

**RESOLUTION NO. 2017-07-046R**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A  
PROMOTIONAL AND MARKETING AGREEMENT FOR ANNUAL URBANA  
SWEETCORN FESTIVAL**

**(Urbana Business Association, FY 2017-2018)**

**WHEREAS**, the City of Urbana ("City") is a home rule unit of local government pursuant to Section 6 of Article VII of the State of Illinois Constitution of 1970; and

**WHEREAS**, the City has determined that supporting marketing and promotion services provides a benefit to the City; and

**WHEREAS**, the Urbana Business Association ("UBA") is well positioned to provide those promotion and marketing services for the City; and

**WHEREAS**, the City deems it beneficial for its residents and its business community to continue to host the annual special event known as the Urbana Sweetcorn Festival (hereinafter, the "Festival") within the City's corporate limits; and

**WHEREAS**, the UBA has arranged for, marketed, promoted, staged, and offered the Festival in past years; and

**WHEREAS**, the City and the UBA seek to form a mutually beneficial arrangement whereby the UBA undertakes the promotion, marketing, sponsoring, and staging of the Festival.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF URBANA, ILLINOIS**, as follows:

**Section 1.**

A Promotional and Marketing Agreement for Annual Urbana Sweetcorn Festival by and between the City of Urbana, a Municipal Corporation, and the Urbana Business Association, a 501c.6 Not-For-Profit Corporation, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

**Section 2.**

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to

attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

**PASSED BY THE CITY COUNCIL** this 7<sup>th</sup> day of August, 2017.

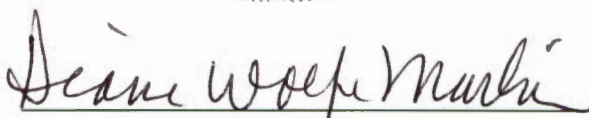
AYES: Brown, Hazen, Jakobsson, Miller

NAYS:

ABSTENTIONS:

  
Charles A. Smith, City Clerk

**APPROVED BY THE MAYOR** this 9<sup>th</sup> day of August, 2017.

  
Diane Wolfe Marlin, Mayor

**PROMOTIONAL AND MARKETING AGREEMENT  
FOR ANNUAL URBANA SWEETCORN FESTIVAL**

This Promotional and Marketing Agreement for Annual Urbana Sweetcorn Festival (hereinafter, "Agreement") is entered into this 1st Day of July, 2017 by and between the City of Urbana (hereinafter, the "City") and the Urbana Business Association (hereinafter, the "UBA") (collectively, the "Parties").

WHEREAS, the City is a home rule unit of local government pursuant to Section 6 of Article VII of the State of Illinois Constitution of 1970; and

WHEREAS, the UBA is not-for-profit business league which has been granted tax-exempt status by the Internal Revenue Service pursuant to Section 501(c)(6) of the Internal Revenue Code (26 U.S.C. § 1 et seq.) and which is comprised of business members which are located in and about the City's corporate limits; and

WHEREAS, the City deems it beneficial for its residents and its business community to continue arranging for, marketing, promoting, staging, offering, and conducting the annual special event within the City's corporate limits known as the Urbana Sweetcorn Festival (hereinafter, the "Festival"); and

WHEREAS, the UBA has arranged for, marketed, promoted, staged, and offered the Festival in past years; and

WHEREAS, the City and the UBA seek to form a mutually beneficial arrangement whereby the UBA undertakes the promotion, marketing, sponsoring, and staging of the Festival and the City agrees to provide a certain amount of funding to the UBA for such purpose.

NOW for good, valuable and mutual consideration which each Party acknowledges as having in hand received and for the mutual exchange of the covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

**A. CITY'S OBLIGATIONS TO THE UBA:**

**1. City Festival Funding:** The City shall make available to the UBA up to but not more than fifteen thousand dollars (\$15,000) which the UBA shall apply to defray the UBA's costs of promoting, marketing, and staging the Festival (hereinafter, "City Festival Funding") as hereinafter provided for in Paragraph A.2.

**2. Disbursement of City Festival Funding:** The City shall disburse City Festival Funding on a reimbursement basis and based on receipts for expenditures made by the UBA which shall be presented to the City. The City shall provide such reimbursement within fourteen (14) days following the UBA's presentment to the City of receipts for which the UBA seeks reimbursement. The UBA shall present its requests for reimbursement no more frequently than once per month.



The City shall disburse up to ten thousand dollars (\$10,000) of the City Festival Funding based only on the presentments of receipts for direct out-of-pocket expenses in connection with the Festival. For purposes of this disbursement, direct out-of-pocket expenses shall not include any expenses whatsoever which is, are or may be attributable to UBA staff expenses.

The City shall disburse up to an additional five thousand dollars (\$5,000) of the City Festival Funding upon the satisfaction of the following criteria:

- a. On or before January 31, 2018, the UBA shall submit to the City a financial statement which reports the actual revenue derived from and all expenses which have been actually paid by the UBA in connection with the Festival as more fully provided for in Sub-Paragraph B.3 of this Agreement. Festival revenue shall include all cash receipts derived from the Festival, cash received for sponsorships for the Festival and the City's contribution of the above-referenced ten thousand dollars (\$10,000). Festival revenue shall not include any in-kind contributions, contributions for overhead costs, or exchanges (barter) of goods and/or services. Festival expenses shall include all out-of-pocket expenses which the UBA actually paid in connection with the Festival plus direct payroll expenses for UBA staff related to their work on or directly in connection with the Festival but shall not include any sum paid for overhead. "Festival Net Revenue" shall be defined as Festival revenue minus Festival expenses.
- b. The UBA agrees that its net revenue goal for the Festival occurring in 2017 ("Festival Net Revenue Goal") shall be ten thousand dollars (\$10,000) of Festival Net Revenue.
- c. In the event that the Festival Net Revenue fails to equal or exceed the Festival Net Revenue Goal, the City shall make available to the UBA an amount equal to one-half the difference between the Festival Net Revenue and the Festival Net Revenue Goal up to a maximum of five thousand dollars (\$5,000). By way of example and by example only, if the 20162016 Festival Net Revenue is \$8,000, thereby leaving a short-fall from the 20162016 Festival Net Revenue Goal of \$2,000, the City's contribution shall be \$1,000 above and beyond the initial Festival Funding of ten thousand dollars (\$10,000) thereby making the City's total contribution to UBA for the Festival equal to \$11,000.

**3. In-Kind Services:** Separate and apart from the City Festival Funding provided for in Paragraph 2 of this Agreement, the City shall provide in-kind services the reasonable value of which shall not exceed ten thousand dollars (\$10,000).

**4. Payment of City Festival Funding and In-Kind Services:** The City shall have the sole discretion whether to reimburse the UBA for any receipt which the UBA presents to the City for reimbursement but such reimbursement shall not be unreasonably withheld. The City shall value the in-kind services which it provides to, for, or for the benefit of the UBA and the Festival based on the rates which the City customarily charges for the provision of the same or similar services in connection with special public events held within the City's corporate limits.

**B. THE UBA'S OBLIGATIONS TO THE CITY:**

**1. Promotional, Marketing and Staging Activities:** The UBA shall use its reasonable best efforts to develop, promote, market, stage or otherwise arrange for the development, promotion, marketing, and staging of the Festival and all aspects related thereto. In the event that the UBA contracts with a third person to undertake the immediate aforesaid activities, the UBA shall make a reasonable effort to assure that such person performs the immediate aforesaid obligations in the same or better manner than would be required of the UBA by reason of this Sub-Paragraph. In the development, promotion, marketing, and staging of the Festival, the UBA and its agent, if any, shall comply with all applicable City ordinances, policies and procedures concerning such public special events. Further, the UBA shall undertake reasonable measures to assure that all other persons who are or become involved with the promotion, marketing, and staging of the Festival comply with all City ordinances, policies and procedures concerning such special public events.

**2. City Sponsorship Recognition:** The UBA shall identify the City as a primary sponsor of the Festival on any and all promotional and marketing material and information provided to or made available to the public in connection with the Festival including any and all posters, signs, banners, mailers, print advertisements, radio and television advertisements, entertainment stage decorations, and any other means by which the Festival is promoted, marketed, and staged.

**3. Accounting for Festival:** The UBA shall submit to the City a complete accounting of all revenue received and expenditures made and/or incurred relating to the promotion, marketing and staging of the Festival. The accounting shall identify each source of revenue and the amount derived from each source and each expense paid or for which the UBA is obligated to pay and the amount paid or to be paid. Such accounting shall be submitted to the City in writing on or before January 31, 2017.

**4. Refund of City Festival Funding:** In the event that the UBA elects not to promote, market, and/or stage or arrange for a third person to promote, market or stage on its behalf the Festival, the City shall be relieved of any and all responsibility to provide any form of City Festival Funding or in-kind services as provided in Sub-Paragraphs A.1., A.2., and A.3. of this Agreement. If the City has provided any City Festival Funding and/or in-kind services to the UBA for the Festival as provided for in the Sub-Paragraphs A.1., A.2., and/or A.3. of this Agreement, prior to the date when the UBA elects to cancel the Festival, the UBA shall promptly refund any and all such City Festival Funding along with the reasonable value of any in-kind services provided which in-kind services will be valued as provided in Sub-Paragraph A.3. of this Agreement.

**C. MISCELLANEOUS TERMS:**

**1. Term of Agreement:** This Agreement shall remain in full force and effect from the date first appearing above through June 30, 2018.

**2. Default and Opportunity to Cure:** In the event that either Party believes that the other Party has defaulted on any covenant, term or condition contained in this Agreement, the non-defaulting Party shall provide written notice to the other Party of such default. The aforesaid written notice shall state or describe the nature of the default, whether by act or omission, and the Paragraph and/or Sub-Paragraph, as the case may be, which governs the obligation which is alleged to be in default. Within ten (10) calendar days of the effective date of such notice of default (as defined by Sub-Paragraph C.5. below), the recipient of such notice shall (i) cure the default and provide



documented evidence of the nature and/or manner of such cure; (ii) respond in writing to such notice which writing shall advise that the recipient reasonably believes that it is not in default and which describes the reasons for such belief; or (iii) provides a written plan of cure in those instances where cure of a default cannot be completed within the aforesaid ten (10) calendar day period.

**3. Dispute Resolution:** In the event that the Parties cannot resolve any dispute between them, they shall submit to mediation in an effort to resolve any such dispute. The Parties shall agree on the selection of the mediator and that mediator's rules and/or procedures shall govern any such mediation. The Parties shall share equally in the cost of the mediation. In the event that the Parties fail to resolve their dispute through mediation, then either or both Parties shall be free to initiate and maintain an action to construe, interpret and/or enforce this Agreement in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

**4. Termination:**

a. This Agreement may be terminated by the City immediately and without written notice if the UBA –

(i) defaults on this Agreement without reasonable cure as provided for in Sub-Paragraph C.2. and which default/dispute is not resolved through mediation;

(ii) files a petition or is the subject of an involuntary petition for bankruptcy filed in a United States Bankruptcy Court;

(iii) files a notice of intent or other paper with the Secretary of State for the State of Illinois which evidences an intent to liquidate or dissolve;

(iv) loses its IRS 501(c)(6) status as a tax-exempt business league by reason of any act or omission on the part of the UBA;

(v) becomes involuntarily dissolved for any reason by the Secretary of State of the State of Illinois and where the UBA fails to apply for reinstatement within ten (10) business days of notice of such involuntary dissolution;

(vi) enters into any arrangement with creditors which could reasonably be deemed, construed, or interpreted as a common law composition with creditors;

(vii) is placed in receivership by a lawful court order;

(viii.) acts or fails to act in such a manner as would injure or likely injure the City in any way, or cast the City or any business located within the City in a negative light unless, in the case of a business, such negative light is reasonably supported by evidence (e.g., an announcement that a business has closed or moved from the City when in fact such business has moved or closed); and/or

(ix) acts or fails to act in a manner which threatens or which may reasonably threaten human life, health or safety.

In the event that the City elects to terminate this Agreement for any one or more of the reasons provided in this Sub-Paragraph, the City's obligation to provide City Festival Funding to the UBA shall automatically cease and become wholly null and void. In addition to any other remedy which the City may have as a matter of law or right, the City shall be entitled to seek, obtain and recover a refund from the UBA of any and all City Festival Funds advanced to or paid to the UBA as provided for in Sub-Paragraphs A.1., A.2. and/or A.3.

b. In the event that the City has provided no City Festival Funding to the UBA, this Agreement may be terminated by either Party by giving written notice to the other Party of its intent to terminate and such termination shall be deemed effective fourteen (14) days after the effective date of such written notice (as defined by Sub-Paragraph C.5. below). Any Party providing such notice of termination shall offer the other Party an opportunity to meet and discuss such termination prior to the effective date hereunder. In the event of such termination, the UBA shall refund to the City any and all City Festival Funds advanced to or paid to the UBA as of the date of termination.

**5. Notices:** All notices required to be given shall be in writing such notices shall be deemed proper and effective as hereinafter provided:

a. If by First Class U.S. Mail: All such notices shall be sent by registered or certified mail with a return receipt requested. If any such notice is placed in an envelope properly addressed to the intended recipient and bearing proper postage, such notice shall be deemed effective four (4) days from the date of placement with the United States Postal Service.

b. If by facsimile: All such notices shall be deemed effective if transmitted to the intended recipient's facsimile machine and the same shall be deemed effective on the next business day following transmission if the sender's facsimile machine provides a printed recipient that the facsimile was received by the intended recipient's facsimile machine. If no such printed receipt is provided, then the notice shall be deemed effective four (4) days after its transmission.

c. If by overnight courier: All such notices shall be deemed effective if placed in a properly addressed overnight courier envelope properly addressed to the intended recipient with delivery charges to be paid by the sender of such notice, and such notice shall be deemed effective the next business day following delivery of such notice.

d. If by personal delivery: All such notices shall be deemed effective if hand delivered by an employee of the sender to an employee of the intended recipient and such notice shall be deemed effective on the next business day following delivery of such notice.

e. No other form of notice, including e-mail notice, shall be deemed effective whether or not such notice was in fact received by the intended recipient.

Notices shall be delivered to the following locations unless a Party informs the other Party in writing of a different location to where notices should be directed:

TO THE CITY:

Economic Development Manager  
City of Urbana  
400 S. Vine St.  
Urbana, IL 61801

TO THE UBA:

Executive Director  
Urbana Business Association  
111 W. Main St.  
Urbana, IL 61801

**6. Waiver:** The failure of any Party to enforce any covenant, term or condition contained in this Agreement or to take action to enforce the same shall not be deemed to constitute a waiver of that Party's right to enforce or take action to enforce such covenant, term or condition. Notwithstanding the foregoing, if a Party fails to enforce or undertake any action to enforce any covenant, term or condition contained in this Agreement and knows that the other Party has relied on such forbearance to its financial detriment, then such knowledge shall constitute a waiver by the Party which has or had the right to enforce or initiate an action to enforce such covenant, term or condition.

**7. Assignment:** The UBA shall not have the right to assign or otherwise transfer to any third person the UBA's obligations provided for in this Agreement without the express written consent of the City. If the City consents to any such assignment, the UBA shall remain responsible for the performance of its obligations as required by this Agreement as if it would be performing such obligations and the third person to whom the UBA makes such assignment shall be bound to perform the UBA's obligations as if a party to this Agreement.

**8. Binding Effect:** This Agreement shall be binding upon and shall inure to the benefit of the City and the UBA and their respective successors and assigns.

**9. Human Rights:** The UBA, in all respects, shall comply with the City's Human Rights Ordinance and, if requested in writing by the City, the UBA shall provide such hiring information as requested by the City as if requested pursuant to the City's Equal Opportunity in Purchasing Ordinance.

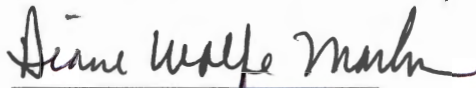
**10. Representations and Warranties:** Each Party represents and warrants that the individual executing this Agreement is duly authorized to do so.

**11. Supersedious:** This Agreement shall supersede and replace any and all agreements respecting the subject matter of this Agreement, whether oral or in writing, entered into by and between the Parties heretofore.

[ END OF AGREEMENT, SIGNATURES FOLLOW. ]



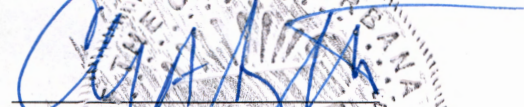
**FOR THE CITY:**

  
\_\_\_\_\_  
Diane Wolfe Marlin, Mayor

**FOR THE UBA:**

  
\_\_\_\_\_  
Executive Director

**ATTEST:**

  
\_\_\_\_\_  
Charlie A. Smyth, City Clerk

**ATTEST:**

  
\_\_\_\_\_  
Board of Directors Chair

