

10R-120

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 10R-120 by accepting Bill No. 10R-120S which is attached hereto as the Substitute resolution.

Introduced by:

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Approved as to Form:

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City Attorney

Requested by: Lauren Wismer, Bond Counsel

Reason for Request: To include TMCO Investments, LLC, as an additional party to the Lease.

**SUBSTITUTE**

10R-\_\_\_

Introduce: May 17, 2010

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION DECLARING THE OFFICIAL INTENT OF THE CITY OF LINCOLN, NEBRASKA TO ISSUE TAX-EXEMPT OBLIGATIONS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000 AND USE THE PROCEEDS THEREOF TO ACQUIRE PROPERTY TO BE LEASED TO TMCO, INC. AND/OR TMCO INVESTMENTS, LLC FOR THE PURPOSES DESCRIBED HEREIN; AND RELATED MATTERS**

**BE IT RESOLVED** by the Council (the **“Council”**) of the City of Lincoln, Nebraska (the **“City”**) as follows:

**Section 1. Findings.**

(a) The City of Lincoln, Nebraska (the **“City”**), is authorized and empowered pursuant to Article XIII, Section 2 of the Nebraska Constitution and Sections 13-1101 to 13-1110, inclusive, Reissue Revised Statutes of Nebraska, as amended (collectively, the **“Act”**), to acquire land, buildings, equipment or other improvements, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which are suitable for use for manufacturing or industrial enterprises, and to lease the same to others as a project in order to provide for the improvement, betterment and extension of economic, industrial and manufacturing development in the State of Nebraska (the **“State”**).

(b) TMCO, Inc., a corporation duly organized and validly existing under and pursuant to the laws of the State (the **“Corporation”**) and TMCO Investments, LLC, a limited liability company duly organized and validly existing under and pursuant to the laws of the State (the **“Company”**), have requested that (1) the City issue and sell its industrial development revenue bonds pursuant to the Act in an amount not to exceed \$5,000,000 to finance the costs and expenses incident to the acquisition and construction of improvements to the manufacturing facilities of the Corporation and/or the Company, together with necessary equipment (collectively, the **“Project”**), all of which will together constitute a project as that term is defined in the Act, to be located in Lincoln, Nebraska and (2) lease or sell the Project to the Corporation and/or the Company, all in accordance with and pursuant to the Act.

(c) The City desires to finance the costs of purchasing, constructing and equipping the Project through the issuance of its industrial development revenue bonds under the Act in a principal amount not to exceed \$5,000,000, said bonds to be payable solely out of payments, revenues and receipts derived from the lease or sale of the Project by the City to the Corporation and/or the Company.

(d) The Internal Revenue Code of 1986, as amended, (the **“Code”**) and applicable regulations require the City to declare its official intent with respect to the Project, and the incurrence of certain expenses and uses of funds in connection with the Project, prior to the issuance of tax-exempt bonds to allow such expenditures and funds to be reimbursed with the proceeds thereof.

(e) The City has received an allocation of Recovery Zone Facility Bonds in the amount of \$26,256,000 (the **“Allocation”**), pursuant to the American Recovery and Reinvestment Tax Act of 2009 (the **“ARRA”**).

(f) The City understands that Recovery Zone Facility Bonds (“**Recovery Zone Bonds**”) are to be issued pursuant to a portion of the Allocation to finance certain expenditures located in or attributable to an area within the jurisdiction of the City, which the City determines has experienced an increase in unemployment and a decline in retail sales and sales tax receipts or general distress.

(g) Pursuant to Resolution No. A-85768 passed by the Council on March 8, 2010 and approved by the Mayor on March 10, 2010, the Mayor and Council have designated the City as a “Recovery Zone” to provide for the possible issuance of Recovery Zone Bonds (such area being referred to herein as the “**Recovery Zone**”).

(h) The City, the Corporation and the Company desire that the purchase and construction of the Project commence as soon as practicable;

**Section 2.** The Council hereby finds and determines that: (a) the Project will promote the economic welfare and development of The City of Lincoln, Nebraska, and (b) the issuance of the City’s industrial development revenue bonds to finance the costs of the Project will be in furtherance of the public purposes set forth in the Act.

**Section 3.** The Council hereby determines and declares the intent of the City to finance the costs of the Project out of the proceeds of its industrial development revenue bonds to be issued pursuant to the Act in a principal amount not to exceed \$5,000,000.

**Section 4.** Subject to the conditions of this Resolution, the City will (a) issue its industrial development revenue bonds to pay the costs of financing the Project, including repayment to the Corporation and/or the Company of advances made by it in connection with the Project, with such maturities, interest rates, redemption terms and other provisions as may be determined by subsequent resolution of the City; (b) purchase and construct the Project and lease (with an option to purchase) or sell or otherwise dispose of the Project to the Corporation and/or the Company; and (c) adopt such resolutions and take such action as may be necessary or advisable to authorize and issue such industrial development revenue bonds of the City for the purposes set forth herein.

**Section 5.** The issuance of such bonds and the execution and delivery of any documents related to financing the Project are subject to (a) approval of the same by (i) the Mayor and Council and (ii) the respective governing bodies of the Corporation and/or the Company; (b) receipt of any other necessary governmental approval and (c) agreement by the City, the Corporation and/or the Company and the purchasers of the bonds upon (i) mutually acceptable terms and conditions with respect to (1) the bonds and the sale and delivery thereof and (2) any other documents related to the issuance of the bonds and the Project.

**Section 6.** The Corporation and the Company are hereby authorized to proceed with the purchase and construction of the Project, including the entering into of any contracts and purchase orders in connection therewith, and to advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law, the City shall reimburse the Corporation and/or the Company for all expenditures paid or incurred therefor out of the proceeds of the bonds.

**Section 7.** The City Attorney and bond counsel for the bonds, together with the officers and employees of the City, are hereby authorized to work with the purchaser of the bonds, the Corporation and/or the Company, their respective counsel and others to prepare for submission to and final action by the City all documents necessary to effect the authorization, issuance and sale of the bonds and other actions contemplated hereunder in connection with the financing of the Project.

**Section 8.** This Resolution shall inure to the benefit of the City, the Corporation, the Company and their respective successors and assigns.

**Section 9.** This Resolution shall take effect and be in full force immediately after its passage by the Council and approval of the Mayor as provided by law.

**Section 10. Conflicting Resolutions Repealed.** All resolutions of the Council, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

**INTRODUCED BY:**

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**PASSED** \_\_\_\_\_, 2008.

**ABSENT OR NOT VOTING:**

**AYES:** \_\_\_\_\_

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**NAYS:** \_\_\_\_\_

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**APPROVED AS TO FORM:**

**CONFLICT OF INTEREST:**

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**City Attorney**

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**APPROVED:** \_\_\_\_\_, 2008.

\_\_\_\_\_  
**Bond Counsel**

\_\_\_\_\_  
**Mayor**