

RESOLUTION NO. 2017-07-048R

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A
PROMOTIONAL AND MARKETING AGREEMENT FOR THE 2017 CHAMPAIGN-
URBANA FOLK & ROOTS FESTIVAL IN DOWNTOWN URBANA**

(Champaign Urbana Folk & Roots Festival NFP, 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 Champaign Urbana Folk & Roots Festival, NFP (“CUFRF”) 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 Champaign-Urbana Folk & Roots Festival in Downtown Urbana (hereinafter, the “Festival”) within the City’s corporate limits; and

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

WHEREAS, the City and the CUFRF seek to form a mutually beneficial arrangement whereby the CUFRF 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 The Champaign-Urbana Folk & Roots Festival in Downtown Urbana by and between the City of Urbana, a Municipal Corporation, and the Champaign-Urbana Folk & Roots Festival, NFP, a 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.

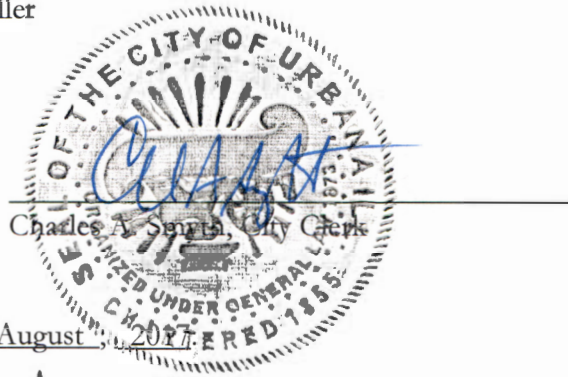
The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED BY THE CITY COUNCIL this 7th day of August, 2017.

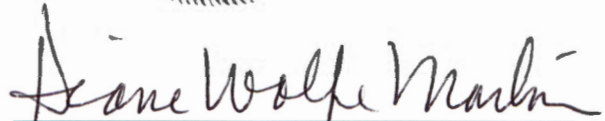
AYES: Brown, Hazen, Jakobsson, Miller

NAYS:

ABSTENTIONS:



APPROVED BY THE MAYOR this 9th day of August, 2017.



Diane Wolfe Marlin, Mayor

**PROMOTIONAL AND MARKETING AGREEMENT
FOR THE 2017 CHAMPAIGN-URBANA FOLK & ROOTS FESTIVAL IN DOWNTOWN
URBANA**

This Promotional and Marketing Agreement for the 2017 Champaign-Urbana Folk & Roots Festival in Downtown Urbana (hereinafter, "Agreement") is entered into this 1st Day of July, 2017 by and between the City of Urbana (hereinafter, the "City") and the Champaign-Urbana Folk & Roots Festival, NFP (hereinafter, the "Organizer") (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 Organizer is a not-for-profit corporation pursuant to the Illinois General Not-For-Profit Act of 1986 (805 ILCS 105); and

WHEREAS, the City deems it beneficial for its business community and its residents to arrange for, market, promote, stage, offer, and conduct a special event within the City's corporate limits known as the Champaign-Urbana Folk & Roots Festival in Downtown Urbana (hereinafter, the "Event"); and

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

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 ORGANIZER:

1. Event Funding: The City shall make available to the Organizer up to but not more than five thousand dollars (\$5,000) which the Organizer shall apply to defray the Organizer's costs of promoting, marketing, and staging the Event (hereinafter, "Event Funding"). The Event Funding shall be disbursed as hereinafter provided for in Sub-Paragraph A.2.

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

The City shall disburse to the Organizer a certain amount of Event Funding which shall be equal to but shall not exceed the aggregate amount of revenue which the Organizer derives from grants, sponsorships or donations from third-party sources collected by the Organizer for the purposes of organizing the Event (hereinafter, collectively, referred to as "Revenue"). Only monetary contributions will be considered as Revenue. Only the Revenue which the Organizer actually collects

and in-hand receives for the purpose of organizing the Event shall be used in calculating the City's Event Funding. In order to obtain the full measure of Event Funding from the City as provided in Sub-Paragraph A.1, the Organizer must generate at least five thousand dollars (\$5,000) in Revenue for the Event.

3. In-Kind Services: The City may at its discretion provide in-kind services at no cost to the Organizer in addition to any Event Funding, but is under no obligation to provide any such in-kind services. The City shall value any in-kind services which it provides to, for, or for the benefit of the Organizer and the Event 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 as described in Section 10.2 of the City of Urbana Policy & Procedure Manual.

4. Payment of Event Funding: The City shall have the sole discretion whether to reimburse the Organizer for any receipt which the Organizer presents to the City for reimbursement but such reimbursement shall not be unreasonably withheld.

B. THE ORGANIZER'S OBLIGATIONS TO THE CITY:

1. Promotional, Marketing and Staging Activities: The Organizer shall use its reasonable best efforts to develop, promote, market, stage or otherwise arrange for the development, promotion, marketing, and staging of the Event and all aspects related thereto. If the Organizer contracts with a third person to undertake the immediate aforesaid activities, the Organizer 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 Organizer by reason of this Sub-Paragraph. In the development, promotion, marketing, and staging of the Event, the Organizer and its agent and sub-contractor, if any, shall comply with all applicable City ordinances, policies and procedures concerning such public special events. Further, the Organizer shall undertake reasonable measures to assure that all other persons who are or become involved with the promotion, marketing, and staging of the Event comply with all City ordinances, policies and procedures concerning such special public events. Notwithstanding anything to the contrary contained in this Sub-Paragraph, the Organizer shall remain responsible for all Event development, promotion, marketing, and staging regardless of who actually undertakes those activities or any portion therein.

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

3. Refund of Event Funding: In the event that the Organizer elects not to promote, market, and/or stage or arrange for a third person to promote, market or stage on its behalf the Event, the City shall be relieved of any and all responsibility to provide any form of Event 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 Event Funding and/or in-kind services to the Organizer for the Event prior to the date when the Organizer elects to cancel the Event, the Organizer shall promptly refund any and all such Event 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.

4. Reporting: The Organizer shall provide to the City a written report summarizing the execution and outcomes of the Event no later than February 1, 2018. The report will provide budget highlights for the Event including the total cost of the Event and will outline how the City was recognized as a sponsor. The report will also describe the benefits generated by the Event within the City's corporate limits by estimating attendance, listing business participants, and discussing other positive community impacts created by the Event.

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 provided for in 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 the cure of the 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 and the laws of the State of Illinois shall govern the resolution of any such dispute and the interpretation, construction and enforcement of this Agreement..

4. Termination:

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

(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 voluntary petition or is the subject of an involuntary petition for bankruptcy protection 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 incorporated status as a domestic corporation by reason of any act or omission on the part of the Organizer;
- (v) becomes involuntarily dissolved for any reason by the Secretary of State of the State of Illinois and where the Organizer 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 of creditors;
- (vii) is placed in receivership by any lawful court order or decree;
- (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 or property.

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 Event Funding to the Organizer 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 Organizer of any and all Event Funding advanced to or paid to the Organizer.

b. In the event that the City has provided no Event Funding and/or in-kind services to the Organizer, 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 Organizer shall refund to the City any and all Event Funds advanced to or paid to the Organizer as of the date of termination.

5. Indemnification: The Organization agrees to and will indemnify, defend and hold harmless the City, its elected and appointed officials, employees, agents, and assigns from and against any and all claims, suits, actions, causes of action, judgments, decrees, orders, liabilities, and defenses which arise or which may arise out of or which are or may be the direct or proximate result of any unlawful intentional, willful, wanton, grossly negligent, or negligent act or omission by the Organization and/or any of its directors, officers, employees, agents, contractors, or representatives. Nothing herein shall require the Organization to indemnify, defend and hold harmless the City, its elected and appointed officials, employees, agents, and assigns from and against any and all claims, suits, actions, causes of action, judgments, decrees, orders, liabilities, and defenses which arise or may arise out of or which are or may be the direct or proximate result of any intentional, willful, wanton, grossly negligent, or negligent act or omission by the City or any of its elected or appointed officials, employees, agents, or assigns.

6. 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 ORGANIZER:

Registered Agent
CU Folk & Roots Festival
P.O. Box 331
Urbana, IL 61803

7. 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.

8. Assignment: The Organizer shall not have the right to assign or otherwise transfer to any third person the Organizer's obligations provided for in this Agreement without the express

written consent of the City. If the City consents to any such assignment, the Organizer shall remain fully 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 Organizer makes such assignment shall be bound to perform the Organizer's obligations as if a party to this Agreement.

Notwithstanding any assignment of the Organizer's obligations under this Agreement, whether in whole or in part, which is consented to in writing by the City, the Organizer, not the City, shall be responsible for compensating any such third person for its or their work and/or services. Nothing in this Agreement shall be deemed, construed or interpreted as authorizing the Organizer to bind the City into any agreement with any third person in the absence of the City's express written consent to be bound into any agreement with any such third person.

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

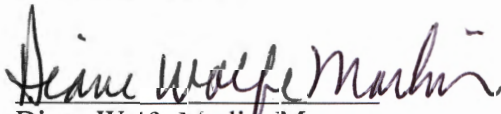
10. Human Rights: The Organizer, in all respects, shall comply with the City's Human Rights Ordinance and, if requested in writing by the City, the Organizer shall provide such hiring information as requested by the City as if requested pursuant to the City's Equal Opportunity in Purchasing Ordinance.

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

12. 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 ORGANIZER:


Rob Krumm, Registered Agent

ATTEST:


Charlie A. Smyth, City Clerk

