

**RESOLUTION NO. 2019-06-018R**

**A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A  
PROMOTIONAL AND MARKETING AGREEMENT**

**(Urbana Business Association, FY 2019-2020)**

**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 of Urbana has determined that the promotion and marketing of its business community 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 the Urbana-Champaign region; and

**WHEREAS**, the City and the UBA have previously held a relationship related to promotion and marketing services; and

**WHEREAS**, the City and UBA believe that it would be mutually beneficial to the City and UBA to renew their agreement whereby UBA would provide marketing and promotion services for and on behalf of the City and the City would reasonably compensate UBA for such services.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Urbana, Illinois, as follows:

**Section 1.**

A Promotional and Marketing Agreement by and between the City of Urbana, a Municipal Corporation, 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.**

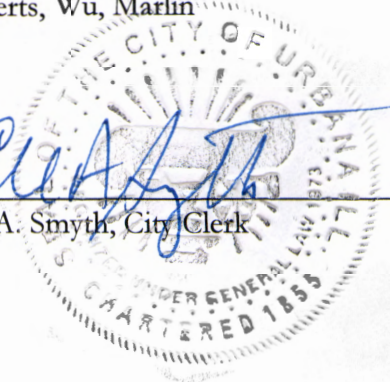
The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of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

**PASSED BY THE CITY COUNCIL** this 17<sup>th</sup> day of June, 2019.

**AYES:** Brown, Hazen, Hursey, Jakobsson, Miller, Roberts, Wu, Marlin

**NAYS:**

**ABSTENTIONS:**



*Charles A. Smyth*  
 \_\_\_\_\_  
 Charles A. Smyth, City Clerk

**APPROVED BY THE MAYOR** this 18<sup>th</sup> day of June, 2019.

*Diane Wolfe Marlin*  
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 Diane Wolfe Marlin, Mayor

**PROMOTIONAL AND MARKETING AGREEMENT**

This Promotional and Marketing Agreement (hereinafter, "Agreement") is entered into 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 a 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; and

WHEREAS, the City seeks to grow its business community by promoting and marketing and by entering into one or more arrangements with other persons to promote and market the City through public and special events which are intended to attract new businesses to, expand existing businesses within, and bring customers into the City; and

WHEREAS, the UBA seeks to grow its membership of businesses and expand its services to businesses located in and about the City; and

WHEREAS, the UBA is experienced in promoting, marketing, staging, and arranging for public and special events which are intended to attract new businesses to, expand existing businesses within, and add customers to the City; 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 various types of public and special events within and for the benefit of the City and its business community.

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 OBLIGATIONS TO UBA:**

**1. City Funding and In-Kind Services to UBA:**

a. **UBA Funding:** The City shall provide UBA with certain funding which UBA may use to operate its business and perform its duties as a 501(c)(6) not-for-profit business league as certified by the Internal Revenue Service. The amount of funding which the City shall provide to UBA for such purpose in the following City fiscal year, which shall commence of July 1 and end on June 30 (hereinafter, "City FY") shall be:

FY 2019-2020: \$57,815

**b. City In-Kind Services to UBA:** Separate and apart from the funding provided for in Sub-Paragraph A(1)(a) of this Agreement, the City shall make available to UBA office space located in the downtown Urbana parking deck and such office space shall be provided without any charge during the term of this Agreement. The value of the right to occupy the aforesaid office space for one year shall be \$7,200. The City shall also allocate three parking spaces for UBA staff and visitors and such parking spaces shall be located in said parking deck without any charge. The value of the aforesaid dedicated parking spaces for one year shall be \$1,620. The City may at its discretion provide additional in-kind services at no cost to UBA, 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 UBA 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.

**c. Collective Funding:** Unless the context of any Paragraph or Sub-Paragraph in this Agreement provides or suggests otherwise, reference to "City Funding" or "City Funds" shall mean and include the monetary funding and any in-kind services provided for in Sub-Paragraphs (A)(1)(a) and A(1)(b) of this Agreement.

**2. Disbursement of Funds:** The Parties recognize and agree that it shall be a goal of the UBA that, during the term of this Agreement, the UBA shall undertake efforts within its own operations, marketing and other activities, as provided for in Sub-Paragraphs B(1) through B(5) to grow its membership of businesses as well as to expand its services to businesses located in and about the City. Thus, the Parties intend that the UBA's receipt of City Funding shall be based in whole or in part on the UBA's performance during the term of this Agreement. However, nothing herein shall be deemed or construed as barring the Parties from entering into one or more other written agreements for other UBA services which benefit the City and/or its business community and the City from compensating the UBA on covenants, terms and/or conditions separate and apart from those provided for in this Agreement. To this end, the City shall disburse to the UBA City Funds subject to the limitations contained in those Sub-Paragraphs, as follows:

**a.** City Funds shall be disbursed to the UBA on a reimbursement basis within twenty-eight (28) days of the City's receipt of documentation of UBA expenses which documentation should include, where available, receipts and payroll for its expenses. In the event that an expenditure is of a type where a receipt is not available, then the UBA shall provide a written statement of the amount paid, to whom paid, and a description of the goods or services purchased. The UBA shall cooperate with the City in providing such information regarding the UBA's expenses as the City determines. The City, in its sole discretion, shall determine which, if any, of the expenses submitted to it by the UBA shall qualify for reimbursement.

b. The UBA shall not submit requests for reimbursement on a more frequent basis than once a month. Further, in the event the UBA determines that a monthly request shall be less than \$500.00 for any month, the UBA shall refrain from making a reimbursement request for that month and include the amount which would be requested in the next month's request for reimbursement.

Notwithstanding anything to the contrary provided for in Sub-Paragraphs A(1)(a), A(1)(b) and A(1)(c) of this Agreement, the UBA shall not use or expend any of the money which the City provides the UBA for political purposes and activities including, but not necessarily limited to, funding of any political action committee, funding any organization's, candidate's, or public office-holder's political campaign, lobbying activities, or other activities which are or may be contrary to the UBA's IRS Section 501(c)(6) tax-exempt status. Nothing herein shall be deemed, construed or interpreted as prohibiting the UBA from engaging in any of the aforesaid political activities or lobbying activities where such activities are clearly and plainly intended to benefit the City as whole rather than any particular political constituency.

**3. Limits on City Funding:** Nothing in this Sub-Paragraph shall be deemed, construed or interpreted as limiting the amount of additional funding, if any, which the City may, in its sole discretion, provide to the UBA for any purpose, whether specific or general in nature and whether or not pursuant to one or more separate agreements entered into and executed by and between the Parties. Any monetary funding paid or in-kind service provided by the City in its sole discretion to UBA for the sole purpose of contributing toward any UBA special event, including but not limited to the annual Urbana Sweetcorn Festival, shall be held separate and apart from this Agreement.

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

**1. Promotional, Marketing, and Sponsoring Activities:** UBA shall undertake such efforts as reasonably possible and within the limits of funding provided by the City to promote and market the City as a destination, to assist in the promotion and marketing of businesses and events located in the City, to expand the sales of existing businesses and events located in the City, to organize or attract major public and special events in the City and assist in their promotion and marketing, and to attract new visitors, entrepreneurs and residents to Urbana. Such efforts shall include but shall not be limited to promotion, marketing, recruitment, sponsoring, and staging of various business-related activities, events, destinations, businesses and partnerships within and for the benefit of the City and its business community. Such efforts shall also be complementary to and consistent with UBA's efforts to grow its membership of businesses and expand its services to businesses located in and about the City. The UBA shall also coordinate the installation and removal of banners in the downtown and other locations as approved by the City. Further, such promotional and marketing efforts may include the advertising, through any and all means and media deemed reasonable and appropriate by the UBA, of the City and businesses located in the City. The UBA's promotional, marketing, staging, sponsorship, and advertising activities shall be undertaken in a reasonable effort so that businesses throughout the City may benefit from such activities. However, nothing herein shall be deemed or construed as prohibiting the UBA from promoting, marketing, staging, or sponsoring one or more public or special events which is/are intended to promote or benefit a

particular business (e.g., the conducting of a ribbon-cutting ceremony) or category of business (e.g., retail, technology, manufacturing) so long as the UBA undertakes reasonable efforts to promote other businesses within the City.

Further, UBA shall –

a. recognize the City as a “Presenting Sponsor” in all of its activities and capacities in a manner that is fully consistent with UBA’s official description of partnership levels and the treatment of other like organizational, municipal, business and/or jurisdictional partners of UBA (hereinafter “City Partnership Status”);

b. market, coordinate, organize and/or support events held within the City in a manner that is consistent with the City Partnership Status including but not limited to the following events: Boneyard Arts Festival, Urbana’s Market at the Square, Urbana’s Market IN the Square, the Urbana Sweetcorn Festival, Uncork Urbana Wine Festival, the World’s Shortest St. Patrick’s Day Parade, the Urbana Arts Expo, Pygmalion Festival in Urbana, Urbana Grand Prix, CU Jazz Festival, and the CU Folk & Roots Festival in Downtown Urbana;

c. communicate, coordinate and cooperate in marketing, sales and promotion efforts with staff and officials of the City, the Champaign County Economic Development Corporation (hereinafter “EDC”) and Visit Champaign County (hereinafter “VCC”) in a manner that is consistent with the City Partnership Status, including but not limited to requesting information and materials from the City, EDC and VCC for inclusion in promotions, inviting City, EDC and VCC representatives to UBA-organized or sponsored events, and including City, EDC and VCC representatives in planning and coordination efforts;

f. include representatives of Urbana businesses, Urbana event organizers, Urbana institutions, the City, the EDC and the VCC to participate in monthly networking activities in a manner that is consistent with the City’s Partnership Status including but not limited to participation in Connections Over Coffee, Connections Over Cocktails, UBA Ribbon Cuttings, and any annual holiday appreciation events;

g. recognize Downtown Urbana, Five Points, Philo Road, the Pines at Stone Creek Commons, East Campus, North Cunningham, and North Lincoln Avenue as unique destinations and commercial districts in all relevant promotion and marketing activities of UBA, including emails, social media, newsletters, and marketing campaigns in a manner that is consistent with the City Partnership Status;

h. assist, market and promote programs and incentives related to City economic development initiatives such as Think Urbana, Urbana Enterprise Zone, and Urbana Tax Increment Finance Districts to potential developers, investors, builders, tenants, contractors and end users;

i. collaborate with Urbana's economic development staff in generating leads for new and retaining existing tenants, developers, investors, and businesses;

j. collaborate with Urbana's public arts staff to curate, facilitate and promote innovative and creative events, businesses, partnerships and activities in and about the City to attract and retain talented, diverse, and skilled individuals and organizations to the City's workforce and citizenry.

Notwithstanding anything to the contrary contained in this Sub-Paragraph B(1), all UBA promotional, marketing, staging, or sponsorship activities shall be undertaken in a manner which

a. presents the City, its officials, and its business community in a favorable light;

b. is presented in good taste and in such manner as to avoid offending the overall City residential and business community;

c. does not promote any particular religious or political positions or persuasions;

d. is presented or conducted in a manner so as not to endanger human life, health or safety.

UBA shall comply with all federal, state and City laws, rules and regulations in connection with any and all UBA activities.

**2. Board Representation:** The City's Economic Development Manager or such other person as the City's Mayor may designate shall sit on the UBA Board of Directors with full voting authority during the term of this Agreement as is consistent with the City Partnership Status and the UBA bylaws.

**3. UBA Work Plan:** UBA shall develop a work plan for the City FY provided for in Sub-Paragraph A(1)(a) of this Agreement and shall submit each said work plan to the City before June 1<sup>st</sup> preceding the start of the respective City FY, upon approval by UBA Board of Directors, or upon the effective date of this Agreement, whichever is latest. UBA's work plan submitted to the City for any given City FY shall include the following: (i) provide an overview of UBA's programmatic and organizational goals for the year; (ii) list specific activities and measurable objectives that UBA intends to complete over the course of the year; and, (iii) describe how such activities and objectives benefit the City and other communities being served. In the event, after presentation of each said work plan to the City, the UBA Board of Director's amends the work plan, UBA shall provide the City with any and all such amendments within seven (7) days after the UBA Board of Directors' adoption of any such plan amendment or amendments.

4. **UBA Budget:** UBA shall submit to the City an annual budget approved by the UBA Board of Directors and said budget shall be submitted at the same time UBA submits the work plan provided for in Sub-Paragraph B(3) of this Agreement. In the event UBA amends the aforesaid budget, UBA shall provide a copy of each such budget amendment to the City along with a statement of the reason therefor within seven (7) days of when UBA's Board of Directors approval of such amendment.

5. **UBA Reports to City Council:** UBA shall provide to the City Council, within forty-five (45) days following the close of each quarter of the City FY, its written monthly report. In addition, UBA shall provide to the City Council, within ninety (90) days following the close of the City's FY, its written annual report which shall (i) describe the activities which UBA has undertaken for, on behalf of and/or for the benefit of the City, of businesses located within the City, and of events located within the City during the immediate past City FY that are consistent with the work plan provided for in Sub-Paragraph B(3) of this Agreement; (ii) provide a summarized accounting of all funds received by UBA during the aforesaid City FY, including but not limited to the City Funds provided for in Sub-Paragraph A(1) of this Agreement; and (iii) provide a summarized accounting of all expenditures and disbursements made by UBA during the aforesaid City FY.

UBA shall annually provide a representative of UBA to present the aforesaid annual report to and address questions from the City Council at such time as the City may direct. All reports and accountings provided in this Sub-Paragraph B(5) shall be in writing and shall appear on the letterhead of UBA.

6. **Dissolution of UBA:** In the event that the UBA should dissolve or elect to cease operations for any reason after any payment provided for in Sub-Paragraphs A(1)(a) and A(1)(b) of this Agreement has been made for a City FY not then completed, then, the UBA, after its payment of all just debts and obligations, shall refund to the City so much of the amount which the City provided to the UBA in the City FY when it dissolves computed as a percentage of days within said City FY which have passed expressed as a fraction or percentage of the total number of days in the said City FY – i.e., 365 or 366 depending on whether the year of dissolution is a “leap-year.” For example and by way of example only, in the event that the City provided the UBA with \$50,000 in the City FY 2019-2020 and the UBA elects to dissolve on February 29, 2020, then the amount refunded to the City shall be computed as follows:  $(\$50,000) \times (244 \div 366) = \$33,333$ . However, the UBA shall be relieved of its obligation to tender such refund should it be determined that state and/or federal law, rules or regulations bar the making of such refund. Separate and apart from the refund provided for in this Sub-Paragraph, in the event that the UBA announces its intent to dissolve or cease operations, the City may, at its sole election and discretion cease to provide additional funds to the UBA.

C. **MISCELLANEOUS TERMS:**

1. **Term of Agreement:** This Agreement shall commence on July 1, 2019 and shall expire at 11:59 p.m. on June 30, 2020.



**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(6) 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 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 UBA;

(v) becomes involuntarily dissolved for any reason by the Secretary of State of the State of Illinois and where 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 not 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 funding to 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 UBA in an amount calculated as if UBA elected to dissolve as provided in Sub-Paragraph B(6) of this Agreement.

b. 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 thirty (30) days after the effective date of such written notice (as defined by Sub-Paragraph C(7) 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, UBA shall refund to the City so much of those funds which the City has provided to UBA in the fiscal year in which the termination occurs computed in the manner provided for in Sub-Paragraph B(6) of this Agreement.

**5. Refund of Funds:** If any event arises which triggers the UBA's obligation to refund any moneys to the City as provided elsewhere in this Agreement, the UBA shall tender to the City such refund in the amount provided for in this Agreement within fourteen (14) calendar days of when the aforesaid event occurred. In the event the UBA fails to tender such refund to the City within the timeframe provided herein, the City shall be entitled to interest on the said refund at the rate of nine percent (9%) per annum with interest commencing to run on the date when the City was first entitled to said refund.

**6. Indemnification:** UBA 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 UBA and/or any of its directors, officers, employees, agents, contractors, or representatives. Nothing herein shall require UBA 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.

7. **Notices:** All notices required to be given shall be in writing, and 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 receipt 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

8. **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.

**9. Assignment:** Neither Party shall have the right to assign or otherwise transfer to any third person the Party's obligation to perform or the right to receive performance of any covenant, term or condition in this Agreement without the written consent of the non-assigning Party. If either Party consents to allow the other Party to assign or otherwise transfer its obligation to perform any covenant, term or condition contained in this Agreement or the right to receive the benefit of performance of any covenant, term or condition contained in this Agreement to or from a third person, then this Agreement shall be binding upon such third person as if such third person was a signatory to this Agreement, and such third person shall be deemed a "Party" as referred to in this Agreement.

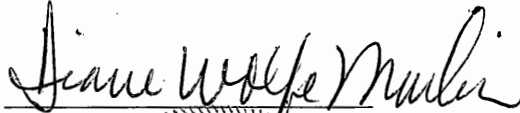
**10. Human Rights:** The UBA, in all respects, shall comply with the City's Human Rights Ordinance and, if requested in writing by the City, the UBA shall provide such hiring information as requested by the City as if requested pursuant to the City's Equal Opportunity in Purchasing Ordinance.

**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 Martin, Mayor

**ATTEST:**



Charles A. Smyth, City Clerk

**FOR THE UBA:**



Paris Baldarotta, Executive Director

**ATTEST:**



Jack Wallace, Board of Directors Chair