the Project by the Minnesota Department of Employment and Economic Development, the Finance Officer of the Issuer is authorized and directed to prepare and execute the Notes as prescribed in the Loan Agreement and the Notes shall be delivered to the Lender. The Finance Officer is hereby authorized to execute and deliver any agreements with any depository institution, including any representation letter or amendment to any existing representation letter, in the event the Issuer and the Lender elect to register the Notes in book-entry form.

2.03. Approval of Documents. The Loan Agreement, the Assignment of Loan Agreement, and the Cooperation Agreement are hereby approved in substantially the forms on file with the Issuer on the date hereof. The terms of the Loan Agreement, the Assignment of Loan Agreement, and the Cooperation Agreement may be established or modified with the approval of the Issuer. The execution and delivery of such documents shall be conclusive evidence that the Issuer has approved such terms as subsequently established or modified. The Finance Officer of the Issuer is authorized and directed to execute and deliver the Loan Agreement, the Assignment of Loan Agreement, and the Cooperation Agreement. Copies of all of the documents necessary to the transaction herein described shall be delivered, filed, and recorded as provided herein and in the Loan Agreement.

2.04. Certifications of the Issuer. The Finance Officer of the Issuer and other officers, employees, and agents of the Issuer are hereby authorized and directed to prepare and furnish to bond counsel and the Lender certified copies of all proceedings and records of the Issuer relating to the issuance of the Notes including a certification of this resolution. Such officers, employees, and agents are hereby authorized to execute and deliver, on behalf of the Issuer, all other certificates, instruments, and other written documents that may be requested by bond counsel, the Lender, or other persons or entities in conjunction with the issuance of the Notes. Without imposing any limitation on the scope of the preceding sentence, such officers, employees, and agents are specifically authorized to execute and deliver one or more financing statements, a certificate relating to federal tax matters including matters relating to arbitrage and rebate certificate, a receipt for the proceeds derived from the sale of the Notes, an order as to the application of the proceeds of the Notes, a general certificate of the Issuer, and an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. September 2007).

2.05. Security for the Notes. The Issuer hereby authorizes the Borrower to provide such security for payment of its obligations under the Loan Agreement and for payment of the Notes, including the Security Agreement, as is agreed upon by the Borrower and the Lender and the Issuer hereby approves the execution and delivery of such security.

2.06. DEED Application. As required by the terms of Section 469.154 of the Act, the employees, officers, and agents of the Issuer are hereby authorized and directed to submit an application to the Minnesota Department of Employment and Economic Development for approval of the Project and the issuance of the Notes.

Section 3. Miscellaneous

3.01. Agreements Binding. All agreements, covenants, and obligations of the Issuer contained in this resolution and in the above-referenced documents shall be deemed to be the agreements, covenants, and obligations of the Issuer to the full extent authorized or permitted by law, and all such agreements, covenants, and obligations shall be binding on the Issuer and enforceable in accordance with their terms. No agreement, covenant, or obligation contained in this resolution or in the above-referenced documents shall be deemed to be an agreement, covenant, or obligation of any member of the City Council, or of any officer, employee, or agent of the Issuer in that person's individual capacity. Neither the members of the City Council, nor any officer executing the Notes, shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance of the Notes.

3.02. Rights Conferred. Except as herein otherwise expressly provided, nothing in this resolution or in the Loan Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Issuer and the registered and beneficial owners of the Notes, any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provision hereof or of the Loan Agreement or any provision thereof; this resolution, the Loan Agreement and all of their provisions being intended to be, and being for the sole and exclusive benefit of the Issuer and the registered and beneficial owners of the Notes issued under the provisions of this resolution and the Loan Agreement, and the Borrower to the extent expressly provided in the Loan Agreement.

3.03. Validity. In case any one or more of the provisions of this resolution, or of the documents mentioned herein, or of the Notes issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Notes, but this resolution, the aforementioned documents, and the Notes shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein. If for any reason the Finance Officer, or any other officers, employees, or agents of the Issuer authorized to execute certificates, instruments, or other written documents on behalf of the Issuer shall for any reason cease to be an officer, employee, or agent of the Issuer after the execution by such person of any certificate, instrument, or other written document, such fact shall not affect the validity or enforceability of such certificate, instrument, or other written document. If for any reason the Finance Officer, or any other officers, employees, or agents of the Issuer authorized to execute certificates, instruments, or other written documents on behalf of the Issuer shall be unavailable to execute such certificates, instruments, or other written documents for any reason, such certificates, instruments, or other written documents may be executed by such other officer of the Issuer as in the opinion of the City Attorney is authorized to sign such certificates, instruments, or other written documents.

3.04. Reimbursement Resolution. The United States Department of the Treasury has promulgated Treasury Regulations, Section 1.150-2 (the "Regulation"), governing the use of the proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse an issuer or a borrower from the issuer for project expenditures paid prior to the date of issuance of such tax-exempt bonds. The Regulation requires that the issuer adopt a statement of official intent to reimburse an original expenditure not later than sixty (60)

days after payment of the original expenditure. The Regulation also generally requires that the tax-exempt bonds be issued and the reimbursement allocation made from the proceeds of the tax-exempt bonds within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Regulation generally permits reimbursement of capital expenditures and costs of issuance of the tax-exempt bonds. A portion of the costs of the Project may be paid by the Borrower prior to the date of issuance of the Notes. In the event a portion of the Project is paid by the Borrower prior to the date of issuance of the Notes, the Issuer reasonably expects to reimburse the Borrower for such expenditures from the proceeds of the Notes after the date of issuance of the Notes. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Notes, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulation and also qualifying expenditures under the Act.

3.05. Program Bonds. The Notes are hereby designated as “Program Bonds” and are determined to be within the “Economic Development Program” and the “Program,” as all defined in Resolution 88R-021 of the City of Minneapolis adopted January 29, 1988 and as amended by Resolution 97R-402 of the City of Minneapolis adopted December 12, 1997.

3.06. Effective Date. This resolution shall take effect and be in force from and after its approval and publication. Immediate publication of this resolution is hereby authorized.