



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: 3/6/18

20180306140PC/KCF/ED

Title: Tucson January 8th Memorial Foundation Donation and Naming Agreement - Kautz Family Foundation

Introduction/Background:

On July 5, 2016 the Board of Supervisors approved Pima County's policy regarding naming of County facilities and programs to recognize grants and donations made to the County for the benefit of the community. On December 13, 2016 the Board of Supervisors approved the January 8th Memorial Funding agreement with Tucson's January 8th Memorial Foundation for the County to accept donations to be used for the design and construction of the January 8th Memorial. The January 8th Memorial will honor Congresswoman Gabrielle Giffords, the six lives lost, and the 13 others wounded during a "Congress On Your Corner" event. On March 21, 2017, the Board of Supervisors approved the naming opportunities plan submitted by the January 8th Memorial Foundation. The naming opportunities plan requires Board of Supervisors approval for naming agreements greater than \$50,000.

Discussion:

The Kautz Family Foundation has donated \$600,000 to Tucson's January 8th Memorial Foundation for the design and construction of the January 8th Memorial. The donation is in the form of an irrevocable pledge that the donor will pay in three equal annual installments of \$200,000 each, the first paid by the donor immediately upon execution of this donation and naming agreement. Tucson's Memorial Foundation intends to pass the donation to the County to be used for the design and construction of the January 8th Memorial. If accepted by the County, the Kautz Family Foundation's generous donation will be acknowledged by identifying the Kautz Family Foundation on a grouping of 30 memorial lanterns alongside the January 8th Memorial.

Conclusion:

By approving this donation and naming agreement, the County will receive \$600,000 for the design and construction of the January 8th Memorial. The County will be able to acknowledge The Kautz Family Foundation's generous donation by naming a grouping of 30 memorial lanterns on their behalf. The entire community benefits from this donation as it contributes to a memorial that invites a remembrance of those who actively participated in their government in pursuit of a better democracy as well as reflection on a community of people who came together to help one another rise above a tragic situation.

Recommendation:

Staff recommends the Board of Supervisors approve this donation and naming agreement.

Fiscal Impact:

\$600,000 will be available to fund the design and construction of the January 8th Memorial. Other donors may be encouraged to donate to the January 8th Memorial Foundation.

Board of Supervisor District:

- 1
- 2
- 3
- 4
- 5
- All

Department: Finance & Risk Management

Telephone: _____

Contact: Michelle Hamilton

Telephone: 724-3930

Department Director Signature/Date: _____

[Signature] 2/15/18

Deputy County Administrator Signature/Date: _____

[Signature] 2-21-18

County Administrator Signature/Date: _____

[Signature] 2/21/18

Tucson's January 8th Memorial Foundation Donation and Naming Agreement

This Donation and Naming Agreement ("Agreement"), effective on the date this Agreement is fully executed by all the parties (the "Effective Date"), is entered into by and among **The Kautz Family Foundation** ("Donor"), **Tucson's January 8th Memorial Foundation, an Arizona nonprofit corporation** (the "Foundation"), and Pima County, a political subdivision of the State of Arizona (the "County").

RECITALS

- A. County is in the process of renovating the County courthouse constructed in 1928 located at 115 N. Church Avenue, Tucson (the "Historic County Courthouse").
- B. The Foundation has been collaborating with Pima County and the City of Tucson to develop a memorial (the "Memorial") in remembrance of the victims of the shooting that occurred in Tucson on January 8, 2011, to be located next to the Historic County Courthouse, primarily on land owned by Pima County, but including some land owned by the City of Tucson.
- C. The Foundation has prepared a preliminary design of the Memorial and wants Pima County to complete the design and construct the Memorial. The preliminary design (the "Concept Design") is attached to this Agreement as **Exhibit A**.
- D. The Foundation wishes to donate or to cause to be donated funds to the County to be used to complete the design and construct the Memorial.
- E. Donor has donated \$600,000.00 (the "Donation") to the Foundation for the design and construction of the Memorial. Donor's donation was made with the understanding that the County will acknowledge that donation in accordance with Policy Number C3.19 of the Pima County Board of Supervisors as adopted on July 5, 2016 (the "Naming Policy").
- F. The Foundation wishes to pass the Donation through to the County, and the County desires to accept that donation, subject to the terms and conditions set forth in this Agreement.

AGREEMENT

- 1. **Donation**. Donor hereby pledges to the Foundation and the County, for the use and benefit of the County for the purposes stated in this Agreement, the Donation.
- 2. **Payment of the Donation**. The Donation is an irrevocable pledge that will be paid by Donor to Foundation over a period of three (3) years, in three equal payments of \$200,000 each. The first payment will be made immediately upon the execution of this Agreement. The two subsequent payments will be made, respectively, on the first and second anniversary of the Effective Date.

Donor may accelerate the payment of any or all of this pledge at any time in Donor's discretion. Payments shall be paid by Donor to Foundation via check, electronic funds transfer, stocks or other securities, or other methods acceptable to Donor and the Foundation. The Foundation will pay the Donation payments to the County immediately upon receipt from the Donor.

3. **Use of the Donation.** The Donation will be used by the County for the purposes described above. Donor acknowledges that the Memorial is still in the design development phase and acknowledges that final design and construction documents, which will be completed by the County, have not been started. During the preparation of the final design and construction documents, the County may alter the preliminary design as it deems necessary to accommodate the construction of the Memorial at the proposed location while using reasonable efforts to keep the concept as shown in the Concept Design. Donor also acknowledges that nothing in this Agreement obligates the the County to expend any funds for the planning, design or completion of the Memorial, other than funds contributed by the Foundation or others for that purpose.

4. **Acknowledgment.** In consideration for the Donation, and subject to the restrictions of the County's Naming Policy, the County will acknowledge the Donation by identifying Donor in the manner identified below for the following component of the Memorial (the "**Naming**") for a period of twenty (20) years:

Description of component to be named:

A grouping of 30 memorial lanterns alongside the Memorial, with naming identification at appropriate locations at the beginning and end of the grouping.

Name to be identified for the component: **To be provided by Donor.**

5. **Termination of Naming.** In addition to any rights and remedies available at law, the County may terminate this Agreement and all rights and benefits of Donor hereunder, including terminating the Naming, if there is any default in payment of the Donation as provided in this Agreement, or if the Board of Supervisors determines in its reasonable and good faith opinion that circumstances have changed such that the Naming would adversely impact the reputation, image, mission or integrity of the County, the Memorial or the Foundation. Upon any such termination of this Agreement and/or the Naming, the Foundation and the County will have no further obligation or liability to Donor and will not be required to return any portion of the Donation already paid.

6. **Modification of Naming.** County reserves the right to modify, relocate, replace or remove the Memorial if the Board of Supervisors determines that this is in the public's best interest, or if the Memorial is severely damaged by casualty. The Naming will cease if the Memorial is transferred or conveyed by County to an agency or political subdivision of the State of Arizona or of the United States of America, closed, deconstructed, destroyed or severely damaged, significantly renovated, upgraded, modified, relocated, or replaced. If the Memorial is conveyed to another governmental agency as described above, the County will use reasonable efforts to have the other governmental agency maintain the Naming for the remainder of the twenty (20) years.

7. **Publicity.** For purposes of publicizing the Donation and the Naming, County will have the right, without charge, to photograph representatives of Donor and use the names, likenesses, and images of Donor in photographic, audiovisual, digital or any other form of medium (the "**Media Materials**") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner, including in brochures, website postings, informational and marketing materials, and reports and publications describing County's activities.

8. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and be served by personal delivery or by certified mail upon the other party, addressed as set forth below, or to such other address as a party may from time to time designate by written notice to the other parties:

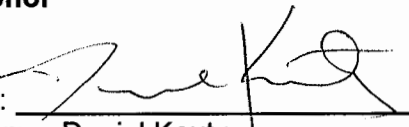
If to County: Pima County Administrator
130 W. Congress Street, Floor 10
Tucson, Arizona 85701

If to Donor: The Kautz Family Foundation
Mr. Daniel Kautz
4605 N. Campbell Avenue
Tucson, Arizona 85718

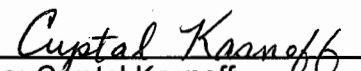
If to the Foundation: Executive Director
PO Box 41502
Tucson, Arizona 85717

9. **Assignment.** A party may not assign its rights or obligations under this Agreement without the prior written consent of the other parties, which consent may be withheld in the sole and absolute discretion of the non-assigning parties.
10. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to the matters addressed, and supersedes all prior oral and written agreements, if any, of the parties. This Agreement may not be modified or amended except by written agreement executed by all the parties.
11. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Arizona without regard to any conflict of laws rule or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction. Any legal proceeding brought in connection with disputes relating to or arising out of this Agreement will be filed and heard in Pima County, Arizona, and each party waives any objection that it might raise to such venue and any right it may have to claim that such venue is inconvenient.
12. **Cancellation for Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

Donor

By: 
Name: Daniel Kautz
Title: Trustee
Date: 1/24/18

Tucson's January 8th Memorial Foundation

By: 
Name: Crystal Kasnoff
Title: Executive Director
Date: 01/24/18

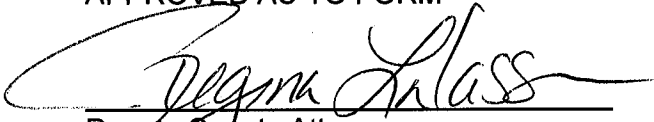
Accepted and approved, this ____ day of _____, 2018.

Richard Elias, Chairman, Pima County Board of Supervisors

ATTEST:

Julie Castaneda, Clerk of the Board

APPROVED AS TO FORM

A handwritten signature in black ink, appearing to read "Regina Nassen", written over a horizontal line.

Deputy County Attorney

REGINA NASSEN