

RESOLUTION NO. 2017-07-049R

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION
OF A PROMOTIONAL AND MARKETING AGREEMENT FOR
MONTHLY URBANA FIRST FRIDAY FESTIVALS**

(Imbibe Urbana LLC, 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, Imbibe Urbana LLC ("Imbibe Urbana") 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 monthly special event known as the Urbana First Fridays (hereinafter, the "Festival") within the City's corporate limits; and

WHEREAS, Imbibe Urbana has arranged for, marketed, promoted, staged, and offered the Festival in the past year; and

WHEREAS, the City and Imbibe Urbana seek to form a mutually beneficial arrangement whereby Imbibe Urbana 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 Monthly First Fridays Festivals by and between the City of Urbana, a Municipal Corporation, and Imbibe Urbana LLC, an Illinois limited liability company, 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.

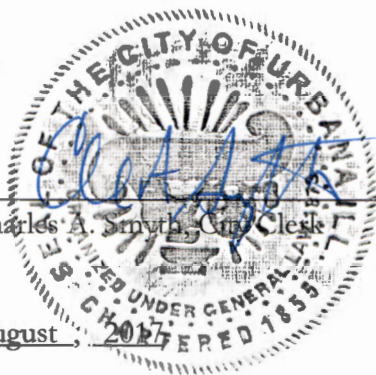
The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of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

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

AYES: Brown, Hazen, Jakobsson, Miller

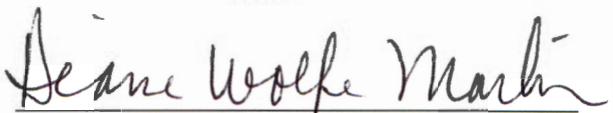
NAYS:

ABSTENTIONS:



Charles A. Smyth, City Clerk

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



Diane Wolfe Marlin, Mayor

**PROMOTIONAL AND MARKETING AGREEMENT
FOR MONTHLY URBANA FIRST FRIDAYS FESTIVALS**

This Promotional and Marketing Agreement for Monthly Urbana First Fridays Festivals (hereinafter, "Agreement") is entered into this 1st Day of July, 2017 by and between the City of Urbana (hereinafter, the "City") and Imbibe Urbana LLC (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 an Illinois limited liability company; 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 monthly special event within the City's corporate limits known as Urbana First Fridays (hereinafter, the "Festival"); and

WHEREAS, the Organizer has arranged for, marketed, promoted, staged, and offered the Festival in the past year; 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 Festival and the City agrees to provide a certain amount of funding to the Organizer 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 ORGANIZER:

1. City Festival Funding: The City shall make available to the Organizer up to but not more than eighteen thousand dollars (\$18,000) which the Organizer shall apply to defray its costs of promoting, marketing, and staging the Festival (hereinafter, "City Festival Funding") as hereinafter provided for in Paragraph A.2. The Organizer agrees that none of the City Festival Funding provided for in this Agreement shall be used at any time to support any events or activities other than the Festival held in Downtown Urbana on the first Friday of each month.

2. Disbursement of City Festival Funding: The City shall disburse City Festival Funding on a reimbursement basis and based on written 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 up to but not more than twelve thousand dollars (\$12,000) of the City Festival Funding based only on the presentments of receipts for direct out-of-pocket expenses in connection with the Festival. Such disbursements shall not exceed one thousand dollars (\$1,000) in any given month.

The City shall disburse up to six thousand dollars (\$6,000) of the City Festival Funding (hereinafter, "Matching Funds") by matching one dollar (\$1) of Matching Funds disbursed for every six dollars (\$6) received by the Organization in aggregate form of cash collected from sponsorships and/or donations and sales revenue (hereinafter, collectively, referred to as "Actual Revenue"). Only the Actual Revenue which the Organizer collects and in-hand receives shall be used in calculating the Matching Funds. In order to obtain the full measure of Matching Funds from the City, the Organizer must generate and receive total Actual Revenue in the amount of thirty-six thousand dollars (\$36,000) (hereinafter, "Revenue Goal").

In the event that the Organizer fails to attain the Revenue Goal, then the City's obligation to provide Matching Funds shall be computed by dividing the Actual Revenue received by the Revenue Goal. For example and by way of example only, in the event that the Organizer receives Actual Revenue in the amount of \$30,000, then the City's obligation to provide the Organizer with Matching Funds shall be \$5,000 computed as follows: $(\$30,000 \div \$36,000) \times \$6,000 = \$5,000$. The Organizer, on a not more frequent basis than monthly, shall provide the City with a statement of the Organizer's Actual Revenue received for the period for which the statement is being submitted. The City shall provide so much of the Matching Funds provided herein based on the proportion of the Actual Revenue received, as reported in the statement, to the Revenue Goal in order to receive the full measure of the Matching Funds. Notwithstanding anything in the foregoing, each statement submitted by the Organizer shall not include any Actual Revenue previously submitted to the City.

3. In-Kind Services: In addition to the City Festival Funding, the City shall provide in-kind services the aggregate reasonable value of which shall not exceed ten thousand dollars (\$10,000). For in-kind services supporting to the Festival, the City shall (i) make available to the Organizer crowd control barriers and related street closure services having a value of up to but not more than seven thousand dollars (\$7,000) for up to twelve (12) days during which the Festival is held, and (ii) the City shall forego usage and/or rental fees for the Urbana Civic Center up to a value of three thousand dollars (\$3,000) for up to four (4) days during which the Festival is held.

4. Payment of City Festival Funding and Provision of In-Kind Services: 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. The City shall value the in-kind services which it provides to, for, or on behalf of the Organizer 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 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 Festival and all aspects related thereto. In the event that 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 Festival, the Organizer and its agent, 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 Festival 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 be responsible for the performance of all obligations required of the Organizer as provided in this Agreement regardless of whether the Organizer contracts with a third person to undertake any or all of the Organizer's obligations under this Agreement.

2. City Sponsorship Recognition: The Organizer 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. The Organizer and its agent, if any, shall only use the official logos and color palette of the City and of Downtown Urbana as provided by the City.

3. Refund of City Festival 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 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 Organizer 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 Organizer elects to cancel the Festival, the Organizer 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. If the City has provided any Matching Funds for the Festival pursuant to Sub-Paragraph A.2. of this Agreement, then, the Organizer shall refund to the City so much of the amount which the City provided to the Organizer computed as a percentage of Festival occurrences within the City fiscal year which have not been completed as a fraction or percentage of the total twelve (12) occurrences within the City fiscal year. For example and by way of example only, in the event that the City provided the Organizer with \$6,000 in Matching Funds and the Organizer elects to cease operations of the Festival after completing 8 Festival occurrences, then the amount refunded to the City shall be computed as follows: $(\$6,000) \times (12 - 8) \div (12) = \$2,000$. However, the Organizer shall be relieved of its obligation to tender any such refund provided for in this Sub-Paragraph should it be determined that state and/or federal law, rules or regulations, or court order bar the making of such refund.

4. Reporting: The Organizer shall provide to the City a written report summarizing the execution and outcomes of each monthly Festival within twenty-one (21) days following each of the

twelve (12) Festival occurrences. The report will provide budget highlights for each of the Festival occurrences including the total cost of the Festival and will outline how the City was recognized as a sponsor. The report will also describe the benefits generated by the Festival within the City's corporate limits by estimating attendance, listing business participants, and discussing other positive community impacts created by the Festival. The Organizer shall provide to the City a final written report which summarizes the execution and outcome of the Festival in total within thirty (30) following the last Festival occurrence for the City fiscal year. Further, within forty-five (45) days following the last Festival occurrence, the Organizer shall make a brief presentation to the City Council regarding the Festival.

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 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 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 LLC status as an Illinois limited liability company 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 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 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 City Festival Funds advanced to or paid to the Organizer 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 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 City Festival Funds advanced to or paid to the Organizer 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 ORGANIZER:

Kristin Walters
Imbibe Urbana LLC
805 S Grove 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 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 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.

8. 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.

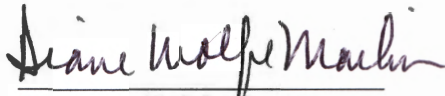
9. Human Rights: The Organizer, in all respects, shall comply with the City's Human Rights Ordinance and, if requested in writing by the City, the Organizer shall provide such hiring information as requested by the City as if requested pursuant to the City's Equal Opportunity in Purchasing Ordinance.

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.

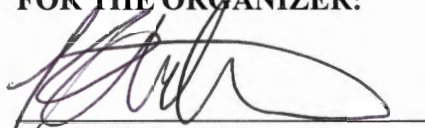
[END OF AGREEMENT, SIGNATURES FOLLOW.]

FOR THE CITY:



Diane Wolfe Martin, Mayor

FOR THE ORGANIZER:



Kristin Walters, Manager

ATTEST:



Charlie A. Smyth, City Clerk

