

Minneapolis Community Development Agency

Request for City Council Action

April 8, 2003

To: Council Member Lisa Goodman, Community Development Committee

Prepared by Bob Lind, Business Finance, Phone 612-673-5068

Approved by Lee Sheehy, MCDA Executive Director
Chuck Lutz, MCDA Deputy Executive Director _____

Subject: Request for Final Approval of up to \$915,000 in Tax-exempt Industrial Development Revenue Refunding Notes of 2003 for the Hauenstein & Burmeister, Inc. Project.

Previous Directives: In 1981 the City issued \$2,100,000 in tax-exempt revenue bonds to acquire and construct an addition to the property at 2629 30th Ave. S. and for the purchase of equipment. In 1987 and in 1998 the City refinanced the outstanding debt by the issuance of refunding revenue bonds.

Ward: 9 2629 30th Ave. S.

Neighborhood Group Notification: The Seward Neighborhood has been notified of the refunding request.

Consistency with *Building a City That Works*: The original project was consistent with Goal 3 of supporting strong and diverse neighborhoods where people choose to live.

Comprehensive Plan Compliance: In compliance.

Zoning Code Compliance: In compliance.

Impact on the MCDA Budget:

No financial impact

Action requires an appropriation increase to the MCDA Budget

Action provides increased revenue for appropriation increase

Action requires use of contingency or reserves

Other financial impact (Explain): Hauenstein & Burmeister, Inc. will continue to pay administrative fee to the Agency as part of the refunding.

Living Wage/Business Subsidy: Does not apply.

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Minneapolis, MN 55401-2534
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Job Linkage: Does not apply.

Affirmative Action Compliance: The existing affirmative action plan on file with the City will be updated.

RECOMMENDATION:

City Council Recommendation: The Executive Director recommends that the City Council adopt the attached Resolution, giving Final Approval to the issuance of up to \$915,000 in Tax-exempt Industrial Development Revenue Refunding Notes of 2003 for the Hauenstein & Burmeister, Inc. Project.

Background/Supporting Information

PROJECT LOCATION & DESCRIPTION: Hauenstein & Burmeister, Inc.
2629 30th Ave. S.
Minneapolis, MN 55406
Ward: 9
Neighborhood: Seward

In 1981 the City of Minneapolis issued \$2.1 million in tax-exempt revenue bonds for Hauenstein & Burmeister, Inc. The 1981 project involved the acquisition of land and the construction of an addition to their current facility at 2629 30th Ave. S. and the purchase of production equipment. In 1987 and again in 1998 the revenue bonds were refinanced to take advantage of lower interest rates. The company would again like to refinance the outstanding balance on the revenue bonds.

Miller Johnson Steichen & Kinnard, Inc. have lined up a private placement of the tax-exempt debt to two institutional investors. One investor will purchase a \$300,000 Note and the other a \$615,000 Note. The loan will be secured by a first mortgage on the property and the guarantees of the borrower and Krause Anderson, Inc.

TYPE OF FINANCING:

Sources:

Issuance of tax-exempt refunding notes	\$915,000
Equity from company	20,000
	<u>\$935,000</u>

Uses:

Retirement of 1998 bonds	\$915,000
Issuance Costs	20,000
	<u>\$935,000</u>

The issuance of the tax-exempt refunding bonds by Miller Johnson Steichen & Kinnard will be a private placement to two private individuals/institutional buyers.

PRESENT EMPLOYMENT:

Hauenstein & Burmeister currently employs 35 at the facility.

NEW EMPLOYMENT:

Refunding only.

ASSESSOR'S ESTIMATED
ANNUAL TAX INCREASE:

Refunding only.

AFFIRMATIVE ACTION COMPLIANCE:

The existing affirmative action plan will be updated prior to the bond closing.

IRP CAP:

The issuance of refunding bonds will not require an allocation from the State's volume cap in that refundings are exempt from the volume cap.

BOND COUNSEL:

Briggs & Morgan

UNDERWRITER:

Miller Johnson Steichen & Kinnard, Inc.

COUNCIL MEMBER INFORMED:

Yes, Ward 9

**AUTHORIZING THE ISSUANCE AND SALE OF THE
\$915,000 INDUSTRIAL DEVELOPMENT REVENUE REFUNDING NOTES OF 2003
(HAUENSTEIN & BURMEISTER, INC. PROJECT)**

RESOLVED by the City Council of the City of Minneapolis, Minnesota:

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

- 1.1.the City is authorized by Minnesota Statutes, Chapter 469.152-1651, as amended (the “Act”), to redeem and refund the outstanding principal balance of its \$1,400,000 Industrial Development Refunding Revenue Bonds (Hauenstein & Burmeister, Inc. Project), Series 1998A (the “Prior Bonds”) issued for the benefit of Hauenstein & Burmeister, Inc., a Minnesota corporation (the “Borrower”) to refinance the Borrower’s industrial project located at 2629-30th Avenue South, Minneapolis (the “Project”) 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 refinancing of the Project the City’s purpose is, and in its judgment the effect thereof will be, to promote the public welfare by: the attraction, encouragement and development of economically sound industry and commerce so as to prevent, so far as possible, the emergence of blighted and marginal lands and areas of chronic unemployment; the development of improved health care facilities available to the community; the halting of the movement of talented, educated personnel of all ages to other areas thus preserving the economic and human resources needed as a base for providing governmental services and facilities; the provision of accessible employment opportunities for residents in the area;
- 1.3.it is desirable, feasible and consistent with the objects and purposes of the Act to issue the \$915,000 Industrial Development Revenue Refunding Notes of 2003 (Hauenstein & Burmeister, Inc. Project) in the form of a \$300,000 Note and a \$615,000 Note (collectively, the “Notes”) to redeem and refund the Prior Bonds and refinance the Project; and
- 1.4.the Notes 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 Notes or interest thereon.

Section 2. The Notes.

2.1. **Authorized Amount and Form of Notes.** The Notes 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 Notes that may be outstanding hereunder is expressly limited to \$915,000 unless a duplicate Note is issued pursuant to Section 2.7.

2.2. **The Notes.** The Notes 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, and shall be subject to such other terms and conditions as are set forth therein.

2.3. **Execution.** The Notes shall be executed on behalf of the City by the signatures of its Mayor and Clerk and countersigned by its Finance Officer and shall be sealed with the seal of the City. In case any officer whose signature shall appear on the Notes shall cease to be such officer before the delivery of the Notes, 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 Mayor, Clerk or Finance Officer such officers 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 execute and deliver the Notes.

2.4. **Delivery of Notes.** Before delivery of the Notes there shall be filed with the purchasers of the Notes (except to the extent waived by the purchasers) 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 purchasers (the "Pledge Agreement");
 - (3) the Mortgage, Security Agreement and Fixture Financing Statement from the Borrower to the purchasers (the "Mortgage"); and
 - (4) the Guaranty from Kraus-Anderson, Incorporated to the purchasers (the "Guaranty").
- (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 Notes; 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 Notes, the purchase price paid will be used to redeem and refund the Prior Bonds.

2.6.Registration of Transfer. The City will cause to be kept at the office of the 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 Notes. The Notes shall be initially registered in the name of the original purchasers and shall be transferable upon the Note Register by the holders 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 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 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 Notes have been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the

Notes may not be assigned or transferred in whole or part, nor may a participation interest in the Notes be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements.

- 2.10. **Issuance of New Notes.** Subject to the provisions of Section 2.9, the City shall, at the request and expense of a holder, issue new notes, in aggregate outstanding principal amount equal to that of the Notes 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 “Program Bonds”.** The Notes are hereby designated “Program Bonds” and are 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 Notes at the place, on the dates, solely from the source and in the manner provided herein and in the Notes. The principal and interest are payable solely from and secured by revenues and proceeds derived from the Loan Agreement, the Pledge Agreement, the Mortgage and the Guaranty (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 Notes and the Security Documents; and nothing in the Notes 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 Notes and in all proceedings of the City Council pertaining thereto; that it is duly authorized under the Constitution and laws of the State of Minnesota including particularly and without limitation the Act, to issue the Notes, pledge the revenues and assign the Loan Agreement in the manner and to the extent set forth in this Resolution, the Notes, the Loan Agreement and the Pledge Agreement; that all action on its part for the issuance of the Notes and for the execution and delivery thereof has been duly and effectively taken; and that the Notes in the hands of the holders are and will be valid and enforceable special limited obligations of the City according to the terms thereof.
- 3.3.**Enforcement and Performance of Covenants.** The City agrees to enforce all covenants and obligations of the Borrower under the Loan Agreement, upon request of the holders of the Notes 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 Notes and the Loan Agreement and subject to Section 3.4.
- 3.4.**Nature of Security.** Notwithstanding anything contained in the Notes, the Security Documents or any other document referred to in Section 2.4 to the contrary, under the provisions of the Act the Notes 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 Notes 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 Notes shall ever have the right to compel any exercise of the taxing power of the City to pay the Notes 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 Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City; and the Notes 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 Notes 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 Notes, 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 Notes. 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 Mayor, the City Clerk 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 Mayor, the City Clerk or Finance

Officer such officers 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.