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

Date: October 24, 2006

To: Council Member Lisa Goodman, Community Development Committee

Subject: A Public Hearing and Request for Preliminary Approval of up to $78 Million in EZ Tax-exempt Revenue Bonds for the Midtown Eco Energy Project

Recommendation: **Recommendation: The CPED Director recommends that the City Council adopt the attached Resolution giving Preliminary Approval to the issuance of up to $78 Million in EZ Tax-exempt Revenue Bonds for the Midtown Eco Energy Project**

Previous Directives: At the June 20, 2006 Transportation & Public Works Committee and the full City Council on June 30, 2006, the sale of City property at 2850 20th Ave. S. (City's former South Transfer Station site) was approved. The City-owned property would be sold to Kandiyohi Development Partners, LLC for $557,500 with the sale proceeds to be used to reimburse Public Works for associated expenses of selling and ceasing operations at this facility and relocating the facility to another location.

Prepared by: Bob Lind, Business Finance, 673-5068
Approved by: Chuck Lutz, Deputy Director CPED ________________
Presenters in Committee: Bob Lind

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

Financial Impact
- Other financial impact: The issuance of EZ revenue bonds for the Midtown Eco Energy Project will generate revenue bond administrative fees of approximately $50,000 a year that are used to support the small business assistance programs of the City of Minneapolis.

Community Impact

- Neighborhood Notification: The East Phillips Improvement Coalition was notified of the proposed Midtown Eco Energy Project's use of EZ Revenue Bond financing on October 4, 2006.

- City Goals: The project promotes the City's goal on the environment and the use of renewable energy.

- Comprehensive Plan: The proposed project complies with the policies of the Minneapolis Plan. In 2005 the City of Minneapolis Planning Commission found that the sale of the site for a biomass facility complies with the City's Comprehensive Plan.

- Zoning Code: The site is the City's former solid waste drop-off site and is zoned I-1.

- Other: N.A.

Supporting Information -

Project Location & Description: 2850 20th Ave. S. (City's former South Transfer Station site)

Kandiyohi Development Partners, LLC (KDP) responded to a City issued RFP to solicit proposals for the sale of the South Transfer Station at 2850 20th Ave. S., for the development into a renewable biomass energy system of a combined heat and electrical power generation facility.

The KDP proposal features a fluidized bubbling bed boiler system capable of producing 200,000 pounds of steam per hour for powering a 24.5 megawatt steam turbine generator. The electrical output from the facility will be enough to serve about 15,000 households, or slightly less than 10 percent of all Minneapolis households. District energy will be available to heat up to three million square feet of space within a one-mile radius of the facility. The plant's expected sale of hot water for district heating to the Abbott Northwestern Hospital campus and the Midtown Exchange, will still leave about half of the district energy capacity for other uses in the area. Electricity generated by the plant is proposed to be sold to Great River Energy to serve their customers located in Dakota County, Wright County and elsewhere in Minnesota. Electrical power from the facility will most likely be distributed to the electrical grid through an existing substation on Hiawatha Avenue. The proposed facility will be primarily urban wood waste fired, but the intended permit strategy will allow up to 30% of agricultural byproducts such as cornstalks and cobs and clean wood construction waste. No other fuel types are identified for the plant. Midtown Eco Energy plans to use waste wood generated by the Minneapolis Park Board, City of Minneapolis and its residents as a significant portion of the wood waste fuel supply. On-site fuel storage will support 48 hours of plant operation.

KDP will renovate the existing South Transfer Station structure and improve the grounds. Looking for a spring 2007 construction start with initial operations by fall 2008.

It is anticipated that up to $78 million in tax-exempt EZ Revenue Bonds would be issued for the project, with a term of 25 years. Security for the bonds would be provided by a 25 year power purchase agreement with Great River Energy whereby Great River Energy would commit to purchase the electricity generated by the facility. In addition, there will be an assignment of all leases and contracts as well as a mortgage on the property and equipment.

Type of Financing:

It is anticipated that Piper Jaffray acting as bond underwriter, will structure the sale of EZ Revenue Bonds for a 20-25 year term to large institutional buyers in minimum denominations of $100,000. Security for the EZ Bonds will be provided by:

1. A 25-year power purchase agreement with Great River Energy (GRE) whereby GRE would commit to purchase the electricity generated by the facility.
2. Also, an assignment of all leases and contracts as well as a first mortgage on the property and equipment.

KDP will have an ownership interest in the facility along with a number of other development equity investors for at least the first ten years of operation. GRE would then have the option to purchase the facility after ten years.

Sources:	EZ Revenue Bonds	$78,000,000
	Developer's Equity	3,000,000
	Syndication of Tax Credits	17,000,000
	Total:	$98,000,000

Uses:	Land Acquisition	$ 557,000
	Building Construction Costs	21,400,000
	District Heating Costs	18,700,000
	Steam Generation Costs	16,800,000
	Other engineering, site work and construction-related	15,100,000
	Debt Service Reserve	3,500,000
	Fees and Other Issuance Costs	21,943,000
	Total:	$98,000,000

Present Employment: None

New Employment: Anticipated that 20 permanent jobs will be created at annual wage levels of $30,000-90,000.

Assessor's Estimate Annual Pending review by the City Assessor.

Real Estate Tax Increase: It is expected that the project will be paying real estate taxes in the range of $150,000 a year.

Affirmative Action Compliance: Project is working with City's Civil Rights on an approved AAP.

CITY IRB POLICIES:

Job Component	Minimum standard of one (1) job per 1,000 square feet of building area. Eco Energy Project – Complies.
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. Eco Energy Project – Complies.
Development Standards	Compliance with the Land Use Plan of the City's Comprehensive Plan. Eco Energy Project - 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. Eco Energy Project - 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. Eco Energy Project - 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. Eco Energy Project - N.A.

IRB CAP:

The project is not subject to the volume cap in that there is no State volume limitation for EZ Revenue Bonds. There is however a Federal limitation that is part of Minneapolis being an EZ City that the City has the ability to issue up to $130 million in EZ tax-exempt revenue bonds prior to 2009. To date the City has not used any of this $130 million allocation of EZ Bonds.

BOND COUNSEL:

Kennedy & Graven, LLC

UNDERWRITER:

Piper Jaffray

REFERED TO (NAME OF) COMMITTEE:
DATE:

RESOLUTION
of the
CITY OF
MINNEAPOLIS

By ______________________________

Giving preliminary approval to the proposed issuance of revenue bonds under Minnesota Statutes, Sections 469.152-469.1651, as amended, for the purpose of financing the construction of a biomass combined heat and power cogeneration facility and related or ancillary assets for the benefit of Midtown Eco Energy LLC

WHEREAS, the City of Minneapolis, Minnesota (the “City”), is authorized by the provisions of Minnesota Statutes, Sections 469.152-469.1651, as amended (the “Act”), to carry out the public purposes described therein and contemplated thereby by issuing its revenue bonds or other obligations to finance, in whole or in part, the costs of the acquisition, construction, improvement, betterment, and extension of “projects” and of related public improvements; and

WHEREAS, the term “project” is defined in Section 469.153, subdivision 2(a), in relevant part to include “any properties, real or personal, used or useful in connection with a revenue producing enterprise, or any combination of two or more such enterprises engaged or to be engaged in generating, transmitting, or distributing electricity . . . any properties, real or personal, used or useful in the abatement or control of noise, air, or water pollution, or in the disposal of solid wastes . . . [and] any properties, real or personal, used or useful in connection with a district heating system, consisting of the use of one or more energy conversion facilities to produce hot water or steam for distribution to homes and businesses, including cogeneration facilities, distribution lines, service facilities, and retrofit facilities for modifying the user’s heating or water system to use the heat energy converted from the steam or hot water”; and

WHEREAS, as defined in Section 469.153, subdivision 2(f) of the Act, the term “project” also means “the activities of any revenue producing enterprise involving the construction, fabrication, sale, or leasing of equipment or products to be used in gathering, processing, generating, transmitting, or distributing solar, wind, geothermal, biomass, agricultural or forestry energy crops, or other alternative energy sources for use by any person or any residential, commercial, industrial, or governmental entity in heating, cooling, or otherwise providing energy for a facility owned or operated by that person or entity"; and

WHEREAS, Midtown Eco Energy LLC, a Minnesota limited liability company (the "Borrower"), has submitted an application to the City requesting the issuance of one or more series of revenue bonds pursuant to the Act, in a principal amount not to exceed $78,000,000 (the "Bonds"); and

WHEREAS, the Borrower has proposed that the City loan the proceeds derived from the sale of the Bonds to the Borrower pursuant to the terms of a Loan Agreement between the City and the Borrower (the "Loan Agreement") to finance: (i) the acquisition, construction, reconstruction, improvement, betterment, or extension of a biomass combined heat and power cogeneration facility and related or ancillary assets that are expected to produce 22.5 net megawatts of electric power and have the ability to provide district heat for up to three million commercial square feet (the "Project"); (ii) the funding of one or more reserve funds to secure timely payment of the Bonds; (iii) the payment of a portion of the interest on the Bonds until the completion of construction and for a reasonable time thereafter, and (iv) the payment of the costs of issuing the Bonds and related costs; and

WHEREAS, pursuant to Section 469.154, subdivision 4, of the Act, prior to submitting an application to the Minnesota Department of Employment and Economic Development ("DEED") for approval of the Project, the City must conduct a public hearing on the proposal to undertake and finance the Project; and

WHEREAS, a notice of public hearing must be published at least once not less than fourteen (14) days, nor more than thirty (30) days, prior to the date fixed for the public hearing in the official newspaper of the City and in a newspaper of general circulation in the City and such notice must state the time and place of the public hearing, the general nature of the Project, the owner of the Project, and an estimate of the principal amount of the Bonds to be issued to finance the Project; and

WHEREAS, such notice must state that a draft copy of the proposed application to DEED, together with all attachments and exhibits, will be available for public inspection following the publication of the notice and must specify the place and times where and when it will be so available; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Treasury Regulations promulgated thereunder ("Treasury Regulations" or "Regulations"), require that prior to the issuance of the Bonds, the City Council (or other "applicable elected representative") of the City must approve the Bonds after conducting a public hearing thereon preceded by publication of a notice of public hearing (in the form required by Section 147(f) of the Code and applicable Treasury Regulations) in a newspaper of general circulation in the City at least fourteen (14) days prior to the public hearing date; and

WHEREAS, pursuant to the Act and the Code, a notice of public hearing in the form required by the Act and Section 147(f) of the Code was published in *Finance & Commerce*, the official newspaper of the City on October 7, 2006, and in the *Star Tribune*, a newspaper of general circulation in the City also on October 7, 2006; and

WHEREAS, the Community Development Committee of the Minneapolis City Council, on behalf of the City, held a public hearing on October 24, 2006, on the proposed issuance of the Bonds and such public hearing was conducted no less than fifteen (15) days following the publication of the notice of public hearing; and

WHEREAS, the Bonds are to be issued as revenue bonds and shall not constitute a general or moral obligation of the City, the Bonds shall not constitute a debt of the City within the meaning of any state constitutional provision or statutory limitation, the Bonds shall not constitute or give rise to a charge against the general credit or taxing powers of the City, the Bonds shall not constitute or give rise to a pecuniary liability of the City, and the Bonds shall be payable solely out of the funds and properties expressly pledged as security therefor;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

1. The City Council of the City hereby grants preliminary approval to the issuance of the Bonds for the purposes referenced in this resolution in an aggregate principal amount not to exceed approximately $78,000,000, subject to the approval of the Project by DEED, as required by the Act, and subject to the mutual agreement of the City, the Borrower, and the initial purchaser(s) of the Bonds as to the details of the Bonds and provisions for their payment. But in all events, it is understood that the Bonds shall not constitute a general or moral obligation of the City or a pecuniary liability or charge, lien or encumbrance, legal or equitable, upon any funds, assets, taxing powers, or any other property of the City, except the City's interest in the Loan Agreement; and the Bonds, when, as, and if issued, shall recite in substance that the Bonds, including interest thereon, are payable solely from the revenues received from the Loan Agreement and other property expressly pledged to the payment thereof. The Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The holders of the Bonds shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal of the Bonds, or the interest thereon or to enforce payment thereof against any property of the City.

2. It is hereby found and determined that the Project furthers the purposes set forth in the Act and the Project constitutes a "project" within the meaning of Section 469.153, subdivision 2(a) and (f) of the Act.

3. In accordance with Section 469.154 of the Act, the City shall cooperate with the Borrower in submitting the proposal for the financing of the Project to DEED, including the execution of necessary documentation by City officials.

4. In accordance with Section 469.154, subdivision 7, of the Act, the officers, employees, and agents of the City are hereby authorized and directed to encourage the Borrower to provide employment opportunities to economically disadvantaged or unemployed individuals. Such individuals may be identified by such mechanisms as are available to the City, such as a first source agreement in which the Borrower agrees to use a designated State employment office as a first source for employment recruitment, referral, and placement.

5. The Borrower shall pay to the City any and all costs incurred by the City in connection with the Bonds or the financing of the Project, whether or not the financing of the Project is approved by DEED, whether or not the financing is carried to completion, and whether or not the Bonds or operative instruments are executed and delivered. The Borrower shall also comply with the City's deposit and fee policies respecting such revenue bond issues.

6. All commitments of the City expressed herein are subject to the condition that by November 1, 2007, the City and the Borrower and the initial purchaser of the Bonds shall have agreed to mutually acceptable terms and conditions of the Loan Agreement, the Bonds, and of the other instruments and proceedings relating to the Bonds and their issuance and sale. If the events set forth herein do not take place prior to the date set forth above, or any extension thereof, and the Bonds are not sold within such time, this resolution will expire and be of no further effect.

7. The adoption of this resolution does not constitute a guaranty or firm commitment that the City will issue the Bonds as requested by the Borrower. The City retains the right in its sole discretion to withdraw from participation and accordingly not to issue the Bonds, or to issue the Bonds in an amount less that the amount referred to herein, should the City at any time prior to issuance thereof determine not to issue the Bonds, or to issue the Bonds in an amount less than the amount referred to in paragraph 1 hereof, or should the parties to the transaction be unable to reach agreement as to the terms and conditions of any of the documents required for the transaction.

8. The staff of the City is hereby authorized, in cooperation with bond counsel, to take all steps necessary and desirable to proceed to finance the Project through the issuance of the Bonds.

9. (a) The United States Department of the Treasury has promulgated final Treasury Regulations governing the use of the proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City or a borrower from the City for project expenditures paid prior to the date of issuance of such bonds. Those regulations, Treasury Regulations, Section 1.150-2, require that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds occur 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 Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

(b) The City reasonably expects to reimburse the Borrower for the expenditures made for costs of the Project from the proceeds of the Bonds in an estimated maximum aggregate principal amount of $78,000,000 after the date of payment of all or a portion of the costs of the Project. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations and also qualifying expenditures under the Act.

(c) Based on representations by the Borrower, no expenditures for the Project have been made by the Borrower more than sixty (60) days before the date of adoption of this resolution other than: (i) expenditures to be paid or reimbursed from sources other than the Bonds; (ii) expenditures permitted to be reimbursed under prior regulations pursuant to the transitional provision contained in Section 1.150-2(j)(2)(i)(B) of the Regulations; (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations; or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations).

(d) Based on representations by the Borrower, as of the date hereof, there are no funds of the Borrower reserved, allocated on a long term-basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project to be financed from proceeds of the Bonds, other than pursuant to the issuance of the Bonds. This resolution, therefore, is determined to be consistent with the budgetary and financial circumstances of the Borrower as they exist or are reasonably foreseeable on the date hereof.

Certified as an official action of the City Council:

RECORD OF COUNCIL VOTE (X INDICATES VOTE)													
COUNCIL MEMBER	**AYE**	**NAY**	**NOT VOTING**	**ABSENT**	**VOTE TO OVERRIDE**	**VOTE TO SUSTAIN**	**COUNCIL MEMBER**	**AYE**	**NAY**	**NOT VOTING**	**ABSENT**	**VOTE TO OVERRIDE**	**VOTE TO SUSTAIN**
President Johnson							**Goodman**						
							Glidden						
Ostrow							**Schiff**						
Gordon							**Remington**						
Hofstede							**Benson**						
Samuels							**Colvin Roy**						
Lilligren							**Hodges**						

PASSED ______________________ ☐ **APPROVED** ☐ **NOT APPROVED** ☐
VETOED

DATE

ATTEST ______________________ ______________________

CITY CLERK MAYOR DATE