



**CITY COUNCIL
COMMUNICATION:**

ITEM _____

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

99-472

SYNOPSIS -

AGENDA:

OCTOBER 18, 1999

SUBJECT:

SUBORDINATION
AGREEMENT FOR
FLYNN
ENTERPRISES, INC.
D.B.A. FORMED
STEEL PRODUCTS,
INC.

On the October 18, 1999 Council agenda is a roll call to approve an Intercreditor and Subordination Agreement and an extension of interest only payments for an additional one-year time period 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 to General Electric Capital Corporation.

FISCAL IMPACT -

No fiscal impact on the City's General Fund; the loan, through the Des Moines Action Loan, is funded from the Economic Development Enterprise Account.

TYPE:

RECOMMENDATION -

RESOLUTION
ORDINANCE
RECEIVE/FILE

1. **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.**
2. **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.**

SUBMITTED BY:

RICHARD CLARK
DEPUTY CITY
MANAGER

BACKGROUND -

In the fall of 1996, Mr. Don Flynn negotiated to purchase the

assets of EMCO Industries, a subsidiary of EMCO Enterprises, Inc., 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 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 (Des Moines Action Loan Fund) loan in the amount of \$200,000 at 3 percent interest repaid over a term of up to ten years;
- State of Iowa CEBA (Community Economic Betterment Account) loan in the amount of \$200,000 at zero percent interest repaid over a term of up to ten years;
- 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
- MidAmerican Energy Company loan in the amount of \$75,000 at 6 percent interest repaid over a term of five years.

Formed Steel Products, Inc. manufactures fastener hardware. 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., the agreement

requires a standstill period on the legal actions to be taken by the junior creditors. The lien position 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.

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