

**CITY OF PAPIILLION  
MAYOR AND CITY COUNCIL REPORT  
JANUARY 5, 2021 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
Chapter Affiliation Agreement between the First Responders Foundation and the Papillion Police and Fire Departments	Resolution No. R21-0004	Fire Chief Bill Bowes

**SYNOPSIS:**

By joining the First Responders Foundation as a Chapter affiliate, the Papillion Police and Fire Departments will gain access to all fundraising programs and events of the First Responders Foundation, Chapter-specific marketing materials, website and social media, behavioral health specialists from the First Responders Support Team (FRST), and all First Responders Foundation wellness and physical fitness programs.

**FISCAL IMPACT:**

None

**RECOMMENDATION:**

Approval

**BACKGROUND:**

The mission of the First Responders Foundation (FRF) is to serve and honor all First Responders, Veterans, and their families, build appreciation and respect for their work, and enhance public safety. They aim to be the leader in advocacy and community support for all first responders, expanding this support and advocacy regionally by 2025. Started as a fundraising and support organization for the Omaha Police and Fire Departments, the FRF is expanding into other communities by establishing Chapter organizations. If approved, Papillion will be the first Nebraska Chapter.

**ATTACHMENTS:**

1. Resolution No. R21-0004
2. First Responders Foundation Committee (Chapter) Agreement

**RESOLUTION NO. R21-0004**

**WHEREAS**, the mission of the First Responders Foundation is to serve and honor all First Responders, Veterans, and their families, build appreciation and respect for their work, and enhance public safety; and

**WHEREAS**, the First Responders Foundation is expanding into other metro-area communities by establishing Chapter organizations; and

**WHEREAS**, by joining the First Responders Foundation as a Chapter affiliate, the Papillion Police and Fire Departments will gain access to all fundraising programs and events of the First Responders Foundation, Chapter-specific marketing materials, website and social media, behavioral health specialists from the First Responders Support Team (FRST), and all First Responders Foundation wellness and physical fitness programs.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Papillion to approve the Chapter Affiliation Agreement between the First Responders Foundation and the Papillion Police and Fire Departments.

**PASSED AND APPROVED THIS 5<sup>th</sup> DAY OF JANUARY, 2021.**

**CITY OF PAPIILLION, NEBRASKA**

\_\_\_\_\_  
David P. Black, Mayor

Attest:

\_\_\_\_\_  
Nicole Brown, City Clerk

(SEAL)

**First Responders Foundation  
COMMITTEE (CHAPTER) AGREEMENT**

This COMMITTEE AGREEMENT (“Agreement”) is entered into as of \_\_\_\_\_, 2021 (“Effective Date”), between First Responders Foundation, a non-profit organization (“Foundation”), and First Responders Foundation Papillion Chapter (Committee).

**BACKGROUND**

A. Foundation is dedicated to serve and honor all our First Responders and their families, build appreciation, and respect for their work, and enhance public safety. Independent regional groups have formed to support the aims of Foundation. These groups, like Foundation, aim to serve and honor all our First Responders and their families, build appreciation, and respect for their work, and enhance public safety.

B. Committee wishes to engage in activities that further the purposes of Foundation and, to that end, affiliate with Foundation as a chapter. Foundation is willing to grant Committee the right to be affiliated with Foundation on the terms and conditions described in this Agreement.

**FOUNDATION AND COMMITTEE AGREE AS FOLLOWS:**

**1. Terms of Affiliation**

**1.1. Grant of Affiliation.** Foundation hereby grants to Committee and Committee accepts the non-transferrable right to be affiliated with Foundation and to be known as the “First Responders Foundation Papillion Chapter” for as long as this Agreement remains in effect.

**1.2. Geographic Limitation.** Committee’s geographic region (“Region”) consists of the response area of the Papillion Fire Department. Committee may carry out activities both inside and outside of the Region, except that it may not direct targeted fundraising solicitations to persons or organizations outside of the Region.

**1.3. Term.** This Agreement shall commence on the Effective Date and shall expire as provided in Section 8.

**1.4. Termination of Prior Agreement.** This Agreement terminates and replaces any and all Prior Agreements.

## **2. Intellectual Property**

**2.1 Use of Marks.** As provided in and subject to the License Agreement, Committee may use the Committee Marks and Project Marks (each as defined in the License Agreement) for the limited and noncommercial purposes of (i) identifying itself as a Foundation chapter and (ii) identifying itself as affiliated with and dedicated to support of Foundation projects and culture. All such uses shall be in a manner consistent with and incidental to the carrying out of Committee activities as contemplated by Section 3.1 of this Agreement. Such permitted uses may include, but are not limited to; website identification, communications and outreach materials, and non-commercial promotional products, all as provided in the License Agreement. Nothing in this Agreement shall be construed as giving Committee permission to use any Committee Mark or Project Mark except as expressly provided in the License Agreement.

**2.2. Limitation on Use of Project Marks.** As provided by the License Agreement, any Committee website page or item displaying a Project Mark must also display either a Committee Mark or the phrase “First Responders Foundation Papillion Chapter”. Such Committee identification must be at least of equal size and prominence as the Project Mark.

## **3. Committee Activities**

**3.1. Programs and Activities.** Committee shall be free to plan, develop, carry out, and publicize its activities as it sees fit, subject to the general principle that Committee’s authorization to identify itself as a Foundation chapter, and the scope of its rights to hold itself out as a Foundation chapter, is based on and limited to its carrying out programs and activities that further the purposes and objectives of Foundation and that are of the highest quality with respect to content, materials, logistical preparation, and otherwise. Committee acknowledges such requirements and limitations and, to that end, shall conduct itself and carry out activities in accordance with them. Such activities may include, but are not limited to:

**(a) Organizing Events.** Committee may organize events in order to promote Committee projects, First Responders Foundation, and culture. Such events may include participation in trade shows, organizing First Responders Foundation parties, or participating in panel discussions or lectures.

**(b) Promoting Foundation Projects and Values.** Committee may promote First Responders Foundation projects, First Responders Foundation, and culture through such vehicles as Committee may determine.

**(c) Third Party Relationships.** Committee may enter into non-commercial arrangements with organizations within the Region to help such organizations use First Responders Foundation.

**(d) Public Relations.** Committee may engage in public relations and outreach activities on Committee's own behalf.

**(e) Fundraising.** Committee may conduct fundraising activities within the Region to support Committee's activities, in accordance with all federal, state or local laws, rules, regulations or ordinance applicable within the Region.

#### **4. Committee Obligations**

**4.1. Conduct.** Committee shall not engage in social or political activism which reflects unfavorably on the reputation of Foundation, or subjects Foundation to public disrepute which could negatively affect the work of Foundation

**4.2. No Authority to Act for Foundation.** Committee shall not hold itself out as an agent or representative of, permit its employees, agents, and representatives to speak or act on behalf of or purport to speak or act on behalf of Foundation, including but not limited to making statements that purport to be official positions of Foundation.

**4.3. Compliance with Law.** Committee shall comply with all applicable law in its activities under this Agreement. Committee shall make all filings and maintain, at its own expense, all permits, licenses, and other governmental approvals that may be required in the Region in connection with its performance of this Agreement.

**4.4. Reporting, Recordkeeping, and Inspection.** No later than sixty (60) days after the end of Committee's fiscal year, Committee shall submit to Foundation a written report describing Committee's operations, including but not limited to the following: budget, financial statements, a list of outgoing and incoming elected or appointed officers and directors, and a roster of current Committee members, with contact information. Committee shall maintain records related to all of its operations, including but not limited to minutes of the meetings of its members and board of directors, and reports and filings made with governmental agencies relating to its nonprofit status. Upon the written request of Foundation and at Committee's expense, Committee shall provide such other documents and data to Foundation as Foundation may reasonably request within a reasonable amount of time as determined by the type of information being sought in the written request, and shall permit Foundation or Foundation's designated agent to review appropriate records of Committee.

## **5. Foundation Activities and Obligations**

**5.1. Communications.** Foundation shall include Committee in any communications targeted to Foundation's chapters generally and shall make its representatives reasonably available to Committee.

**5.2. Reporting.** Foundation shall supply a written activity and financial report, in form and content determined by Foundation, to Committee within ninety (90) days of the end of Foundation's fiscal year. Foundation shall promptly advise Committee of any changes in Foundation's nonprofit status or bylaws.

**5.3. Responsibility.** Foundation shall support the activities of its chapters, including Committee, in such manner and with such resources as it may determine in its sole discretion. Foundation acknowledges that it has sole responsibility for the planning, management, and carrying out of Foundation's activities under this Agreement, including but not limited to payment of all expenses and other liabilities that it may incur in such activities.

## **6. Relationship**

**6.1. Organization.** Foundation and Committee expressly acknowledge and agree that the Committee shall be a chapter of the Foundation whose Chairman shall be a member of the Board of Directors of the Foundation.

**6.2. No Financial Support.** Committee and Foundation have no obligation to provide any financial support to each other for any reason. Any financial support provided by one party is in that party's sole discretion and shall not create any right in the other party to further financial support.

**6.3. Taxes.** Committee shall assist the Foundation in preparing and filing all tax returns and payments required by any federal, state or foreign tax authority in connection with any of its operations. Committee shall not be liable for any tax liability incurred by Foundation, nor shall Committee be responsible for maintaining any records relating to Foundation's financial condition or tax position.

**6.4. Press Releases and Public Statements.** Each party shall obtain the other party's prior written consent before making any press release, official public statement, or other announcement concerning this Agreement via any web logs, news groups, mailing lists, or similar communications media.

## 7. Indemnification

Foundation shall indemnify, defend, and hold harmless Committee and its officers, directors, members, agents, and assignees, from and against any and all claims, actions, suits, demands, losses, damages, judgments, settlements, costs, and expenses, as allowable under Nebraska law and character whatsoever resulting from (i) any breach by Foundation of its obligations under this Agreement, or (ii) any other act or omission by Foundation, its officers, directors, members, and agents, whether in connection with this Agreement or otherwise.

## 8. Termination

**8.1. At-Will Termination.** This Agreement shall remain in full force and effect unless terminated by either party upon ninety (90) days' written notice or terminated under any of the other provisions of this Section 8.

**8.2. Misuse and Attempted Assignment.** If Committee breaches any of its obligations under Sections 2, 6.4, or 10.1 of this Agreement, Foundation may immediately terminate this Agreement by giving written notice to such effect. The termination shall be effective upon giving such notice.

**8.3. Other Breach by Either Party.** If either Party breaches any of its duties or obligations under this Agreement, other than as set forth in Section 8.2, the non-breaching Party may provide the breaching Party with written notice of the breach. If the breaching Party fails to cure the breach within ten (10) days after receipt of such notice, the non-breaching Party may terminate this Agreement upon delivery to the breaching Party of a written notice to such effect, with the termination effective upon delivery of such notice to the breaching Party. The non-breaching Party shall in its sole discretion determine whether the breach has been cured.

**8.4. Dissolution and Insolvency.** If Committee (i) dissolves, liquidates, or ceases to engage in its operations, or (ii) commences any proceeding under any bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, appointment of a custodian, receiver, or trustee, or other relief, Foundation may immediately terminate this Agreement by giving written notice to such effect. The termination shall be effective upon giving such notice.

**8.5. Reputational Harm.** If Committee engages in activity or markets any services or products or otherwise engages in conduct which, in Foundation's sole opinion, reflects materially and unfavorably upon the reputation of Foundation or subjects or could subject Foundation to public disrepute, Foundation may immediately

terminate this Agreement by giving written notice to such effect. The termination shall be effective upon giving such notice.

**8.6. Misrepresentations.** If Committee has made or makes any misrepresentation in any statement or document it supplies to Foundation, including but not limited to (i) those statements and materials supplied to Foundation to induce Foundation to enter into this Agreement or in connection with its request for affiliation with Foundation, (ii) the Committee's annual reports under Section 4.4, and (iii) the Committee's bylaws and incorporation documents, Foundation may immediately terminate this Agreement by giving written notice to such effect. The termination shall be effective upon giving such notice.

**8.7. Other Agreements.** Upon termination or expiration of any other agreement between Foundation and Committee, including but not limited to the License Agreement, Foundation may immediately terminate this Agreement by giving written notice to such effect. The termination shall be effective upon giving such notice.

**8.8. Effect of Termination.** Upon termination or expiration of this Agreement, the rights of Committee granted under this Agreement shall immediately, automatically, and without consideration terminate and revert to Foundation. Committee shall no longer identify itself as affiliated with Foundation. Committee shall immediately discontinue using the Committee Marks and Project Marks identified in Section 2.1, and all other rights and privileges associated with affiliation with Foundation. Committee shall return to Foundation any and all property belonging to or associated with Foundation. Foundation shall return all funds in the Committee's designated account within sixty (60) days.

**8.9. Survival.** The provisions of Sections 6.1, 6.3, 7, 8, 9, and 10 shall survive termination of this Agreement regardless of the reason for termination.

## **9. Agreements Regarding Liability and Remedies**

**9.1. DAMAGES.** Neither foundation nor chapter shall be liable to the other for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this agreement (including but not limited to claims for loss of revenue, loss of profit, or loss of use) even if the other party has been apprised of the likelihood of such damages.

**9.2. Committee Remedies and Claims.** Committee shall under no circumstance be entitled, directly or indirectly, to any form of compensation or indemnity from Foundation or to obtain an injunction, specific performance, or other equitable remedy as a consequence of the termination or expiration of this Agreement for any reason. Committee waives any claims it may have against Foundation arising

from any alleged goodwill created by Committee for the benefit of Foundation or from the alleged creation or increase of a market for products, services, or other items bearing the Committee Marks or Project Marks.

**9.3. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Nebraska, U.S.A., without regard to principles of conflicts of law.

**9.4. SUBMISSION TO JURISDICTION.** Committee and Foundation consent to the exclusive jurisdiction in a state or federal court with proper jurisdiction in Sarpy county, state of Nebraska and irrevocably agree that all actions or proceedings relating to this agreement or any related matter shall be litigated in those courts. Committee and Foundation each waive any objection which it may have based on improper venue or forum non convenience to the conduct of any such action or proceeding in any such court.

**9.5. English Language.** Committee and Foundation confirm that it is their understanding that this Agreement, as well as all other documents relating to the relationship contemplated by this Agreement, including notices, be written in the English language only. This Agreement as presently written in the English language shall be interpreted, and the rights of Committee and Foundation shall be determined, by the English text only. Should this Agreement be translated into a language other than English, the English version shall remain controlling and shall prevail on questions of interpretation or otherwise.

## **10. General Provisions**

**10.1. Assignment by Committee.** Committee shall not assign its rights or delegate its duties under this Agreement without Foundation's prior written consent, which consent may be granted or withheld in Foundation's sole discretion. Any attempted assignment by Committee without Foundation's prior written consent shall be null and void.

**10.2. Assignment by Foundation.** Foundation may assign or transfer its interest in this Agreement or engage in any merger, consolidation, sale of assets, reorganization, or other transaction, without consent of Committee, other than as contemplated by Section 5. In the event the Foundation assigns or transfers its interest in this Agreement or engages in any merger, consolidation, sale of assets, reorganization, or other transaction, Foundation shall notify Committee within sixty (60) days of such action.

**10.3. Entire Agreement.** This Agreement, including the Exhibits, and together with the concurrently-signed License Agreement, contains the entire agreement of

Foundation and Committee and supersedes any Prior Agreements and all other prior or contemporaneous communications, representations, understandings, and agreements, either oral or written, relating to the subject matter of this Agreement.

**10.4. Understanding.** It is understood and agreed that neither Committee nor Foundation shall be, as a result of entry into or performance under this Agreement, obligated to renew or extend this Agreement or relationship in any respect, or to negotiate any such renewal or extension, or to engage in any other transaction or relationship.

**10.5. Amendment.** This Agreement may not be amended except by a written instrument signed by both Committee and Foundation which states that it is an amendment to this Agreement.

**10.6. Waiver.** Any waiver of the provisions of this Agreement or of the parties' rights or remedies under this Agreement must be in writing and signed by an officer of the waiving party to be effective. Failure, neglect, or delay by a party at any time to enforce the provisions of this Agreement or the parties' rights or remedies shall not be construed as a waiver of such party's rights, powers, or remedies under this Agreement. Waiver of any breach or provision of this Agreement shall not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

**10.7. Severability.** If any provision of this Agreement is held illegal, invalid, or unenforceable, all other provisions of this Agreement shall nevertheless be effective, and the illegal, invalid, or unenforceable provision shall be considered modified such that it is valid to the maximum extent permitted by law.

**10.8. No Presumption Against Drafter.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting the Agreement.

**10.9. Notices.** Notices, approval, and consent under this Agreement shall be in writing and shall be delivered by mail, courier, fax, or email to the addresses set out on the signature page of this Agreement. Notices given in the manner provided by this Section 10.9 shall be considered effective three (3) days after deposit in the mail, or the next business day if delivered by courier, fax, or email. The addresses to which notices are to be given may be changed from time to time by notice delivered as provided above.

**10.10. Counterparts.** This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original. Such counterparts together shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, Foundation and Committee have executed this Agreement as of the date first written above.

**FOUNDATION:**

By: \_\_\_\_\_

Name: Al Batschelet

Title: CEO

Address: 10605 Burt Circle

Omaha, NE 68114

Telephone Number: 712-330-8581

Fax Number: \_\_\_\_\_

Email Address: al@firstrespondersfoundation.org

**COMMITTEE:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_