



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

Date: August 8, 2006
To: Council Member Lisa Goodman, Community Development
Subject: Request for Preliminary and Final Approval of up to \$1.4 million in 501 (c)(3) Tax-exempt Revenue Bonds for the Ascension Academy Charter School Project.

Recommendation: Recommendation: The CPED Director recommends that the City Council adopt the attached Resolution giving Preliminary and Final Approval to the issuance of up to \$1.4 million in 501 (c)(3) Tax-exempt Revenue Bonds for the Ascension Academy Charter School Project.

Previous Directives: None.

Prepared by: Becky Shaw **Phone:** 612-673-5066

Approved by:

Chuck Lutz, Deputy Director CPED _____

Permanent Review Committee (PRC) Approval _____ Not Applicable X

Note: To determine if applicable see <http://insite/finance/purchasing/permanent-review-committee-overview.asp>

Presenter in Committee: Becky Shaw

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.

X Other financial impact (Explain): The issuance of revenue bonds for the Ascension Charter School Project will generate revenue bond administrative fees of approximately \$3500 per year that are used to support the small business assistance programs of the City of Minneapolis.

___ Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Neighborhood Notification: The Near North Neighborhood has been notified.

City Goals: The project promotes public and community partnerships that enhance Minneapolis as the premier regional center for education.

Comprehensive Plan: The proposed project complies with the policies of the Minneapolis plan.

Zoning Code: The proposed project is in compliance.

Other:

Background/Supporting Information:

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:

Church of the Ascension is requesting a \$1.4 million bond issue in the form of a tax exempt note. The intent of sale is to place the note with one to three sophisticated investors. Improvements and installation are expected to commence in August or September of 2006.

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

Present Employment: Ascension Academy employs 11 individuals

New Employment: 2 new employees will be added within the 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.
<u>IRB CAP:</u>	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

PROPOSED RESOLUTION

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF THE \$1,400,000 COMMERCIAL DEVELOPMENT REVENUE NOTE (ASCENSION ACADEMY PROJECT), SERIES 2006

RESOLVED by the City Council of the City of Minneapolis, Minnesota (the "City"):

Section 1. Findings. The City Council has heretofore determined, and does hereby determine, as follows:

1.1. the City 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 (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 City'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(s) of 2006 (Ascension Academy Project), in the form of no more than three Notes in the aggregate principal amount of \$1,400,000 (collectively, the "Note") to finance the Project; and

1.4. the Note and the interest accruing thereon do not constitute an indebtedness of 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 City and neither the full faith and credit nor the taxing powers of the City is 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 \$1,400,000 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 City by the signature of the Finance Officer, registered by the Finance Officer and shall be sealed with the seal of the City. 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 Finance Officer such officer of the City as, in the opinion of the City Attorney, may act in his behalf, shall without further act or authorization of the City Council 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 City 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 City will cause to be kept at the office of the City Finance Officer a Note Register in which, subject to such reasonable regulations as it may prescribe, the City 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 City Finance Officer, duly executed by the holder or its duly authorized agent. The following form of assignment shall be sufficient for such purpose.

For value received _____ hereby sells, assigns and transfers unto _____ the within Note of the City of Minneapolis, Minnesota, and does hereby irrevocably constitute and appoint _____ attorney to transfer such Note on the books of such City with full power of substitution in the premises. The undersigned certifies that the transfer be made in accordance with the provisions of Section 2.9 of the Resolution relating to the above Note.

Dated: _____

Registered Owner

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 City 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 City in connection therewith, and in the case of a Note destroyed or lost, the filing with the City of evidence satisfactory to the City 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 City 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 City 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 City 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 City 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 City.

3.2. Performance of and Authority for Covenants. The City 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 City Council pertaining thereto. The City 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 City for all expenses and claims arising therefrom, and to perform all covenants and other provisions pertaining to the City 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 City other than the revenues and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon, nor shall the Note otherwise contribute or give rise to a pecuniary liability of the City or, to the extent permitted by law, any of 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 City to pay the Note or the interest thereon, or to enforce payment thereof against any property of 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 City; and the Note shall not constitute a debt of 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 City has made the covenants and agreements herein for the benefit of the purchasers; provided that in any event, the agreement of the City 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 the City shall not be subject to any personal or pecuniary liability thereon.

Section 4. Miscellaneous.

4.1. 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.

4.2. Authentication of Transcript. The officers of the City 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 City as to the correctness of all statements contained therein.

4.3. 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 City Council, 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 Finance Officer are authorized to execute the Loan Agreement and the Pledge Agreement in the name of and on behalf of the City 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 Finance Officer, such officer of the City as, in the opinion of the City Attorney, may act in their behalf, shall without further act or authorization of the City Council 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 City herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.

Be It Further Resolved that this Resolution shall take effect upon publication.