

1-22-13
PUR-1

CHANGES TO EX-1 + EX-2

Wendy Gonyea

From: Jonda Joseph
Sent: Tuesday, January 22, 2013 11:12 AM
To: Bobby B. DuBose; Bruce G. Roberts; Jack Seiler; Laura - Mayor's Assistant; Maxine Singh; MJ Matthews; Robbi Uptegrove; Romney Rogers; Safeea Ali; Scott Wyman; Tracy Roach
Cc: Kirk Buffington; Douglas Wood; Wendy Gonyea; Aixa Penedo; Alexandria Woolweaver; Donna Varisco; Harry Stewart; John Herbst; Katerina Skoundridakis; Lee Feldman; Maureen Richards; Stanley Hawthorne; Susanne Torriente
Subject: Jan 22 Item PUR - 1 CAM 12-2504 / Employee Financial Loan Program
Attachments: Fort Lauderdale Payroll Deduction Authorization Form 20121211.doc; BMG REVISED for CommissionMeeting.pdf

Mayor, Vice Mayor and Commissioners --- PUR-1 has revisions as detailed below. I will bring hardcopies to the mtg for you also

From: Kirk Buffington
Sent: Tuesday, January 22, 2013 9:49 AM
To: Jonda Joseph; Jeff Modarelli
Cc: Lee Feldman; Douglas Wood; Stanley Hawthorne; Richard Ewell; John Herbst; Carrie Keohane
Subject: PUR - 1 CAM 12-2504 / Employee Financial Loan Program

We have to make some adjustments to the above referenced CAM

- 1) Exhibit 2 (Employee Documents) the last page of this exhibit (Payroll Deduction Authorization Form) is an incorrect version and needs to be replaced with the attached.
- 2) Exhibit 1 (agreement)
 - a. The following change will be made to the agreement. The paragraph entitled **Marketing**, will be amended as follows
- 3) **Marketing.** Employer agrees to provide BMG Money with opportunities to market the Program to eligible employees and to educate such employees about the Program. Subject to applicable law and Employer's discretion, marketing opportunities may include, without limitation, in person meetings with employees, direct mail to employees, bulletin board postings, information made available through the Internet and emails to employees. ~~Employer hereby authorizes BMG Money to disclose Employer's participation in the Program in any marketing materials prepared by or on behalf of BMG Money.~~ Under no circumstances shall BMG Money state, indicate, imply or lead the employee to reasonably infer an official relationship between it and Employer, that the loan is being made directly by Employer, or that the Employer endorses the Program.

I have also attached a new version of the agreement.

Kirk W. Buffington, CPPPO, C.P.M. MBA
 Deputy Director of Finance
 City of Fort Lauderdale | Department of Finance
 V: 954.828.5144 | F: 954.828.5576
 E: kbuffington@fortlauderdale.gov

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from city officials regarding City business are public records available to the public and media upon request. Your e-mail communications may be subject to public disclosure.

NON-EXCLUSIVE PAYROLL DEDUCTION PLAN AGREEMENT

THIS NON-EXCLUSIVE PAYROLL DEDUCTION PLAN AGREEMENT (this "**Agreement**") is entered into on _____, 2012 by and between the City of Fort Lauderdale, Florida, a Florida municipality, ("Employer" or "City"), and BMG Money, Inc., a Delaware corporation authorized to transact business in the State of Florida, ("BMG Money" or "Contractor"). Employer desires to offer as a benefit to its employees BMG Money's LoansAtWork program and BMG Money desires to loan money to such employees, in each case to be evidenced by a promissory note with the applicable employee (collectively, as amended or otherwise modified from time to time, the "**Notes**").

Employer Acknowledgment. Employer acknowledges and agrees that it will comply with its employees' requests set forth in the Notes to (a) deduct from their wages, salary, commissions or other similar compensation (collectively, "**wages**") the amounts to be so deducted as described in the respective Notes and (b) remit such amounts to BMG Money, in each case, solely to the extent of the maximum available wages of the applicable employee and in accordance with applicable laws, rules, regulations and orders (collectively, the "**Program**").

Payment Instructions. Employer agrees to remit to BMG Money monthly by check funds deducted from employees' wages pursuant to the Program together with the corresponding register of deduction amounts as promptly as practicable following the calendar month in which the applicable wages were paid.

Marketing. Employer agrees to provide BMG Money with opportunities to market the Program to eligible employees and to educate such employees about the Program. Subject to applicable law and Employer's discretion, marketing opportunities may include, without limitation, in person meetings with employees, direct mail to employees, bulletin board postings, information made available through the Internet and emails to employees. ~~Employer hereby authorizes BMG Money to disclose Employer's participation in the Program in any marketing materials prepared by or on behalf of BMG Money.~~ Under no circumstances shall BMG Money state, indicate, imply or lead the employee to reasonably infer an official relationship between it and Employer, that the loan is being made directly by Employer, or that the Employer endorses the Program.

Notice. Employer shall notify BMG Money as soon as reasonably practicable if any employee requests revocation of his or her payroll deduction request, ceases to be employed by Employer or changes his or her employment status.

Further Assurances. Employer agrees to provide BMG Money with access to all non-empt and non-confidential, pursuant to Florida law, public records (or copies thereof) necessary for BMG Money to implement or effectuate the provisions of this Agreement and/or the Program. Should BMG Money, at any time during the term of this Agreement, offer the same program to employees of any governmental entity in the State of Florida at prices below those offered to employees of Employer, BMG Money shall immediately make available such lower prices to employees of Employer who enroll in the Program after such time.

Public Records. Employer is subject to Chapter 119, Florida Statutes, otherwise known as the *public records law*. This Agreement and all other documents and agreements flowing therefrom, including those executed by any employee, are subject to disclosure to the extent required by such Chapter 119.

Indemnification. BMG Money agrees to defend at BMG Money's expense, and indemnify Employer and Employer's officers, employees, and agents against, and hold it harmless from, any and all losses, liabilities, claims, costs, expenses, penalties, fines, judgments, settlements, and damages of any nature, including any award of attorney fees and any award of costs, in any way arising out of or occasioned by any act or omission by BMG Money or BMG Money's employees, agents, or subcontractors, or any breach of BMG Money's obligations under this Agreement. Notwithstanding the foregoing, BMG Money shall not be liable to Employer for any special, indirect, exemplary or consequential damages. The indemnification obligation under this paragraph shall survive termination of this Agreement. Employer does not guarantee BMG Money against any risk of credit losses and has no obligations other than as expressly set forth herein.

Assignment. BMG Money and its assignees may assign all or any of BMG Money's rights, but none of its obligations, under this Agreement in connection with any financing of Notes or of the loans evidenced by such Notes or otherwise, *provided, however*, that Employer shall, notwithstanding any such assignment, be entitled to deal solely and directly with BMG Money in connection with Employer's rights and obligations under this Agreement. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. Notwithstanding any such assignment, Employer's obligations, rights and responsibilities shall be governed exclusively by this Agreement.

Termination. Employer and BMG Money may terminate this Agreement upon 60 days prior written notice to the non-terminating party, at the address shown below. Notwithstanding any termination of this Agreement, this Agreement shall survive as to any Notes outstanding as of such termination until final payment in full of such Notes.

Miscellaneous. This Agreement supersedes any prior agreements with respect to the subject matter hereof and may only be amended or otherwise modified by a writing signed by both parties. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, this will not affect the validity or enforceability of any other provision. Any provision of this Agreement that conflicts with any mandatory provision of applicable law shall be deemed to be amended to conform with such applicable law. Time is of the essence under this Agreement.

Waiver of Trial by Jury. Each party, as a crucial and material inducement to the other to execute this Agreement, hereby on behalf of itself, its agents, successors and/or assigns waives trial by jury of any and all matters triable by right arising from, through or as a result of this Agreement.

Governing Law; Venue. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF FLORIDA (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES PROVIDING FOR THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION). Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

Insurance. The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor's expense. The Contractor shall ensure that any and all of its subcontractors comply with these insurance requirements.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the

responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the City's Procurement Services Division.

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes
Employers' Liability - \$500,000

Any firm performing work for or on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed, by the City's Risk Manager, if they are in accordance with Florida Statutes.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

Automobile Liability Insurance

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily injury \$250,000 each person,
\$500,000 each occurrence
Property damage \$100,000 each occurrence

Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 N. Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

Non-discrimination. The Contractor shall not discriminate in any of its activities on the basis of race, color, religion, national origin, disability, age, gender, sexual orientation, or marital status.

IN WITNESS WHEREOF, the City and BMG Money execute this Agreement as follows:

ATTEST:

City of Fort Lauderdale

Jonda K. Joseph, City Clerk

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager

Approved as to form:

Senior Assistant City Attorney

WITNESSES:

BMG Money, Inc.

Signature
Print Name:

By: _____
Print Name:
President

Signature
Print Name:

(CORPORATE SEAL)

ATTEST:

Secretary

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2012,
by _____, as president for BMG Money, Inc., a Delaware corporation authorized to
transact business in the State of Florida.

(Signature of Notary Public - State of _____)
(SEAL)

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____



Payroll Deduction Authorization Form

EMPLOYER/AGENCY

EMPLOYEE'S FIRST/LAST NAME

() -
EMPLOYEE'S WORK PHONE NUMBER

() -
EMPLOYEE'S HOME PHONE NUMBER

PAY CYCLES
<input type="checkbox"/> Biweekly (26) example

□ □ □ - □ □ - □ □ □ □

EMPLOYEE'S SOCIAL SECURITY NUMBER

The payroll deduction amount will reflect my choice to have payroll deductions deducted from my wages, salary, commissions or other similar compensation on each day for which I am paid. Such payroll deductions shall be applied in accordance to my payment obligations set forth in my Promissory Note with BMG Money.

I authorize my employer to deduct \$ _____ from each pay period beginning ____/____/____ to be remitted to BMG Money for credit to my account.

I authorize my employer to deduct from my paychecks the total deduction amount for my BMG Money loan. I understand if my employment is terminated or if, for any reason, the deduction is not made by my employer as scheduled, I must submit my payment(s) for the above account directly to BMG Money per the terms of my Promissory Note with BMG Money. I understand it is my responsibility to cancel my payroll deduction when the account listed above is paid in full.

By signing this authorization I expressly acknowledge and understand that my Employer is not a party to my loan with BMG Money, and that my employer bears no responsibility for any act, error or omission of BMG Money.

EMPLOYEE'S E-SIGNATURE

DATE