



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Geoffrey K. Nichols, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

Date: December 19, 2017

To: Debbie Voorhees, Contracts Manager, Parks and Natural Resources Department

Through: Mitchell O. Palmer, County Attorney *MOP 12/22/17*

From: Anne Morris, Assistant County Attorney *amm*

RE: **University of South Florida, Women's Rowing at Fort Hamer Park/Boathouse;
CAO Matter No. 2017-0616.**

This memorandum is in response to the above referenced Request for Legal Services in which you asked this Office to review a proposed agreement between the University of South Florida ("USF") and Manatee County for use of the boathouse and related facilities at Fort Hamer Park ("Agreement"). In addition to the Agreement, you also asked this Office to review a proposed amendment to a license agreement between Manatee County Youth Rowing (MCYR), a non-profit organization, and Manatee County ("Amendment").

Per your request, I have reviewed and revised the Agreement and the Amendment. The majority of the proposed revisions to the Agreement and the Amendment are relatively minor, with the exception of Article 5 of the Amendment. The language proposed in Article 5 of the Amendment stated the following:

The County agrees to provide 50% of the rent received from USF to MCYR for support of their rowing programs. This payment will be made to MCYR in one lump sum within the month of December annually. The other 50% will be held by the County to provide for Capital Improvement Projects at the Property.

This proposed language fails to satisfy the legal standards for disbursement of public funds to non-profit organizations. Article VII, Section 10, of the Florida Constitution generally prohibits the disbursement of funds to aid private corporations. An exception to this prohibition is where a

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

local government funds a non-profit organization to carry out a public purpose. *O'Neill v. Burns*, 198 So. 2d 1 (Fla. 1967). The courts have made clear, however, that:

It is only when there is some clearly identified and concrete public purpose as the *primary objective* and a reasonable expectation that such purpose will be substantially and effectively accomplished, that the state or its subdivision may disburse, loan or pledge public funds or property to a non-governmental entity such as a non-profit corporation.

Id. at 4 (emphasis supplied).

It is not enough that services or resources provide "incidental" benefits to the public, "[t]here must be some control retained by the public authority to avoid frustration of the public purpose." *Id.* Accordingly, in order to satisfy the legal standards articulated above, the language in Article 5 of the Amendment was revised as follows:

The County shall utilize at least fifty percent (50%) of the rent received from the University of South Florida pursuant to the USF License for the purpose of improving the Property, either directly or through one or more reimbursement agreements with Licensee.

Attached to this memorandum are clean and redlined versions of the Agreement, Exhibit C of the Agreement, and the Amendment. These documents are now in legally sufficient form for consideration by the Board of County Commissioners.

This completes my response to your Request for Legal Services. As always, should you have any related questions, please do not hesitate to contact me.

Enclosures

Copies to: Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Charlie Hunsicker, Director, Parks and Natural Resources Department