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# **AGENDA**

## **SPECIAL MEETING**

**PALM BAY MUNICIPAL FOUNDATION, INC.  
THURSDAY**

**December 16, 2021 – 6:00 P.M.  
City Hall Council Chambers**

### **CALL TO ORDER:**

### **ROLL CALL:**

### **BUSINESS:**

1. Consideration of a fundraising agreement between the Palm Bay Municipal Foundation, Inc. and the American Legion Post 117 for the Mayor's Ball to benefit improvements to Sacrifice Park.

### **ADJOURNMENT:**

**THIS MEETING IS BROADCAST LIVE ON THE CITY'S WEBSITE.**

# LEGISLATIVE MEMORANDUM

## Palm Bay Municipal Foundation, Inc.

**TO:** Palm Bay Municipal Foundation, Inc. Board of Directors

**FROM:** Larry Wojciechowski, Treasurer

**DATE:** December 16, 2021

**RE:** Fundraising Agreement between Palm Bay Municipal Foundation, Inc. and the American Legion Post 117

The Mayor's Ball will be held on Saturday, March 26, 2022, at the Palm Bay Senior Center. All proceeds raised through the Mayor's Ball will benefit improvements to the memorial at Sacrifice Park, a public park site owned by Brevard County honoring fallen first responders countywide. Palm Bay City Council and the Brevard County Board of County Commissioners approved and executed an interlocal agreement on November 9, 2021, authorizing the City to make improvements to and maintain the site.

The Mayor and the American Legion Post 117, through a fundraising agreement, will solicit monetary and in-kind donations for the rehabilitation of the memorial at Sacrifice Park. For context, fundraising is typically done by the beneficiary and the Mayor, with all funds being collected by the City's non-profit, Palm Bay Municipal Foundation, Inc., which issues a check for the proceeds to the beneficiary. However, as all proceeds raised through the Mayor's Ball will benefit the rehabilitation of a public park site, the Mayor has engaged the American Legion Post 117 to assist in fundraising efforts. The attached fundraising agreement provides certain authorization to the American Legion Post 117 related to this Mayor's Ball.

***FISCAL IMPACT:***

There is no fiscal impact associated with this request.

***RECOMMENDATION:***

Motion to authorize the President of the Palm Bay Municipal Foundation, Inc. to execute an interlocal agreement with the American Legion Post 117.

JJB/tjl

Attachment: 1) Fundraising Agreement

## FUNDRAISING AGREEMENT

This Fundraising Agreement (Agreement) is entered into and made effective this \_\_\_\_\_ day of December, 2021 (the "Effective Date"), by and between American Legion Post #117 (Legion), and Palm Bay Municipal Foundation (PBMF), each individually a "Party," collectively "Parties."

### WITNESSETH:

**WHEREAS**, The American Legion was chartered and incorporated by Congress in 1919 as a patriotic veterans organization devoted to mutual helpfulness;

**WHEREAS**, PBMF is a not-for-profit corporation organized exclusively for charitable, educational, and cultural purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986;

**WHEREAS**, the Mayor has expressed interest in partnering with the Legion to raise funds for The Mayor's Ball to benefit improvements to Sacrifice Park;

**WHEREAS**, Sacrifice Park was constructed to recognize Brevard County law enforcement officers killed in the line of duty; and,

**WHEREAS**, to fund the improvements to Sacrifice Park, PBMF and the Legion desire to work together to raise sufficient charitable contributions to pay for expenses related to design, renovation, and construction costs.

**NOW, THEREFORE**, in consideration of the covenants herein contained it is mutually agreed between the PBMF and Legion as follows:

1. Recitations. The recitals set forth above are true and correct and are incorporated into this Agreement.
2. Purpose of the Agreement. The parties agree to conduct a joint fundraising campaign to raise sufficient funds on behalf of, and for the exclusive benefit of, the PBMF who will provide the funds to the City to use for the design and construction of a memorial in Sacrifice Park.
3. Term of agreement. This Agreement shall commence on the Effective Date and shall continue for 12 months unless terminated by either Party, upon a 14-day notice of termination except as provided below:
  - (a) Any funds collected on behalf of PBMF after notice of termination shall be deemed to be held in trust for the benefit of PBMF.
  - (b) PBMF reserves the right to immediately terminate this Agreement, upon written notice to Legion, if Legion or its agents, employees, or representatives:

- (i) make any material misrepresentations during solicitations or with respect to PBMF or other material matter subject to this Agreement;
  - (ii) are found by PBMF to have been convicted of a crime arising from the conduct of a charitable solicitation; or
  - (iii) otherwise conducts its fundraising activities in a manner that causes or could cause public disparagement of PBMF's good name or goodwill.
- 4. Coordination of Effort. The Parties agree to cooperate with each other in raising funds for Sacrifice Park. Such cooperation may include the joint development of a fundraising strategy, sharing informational material including information about Sacrifice Park and marketing materials for The Mayor's Ball and sponsorship information. All approvals for the PBMF should be directed to the Executive Director or her designee.
  - (a) PBMF must be apprised of and approve the fundraising strategy.
  - (b) The Parties agree to use commercially reasonable efforts to engage in promotional activities for The Mayor's Ball and the event's fundraising project: the design and construction of a monument at Sacrifice Park.
  - (c) PBMF and the Legion will mutually agree in writing to a flyer, or other marketing material that will be used for marketing The Mayor's Ball and fundraising for Sacrifice Park. Any other print images or marketing efforts need to be mutually approved in writing. PBMF and Legion will mutually agree to social media advertisements as well as promotional videos used to promote The Mayor's Ball or fundraising for Sacrifice Park.
  - (d) Subject to the terms of this Agreement, the City grants the Legion permission to use the City logo on marketing efforts that have been approved by both Parties to promote/ market The Mayor's Ball and fundraising for Sacrifice Park.
  - (e) In the performance of this Agreement, it is mutually understood and agreed that the Parties are acting and performing as independent contractors, and not as an employee joint venture or partner of the other. Legion shall not be responsible for the Mayor's Ball or be responsible for the design and construction of the monument at Sacrifice Park.
- 5. Indemnification. Legion shall comply with all applicable laws and regulations of the State of Florida in the conduct of its fundraising activities on behalf of PBMF. Legion agrees to indemnify and hold harmless PBMF from any third-party claims for liability, damages, expenses including attorneys' fees and costs for trials and appeals, proceedings and causes of action of every kind and nature, arising out of or connected with Legion's negligence or willful misconduct in engaging in the promotional and fundraising activities described in this Agreement.
- 6. Control of funds. Legion shall direct sponsors and potential donors to the PBMF's designated website for donations to The Mayor's Ball's beneficiary, Sacrifice Park.

7. Accounting. To the extent that PBMF approves Legion to accept direct donations or Legion is unable to direct individual donations to PBMF's designated website, each donation in the control or custody of Legion shall, in its entirety and within five (5) working days of its receipt be delivered to PBMF in person, by U.S. mail, or through PBMF'S PayPal account. Legion must maintain accounting books and records under a system of accounts and financial controls that is consistent with Generally Accepted Accounting Principles. Legion must allow PBMF to verify and audit any financial audit or records from the books, correspondence, memoranda, and other records of Legion, relating to this Agreement, during the period of this Agreement, and for such time thereafter as may be necessary to accomplish such verification. Legion must ensure that if any funds raised under this Agreement are commingled with other funds held or managed by Legion, an accounting system will be utilized which independently tracks and distinguishes funds raised under this Agreement from other funds.
  
8. Non-Discrimination. All activities pursuant to this Agreement shall be conducted without discrimination on grounds of race, color, religion, sex, or national origin.
  
9. Notice to parties to agreement. All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service or by certified mail, return receipt requested, addressed to the Parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of the actual receipt, whichever is earlier.

FOR PBMF

Suzanne Sherman, Executive Director  
 Palm Bay Municipal Foundation  
 120 Malabar Road, SE  
 Palm Bay, FL 32907

FOR AMERICAN LEGION

10. **IF THE LEGION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119 FLORIDA STATUTES, TO THE LEGION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT EMAIL: \_\_\_\_\_  
 OR AT ADDRESS: \_\_\_\_\_,  
 (ATTENTION: RECORDS).**

11. Applicable law and venue. This Agreement shall be governed by and interpreted

in accordance with the laws of the State of Florida. Venue to commence litigation for any disputes under this Agreement shall be a court of competent jurisdiction in Brevard County.

- 12. No Third-Party Beneficiary. This Agreement is for the benefit of the PBMF, Legion and the City, as the lease holder of Sacrifice Park. No other person or entity is intended to be a beneficiary under this Agreement.
- 13. Assignment. This Agreement may not be assigned by either Party without the express written consent of the other.
- 14. Amendment. This Agreement constitutes the entire agreement between the parties and may not be modified, amended, or otherwise altered, except by written agreement signed by the parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be signed on this the first date first above written.

**PALM BAY MUNICIPAL FOUNDATION**

**AMERICAN LEGION POST #117**

By: \_\_\_\_\_  
Rob Medina, President

By: \_\_\_\_\_  
Name, Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_