

**RESOLUTION NO. 2019-05-013R**

**A RESOLUTION APPROVING A LOAN AGREEMENT WITH THE URBANA FREE LIBRARY**

**WHEREAS**, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Resolution constitutes an exercise of the City’s home rule powers and functions as granted in the Illinois Constitution, 1970; and

**WHEREAS**, Section 2-2-12 of the Illinois Municipal Code (65 ILCS 5/2-2-12) authorizes incorporated cities to contract and be contracted with; and

**WHEREAS**, The Urbana Free Library (“Library”) and the City desire to execute an agreement to allow the Library to borrow money from the City; and

**WHEREAS**, the City Council, after due consideration, finds that approving an agreement with the Library as herein provided is in the best interests of the residents of the City and is desirable for the welfare of the City’s government and affairs.

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

**Section 1.**

A Loan Agreement between The Urbana Free Library and the City of Urbana, Illinois, 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.

**Section 3.**

From and after the execution and delivery of such Agreement, the Finance Director is hereby authorized and directed to perform all acts as may be necessary on behalf of the City of Urbana to carry out the purposes and intent of this Resolution.

**PASSED BY THE CITY COUNCIL** this 3<sup>rd</sup> day of June, 2019.

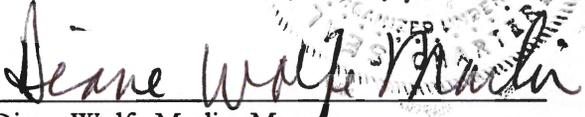
**AYES:** Hazen, Hursey, Jakobsson, Miller, Roberts, Wu

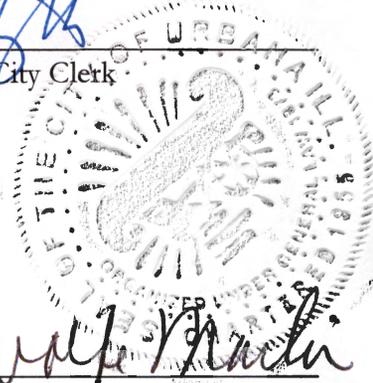
**NAYS:**

**ABSTENTIONS:**

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

**APPROVED BY THE MAYOR** this 5<sup>th</sup> day of June, 2019.

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



## **LOAN AGREEMENT**

This loan agreement is made between The Urbana Free Library ("Library") and the City of Urbana, Illinois ("Urbana"), each a "party" and together the "parties," and is effective on the last date signed by a party hereto.

### **Background**

This agreement authorizes the Library to borrow money from Urbana.

The Library's fiscal year begins on July 1 and ends on June 30. The Library derives most of its annual budget from the annual tax assessment on real estate. Champaign County generally distributes the revenue from each year's assessment in June and September, but a delay likely will occur this year. Because the Library receives almost half of its tax revenue after the close of its fiscal year, this delay may cause the Library's treasury to contain insufficient funds to defray the Library's necessary expenses and liabilities for general corporate and library purposes. Urbana will lend money to the Library to prevent such a deficit from interfering with the Library's ability to meet its financial obligations. Urbana's loan to the Library is intended to serve as short-term operating capital so that the Library may carry on its day-to-day fiscal, economic, financial, and business affairs. Although Urbana's loan will not be secured, this loan will be drawn against and in anticipation of the Library's receipt of future tax revenue.

Because the undue delay in receiving the loan from Urbana may prevent the Library from meeting its monetary obligations, this agreement authorizes Urbana's finance director to approve the loan and release funds to the Library. Therefore, the parties agree as follows:

1. **Loan authorized.** Subject to the terms of this agreement, Urbana may lend to the Library and the Library may borrow from Urbana a sum as the Library may require to defray its operating expenses in connection with its business. The Library may request the loan in an amount as it may choose, subject to the following conditions:
  - A. The Library may request the loan only when the cash projection for the Library's general fund for the two-week period beginning on the Monday next following the request is less than the Library's projected expenses, as determined by the Library's executive director and Urbana's finance director.
  - B. The request for the loan may be made orally or in writing only by the Library's executive director.
  - C. The amount of the loan must not exceed \$500,000.
  - D. The Library is not required to execute a promissory note to receive the loan under this agreement. Urbana's loan to the Library will be unsecured and will bear no interest.

- E. The Library shall submit to Urbana such financial statements and other financial information as Urbana's finance director deems necessary to properly evaluate the Library's request for the loan.
- F. Urbana's finance director has sole and absolute discretion to approve or disapprove the request for the loan and do all things necessary, essential, or convenient to carry out and give effect to the purpose and intent of this agreement. The finance director shall notify the Library of her decision to approve or deny the request for a loan no later than 5:00 p.m. on the fifth business day following her receipt of the request.
- G. Urbana's financial books and records will evidence the loan made by Urbana to the Library and the Library's repayment of the loan. Such financial books and records will be presumptive evidence of the amount due and owing to Urbana by the Library under this agreement, absent manifest error or omission. The Library will have the burden of proof to show manifest error or omission.

2. **Repayment.** The outstanding balance of the loan made under this agreement, if not sooner paid, is due and payable no later than 5:00 p.m. on the tenth day after the Library receives this year's second regular property tax installment. Notwithstanding the foregoing, the entire unpaid balance will become immediately due and payable upon the occurrence of an event of default, as defined in this agreement.

3. **Setoff.** The Library hereby gives Urbana a lien and a right of setoff for the loan made to the Library under this agreement upon and against all the deposits, credits, collateral, and property of the Library now or hereafter in the possession, custody, safekeeping, or control of Urbana or in transit to it, including without limitation future tax distributions to the Library.

4. **Termination.** This agreement will remain in effect until October 1, 2019, unless sooner terminated by either party. Either party may terminate this agreement at any time, with or without cause, upon giving written notice of termination at least 10 days before the termination is to become effective. The Library's obligation to make full and final payment of all amounts due under this agreement will survive the termination of this agreement until fulfilled.

5. **Default.**

A. Events of default. The occurrence of any of the following by the Library will constitute an event of default under this agreement:

- (1) Failure to repay the loan by the due date specified in this agreement or failure to observe or perform any covenant, obligation, or condition contained in this agreement.

- (2) Making any representation or warranty in connection with the request for the loan under this agreement that is untrue in any material respect at the time when made.
- (3) Furnishing any financial statement or other record to Urbana that is untrue in any material respect at the time when made.

B. Remedies. Upon the occurrence of an event of default as defined above, and at any time thereafter during the continuance of such event of default, Urbana may, by written notice to the Library, declare the outstanding loan made under this agreement to be immediately due and payable without presentment, demand, protest, or other notice of any kind, all of which the Library expressly waives. In addition, Urbana may exercise any other right, power, or remedy granted to it hereunder or pursuant to applicable law, including without limitation the right of setoff as provided in this agreement.

6. **Entire agreement.** This agreement constitutes the entire agreement between the parties, supersedes all other agreements or understandings between them pertaining to the matter of this agreement, and may not be amended except by a writing signed by both parties.

7. **Notices.** Except where the terms of this agreement expressly provide otherwise, the parties shall give all notices required or permitted by this agreement in writing. All notices will be deemed given when personally delivered or deposited in the U.S. mail, postage prepaid, first class. A notice delivered by email will be deemed given when the recipient acknowledges having received the email by an email sent to the sender's email address, as stated in this section, or by a notice delivered by another method in accordance with this section. An automatic "read receipt" will not constitute acknowledgment of an email for purposes of this section. Each party's address is stated below and may be changed to such other address as the party may hereafter designate by notice.

The Urbana Free Library:

Celeste Choate, Executive Director  
The Urbana Free Library  
210 W. Green Street  
Urbana, Illinois 61801  
217-367-4058  
cchoate@urbanafree.org

City of Urbana:

Elizabeth Hannan, Finance Director  
City of Urbana  
400 S. Vine Street  
Urbana, Illinois 61801  
217-384-2368  
eahannan@urbanaininois.us

8. **Waiver.** Either party's failure to enforce any provision of this agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any provision of this agreement is valid only if in writing and signed by the parties.

9. **Counterparts.** The parties may sign this agreement in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the

same instrument. Signatures delivered by email in Adobe Portable Document Format (PDF) will be deemed original signatures for all purposes.

The parties are signing this agreement on the dates indicated below their signatures.

The Urbana Free Library

City of Urbana, Illinois

By: Christian Scherer  
Christian Scherer  
President, Board of Library Trustees

Date: June 19 2019, 2019

By: Barbara Bennett  
Barbara Bennett  
Secretary, Board of Library Trustees

Date: 06/11/2019, 2019

Resolution No. 2019-06

By: Diane Wolfe Marlin  
Diane Wolfe Marlin  
Mayor

Date: 4 June, 2019

Attest:

Charles A. Smyth  
Charles A. Smyth  
City Clerk  
Resolution No. 2019-05-013R

