

RESOLUTION NO. 2014-05-027R

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

(Urbana Business Association, FY 2014 - 2015, FY 2015 - 2016, & FY 2016 - 2017)

**WHEREAS**, the City of Urbana ("City") has determined that supporting marketing and promotion services provides a benefit to the City; and

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

**WHEREAS**, the City and the UBA have established a long standing relationship related to promotion and marketing services; and

**WHEREAS**, the City and the UBA believe that it would be mutually beneficial to the City and UBA to renew their relationship 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, and the Urbana Business Association, a 501c.6 Not-For-Profit Corporation, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

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

**PASSED BY THE CITY COUNCIL** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

**APPROVED BY THE MAYOR** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

Resolution No. \_\_\_\_\_

**PROMOTIONAL AND MARKETING AGREEMENT**

This Promotional and Marketing Agreement (hereinafter, "Agreement") is entered into this \_\_\_\_ Day of \_\_\_\_\_, 2014 by and between the City of Urbana (hereinafter, the "City") and the Urbana Business Association (hereinafter, the "UBA") (collectively, the "Parties").

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

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

**1. City Funding of UBA:**

**a. UBA Staff Funding:** The City shall provide the UBA with certain funding which the UBA may use to pay UBA-employee salaries. The amount of funding which the City shall provide to the UBA for such purpose in each of the following City fiscal years, each of which shall commence of July 1 and end on June 30 (hereinafter, "City FY" or "City FYs") shall be:

FY 2014-2015:	\$50,000
FY 2015-2016:	\$45,000
FY 2016-2017:	\$40,000

The UBA agrees that none of the funds provided for in this Sub-Paragraph shall be used at any time to increase any UBA employee's compensation.

**b. UBA Operational Funding:** Separate and apart from the funding provided for in Sub-Paragraph A.1. of this Agreement, the City shall provide the UBA with a certain amount of funds which shall be equal to but shall not exceed the aggregate amount of revenue which the UBA derives from corporate investments in and/or donations to the UBA (whether monetary or in-kind services) and new membership fees and/or dues collected by the UBA (hereinafter, collectively, referred to as "Revenue"). Notwithstanding anything in this Sub-Paragraph to the contrary, the maximum amount which the City shall provide to the UBA as operational funding for any of the City FYs listed in Sub-Paragraph A.1. of this Agreement shall be \$35,000 (hereinafter, "Matching Funds"). Only the Revenue which the UBA actually collects and in-hand receives during a City FY shall be used in calculating the Matching Funds which the City shall provide for that fiscal year. For purposes of determining the monetary value of in-kind services received by the UBA, the UBA shall provide the City with detailed documentation satisfactory to the City which shall include (i) the name of the provider of the in-kind service; (ii) a description of the nature of the in-kind service; (iii) the date or dates when such in-kind services were provided; (iv) the value of each such in-kind service; and (v) the means, method or basis by which each such in-kind service has been valued by the UBA. The City shall have the sole right and discretion whether to include any one or more of the in-kind services in computing the Matching Funds which the City shall provide to the UBA. On or before June 1<sup>st</sup> preceding each City FY for which Matching Funds are sought, the UBA shall provide the City with the amount of Revenue it received and, in the case of in-kind services, the information hereinbefore referenced. In addition to the aforesaid information, the City may request the UBA to provide the said information on a periodic basis.

**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 funding provided for in Sub-Paragraphs A.1. and A.2. of this Agreement.

**3. 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 significant efforts towards becoming a self-sustaining organization. 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 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 necessary in order to calculate disbursements to the UBA. 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.2. and A.3. of this Agreement, the UBA shall not use or expend any of the money which the City provides the UBA, 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 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.

**4. 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.

**5. UBA Office Space:** During the term of this Agreement, the City shall make available to the UBA office space located in the downtown Urbana parking deck and such office space shall be provided without any charge. The City shall also provide parking for UBA staff and visitors and such parking shall be located on the top level of said parking deck without any charge.

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

**1. UBA Business Plan:** The UBA shall develop a business plan for each of the City FYs provided for in Sub-Paragraph A.1. of this Agreement and shall submit each said business plan to the City Council on or before June 1<sup>st</sup> preceding the respective City FY for which City

Funding is requested by the UBA. The UBA business plan for FY 2014-2015 shall, at a minimum, provide the same type of information which the UBA provided to the City for the City's FY 2013-2014. For City FYs 2015-2016 and 2016-2017, each of the UBA's business plans submitted to the City shall include, in addition to the type of information provided in the business plan submitted for the City FY 2014-2015, the following: (i) describe in detail how City Funds will be used in each of the City FYs 2015-2016 and 2016-2017 for which City Funding is being requested in each of the immediate aforesaid City FYs; (ii) state how the UBA believes the use of City Funding will directly benefit the City and its business community; (iii) state the goals and objectives sought to be achieved through use of City Funding and how the UBA intends to measure whether any one or more such goals or objectives have been met; and (iv) state or describe what moneys from sources other than City Funds will be used to achieve the stated goals and objectives. Each business plan shall be submitted to the City at least twenty-one (21) days following the UBA's adoption of the said plan. The UBA shall provide a representative of the UBA to present the said plan to and address questions from the City Council at such time as the City may direct. In the event, after presentation of each said business plan to the City Council, the UBA amends the business plan, the UBA shall provide the City with any and all such amendments within seven (7) days after the UBA's adoption of any such plan amendment or amendments.

**2. UBA Budget:** The UBA shall submit to the City a budget approved by the UBA Board of Directors and said budget shall be submitted at the same time the UBA submits the business plan provided for in Sub-Paragraph B.1. of this Agreement. The said budget shall be presented to the City Council at the same time the UBA presents the business plan provided for in Sub-Paragraph B.1. of this Agreement. In the event the UBA amends the aforesaid budget, the 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 the UBA's Board of Directors approves such amendment.

**3. UBA Records and Reports to City:** The UBA shall submit to the City, within forty-five (45) following the close of the UBA's fiscal year, a written annual report which (i) describes the activities which the UBA has undertaken for, on behalf of and/or for the benefit of the City during the immediate past UBA fiscal year; (ii) states how each such activity comports or complies with the business plan provided for in Sub-Paragraph B.1. of this Agreement; (iii) accounts for all funds received by the UBA during the aforesaid UBA fiscal year, including but not limited to the Revenue provided for in Sub-Paragraphs A.1. and A.2. of this Agreement including their sources and amounts; and (iv) accounts for all expenditures and disbursements made by the UBA during the aforesaid UBA fiscal year. In January preceding the commencement of City FYs 2015-2016 and 2016-2017, respectively, the UBA shall submit to the City an updated accounting of all funds received by the UBA during the then current UBA fiscal year, including but not limited to the Revenue provided for in Sub-Paragraphs A.1. and A.2. of this Agreement as well as their sources and amounts; and all expenditures and disbursements made by the UBA during the then current UBA fiscal year. Further, the UBA shall provide such updates to the one or more aforesaid reports and accountings as the Mayor of the City and/or the City Council (the later acting by a majority vote) may from time to time request. All reports and accountings provided in this Sub-Paragraph B.3. shall be in writing and shall appear on the letterhead of the UBA.

**4. Promotional, Marketing, and Sponsoring Activities:** The UBA shall undertake such efforts as reasonably possible and within the limits of funding provided by the City to promote and market businesses and business and commercial areas in the City. Such promotion and marketing efforts shall include but shall not be limited to promoting, marketing, conducting, staging, and sponsoring public and special events in and about the City and such other activities and campaigns which are intended to promote and market businesses located within the City and/or cast the City and its business in a favorable light. The UBA shall also coordinate the design, purchase, installation and removal of banners and holiday decorations 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's business community. Notwithstanding anything to the contrary contained in this Sub-Paragraph B.4., all UBA promotional, marketing, staging, or sponsorship activities shall be undertaken in any manner which –

- a. presents the City 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.

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

**5. Board Representation:** The UBA, as a condition of receiving City Funds, shall appoint the City's Economic Development Manager or such other person as the City's Community Development Services Director may designate to sit on the UBA's Board of Directors with full voting authority.

**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. and A.2. 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 2015-2016 and the UBA elects to dissolve on February 29, 2016, then the amount refunded to the City shall be computed as follows:  $(\$50,000) \times (244 \div 366) = \$33,333.33$ . 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 barring the making of such refund. Separate and apart from the refunded provided for in this Sub-Paragraph, in the event that the UBA announces its intend to dissolve or cease operations, the City may, at its sole election and discretion cease to provide additional funds to the UBA and/or make further funding to the UBA but solely for the promotion, marketing, staging, and/or sponsoring of specific public or special events.

**C. MISCELLANEOUS TERMS:**

**1. Term of Agreement:** This Agreement shall commence on July 1, 2014 and shall expire at 11:59 p.m. on June 30, 2017.

**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, 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. In the event that the Parties fail to resolve their dispute through mediation, then either or both Parties shall be free to initiate and maintain an action to construe, interpret and/or enforce this Agreement in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

**4. Termination:**

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

(i) defaults on this Agreement without reasonable cure as provided for in Sub-Paragraph C.2.;

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

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

- (iv) loses its IRS 501(c)(6) status as a tax-exempt business league by reason of any act or omission on the part of the UBA;
- (v) becomes involuntarily dissolved for any reason by the Secretary of State of the State of Illinois and where the UBA fails to apply for reinstatement within ten (10) business days of notice of such involuntary dissolution;
- (vi) enters into any arrangement with creditors which could reasonably be deemed, construed, or interpreted as a common law composition of 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, 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 funding to the UBA shall automatically cease and become wholly null and void. In addition to any other remedy which the City may have as a matter of law or right, the City shall be entitled to seek, obtain and recover a refund from the UBA in an amount calculated as if the UBA elected to dissolve as provided in Sub-Paragraph B.6. of this Agreement.

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 twenty-eight (28) days after the effective date of such written notice. Any Party providing such notice of termination shall offer the other Party an opportunity to meet and discuss such termination prior to the effective date hereunder. In the event of such termination, the UBA shall refund to the City so much of those funds which the City has provided to the 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. 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 not 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 on the day following delivery of such notice.

d. If by personal delivery: All such notices shall be deemed effective if hand delivered by the 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

**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:** 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 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 and such third person shall be deemed a "Party" as referred to in this Agreement.

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

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

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

[ END OF AGREEMENT, SIGNATURES FOLLOW. ]

**FOR THE CITY:**

**FOR THE UBA:**

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

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

ATTEST:

ATTEST:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

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