

**CITY OF PAPILLION
MAYOR AND CITY COUNCIL REPORT
JUNE 6, 2023 AGENDA**

Subject:	Type:	Submitted By:
A resolution to approve a Memorandum of Understanding between the City of Papillion and the Papillion Arts Foundation.	Resolution R23-0102	Amber Powers, City Administrator

SYNOPSIS

If adopted, Resolution R23-0102 would approve a Memorandum of Understanding (MOU) between the City of Papillion and the Papillion Arts Foundation (PAF). The MOU establishes a partnership between the two entities in promoting the availability and community participation in arts and cultural events within the community and recognizes the PAF’s role in civic engagement, quality of life, economic development, and tourism.

The MOU would be for a period of five years, with an automatic renewal for an additional five years.

The City would commit to annual funding (as described in the “FISCAL IMPACT” section), allowing the PAF’s limited use of City property for certain PAF uses and events free of charge, and rescinding the City’s Papillion Arts Council (PAC) section of the City codes.

The PAF would commit to creating a new Papillion Area Council of Artists, commit to annual theatrical and music productions, commit to continue hosting art galleries in public areas of City-owned property, commit to planning, funding, and overseeing a City Sculpture Walk, host annual art events within City limits, and promote and support cultural and art-related events within the community.

Both parties would jointly investigate the formation of an official “Creative District” through the Nebraska Arts Council. Both parties would also collaborate in the investigation and application of applicable grant opportunities.

FISCAL IMPACT

\$15,000 annually from the Community Betterment Fund, with a 3% increase each year starting October 2024, to recognize the role of arts and culture in increasing citizens’ quality of life.

3% of the annual receipts from the Hotel Tax to recognize the role of arts and culture in tourism.

Additional amounts each fiscal year may be determined through the budget process at

the City's sole discretion to recognize the role of arts and culture in city promotion and economic development.

\$5,000 one time from the Community Betterment Fund for use by the PAF's Papillion Area Council of Artists.

\$2,500 one time for the planning, funding, and oversight of a City Sculpture Walk.

RECOMMENDATION

Approval.

The PAF unanimously approved the MOU on May 24, 2023.

BACKGROUND

In March 2007, the City created the Amphitheater Review Board via Ordinance No. 1510. The board was replaced in January of 2010 to expand to include all of the City, through Ordinance No. 1584, with the Papillion Arts Council (PAC). The intent of the PAC was to promote, sustain, and cultivate the arts for the citizens of Papillion. The PAC codes were amended in May of 2011 through Ordinance No. 1612; however, the intent of the creation of the Papillion Arts Council remained the same. If approved, Ordinance No. 2000 would repeal the city codes establishing the Papillion Arts Council, contingent upon Council approval of Resolution R23-0102. Ordinance No. 2000 will be introduced at the June 6th, 2023, Council meeting.

The Papillion Arts Foundation (PAF), a component fund of the Midlands Community Foundation, was formed in April 2023. The PAC was established for the charitable purpose of providing arts and cultural improvements for the community of Papillion and the surrounding area. The PAF has established Policies and Procedures to allow individual arts and cultural non-profit entities to join it as Affiliate Funds as a way to encourage collaborative relationships. The PAF Affiliate Funds are currently the Papillion Area Community Theatre, the Papillion Area Concert Band, the Papillion Area Community Singers, and the Papillion Area Council of Artists. If Resolution R23-0102 is approved, the PAF would replace the PAC's role in promoting, sustaining, and cultivating the arts for the citizens of Papillion – in addition to the PAF's other goals and functions.

ATTACHMENTS

- 1) Resolution R23-0102
- 2) Memorandum of Understanding – City of Papillion and Papillion Arts Foundation

RESOLUTION NO. R23-0102

BE IT RESOLVED by the Mayor and City Council of the City of Papillion that the Memorandum of Understanding between the City of Papillion and the Papillion Arts Foundation is hereby approved contingent upon full execution of the document by all of the named parties.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized to sign and execute all documents on behalf of the City of Papillion to facilitate the approval of the Memorandum of Understanding between the City of Papillion and the Papillion Arts Foundation.

PASSED AND APPROVED THIS ____ DAY OF _____, 2023.

CITY OF PAPIILLION

DAVID P. BLACK, Mayor

ATTEST:

NICOLE BROWN, City Clerk

(SEAL)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made and entered into this 6th day of June, 2023 (“effective date”), by and among the **City of Papillion**, Nebraska, a municipal corporation (“City”) and the **Papillion Arts Foundation**, a Nebraska nonprofit corporation and a “component fund” of the Midlands Community Foundation, (hereinafter “PAF”). The City and PAF shall be collectively referred to as “Parties.”

WHEREAS, the City of Papillion desires to promote the availability and community participation in arts and cultural events within the community and recognizes their valuable role in **civic engagement, quality of life, economic development** and **tourism**; and,

WHEREAS, the PAF, is an Affiliate of the **Midlands Community Foundation** (hereinafter “MCF”) and operates under the Governing Instruments of MCF such that it does not file separate non-profit tax status, but rather operates under the umbrella of the MCF’s “Community Foundation” non-profit status. The PAF was established for the charitable purpose of providing arts and cultural improvements for the community of Papillion and the surrounding area;

WHEREAS, to encourage collaborative relationships, PAF has established Policies and Procedures to allow individual arts and cultural non-profit entities to join under the PAF as separate Affiliate Funds whereby each joining entity retains a level of independence while working cooperatively and supporting the joint efforts of each other for the benefit of both the individual Affiliates and the overall charitable purpose of the PAF of providing charitable art and/or cultural improvements projects or programs in the Papillion area. PAF Affiliate Funds are currently the **Papillion Area Community Theatre**; the **Papillion Area Concert Band**; **Papillion Area Community Singers**; and, from Section 2.c.ii the **Papillion Area Council of Artists**.

WHEREAS, the Parties recognize the value and benefits that a centralized and collaborative relationship between the City and local arts and cultural entities can bring to the local community; and,

WHEREAS, the Parties desire to work together to maximize the benefits to the local community and support the growth of arts and cultural events;

WHEREAS, the Parties wish to set forth their respective understandings, rights and responsibilities regarding this collaborative relationship and the consideration for the benefits to be received by each Party from the other.

IT IS THEREFORE AGREED AS FOLLOWS:

1. GENERAL:

- a. The purpose of this non-binding MOU is to outline a relationship between the City and PAF that will foster community betterment by providing increased accessibility and participation in art and cultural events.

- b. This MOU shall be for a period of five (5) years. At the end of the initial five-year term, this MOU will automatically renew for an additional five-year term unless either Party provides to the other written notice of the intention not to renew at least ninety (90) days prior to the end of the term.

2. CITY'S OBLIGATION:

a. Funding.

- i. The City shall provide funding to PAF as follows:

- 1. Effective upon approval of this MOU, \$15,000 from the Community Betterment Fund to recognize the PAF role in culture and arts in **quality of life** within the City of Papillion. This shall increase 3% each year after the first full fiscal year.
- 2. Effective with the first full fiscal year of the City following approval of this MOU, 3.0% of the annual receipts from the Hotel Tax to recognize the role of arts and culture in **tourism**. Payment shall be based on prior year actual receipts.
- 3. An additional amount each fiscal year to be determined in the City's sole discretion from the General Fund to recognize the role of arts and culture in city **promotion and economic development**.

- ii. The first annual payment under Section 2.a.i.1 shall be made upon approval of the MOU. Subsequent payments under Section 2.a.i shall be made annually following approval of the invoices at the first City Council meeting in October of each year, starting with the City Council meeting on October 3, 2023.

- iii. One-time single payments under Section 2.c.iv (transfer of Papillion Arts Council responsibilities) and 3.c.ii (transfer of reserved funds for future Sculpture Walk) shall be made upon approval of this MOU.

- iv. In addition to any funding received from the City, PAF shall actively work to raise funds through private donors, fundraising activities, grants and other means that support the PAF purpose in order to grow its role in supporting culture and arts within the community.

- b. Property. The City shall make City-owned property available to PAF free of rent or customary fees for the following uses (use of City property shall be subject to all normal and usual conditions and requirements for rental/usage, including insurance requirements. The waiver of rental fees shall not extend to other standard or additional expenses that may be incurred incidental to the rental of a City facility, such as catering or staff expenses.):

- i. One two-week theater summer production at SumTur Amphitheater per year,

- ii. Participation in the SumTur Amphitheater City concert series each year which has an appeal to the broad Papillion community;
- iii. Art gallery and/or art display space at the Sump Memorial Library, City Hall and the Papillion Landing;
- iv. Use of the Chrysalis Banquet Hall (i.e. Community Gym) to hosting an annual community event fundraising event for the benefit of the PAF General Fund; and
- v. Use of Chrysalis Community Rooms or Banquet Hall once per year.

c. Papillion Arts Council.

- i. In recognition of the PAF continuing the work of the **Papillion Arts Council**, the City shall rescind Ordinance Number 1612 adopted May 3, 2011, which created Article X of the Papillion Municipal Code “Papillion Arts Council”;
- ii. The PAF shall create the **Papillion Area Council of Artists** as a new Affiliate Fund to carry on the work of the Papillion Arts Council;
- iii. The PAF shall allow all interested Mayoral appointments of the Papillion Arts Council to become inaugural Board members of the Papillion Area Council of Artists; and
- iv. To facilitate the transfer of this responsibility, the City shall, effective upon approval of the MOU, fund \$5,000 from the Community Betterment Fund to the new PAF Papillion Area Council of Artists at MCF.

3. PAF OBLIGATIONS:

- a. PAF shall plan and produce at least one theatrical production at Sumtur Amphitheatre which shall be open to the general public each year.
- b. PAF shall plan and produce at least two musical concerts which are open to the general public each year.
- c. PAF, through the new Papillion Area Council of Artists, shall continue the functions of the Papillion Arts Council to include:
 - i. In cooperation with a City Liaison, curating the public art galleries in City Hall, Sump Memorial Library, Papillion Landing, and future City-owned locations as approved by the City Administrator.

- ii. Planning, funding and oversight of a potential City Sculpture Walk program. Effective with the approval of this MOU the City shall transfer \$2,500 currently being held for a Sculpture Walk to PAF designated for the same purpose.
 - d. PAF shall host an annual Arts event in First Street Plaza, or another location agreed to by the city, with a strong preference of a collaborative event with the Papillion Downtown Business Association, Papillion Community Foundation or another established business association within the city limits of Papillion.
 - e. PAF shall promote and support culture and arts-related events within the local community, and through PAF's Affiliated Funds to include, but not limited to, theater, instrumental music, vocal music; visual or public art.
- 4. JOINT OBLIGATIONS:
 - a. The Parties shall jointly investigate the formation of an official "**Creative District**" which may provide eligibility for additional funding and grants through the **Nebraska Arts Council**.
 - b. The Parties shall collaborate in the investigation and application of other applicable grant opportunities.
- 5. COMMUNICATION AND MUTUAL PARTICIPATION:
 - a. PAF shall provide annual reports to the Mayor and City Administrator outlining planned and completed activities and specifying any significant expenditures made from City provided funding.
 - b. The PAF Board of Director shall include an employee of the City as a non-voting liaison at all Board meetings and shall allow room on the agenda for a report from the City regarding any upcoming events or activities that would benefit from the participation or involvement of the PAF. Nothing in this provision shall prevent or prohibit any individual who is employed by the City from serving in an individual and voluntary capacity on the PAF Board of Directors.
- 6. MISCELLANEOUS PROVISIONS:
 - a. It is mutually agreed and understood by and between the parties that this MOU shall only apply to PAF and may not be assigned without the written consent of the City.
 - b. This MOU in no way restricts either Party from managing or regulating the Parties' land, property and/or businesses as the Party sees fit.
 - c. Nothing in the MOU shall obligate the Parties to enter into any contract or other obligations or cooperate beyond the terms of this MOU.

- d. This MOU shall supersede all prior agreements between the City and any individual organization, and it cannot be changed, amended, modified or extended except upon the written consent and approval of all Parties.
- e. Nothing in the MOU restricts PAF from pursuing other programs that fall within its defined charitable purpose.
- f. This MOU shall not create any obligation upon a Party that is not specifically outlined herein. In the event of a significant dispute or disagreement between the Parties, the Parties shall make reasonable efforts to resolve such dispute or disagreement in a professional, respectful and amicable manner.
- g. Either Party hereto may withdraw from this MOU at any time by giving ninety (90) days written notice to the other Party.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK.

IN WITNESS WHEREOF the undersigned Parties hereby enter into this non-binding Memorandum of Understanding by signing below.

CITY OF PAPIILLION

David Black, Mayor

Attest:

Nicole Brown, City Clerk

Papillion Arts Foundation
a “component fund” of the
Midlands Community Foundation.

Georgie Scurfield, President

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2023, before me, a Notary Public, qualified for said county, personally came **Georgie Scurfield**, the **President** of the **Papillion Arts Foundation**, a “component fund” of the Midlands Community Foundation, known to me to be such officer and the identical person who signed the foregoing instrument on behalf of such non-profit corporation, and acknowledged the execution thereof to be his voluntary act and deed on behalf of such non-profit corporation, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at Papillion, Nebraska, on the day last above written.

Notary Public