

**CITY COMMISSION AGENDA MEMO**  
**November 4, 2009**

**FROM:** Lauren Palmer, Assistant City Manager

**MEETING:** November 17, 2009

**SUBJECT:** Ordinance No. 6797 Issuing up to \$1,020,000 in Industrial Revenue Bonds for GTM Sportswear, Inc.

**PRESENTERS:** Lauren Palmer, Assistant City Manager  
Rob Berard, Vice President, Chief Financial Officer,  
GTM Sportswear, Inc.

**BACKGROUND**

Municipalities have the statutory authority to issue Industrial Revenue Bonds (IRBs) for the purpose of constructing and/or equipping facilities, which will enhance, promote, stimulate, and develop the general economic welfare and prosperity of the community. Furthermore, interest earned from IRBs issued for certain purposes is exempt from Federal and State income taxes.

The City is the issuer of the IRBs. The City owns the real or personal property financed from bond proceeds and leases the property to the applicant (tenant). The tenant makes lease payments to a Trustee Bank equal to the annual principal and interest payments on the bonds. When the bonds have been paid in full, the City deeds the real and/or personal property to the tenant. Although the City is the issuer of the bonds, the City incurs no legal obligation to make payments on the bonds should the tenant become unable to make the payments. Should there be a default, the real or personal property reverts to the City, and the Trustee Bank would attempt to sell or lease the property to reimburse the bondholders. According to Bond Counsel, a default on a single IRB issue would not jeopardize the bond rating of a municipality.

On May 2, 2006, the City Commission conducted a public hearing and passed a Resolution of Intent to issue up to \$28 million in IRBs to finance the costs of acquiring, constructing, expanding, and further equipping GTM's manufacturing facility on McCall Road. The first series of bonds, totaling \$6 million, was issued in December 2006 and remains outstanding. The second series of bonds, totaling \$3,336,000, was issued in July 2008 and remains outstanding.

On November 3, 2009, the City Commission approved first reading of an ordinance authorizing the issuance of Industrial Revenue Bonds to GTM Sportswear, Inc., for the purpose of acquiring, constructing, expanding, and equipping the company's existing manufacturing facility located at 520 McCall Road.

## **DISCUSSION**

The Resolution of Intent authorizing up to \$28 million in IRBs was approved in 2006 as part of the economic development incentives package for GTM. The incentives are conditioned upon GTM meeting performance targets in four categories: capital investment, job creation, wage structure, and employee benefits. For the year ended December 31, 2008, GTM met or exceeded three of its four performance targets and earned a blended compliance rate of 128%. Company sales have grown by over 18% in the last fourteen months, and facility space has expanded to 120,000 square feet. The company has added 195 full-time equivalent employees within the last four months in anticipation of the fall selling season. The proposed issuance is for a total principal amount not to exceed \$1,020,000 and will assist with ongoing expansion efforts. GTM is eligible for a ten-year 100% tax abatement on both real (land and buildings) and personal (equipment) property related to its expansion, as well as the existing facility and equipment.

## **FINANCING**

The repayment on these bonds will be the responsibility of the company; the City incurs no legal responsibility for repayment by acting as a financing conduit.

## **ALTERNATIVES**

It appears the Commission has the following alternatives concerning the issue at hand. The Commission may:

1. Approve Ordinance No. 6797 authorizing the issuance of Industrial Revenue Bonds for GTM Sportswear, Inc., and authorize the Mayor and City Clerk to execute documents related to the bond sale.
2. Do not approve an ordinance authorizing the issuance of Industrial Revenue Bonds for GTM Sportswear, Inc.
3. Table the request.

## **RECOMMENDATION**

City Administration recommends the City Commission authorize the issuance of Industrial Revenue Bonds for GTM Sportswear, Inc., and authorize the Mayor and City Clerk to execute documents related to the bond sale.

## **POSSIBLE MOTION**

Approve Ordinance No. 6797 authorizing the issuance of Industrial Revenue Bonds to GTM Sportswear, Inc., for the purpose of acquiring, constructing, expanding, and equipping the company's existing manufacturing facility located at 520 McCall Road and authorize the Mayor and City Clerk to execute documents related to the bond sale.

LEP  
09166

Enclosure:

1. Ordinance No. 6797

**ORDINANCE NO. 6797**

**OF THE  
CITY OF MANHATTAN, KANSAS**

**AUTHORIZING THE ISSUANCE OF**

**\$740,000  
TAXABLE INDUSTRIAL REVENUE BONDS  
SERIES A, 2009, SERIES C, 2009  
(GTM SPORTSWEAR PROJECT)**

**\$280,000  
INDUSTRIAL REVENUE BONDS  
SERIES B, 2009  
(GTM SPORTSWEAR PROJECT)**

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(Published in the *Manhattan Mercury*, November 22, 2009)

## **ORDINANCE NO. 6797**

**AN ORDINANCE AUTHORIZING THE CITY OF MANHATTAN, KANSAS TO ISSUE ITS INDUSTRIAL REVENUE BONDS, SERIES A, 2009, SERIES B AND SERIES C, 2009 (GTM SPORTSWEAR PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$1,020,000 FOR THE PURPOSES OF ACQUIRING, CONSTRUCTING, IMPROVING AND FURNISHING AN EXISTING MANUFACTURING FACILITY; AUTHORIZING EXECUTION OF SUPPLEMENTAL TRUST INDENTURE NO. 2 BETWEEN THE CITY AND UMB BANK, N.A., WICHITA, KANSAS, AS TRUSTEE; AUTHORIZING THE CITY TO LEASE SUCH FURTHER IMPROVEMENTS TO DREILING REAL ESTATE, LLC AND AUTHORIZING EXECUTION OF SUPPLEMENTAL BUILDING LEASE NO. 2 BETWEEN THE CITY AND DREILING REAL ESTATE, LLC; APPROVING THE FORM OF A SUBLEASE BY DREILING REAL ESTATE, LLC TO IT'S GREEK TO ME, INC.; AUTHORIZING EXECUTION OF A TAX COMPLIANCE AGREEMENT BETWEEN THE CITY, DREILING REAL ESTATE, LLC, IT'S GREEK TO ME, INC. AND UMB BANK, N.A.; APPROVING THE FORM OF A GUARANTY AGREEMENT BETWEEN THE TENANT, IT'S GREEK TO ME, INC., DAVID L. DREILING, KRISTEN E. DREILING AND UMB BANK, N.A., AS TRUSTEE; AND AUTHORIZING THE EXECUTION OF A BOND PURCHASE AGREEMENT FOR THE BONDS BY AND BETWEEN THE CITY, IT'S GREEK TO ME, INC., DREILING REAL ESTATE, LLC, UMB NATIONAL BANK OF AMERICA, MANHATTAN, KANSAS, AND LANDMARK NATIONAL BANK, MANHATTAN, KANSAS, AS PURCHASERS OF THE BONDS; AND AUTHORIZING THE EXECUTION OF ADDITIONAL DOCUMENTS NECESSARY OR DESIRABLE TO EFFECT THE TRANSACTION CONTEMPLATED HEREBY.**

**WHEREAS**, the City of Manhattan, Kansas is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities; and

**WHEREAS**, pursuant to Ordinance No. 6592 adopted December 5, 2006 (the "Original Ordinance") and a Trust Indenture dated as of December 15, 2006 between the City and UMB Bank, n.a. (the "Original Indenture") the City has previously issued its Industrial Revenue Bonds, Series A, 2006, Series B, 2006, Series C, 2006, Series D, 2006 and Series E, 2006 (GTM Sportswear Project) dated December 15, 2006 (the "Original Bonds"), in the original principal amount of \$6,000,000 for the purposes of acquiring, constructing, expanding and further equipping an existing manufacturing facility (the "Original Project"), as amended and

supplemented by a Supplemental Indenture dated as of July 15, 2008 (the "Supplemental Indenture") between the same parties, as more fully described in a Building Lease dated as of December 15, 2006 (the "Original Building Lease") from the City to Dreiling Real Estate, LLC (the "Tenant") and sublease to It's Greek to Me, Inc. (the "Subtenant"), as amended and supplemented by a Supplemental Building Lease dated as of July 15, 2008 (the "Supplemental Building Lease") between the same parties; and

**WHEREAS**, the Tenant has requested the City assist in a financing plan proposed by the Tenant to construct, improve and furnish certain additions to the Original Project (the "Project Additions") by the issuance of the City's Industrial Revenue Bonds, Series A, 2009, Series B, 2009 and Series C, 2009 (GTM Sportswear Project) in an aggregate principal amount not exceeding \$1,020,000 (collectively, the "Series 2009 Bonds") for such purpose as more fully described in Supplemental Indenture No. 2 and in Supplemental Building Lease No. 2 hereinafter authorized; and

**WHEREAS**, the City further finds and determines that it is necessary and desirable in connection with the issuance of said Series 2009 Bonds to execute and deliver Supplemental Trust Indenture No. 2 dated as of December 1, 2009 ("Supplemental Indenture No. 2"), with UMB Bank, n.a., as Trustee (the "Trustee"), for the purpose of issuing and securing the Series 2009 Bonds as provided in the Original Indenture, the Supplemental Indenture and in Supplemental Indenture No. 2, and to enter into Supplemental Building Lease No. 2 dated as of December 1, 2009 ("Supplemental Lease No. 2"), with the Tenant pursuant to which the City shall cause the Project Additions to be leased to the Tenant in consideration of payments of Basic Rent, Additional Rent and other charges as provided in the Original Building Lease, the Supplemental Building Lease, and in Supplemental Building Lease No. 2; and

**WHEREAS**, the Issuer's governing body has found that under the provisions of K.S.A. 79-201a *Second*, the Project Additions purchased or constructed with the proceeds of the Series 2009 Bonds are eligible for exemption from ad valorem property taxes for up to 10 years, commencing in the calendar year following the calendar year in which the Bonds are issued, if proper application is made. The Issuer's governing body has further found that the Project Additions should be exempt from ad valorem property taxes for a period of 10 years in accordance with the provisions of the Economic Development Agreement dated September 15, 2006, entered into between the Issuer and the Tenant. Prior to making this determination, the governing body of the Issuer has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by K.S.A. Supp. 12-1749d.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS AS FOLLOWS:**

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined herein shall have the respective meanings set forth in the Original Indenture, the Supplemental Indenture, the Supplemental Indenture No. 2, the Original Building Lease, the Supplemental Building Lease and the Supplemental Building Lease No. 2 referred to herein.

Section 2. **Authority to Cause the Project Additions to be Acquired, Constructed and Improved.** The City shall cause the Project Additions to be acquired, constructed and improved in the manner and as more particularly described in Supplemental Indenture No. 2 and Supplemental Lease No. 2 hereinafter authorized.

Section 3. **Authorization of and Security for the Bonds.** The Series 2009 Bonds are hereby authorized and directed to be issued. They shall be designated "City of Manhattan, Kansas Industrial Revenue Bonds, Series A, 2009, Series B, 2009 and Series C, 2009 (GTM Sportswear Project)" and shall be issued in an aggregate principal amount not exceeding \$1,020,000 for the purpose of providing funds to pay the costs of the Project Additions. The Series 2009 Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Supplemental Indenture. The Series 2009 Bonds shall be special limited obligations of the City payable solely from the Trust Estate under the Original Indenture, as augmented and supplemented under the Supplemental Indenture No. 2. The Series 2009 Bonds shall not be general obligations of or constitute a pledge of the faith and credit of the City within the meaning of any constitutional or statutory provision and shall not be payable in any manner from tax revenues.

Section 4. **Authorization of Supplemental Indenture No. 2.** The City is hereby authorized to enter into Supplemental Indenture No. 2 dated as of December 1, 2009, between the City and UMB Bank, n.a., Wichita, Kansas, as Trustee, under which the City shall pledge and assign to the Trustee, for the benefit of the owners of the Original Bonds, the Series 2008 Bonds, the Series 2009 Bonds, and any other Bonds issued and secured as provided in the Original Indenture, the Trust Estate as augmented by the Project Additions, all upon the terms and conditions set forth in the Original Indenture, the Supplemental Indenture and in Supplemental Indenture No. 2.

Section 5. **Authorization of Supplemental Lease No. 2.** The City is authorized to enter into Supplemental Lease No. 2 with the Tenant and the Subtenant. The City shall cause the Project Additions to be acquired and leased by the City to the Tenant pursuant to and in accordance with the provisions of the Original Lease, the Supplemental Lease, as amended and supplemented by Supplemental Lease No. 2.

Section 6. **Approval of Form of Guaranty Agreement.** The form of Guaranty Agreement, dated as of December 1, 2009, pursuant to which the guarantors named therein guarantee to the Trustee, for the benefit of the owners of the Series 2009 Bonds, the full and prompt payment of the Series 2009 Bonds and interest thereon, is hereby approved.

Section 7. **Authorization of the Tax Compliance Agreement.** The Issuer is authorized to enter into the Tax Compliance Agreement with the Tenant and the Trustee in the form approved in this ordinance.

Section 8. **Authorization of Bond Purchase Agreement.** The Series A, 2009 and the Series B, 2009 Bonds shall be sold and delivered to UMB National Bank of America, Manhattan, Kansas and Landmark National Bank, Manhattan, Kansas, upon the terms and subject to the

provisions of a Bond Purchase Agreement to be entered into among the City, the Tenant, the Subtenant and UMB National Bank of America and Landmark National Bank, as Original Purchasers. The Tenant will purchase the Series C, 2009 Bonds.

**Section 9. Pledge of the Project Additions.** The City hereby pledges the Project Additions to the payment of the Series 2006 Bonds, the Series 2008 Bonds and the Series 2009 Bonds in accordance with K.S.A. 12-1744. The lien created by such pledge shall be discharged when all of the bonds secured by the Original Indenture, the Supplemental Indenture and the Supplemental Indenture No. 2 (including the Series 2009 Bonds) shall be deemed to have been paid within the meaning of the Original Indenture.

**Section 10. Execution of Bonds and Agreements.** The Mayor of the City or person authorized by the City to act for the Mayor in the Mayor's absence is hereby authorized and directed to execute the Series 2009 Bonds and deliver same to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Original Indenture, the Supplemental Indenture and Supplemental Indenture No. 2. The Mayor or other authorized signatory is hereby further authorized and directed to execute and deliver Supplemental Indenture No. 2, Supplemental Lease No. 2 and the Bond Purchase Agreement for and on behalf of and as the act and deed of the City in substantially the forms presented today, with such minor corrections or amendments thereto as the Mayor or other authorized signatory shall approve, which approval shall be evidenced by his or her execution thereof, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk or the Deputy City Clerk of the City is hereby authorized and directed to attest the execution of the Series 2009 Bonds, Supplemental Indenture No. 2, the Supplemental Lease No. 2 and the Bond Purchase Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 11. Tax Exemption.** The Project Additions will be exempt from ad valorem property taxes for 10 years, commencing in the calendar year after the calendar year in which the Series 2009 Bonds are issued. The Tenant will prepare the application for exemption and submit it to the Issuer for its review. After its review, the Issuer will submit the application for exemption to the Pottawatomie County Appraiser for review and transmittal to the State Court of Tax Appeals.

**Section 12. Election Under Section 144(a)(4) of the Internal Revenue Code.** The City hereby elects that Section 144(a)(4) of the Internal Revenue Code of 1986, as amended, shall apply to some or all of the Bonds, as set forth in the Tax Compliance Agreement, and the Mayor and City Clerk are hereby authorized and directed to file evidence of such election with the Secretary of the Treasury of the United States or his or her delegate, and to take such other action as may be necessary to make effective such election.

**Section 13. Further Authority.** The City shall, and the officers, agents and employees of the City are hereby authorized and directed to take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Series 2009 Bonds, the Original Indenture, the Supplemental

Indenture, the Original Lease, the Supplemental Lease, Supplemental Indenture No. 2 and Supplemental Lease No. 2 as necessary to carry out and effect the issuance of the Series 2009 Bonds.

Section 14. **Effective Date.** This Ordinance shall take effect and be in full force from and after its final passage by the governing body, signature by the Mayor and publication once in the official City newspaper.

**PASSED** by the governing body of the City of Manhattan, Kansas this 17<sup>th</sup> day of November, 2009.

**SIGNED** by the Mayor of the City of Manhattan, Kansas this 17<sup>th</sup> day of November, 2009.

(Seal)

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Mayor

Attest:

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City Clerk

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**CERTIFICATE OF COPY**

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 6797 of the City of Manhattan, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated therein, and that the signed original of such Ordinance is on file in my office.

(Seal)

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City Clerk