

**CITY COUNCIL
COMMUNICATION:**

ITEM _____

**OFFICE OF THE CITY MANAGER
CITY OF DES MOINES, IOWA**

99-443

SYNOPSIS -

AGENDA:

OCTOBER 4, 1999

SUBJECT:

SUBORDINATION
AGREEMENT FOR
FLYNN

ENTERPRISES, INC.,
D.B.A. FORMED
STEEL PRODUCTS,
INC.

TYPE:

RESOLUTION
ORDINANCE
RECEIVE/FILE

SUBMITTED BY:

RICHARD CLARK
DEPUTY CITY
MANAGER

On the October 4, 1999 Council agenda is a roll call to approve an Intercreditor and Subordination Agreement and approve the extension of interest only payments for an additional one-year time period to a Des Moines Action Loan in the amount of \$200,000 for Flynn Enterprises, Inc., D.B.A. Formed Steel Products, Inc. Approval of the requests will facilitate a change in banking relationships from Bank of America (successor to Boatmen's National Bank of St. Louis) to General Electric Capital Corporation.

By Roll Call No. 97-515, dated February 17, 1997, Council gave final approval to a State of Iowa Community Economic Betterment Account (CEBA) Loan in the amount of \$200,000 and a Des Moines Action Loan Fund (DMALF) Loan in the amount of \$200,000 as part of a financing package to assist in the management buyout of EMCO Industries, a division of EMCO Enterprises, Inc. By Roll Call No. 97-542, dated February 20, 1997, Council approved an Agreement of Subordination between Bank of America (successor to Boatmen's National Bank of St. Louis) and the City.

General Electric Capital Corporation has conditioned its financing upon the continued subordination of all public sector creditors and their provision of an additional year of interest-only payments under the public loan agreements. The Intercreditor and Subordination Agreement reflects the same basic terms and conditions as approved for the previous senior creditor. General Electric Capital Corporation will provide the company a total credit facility in the amount of \$5.4 million.

FISCAL IMPACT -

No fiscal impact on the General Fund. The Des Moines Action Loan is funded out of the Economic Development Enterprise Account.

RECOMMENDATION -

Approval of the Intercreditor and Subordination Agreement and approval of an amendment to the City loan agreement providing for an additional year of interest only payments. Approval of authorization for the Mayor to execute all necessary documents to implement the Intercreditor and Subordination Agreement and amendments to the City loan agreement. Approvals are subject to approval by the Iowa Department of Economic Development and the Mid-Iowa Development Fund to the same terms and conditions as contained in this communication.

BACKGROUND -

In the fall of 1996, Mr. Don Flynn negotiated to purchase the assets of EMCO Industries, a subsidiary of EMCO Enterprises, Inc. in an effort to have the manufacturing facility remain in the City of Des Moines. EMCO Enterprises, Inc. had made the decision to sell this subsidiary and was negotiating with a Ft. Wayne, IN, company that would result in the break-up and relocation of the subsidiary outside the state.

To assist in the purchase, a public financing assistance package comprised of the following entities and amounts was approved: City of Des Moines DMALF loan in the amount of \$200,000 at 3 percent interest repaid over a term of up to ten years; State of Iowa CEBA loan in the amount of \$200,000 at zero percent interest repaid over a term of up to ten years; a Mid-Iowa Development Loan Fund, Inc. loan in the amount of \$200,000 at 4 percent interest repaid over a term of ten years; and a loan from MidAmerican Energy Company in the amount of \$75,000 at 6 percent interest repaid over a term of five years.

Formed Steel Products, Inc. is a manufacturer of hardware in the fastener industry. Its principal product groups are automotive exhaust parts manufacturing and distribution, and industrial fasteners primarily u-bolts. The company employs 84 people with an annual payroll of about \$2.6 million. Seventy of its employees are engaged in production and are members of the United AutoWorkers Union. The production jobs average \$10.47 per hour plus medical and pension benefits.

Legal counsels representing the General Electric Credit Corporation (senior creditor), Iowa Department of Economic Development, Mid-Iowa Development Fund, and the City (collectively referred to as the junior creditors) have negotiated an Intercreditor and Subordination Agreement that has been reviewed and approved by all parties. The agreement subordinates the junior creditors' security interests to the bank's security interests and places restrictions on the receipt of payments by the junior creditors if Flynn Enterprises, Inc. is in default under the senior creditor's loan. In the event of default by Flynn Enterprises, Inc. under the terms and conditions of the junior creditors' loans, the agreement requires a stand still period on the legal actions to be taken by the junior creditors. The lien position to be held by the City and all junior creditors in the assets of Flynn Enterprises, Inc. has always been intended to be junior to that of the senior creditor. The Intercreditor and Subordination Agreement formalizes the relationship among all creditors and is not detrimental to the City's loan position among junior creditors.