

Order 147-05/06

Emergency Passage: 1/4/06 7-0 (Gorham, Duson absent)

JAMES I. COHEN (MAYOR)(5)  
WILLIAM R. GORHAM (1)  
KAREN A. GERAGHTY (2)  
DONNA J. CARR (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

JAMES F. CLOUTIER (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)  
EDWARD J. SUSLOVIC (A/L)

**CITY OF PORTLAND, MAINE**

**FINDINGS OF FACT AND RESOLUTIONS AUTHORIZING THE ISSUANCE OF  
UP TO THREE MILLION TWO HUNDRED FIFTY DOLLARS (\$3,250,000)  
OF REVENUE BONDS  
(2006 EASTMAN INDUSTRIES AND INGERSOLL TRACTOR PROJECT)**

**WHEREAS**, the Finance Authority of Maine Act, 10 M.R.S.A., Ch. 110, §§ 961 et seq. (the "Act"), authorizes and empowers the City of Portland, Maine (the "City") to provide financing for eligible projects within the corporate limits of the City, and to make and enter into all financing documents, security agreements, mortgages, contracts, and trust agreements necessary or convenient to carry out each such power; and

**WHEREAS**, Section 1064(1) of the Act authorizes the City Council of the City as the Municipal officers of the City to provide, by resolution for the issuance of the City's revenue bonds upon receipt of a Certificate of Approval issued by the Finance Authority of Maine (the "Authority"); and

**WHEREAS**, by the Inducement Order adopted by the City Council on August 15, 2005, the City Council authorized the Director of Finance of the City to prepare and submit to the Authority a municipal application seeking approval of the issuance of the Bonds, and further ordered that the Inducement Order constitute the City's and the Company's (as defined herein) declaration of official intent pursuant to Treas. Reg. § 1.150-2; and

**WHEREAS**, the Certificate of Approval of the Authority is expected to be issued and received prior to issuance of the Bonds; and

**WHEREAS**, Section 1064(6) of the Act provides that the Bonds (as defined herein) of the City authorized hereby shall not constitute any debt or liability of the State of Maine, its political subdivisions or any municipality thereof nor a pledge of the faith and credit of the State of Maine, its political subdivisions or any municipality but shall be payable solely from revenues of the project for which they are issued, and that the issuance of such Bonds shall not directly or indirectly or contingently obligate the State of Maine, its political subdivisions or any municipality thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment; and

**WHEREAS**, 410 Riverside Street, LLC (“410 Riverside”), Eastman Industries (“Eastman”) and Ingersoll Tractor (“Ingersoll” and collectively the “Companies”) desire to finance (i) the acquisition, construction, expansion, renovation, equipping and installation of a manufacturing facility located at 410 Riverside Street, Portland, Maine 04103 to be owned by 410 Riverside and leased to Eastman and Ingersoll; and (ii) a portion of the cost of issuing the Bonds (the “Project”); and

**WHEREAS**, the Companies desire the City to issue the City's revenue bonds, to be designated "City of Portland, Maine, Revenue Bond (2006 Eastman Industries and Ingersoll Tractor Project)" in an aggregate principal amount not to exceed \$3,250,000 (the "Bonds") and to loan the proceeds thereof to one or more of the Companies to finance the costs of the Project or to reimburse the Companies for such costs previously incurred or paid by the Companies; and

**WHEREAS**, the City Council, the municipal officers of the City and acting as the "applicable elected representative" of the City have held a public hearing at 7:00 p.m. on January 4, 2006 after reasonable public notice posted in 2 public and conspicuous places within the City on or before December 21, 2005 and published in the *Portland Press Herald* on December 20, 2005 and December 21, 2005 which paper is of general circulation in the City, about the proposed issue of the Bonds for the Project as required by the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 147(f)(2), and regulations thereunder;

**NOW, THEREFORE**, following such public hearing held by the City Council of the City of Portland, Maine, held upon due notice, **THE CITY OF PORTLAND HEREBY FINDS AND RESOLVES:**

1. **THAT** the City Council hereby finds and determines that:
  - a. The City is a duly organized municipality of the State of Maine and the City Council is comprised of the duly elected municipal officers of the City; and
  - b. The Act authorizes and empowers the City to issue the Bonds and loan the proceeds thereof to one or more of the Companies to finance the cost of the Project; and
  - c. The Act authorizes the City to enter into financing documents including security agreements, mortgages, contracts, and trust agreements and all other contracts and agreements which are necessary or convenient to the exercise of its powers under the Act; and
  - d. The Certificate of Approval, the receipt of which is a necessary precondition to issuance of the Bonds, is expected to be issued and received as required by Section 1064(1)(A) of the Act prior to issuance of the Bonds, which Certificate authorizes the City to proceed to issue the Bonds to finance the Project; and

- e. The proceeds of the Bonds in an aggregate principal amount not to exceed \$3,250,000 will be required and, when added to the funds provided by the Company, will be sufficient to pay the estimated costs of the Project.

2. **THAT** pursuant to the Act, there is hereby authorized and approved the issuance of the Bonds of the City in an aggregate principal amount not to exceed \$3,250,000 to be designated substantially as "City of Portland, Maine, Revenue Bond (2006 Eastman Industries and Ingersoll Tractor Project)" (the "Bonds,") The proceeds of the Bonds, if and when issued by the City, shall be loaned to one or more of the Companies and used to finance the Project.

3. **THAT** the date, maturities, minimum denominations and interest rate or rates, place of payment, and other details of the Bonds shall be determined by the Director of Finance with the approval of one or more of the Companies and said Bonds shall be executed in the name of the City by the Mayor and Director of Finance, sealed with the seal of the City, attested to by its Clerk, and be in such form and contain such terms and provisions, not inconsistent herewith, as they may approve, their approval to be conclusively evidenced by their execution thereof.

4. **THAT** the Bonds shall: (1) consist of registered bonds, without coupons; and (2) mature not more than twenty-five (25) years from the date of issuance.

5. **THAT the Bonds shall be, and shall contain on their face, a statement substantially to the effect that the Bonds shall not constitute any debt or liability of the City, the State of Maine, its political subdivisions or any municipality therein or a pledge of the faith and credit of the City, the State of Maine, its political subdivision or any municipality, but shall be payable solely from revenues of the Project for which they are issued; and the issuance of the Bonds shall not directly or indirectly or contingently obligate the City, the State of Maine, its political subdivisions or any municipality therein to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.**

6. Furthermore, the Companies shall be obligated to pay to the City, directly or indirectly, such sums as shall be sufficient to pay the principal of, premium, if any, and interest on such Bonds as and when the same shall become due and payable, pursuant to financing documents that will contain such provisions as may be required by law and as shall be mutually acceptable to the City and one or more of the Companies. The City shall not have any obligation or liability whatsoever under this resolution or under the Bonds or any agreements or undertakings or actions with respect to the Project or the Bonds or any other document, agreement, covenant or undertaking by the City in connection with the Project or this resolution or the Bonds and the City shall not be obligated to appropriate or expend any money or funds whatsoever in connection therewith.

7. **THAT** the Director of Finance is authorized to negotiate, approve, execute, deliver, and record in the name of and on behalf of the City such contracts, deeds, leases, assignments, certificates, memoranda, abstracts, agreements, and other documents, including but not limited to a Loan and Security Agreement, a Non-Arbitrage Certificate, an IRS Form 8038, and any other certificates documents or agreements as may be necessary or appropriate as determined and

approved by such Director of Finance in connection with the financing of the Project to carry out (i) the provisions of this Order, and (ii) the execution, sale, and delivery by the City of the Bonds (the “Bond Documents”) which Bond Documents shall be in such form and contain such terms, provisions, and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

**8. THAT** the Clerk is hereby authorized and directed to cause a true copy of the form of Notice of Intent to issue City of Portland, Maine, Revenue Bond (2006 Eastman Industries and Ingersoll Tractor Project) to be published no later than fourteen (14) days after the date hereof in the *Portland Press Herald*, a newspaper of general circulation in the City, and the *Daily Kennebec Journal*, the state newspaper of the State of Maine. Such publications shall constitute the notice of intent to issue the Bonds required by Section 1064(1)(C) of the Act.

**9. THAT** the Director of Finance be and hereby is authorized to provide that any of the Bonds hereinbefore authorized be made callable, with or without premiums, prior to their maturity, and each Bond issued hereunder shall be signed by the Director of Finance and the Mayor whose signatures may be by facsimile to the extent permitted by law;

**10. THAT** the Director of Finance be and hereby is authorized to approve the Company’s selection of the underwriter or placement agent for the Bonds and the Director of Finance of the City be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

**11. THAT** the Bonds shall be transferable only on the registration books of the City kept by the transfer agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in the minimum denomination (if any) of the Bonds upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

**12. THAT** the Mayor and the Director of Finance from time to time shall execute such Bonds as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds to bear the original signature of the Mayor and the Director of Finance, and in case any officer of the City whose signature appears on any bond shall cease to be such officer before the delivery of said bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

**13. THAT** the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or

obligations, the acquisition of which would cause such notes to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended;

**14. THAT** the Director of Finance be and hereby is authorized to covenant, certify, and agree, on behalf of the City, for the benefit of the holders of such Bonds, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the notes to be subject to federal income taxation;

**15. THAT** the Director of Finance be and hereby is authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

**16. THAT** the term "cost" or "costs" as used herein and applied to the Projects, or any portion thereof, includes, but is not limited to (1) the purchase price or acquisition cost of all or any portion of the Project; (2) the cost of construction, building, alteration, enlargement, reconstruction, renovation, improvement, and equipping of the Project; (3) the cost of all appurtenances and other facilities either on, above, or under the ground which are used or usable in connection with the Project; (4) the cost of landscaping, site preparation and remodeling of any improvements or facilities; (5) the cost of all labor, materials, building systems, machinery and equipment; (6) the cost of land, structures, real property interests, rights, easements, and franchises acquired in connection with the Project; (7) the cost of all utility extensions and site improvements and development; (8) the cost of planning, developing, preparation of specifications, surveys, engineering, feasibility studies, legal and other professional services associated with the Project; (9) the cost of environmental studies and assessments; (10) the cost of financing charges and issuance costs, including premiums for insurance, interest prior to and during construction, underwriters' fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing transaction; and (11) the cost of all other financing authorized hereunder, whether related or unrelated to the foregoing; and

**17. THAT** the Mayor, Director of Finance and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such other acts and things as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds hereinabove authorized.

**18. THAT** if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or official; and also any such Bonds may be signed and sealed on behalf of the City by those persons who, at the actual date of the

execution of such Bonds, shall be the proper officers and officials of the City, although at the nominal date of such Bonds any such person shall not have been such officer or official.

**19. THAT** if the Mayor, the Director of Finance or Clerk are for any reason unavailable to approve and execute the Bonds or any of the Bond Documents, the person or persons then acting in any such capacity whether as an assistant, a deputy, or otherwise, are each individually authorized to act for such official with the same force and effect as if such official had herself or himself performed such act.

**20. THAT,** the Bond Documents and each agreement, contract, certificate or document executed pursuant to the foregoing resolutions and any action taken or not taken by the City pursuant to the foregoing resolutions or pursuant to the Bond Documents or any such agreement, contract, certificate or documents executed pursuant to the foregoing resolutions shall not create or constitute a debt or liability of the Issuer or a pledge of its faith or credit or directly or indirectly obligate the Issuer to expend any funds of the Issuer or levy or pledge any form of taxation or to make any appropriation for payment.

Duly adopted on January 4, 2006.

Attest:

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Clerk