



STAFF REPORT

Meeting Date: July 5, 2016
To: Honorable Mayor & City Council
From: Nancy Hunt-Coffey, Assistant Director of Community Services
Subject: Request by Resnick Foundation to have Sole Donor Recognition for the Cactus Garden Block of Beverly Gardens Park
Attachment: Charitable Pledge Agreement

INTRODUCTION

In August of 2015, The Resnick Foundation donated \$750,000 toward the restoration of the Cactus Garden block of Beverly Gardens Park. At that time, an agreement was executed which indicated that in recognition of the donation, a donor plaque would be placed in the Cactus Garden which is similar in size and appearance to the plaques that are placed on the wall that surrounds the Lily Pond. The Resnick Foundation is now requesting the execution of a side letter to this agreement which will ensure that the Resnick Foundation plaque is the only plaque to be placed in the Cactus Garden. The purpose of this report is to seek direction from the City Council regarding this request.

DISCUSSION

The pledge agreement that was executed in August of 2015 indicated that "*the Donor Plaque cannot be modified or removed before the earlier of 50 years or the removal or major renovation of the Cactus Garden*" (other than the current campaign to restore the Cactus Garden) in Beverly Gardens Park, "*.....without prior written consent of the Foundation....*" However the pledge agreement did not provide for sole donor recognition for that block of the park. The Resnick Foundation feels that sole donor recognition was the intent of the original agreement; however, they would like this intent memorialized in a side letter. Should the Council wish to grant exclusivity to the Resnick Foundation, future donors, if any, would be precluded from having a plaque in the Cactus Garden for the 50 year term.

FISCAL IMPACT

The current estimate to restore the Cactus Garden block in Beverly Gardens Park is \$1,175,810. The Resnick Foundation donated \$750,000 specifically toward the restoration of the Cactus Garden. With the City's current and available matching dollars of \$750,000, it would provide for a \$1,500,000 total, and the balance (\$324,190) of which could be utilized for other blocks included in the overall Beverly Gardens Park project.

RECOMMENDATION

Staff recommends that the City Council provide direction on whether to execute a side letter with the Resnick Foundation for sole donor recognition of the Cactus Garden block in Beverly Gardens Park.


Nancy Hunt-Coffey
Approved By

Attachment 1

CHARITABLE PLEDGE AGREEMENT

This CHARITABLE PLEDGE AGREEMENT (the "Agreement") is entered into between the Resnick Foundation (the "Foundation") and the City of Beverly Hills, a municipal corporation (the "Recipient"), in reference to the following facts:

WHEREAS, the Recipient has undertaken a campaign to raise funds to restore the Cactus Garden in Beverly Gardens Park (the "Project"), a public park located in Beverly Hills, California; and

WHEREAS, the Foundation desires to make a charitable donation to the Recipient as described in this Agreement, which shall be used to fund the Project on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises of the parties as set forth herein, the parties hereto agree as follows:

1. Pledge. Subject to the terms and conditions set forth herein, the Foundation hereby agrees to donate Seven Hundred Fifty Thousand Dollars (\$750,000) to Recipient to fund the Project (the "Pledge"). The Pledge shall be paid in one (1) installment on or before August 31, 2015.

2. Payment of Pledge. Notwithstanding any other provision of this Agreement, any payment of the Pledge may also be made in whole or in part by Stewart A. Resnick or Lynda Rae Resnick, individually (collectively, the "Resnicks"), by Stewart A. Resnick and Lynda Rae Resnick, as Trustees of the Stewart and Lynda Resnick Revocable Trust, dated December 27, 1988, as amended (the "Trustees"), or by the Resnick Family Foundation, Inc., a Delaware corporation (the "Family Foundation"). Any amount paid to Recipient by the Resnicks, the Trustees or the Family Foundation specifying that such payment is being made pursuant to this Agreement, shall reduce the amount payable by the Foundation by a like amount. For the avoidance of doubt, the obligation to pay the Pledge under this Agreement is and shall remain the sole obligation of the Foundation. If the Resnicks, the Trustees or the Family Foundation make any payment that reduces the Foundation's obligations under this Agreement, none of them shall become obligated in any manner with respect to fulfilling the Foundation's obligation's hereunder.

3. Use of Pledge. The Pledge shall be used to fund and support the Project.

4. Reporting. Recipient shall provide the Foundation with financial information and a report outlining the general accomplishments and highlights of the Project, and any other information reasonably requested by the Foundation. Recipient shall submit the report through the Foundation's online system, which is available at www.cybergrants.com/roll/rollphilanthropy, within thirty (30) days after the completion of the Project. Additional updates will be provided upon written request to the City. Any questions regarding the report should be directed to:

Resnick Foundation
c/o The Wonderful Company LLC
11444 W. Olympic Blvd, 5th Floor
Los Angeles, CA 90064
Email: philanthropy@wonderful.com
Attention: Foundation Program Director

5. Donor Recognition. The Pledge shall be recognized as a charitable donation made by the Foundation in the name of the Resnicks. In recognition of the Pledge, Recipient shall install a plaque (the "Donor Plaque") in the Cactus Garden in Beverly Gardens Park in accordance with the policy set by Recipient for donor plaques in this area of Beverly Gardens Park. The Resnicks reserve the right to approve the description and appearance of the Donor Plaque prior to its placement in the Cactus Garden in Beverly Gardens Park but hereby acknowledge and agree that such Donor Plaque will be similar in size and appearance to the plaque attached hereto as Exhibit A. Once approved, the Donor Plaque cannot be modified or removed before the earlier of 50 years or the removal or major renovation of the Cactus Garden other than the Project, without the prior written consent of the Foundation, which consent shall not unreasonably be withheld. The parties agree that a breach of this Section 5 is considered a material breach of this Agreement.

6. Public Announcements. No written public recognition, acknowledgement or announcement of the Pledge shall be made, other than the Donor Plaque described in Section 5 above, without the prior written approval of the Foundation, which approval may be withheld in its sole discretion. If the Foundation agrees in writing to any written public announcement, then the Foundation will have prior approval rights as to any and all references to the Foundation in connection with the Pledge. Notwithstanding the foregoing, the Recipient is permitted to agendize and discuss the Pledge and this Agreement at a public Beverly Hills City Council meeting.

7. Representations and Warranties of Recipient. Recipient represents and warrants as follows:

a. Authority. Prior to signing this Agreement, Recipient shall have obtained all required authority from its governing body to enter into this Agreement and each of the officers and representatives of Recipient executing this Agreement on Recipient's behalf shall be duly empowered and authorized to do so.

b. No Violation. The execution, delivery and performance by Recipient of this Agreement will not violate Recipient's organizational and governing documents or the terms of any provision of any agreement or instrument which is binding upon Recipient or any law to which Recipient is subject.

c. Tax Status. Recipient is exempt from income taxes as a governmental entity and political subdivision of the State of California pursuant to Section 115 of the Internal Revenue Code.

8. Indemnification. Recipient shall indemnify and hold harmless the Foundation and its heirs, beneficiaries, successors, assigns, and representatives from and against any and all

losses, claims, demands, costs, damages, liabilities, expenses of any nature (including sales and use taxes, if any, and reasonable attorneys' fees (at market rates) and disbursements), judgments, fines, settlements and other amounts ("Losses") arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, that may arise or which relate to or arise from this Agreement, the Pledge, the Project or the breach of any of Recipient's representations, warranties or covenants set forth in this Agreement, except to the extent such Losses are caused by the negligent or wrongful actions of the Foundation.

9. Termination.

a. The Foundation will have the right through the date on which the Project is completed, in its sole discretion, to immediately terminate this Agreement and demand a refund of all or any unspent portion of the Pledge if: (i) Recipient ceases for any reason to be exempt from income taxes as an organization described in Section 115 of the Internal Revenue Code; or (ii) Recipient becomes insolvent or for any reason is unable to meet its financial obligations as they become due.

b. The Foundation will have the right, in its sole discretion, to immediately terminate this Agreement and demand a refund of all or any unspent portion of the Pledge if: (i) Recipient materially breaches any of the terms and conditions set forth in this Agreement, including, without limitation, any of its obligations, duties, representations or warranties; or (ii) there is any fraudulent conduct, willful misconduct or material misrepresentation on the part of the Recipient in its use of the Pledge or planting of the Project.

10. Miscellaneous.

a. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior and contemporaneous agreements, representations and understandings, both written and oral. No other agreements that have been entered into between the parties shall, in any way, effect or alter this Agreement.

b. Applicable Law; Venue; Legal Fees. This Agreement and all acts and transactions hereunder and all rights and obligations of each of the Recipient, the Foundation and their respective successors will be governed, construed and interpreted in accordance with the internal laws of the State of California. Any legal proceedings relating directly or indirectly hereto will take place in Los Angeles County, California, and such parties consent to the jurisdiction of the Federal and State courts located therein. If any legal action or other proceeding is brought for the enforcement of this Agreement, including, but not limited to, the enforcement of the Pledge, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party will be entitled to recover reasonable attorneys' fees (at market rates) and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

c. Amendment. The terms and provisions of this Agreement may not be waived, altered, modified or amended except in a writing executed by the parties hereto.

d. Section Headings. Section headings are used herein for convenience only, and shall not be used in any manner to interpret any provision hereof.

e. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties' respective legal heirs, successors and assigns.

f. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

g. Waiver. None of the provisions, warranties, terms or conditions of this Agreement shall be deemed to have been waived except in a writing signed by the party against whom waiver is claimed.

h. Notices. All notices to be given hereunder will be in writing and will be effective when they are served either personally or by depositing the same in the United States mail, first class postage prepaid, by registered or certified mail addressed as follows:

to the Foundation:

Resnick Foundation
c/o The Wonderful Company LLC
11444 West Olympic Boulevard, 10th Floor
Los Angeles, CA 90064
Facsimile No.: (310) 966-5758
Attention: Chief Legal Officer

to Recipient:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210
Facsimile No.: (310) 274-9571
Attention: City Manager

i. Further Assurances. Each of the Foundation and Recipient agrees to do or to cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements and instruments as the other party may reasonably request to carry into effect the purposes of this Agreement.

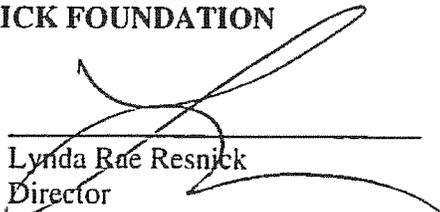
j. Non-Assignment. Recipient shall not assign, pledge or otherwise encumber this Agreement or any rights or obligations hereunder without the prior written consent of the Foundation, which consent may be withheld in the Foundation's sole discretion.

k. No Joint Venture. This Agreement is not intended to create, and shall not be construed as creating, any partnership, joint venture or other entity between or including Recipient and the Foundation.

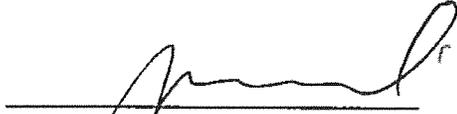
IN WITNESS WHEREOF, the parties have executed this Agreement as of the 13th day of August 2015.

RESNICK FOUNDATION

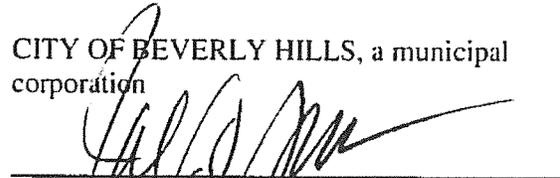
By:


Lynda Rae Resnick
Director

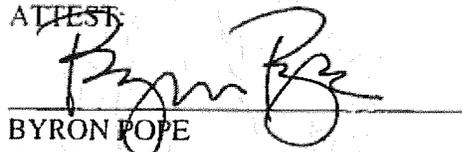
By:


Stewart A. Resnick
Director

CITY OF BEVERLY HILLS, a municipal
corporation

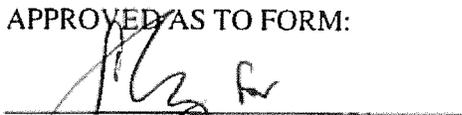

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills, California

ATTEST:

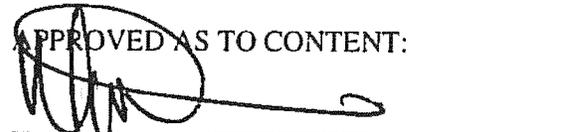

BYRON POPE
City Clerk

(SEAL)

APPROVED AS TO FORM:


LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:


MAHDI ALUZRI
Interim City Manager

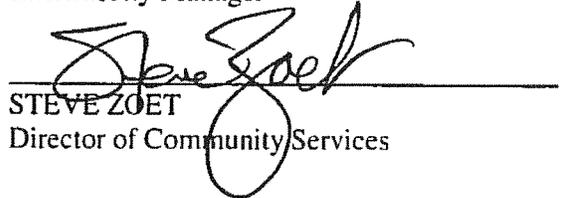

STEVE ZOET
Director of Community Services

EXHIBIT A

FORM OF DONOR PLAQUE

