

**CITY COMMISSION AGENDA MEMO**  
**May 12, 2008**

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

**MEETING:** May 20, 2008

**SUBJECT:** Amendment to Agreement for Economic Development Assistance for Collegiate Marketing Services (CMS)

**PRESENTERS:** Lauren Palmer, Assistant City Manager  
Steve Ballard, CEO, Collegiate Marketing Services (CMS)

**BACKGROUND**

Collegiate Marketing Services (CMS) is a company previously located in Overland Park, Kansas. CMS contracts with major universities to operate official sportswear stores and provide merchandise services. The company currently has multi-year contracts with major universities such as the University of Texas, University of Nebraska, University of Oklahoma, Oklahoma State University, and the University of Arizona.

Last year, the City Commission authorized an economic incentives package to help CMS relocate to Manhattan. The package involves a forgivable loan of \$350,000 and a conventional loan of \$350,000, for total incentives of \$700,000. CMS is rehabilitating an existing building located at 4<sup>th</sup> Street and Houston Street in Downtown Manhattan (Mid-Town Plaza Property). CMS plans to utilize the warehouse in the basement of the building for its primary operations while utilizing some space on the main floor and maintaining lease space on the main floor as well. Eventually, the company plans to also purchase the former Sears building located on the opposite corner to accommodate growth.

The Company plans to continue to build upon existing successful contracts by establishing new contracts with other universities. Company sales have grown from \$200,000 in 1998 to \$8.8 million in 2006. Company sales reached \$7.1 million in 2007. The company plans to have over 100 employees in Manhattan over the next 10 years.

## **DISCUSSION**

The original Agreement includes the following elements: a \$350,000 forgivable loan to be paid to the company in two installments, with \$250,000 being paid the first year and \$100,000 being paid in year three; a conventional loan totaling \$350,000, to be paid out in two installments of \$250,000 the first year and \$100,000 the second year with the loans being paid back in 5 years at 3% interest. Each of the first two installments, totaling \$500,000, have already been paid to CMS.

The original Agreement required CMS to provide a mortgage to the City on the Mid-Town Plaza Property that would secure an indebtedness of up to \$700,000 to cover the economic incentives if performance requirements were not met. The mortgage is superior to any interests in the property other than the first mortgage in an amount not to exceed \$2.25 million. In addition to the mortgage, as part of the agreement, the City has Personal Guarantees from the company's officers and spouses.

Construction delays have led to considerable unplanned costs for CMS. CMS now needs to increase the construction loan portion of its financing by \$85,000. The original estimated project cost was over \$2.5 million, so the overrun is just 3.4% of the total budget. However, this will require an amendment to the original Agreement.

Currently, the City of Manhattan mortgage is filed behind mortgages in the amount of \$2,220,888. Therefore, CMS requests that the City subordinate its mortgage to other mortgages in a collective amount not to exceed \$2,306,000. In return, CMS will agree to forgo the remaining forgivable and conventional loan payments in the total amount of \$200,000. All other provisions of the original Agreement will remain in effect, including performance requirements for capital investment, job creation, wage structure, and benefit package. CMS's first annual compliance report is not due until August 1, 2008. However, interim reports provided by the company indicate that CMS is on target to meet all of its performance obligations.

## **FINANCING**

The Amendment will release \$200,000 currently reserved in the Economic Development Opportunity Fund.

## **ALTERNATIVES**

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

1. Authorize the Mayor and City Clerk to execute an Amendment to the Economic Development Incentives Agreement with CMS based upon the company's need for additional mortgage subordination and its willingness to forgo incentives totaling \$200,000.
2. Do not authorize the amendment of the agreement.
3. Modify or develop alternatives if other concerns or factors arise to meet the needs of the Commission.
4. Table the request.

## **RECOMMENDATION**

City Administration recommends that the City Commission authorize the Mayor and City Clerk to execute an amendment to the Economic Development Incentives Agreement with CMS based upon the company's need for additional mortgage subordination and its willingness to forgo incentives totaling \$200,000

The original security arrangement was based upon a possible indebtedness of \$700,000. Currently, the total indebtedness of the City is only \$500,000. Because CMS will forgo the remaining \$200,000 in incentives, a \$700,000 mortgage along with the personal guarantees is adequate security for the level of indebtedness.

## **POSSIBLE MOTION**

Authorize the Mayor and City Clerk to execute an amendment to the Economic Development Incentives Agreement with CMS based upon the company's need for additional mortgage subordination and its willingness to forgo incentives totaling \$200,000.

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Attachments:

1. Request Letter from CMS
2. Amendment to Economic Development Incentives Agreement

# COLLEGIATE MARKETING SERVICES, INC.

9111 Cody - Overland Park, KS 66214

Phone: 913-888-2160 Fax: 913-888-2167 Email: sballard@cmssports.com

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April 21, 2008

Ms. Lauren Palmer  
Assistant City Manager  
City of Manhattan

Dear Ms. Palmer

In response to our meeting on the 16<sup>th</sup> and the letter dated the same day, I would like to submit this written proposal to make changes to the security arrangement of our Economic Development Agreement.

The delays in the construction have led us to incur considerable unplanned costs. Most of these costs were incurred due to our efforts to get as many of our employees working out of Manhattan as soon as possible. This has led to cost overruns from our original projected costs. We are in a position where we need to increase the construction loan portion of our financing by approximately \$85,000. The original estimated project cost was over \$2,500,000 so the overrun is only 3% of the total budget. However, this increase will put us in violation of the original security agreement with the City.

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The disbursement shall be further conditioned upon the City receiving such security for the repayment of the note, or notes, as the City deems appropriate.

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CMS hereby agrees, and affirmatively asserts, that, prior to the disbursement of any funds under this subsection, it will grant and deliver to the City a mortgage, in a form approved by the City, on the Mid-Town Plaza Property, securing the indebtedness of up to \$700,000, evidenced by any, and all, notes executed, or to be executed, by CMS under the terms of this subsection. CMS further agrees, and affirmatively asserts, that such mortgage will be superior to any interests in such Property, other than a first and prior mortgage, or mortgages, in a collective amount of no more than \$2,250,000.

Currently the amount of mortgages that the City of Manhattans mortgage is filed behind is \$2,220,888. Bill Lansdowne from Fletcher Simmons has done his post construction walk-through and has indicated that the original finished building appraisal should be accurate.

In addition to the mortgage referenced above, as part of the agreement, the City has Personal Guarantees from the following people:

Steve Ballard	Becky Ballard
Erich Wurster	Patricia Wurster
Greg Gurley	Amy Gurley
Jeff Grantham	Peggy Brown Grantham
Tom Wurster	

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In order to secure the additional \$85,000 in financing to cover the 3% in project cost overruns we would request the following addendum be added to the agreement.

*The City of Manhattan will subordinate their \$700,000 mortgage to the additional \$85,000 mortgage that will be filed by Kansas State Bank.*

*CMS would agree to forgo the additional \$100,000 forgivable loan and the \$100,000 conventional loan outlined in the original agreement. CMS would agree to forgo these as long as the additional \$85,000 mortgage that the City is subordinate too exists.*

This security arrangement was set in place based upon a possible indebtedness of \$700,000. Currently the total indebtedness is \$500,000. We believe that the \$700,000 mortgage along with the personal guarantees is adequate security for this \$500,000 indebtedness. By foregoing the additional \$200,000 indebtedness in exchange for the City only being behind an additional \$85,000 it could be argued that the City is actually in a better security position.

The original agreement called for next City disbursement to be a \$100,000 forgivable loan available on July 1<sup>st</sup> 2009. It would be our intention to have the \$85,000 mortgage released by that time.

We appreciate your consideration of this request. As we discussed in our meeting last week, we anticipate no issues in meeting all of our target goals for this year as outlined in our agreement. I would be available at anytime to further discuss this request.

Sincerely,

Steve R. Ballard  
Collegiate Marketing Services, Inc.

# AMENDMENT TO AGREEMENT

**THIS AMENDMENT TO AGREEMENT (the "Amendment")** is made and entered into as of the 20th day of May, 2008, (the "Amendment Date") by and between Collegiate Marketing Services, Inc., a Kansas Corporation ("CMS"), and the City of Manhattan, Kansas, a Municipal Corporation, (the "City").

**WHEREAS**, the parties hereto have previously entered into an agreement dated July 1, 2007 (the "Original Agreement"); and,

**WHEREAS**, the Original Agreement obligated the City to provide a \$350,000 Forgivable Loan to CMS in disbursements of \$250,000 (the "First Forgivable Loan Disbursement") upon the execution of the Original Agreement, and \$100,000 (the "Second Forgivable Loan Disbursement") after the third anniversary of the Original Agreement; and,

**WHEREAS**, the Original Agreement obligated the City to provide a \$350,000 Conventional Loan to CMS in disbursements of \$250,000 (the "First Conventional Loan Disbursement") upon the execution of the Original Agreement, and \$100,000 (the "Second Conventional Loan Disbursement") after the second anniversary of the Original Agreement; and,

**WHEREAS**, the Original Agreement also obligated CMS to grant to the City a mortgage (the "Mortgage"), securing an indebtedness of up to \$700,000, on certain property (the "Property") described therein; and,

**WHEREAS**, the Original Agreement further provided that the Mortgage would be superior to any interests in the Property, other than a first and prior mortgage, or mortgages, in a collective amount of no more than \$2,250,000; and,

**WHEREAS**, CMS has granted and filed, at book 829, page 6880 of the Riley County Register of Deeds, the Mortgage, securing an indebtedness of up to \$700,000, to the City; and,

**WHEREAS**, the City has made the First Forgivable Loan Disbursement and the First Conventional Loan Disbursement to CMS; and,

**WHEREAS**, CMS needs to encumber the Property with a first and prior mortgage, superior to the Mortgage, in an amount, not to exceed, \$2,306,000, which will require the City to subordinate the Mortgage to the additional amount; and,

**WHEREAS**, in exchange for the City's agreement to subordinate the Mortgage to the above described additional amount, CMS has agreed to forgo, and waive, both the Second Forgivable Loan Disbursement and the Second Conventional Loan Disbursement; and,

**WHEREAS**, the parties hereto desire to amend the Original Agreement to facilitate the transaction described above.

**NOW THEREFORE**, in consideration of the Original Agreement and in further consideration of the mutual covenants contained in this Amendment, the parties agree as follows:

1. The City hereby agrees to subordinate the Mortgage to a first and prior mortgage, or mortgages, in a collective amount of no more than \$2,306,000. The City Agrees to execute all documents necessary to effectuate such subordination. CMS shall be responsible for all costs associated with the preparation, and filing, of such subordination.

2. CMS agrees to forgo, and waive, both the Second Forgivable Loan Disbursement and the Second Conventional Loan Disbursement, and hereby releases the City from any obligation for such Disbursements.

3. The parties hereto agree that this Amendment amends the Original Agreement as set forth herein. All provisions of the Original Agreement, not amended hereby, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Amendment as of the Amendment Date.

**CITY OF MANHATTAN, KANSAS:**

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

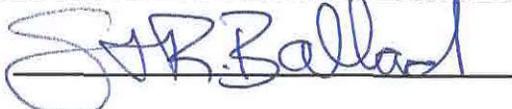
**NAME: MARK J. HATESOHL**

**NAME: GARY S. FEES, CMC**

**TITLE: MAYOR**

**TITLE: CITY CLERK**

**COLLEGIATE MARKETING SERVICES, INC.:**

BY:  \_\_\_\_\_

**NAME: STEPHEN R. BALLARD**

**TITLE: CEO**