

**RESOLUTION NO. 2019-06-019R**

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

**(Visit Champaign County, 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 supporting promotion and marketing of the Urbana-Champaign region as a tourist destination provides a benefit to the City; and

**WHEREAS**, Visit Champaign County (“VCC”) is well positioned to provide those promotion and marketing services for the City and the Urbana-Champaign region; and

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

**WHEREAS**, the City and VCC believe that it would be mutually beneficial to the City and VCC to renew their agreement whereby VCC would provide marketing and promotion services for and on behalf of the City and the City would reasonably compensate VCC 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, and Champaign County Convention and Visitors Bureau d/b/a Visit Champaign County, 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

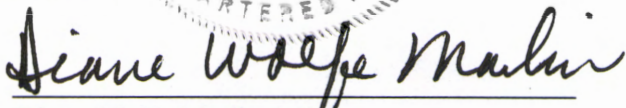
NAYS:

ABSTENTIONS:



Charles A. Smyth, City Clerk

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



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 Champaign County Convention and Visitors Bureau DBA Visit Champaign County (hereinafter, "VCC") (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, VCC is an Illinois 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. § *et seq.*) and which is certified by the Illinois Office of Tourism as the Local Tourism and Convention Bureau for Champaign County; and

WHEREAS, the City seeks to grow its tourism industry by entering into one or more arrangements with other persons or entities to promote and market the City as a destination, to assist in the promotion and marketing of tourism-related businesses and events located in the City, to expand the sales of existing tourism-related businesses within the City, to organize or attract major public and special events in Champaign County and assist in their promotion and marketing, and to attract new visitors to Champaign County from locations over fifty miles from Champaign County including from other nations; and

WHEREAS, VCC seeks to promote Champaign County as an overnight visitor destination and to make Champaign County the premiere destination in Central Illinois; and

WHEREAS, VCC is experienced in the promotion and marketing of Champaign County as a destination to audiences located over fifty miles from Champaign County including other nations, the organization and attraction of major public and special events in Champaign County including assistance in the promotion and marketing, the expansion of sales of existing tourism-related businesses within Champaign County, and the promotion and marketing of tourism related businesses and events within Champaign County, all of which are intended to grow the regional tourism industry; and

WHEREAS, the City and VCC seek to form a mutually beneficial arrangement whereby VCC undertakes certain promotion, marketing, recruitment, sponsoring, and staging of various tourism-related activities, events, destinations, businesses and partnerships within and for the benefit of the City and its tourism industry, and whereby the City shares in the support of VCC's regional efforts to promote all of Champaign County and improve the region's tourism industry as a whole.

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 VCC:**

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

**a. City Monetary Funding to VCC:** The City shall provide VCC with certain funding which VCC may use to operate its business and also perform its duties as the Local Tourism and Convention Bureau for Champaign County as certified by the State Office of Tourism. The amount of funding which the City shall provide to VCC for such purpose in each of the following City fiscal years, each of which shall commence on July 1 and end on June 30 (hereinafter, "City FY" or "City FYs") shall be:

FY 2019-2020:           \$10,000

**b. City In-Kind Services to VCC:** Separate and apart from the funding provided for in Sub-Paragraph A(1)(a) of this Agreement, the City may at its discretion provide in-kind services at no cost to VCC, 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 VCC 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 City 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 VCC that, during the term of this Agreement, VCC shall undertake efforts within its own operations, marketing and other activities, as provided for in Sub-Paragraphs B(1) through B(5), to increase the representation of tourism-related events, activities and businesses located within the City as well as to increase tourism-related sales for businesses within the City. Thus, the Parties intend that VCC's receipt of City Funding shall be based in whole or in part on VCC'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 VCC services which benefit the City and/or its business community and the City from compensating VCC on covenants, terms and/or conditions separate and apart from those provided for in this Agreement. To this end, the City shall disburse to VCC City Funds within thirty (30) days of the City's receipt of an invoice from VCC within the term of this agreement.

Notwithstanding anything to the contrary provided for in Sub-Paragraphs A(1) of this Agreement, VCC shall not use or expend any City Funds, whether as staff funding and/or operational funding, 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 VCC's IRS Section 501(c)(6) tax-exempt status. Nothing herein shall be deemed, construed or interpreted as prohibiting VCC from engaging in any of the aforesaid political activities or lobbying activities where such activities are clearly and plainly intended to benefit the City or Champaign County 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 VCC 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 funding paid by the City in its sole discretion to VCC for the sole purpose of contributing toward any Illinois High School Association (IHSA) bid or IHSA tournament shall be held separate and apart from this Agreement.

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

**1. Promotional, Marketing, and Sponsoring Activities:** VCC 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 tourism-related businesses and events located in the City, to expand the sales of existing tourism-related businesses within the City, to organize or attract major public and special events in Champaign County and assist in their promotion and marketing, and to attract new visitors to Champaign County from locations over fifty miles from Champaign County including from other nations. Such efforts shall include but shall not be limited to promotion, marketing, recruitment, sponsoring, and staging of various tourism-related activities, events, destinations, businesses and partnerships within and for the benefit of the City and its tourism industry. Such efforts shall also be complimentary to and consistent with VCC's regional efforts to promote all of Champaign County and improve the region's tourism industry as a whole.

Further, VCC shall –

a. recognize the City as a "Gold Partner" in all of its activities and capacities in a manner that is fully consistent with VCC's official description of partnership levels and the treatment of other like organizational, municipal and jurisdictional partners of VCC (hereinafter "City Partnership Status");

b. market and 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: Urbana's Market at the Square, the Urbana's Market IN the Square, the Urbana Holiday Market, the Urbana Sweetcorn Festival, Uncork Urbana Wine Festival, the Urbana Arts Expo, 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 both the City and the Urbana Business Association (hereinafter "UBA") in a manner that is consistent with the City Partnership Status, including but not limited to requesting information and materials from the City and UBA

for inclusion in promotional bags and packets, inviting City and UBA representatives to VCC organized or sponsored events, and including City and UBA representatives in planning and decision-making teams or committees;

d. include tourism-related businesses and venues located within the City and their representatives in all relevant promotion and marketing activities of VCC in a manner that is consistent with the City Partnership Status including but not limited to participation on planning teams, networking events, trips, tours, site visits, printed materials, informational displays, maps, business listings, emails, and social media postings;

e. generate sales leads for hotels, venues and other tourism-related businesses located within the City in a manner that is consistent with the City Partnership Status including but not limited to event attraction, sales blitzes, marketing blitzes, bid packages, networking events, trips, tabling, tours and site visits;

f. include representatives of Urbana businesses, the City and the UBA to participate in hospitality and business planning and networking activities in a manner that is consistent with the City's Partnership Status including but not limited to participation in sales, sports, tourism or hospitality councils and participation in quarterly meetings of chamber or business association professionals.

g. recognize Downtown Urbana as a destination in all relevant promotion and marketing activities of VCC, including visitors guide, maps and business listings, in a manner that is consistent with the treatment of Downtown Champaign.

h. assist the City and the UBA in establishing and seeking approvals from the State of Illinois for tourism attraction signs on Interstate 74 for major events and businesses located within the City including but not limited to Urbana's Market at the Square and the Urbana Sweetcorn Festival;

Notwithstanding anything to the contrary contained in this Sub-Paragraph B(1), all VCC 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.

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

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

**3. VCC Work Plan:** VCC shall develop a work plan for each of the City FYs 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 VCC Board of Directors, or upon the effective date of this Agreement, whichever is latest. VCC's work plan submitted to the City for any given City FY shall include the following: (i) provide an overview of VCC's programmatic and organizational goals for the year; (ii) list specific activities and measurable objectives that VCC 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 VCC Board of Director's amends the work plan, VCC shall provide the City with any and all such amendments within seven (7) days after the VCC Board of Directors' adoption of any such plan amendment or amendments.

**4. VCC Budget:** VCC shall submit to the City an annual budget approved by the VCC Board of Directors and said budget shall be submitted at the same time VCC submits the work plan provided for in Sub-Paragraph B(3) of this Agreement. In the event VCC amends the aforesaid budget, VCC 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 VCC's Board of Directors approval of such amendment.

**5. VCC Reports to City Council:** VCC shall provide to the City Council, within forty-five (45) days following the close of each quarter of the City FY, its written quarterly report. In addition, VCC shall provide to the City Council, within sixty (60) days following the close of the City's FY, its written annual report which shall describe the activities which VCC has undertaken during the immediate past City FY that are consistent with the work plan provided for in Sub-Paragraph B(3) of this Agreement

In addition, VCC shall submit to the City, within ninety (90) days following the close of the City FY, its written annual partnership report which shall (i) describe the activities which VCC 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; (ii) provide a summarized accounting of all funds received by VCC 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 VCC during the aforesaid City FY.

VCC shall annually provide a representative of VCC to present the aforesaid annual report and annual partnership 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 VCC.

6. **Dissolution of VCC:** In the event that VCC 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, VCC, after its payment of all just debts and obligations, shall refund to the City so much of the amount which the City provided to VCC 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 VCC with \$10,000 in the City FY 2019-2020 and VCC elects to dissolve on February 29, 2020, then the amount refunded to the City shall be computed as follows:  $(\$10,000) \times (244 \div 366) = \$6,666.67$ . However, VCC 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 VCC announces its intent to dissolve or cease operations, the City may, at its sole election and discretion cease to provide additional funds to VCC.

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 VCC –

(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 VCC;

(v) loses its Illinois Office of Tourism certification as the Local Tourism and Convention Bureau for Champaign County;

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

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

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

(ix.) 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

(x) 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 VCC 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 VCC in an amount calculated as if VCC 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, VCC shall refund to the City so much of those funds which the City has provided to VCC 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 VCC's obligation to refund any moneys to the City as provided elsewhere in this Agreement, VCC 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 VCC 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:** VCC 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 VCC and/or any of its directors, officers, employees, agents, contractors, or representatives. Nothing herein shall require VCC 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 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:**

Rachel Lauren Storm  
Public Arts Coordinator  
City of Urbana  
400 S. Vine St.  
Urbana, IL 61801

**TO VCC:**

Jayne DeLuce  
President & CEO  
Visit Champaign County  
17 E. Taylor St.  
Champaign, IL 61820

**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.

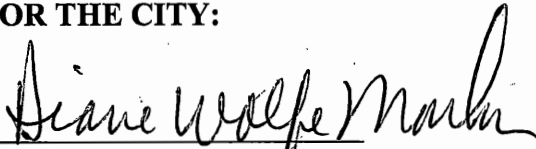
**10. Human Rights:** VCC, in all respects, shall comply with the City's Human Rights Ordinance and, if requested in writing by the City, VCC shall provide such hiring information as requested by the City as if requested pursuant to the City's Equal Opportunity in Purchasing Ordinance.

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

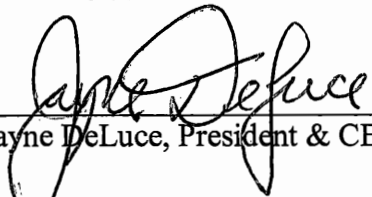
12. **Supersedious:** This Agreement shall supersede and replace any and all agreements respecting the subject matter of this Agreement, whether oral or in writing, entered into by and between the Parties heretofore.

[ END OF AGREEMENT, SIGNATURES FOLLOW. ]

**FOR THE CITY:**

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

**FOR VCC:**

  
\_\_\_\_\_  
Jayne DeLuce, President & CEO

ATTEST:

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



ATTEST:

  
\_\_\_\_\_  
Robert Kowalski, Board of Directors Chair