



Sierra Madre Public
LIBRARY
Read • Discover • Connect

AGENDA

SPECIAL LIBRARY BOARD OF TRUSTEES MEETING

Wednesday, August 26 2020

4:00 PM

**City Hall Council Chambers
232 W. Sierra Madre Boulevard
Sierra Madre, CA 91024**

*Richard Procter, Chair; Rod Spears, Vice Chair;
Patricia Hall, Trustee; Shannon King, Trustee; Barry Ziff, Trustee*

CALL TO ORDER / ROLL CALL

Trustees Procter, Hall, King, Spears, Ziff

APPROVAL OF AGENDA

Majority vote of the Board to proceed with Board business

APPROVAL OF MINUTES

Majority vote of the Board to approve the minutes from July 22, 2020 meeting.

COMMUNITY INPUT – COVID-19 NOTICE

As part of the City of Sierra Madre's COVID-19 transmission mitigation efforts, all City Council, Commission and Board meetings will be conducted virtually until further notice. The Brown Act provides the public with an opportunity to make public comments at any public meeting.

Public comment may be made by e-mail to csmart@cityofsierramadre.com with the subject heading PUBLIC COMMENT by 3:00 pm on August 26, 2020. Emails will be acknowledged at the Trustee meeting and read into public record with a limit of three minutes per person.

**To watch the meeting live, please access the live Zoom call
by visiting the following link: <http://bit.ly/CSM8262020>**

For more information, please contact City Librarian, Christine Smart via email at csmart@cityofsierramadre.com or by telephone at (626) 355-7186.

PUBLIC COMMENT

The Trustees will listen to the public on any item on the agenda. In addition, the Trustees will also devote time for public comment on items not on the agenda. Under the Brown Act, Trustees are prohibited from taking action on items not on the agenda, but the matter may be referred to staff or to a subsequent meeting.

Each comment read on the record will be limited to three continuous minutes, which may not be delegated. These rules will be enforced but may be changed by appropriate Library Board of Trustee action.

ACTION ITEMS AND REPORTS

1. Day Estate Funds

City Manager Engeland to discuss the proposed transfer of the Day Estate Funds.

2. Library Site Plan

City Librarian Smart to discuss the various options for the Library for discussion.

****ACTION ITEMS***

Regardless of a staff recommendation on any agenda item, the Board will consider such matters including action to approve, conditionally approve, reject or continue such item. Further information on each item may be procured from the Library Board of Trustees.

ADJOURNMENT

The Library Board of Trustees may adjourn to a special zoom meeting on September 9 at 4:00 pm.

If you require special assistance to participate in this meeting, please call the City Manager's Office at 626-355-7135 at least 8 hours prior to the meeting.



Sierra Madre Public
LIBRARY
Read • Discover • Connect

MINUTES

SPECIAL LIBRARY BOARD OF TRUSTEES MEETING

Wednesday, July 22, 2020

4:00 PM

City Hall Council Chambers
232 W. Sierra Madre Boulevard
Sierra Madre, CA 91024

*Richard Procter, Chair; Rod Spears, Vice Chair;
Patricia Hall, Trustee; Shannon King, Trustee; Barry Ziff, Trustee*

CALL TO ORDER / ROLL CALL

Trustees Procter, Hall, King, Spears, Ziff in attendance. Meeting called to order at 4:00.

APPROVAL OF AGENDA

Trustee Hall motioned to approve the agenda, Trustee Ziff seconded. All approved.

APPROVAL OF MINUTES

Trustee Hall motioned to approve the minutes. Trustee King seconded. All approved.

PUBLIC COMMENT

No public comment for items not on the agenda.

CONSENT CALENDAR

- 1. Library Warrants** - Trustee Ziff motioned to approve the payment of Library Warrants in the aggregate amount of \$6,073.39. Trustee Hall seconded. All approved.
- 2. Library Statistics** – June Statistical Reports were received and filed.

ACTION ITEMS AND REPORTS

- 1. Conflict of Interest**

As a result of the recommendation by the Trustees and agreement of Council, Rich Procter and Patricia Hall will resign from their positions on the Library Foundation and remain on the Library Board of Trustees.

2. Library Site

Public Comment

I have no doubt that the Trustees will hold the same view as I am expressing here, so these comments are intended more as community support for the direction you will be pursuing in regards to the Library building. Our world has fundamentally changed for now and the foreseeable future and the vision for the Sierra Madre Public Library must also be adapted to our current reality. By this, I don't mean that a new structure or a major remodel is entirely out of the question, but the Sierra Madre community values its public library so highly and a wide range of stakeholders, most especially the Friends of the Library, are heavily invested financially, emotionally and time-wise in the development of the 21st Century Library project. Therefore, it is critical that an extensive and methodical community outreach effort is planned and implemented to truly have a community supported vision for the library. I personally look forward to being actively engaged in this process. Thank you for your service and consideration of my thoughts. Take good care. Rob Stockly.

Discussion

Chair Procter brought forward intermediary plans for the Library building during the pandemic to fix the portions of the building that have been put off, such as the structural retrofitting, and improve the exterior of the building and the lot to be utilized for outdoor programming. The two-phase plan would include: Repair most dire structural issues, ADA improvements for handicapped, paint, enclose the air conditioner, and reconfigure the interior in year two.

The trustees are urged to bring forward a unified plan to the joint meeting in September, and would like to meet in advance of this meeting in order to come to a decision in advance.

3. City Librarian Report

City Librarian discussed the bookmark contest winners, the advancement of the RFID project, upcoming vacation and staffing changes. Lori Garza position has been corrected to a promotion of Management Analyst based on her workload. With the retirements of Kim and Donna, the City has approved the hiring of a full time employee in their place. Interviews will occur next week.

Summer programming is wrapping up and planning for the fall is in full swing. We are hoping to host micro programs for children and adults in person as soon as everything settles, but will continue to rely on science and best practices.

***ACTION ITEMS**

Regardless of a staff recommendation on any agenda item, the Board will consider such matters including action to approve, conditionally approve, reject or continue such item. Further information on each item may be procured from the Library Board of Trustees.

ADJOURNMENT

Meeting adjourned at 5:00.



Library Board of Trustees

Rich Procter, Chair
Rod Spears, Vice-Chair
Patricia Hall, Trustee
Shannon King, Trustee
Barry Ziff, Trustee

SIERRA MADRE PUBLIC LIBRARY AGENDA REPORT

Day Estate Funds

To: Library Board of Trustees
From: Christine Smart, City Librarian
Gabriel Engeland, City Manager
Date: August 26th, 2020

OVERVIEW

On June 24, 2020, the Library Board of Trustees voted unanimously to recommend the City Council transfer the Day Trust funds to the Library Foundation, and enter into an MOU with the Library Foundation outlining the terms of the disbursement and use of the funds. After research into this matter by staff and legal counsel, discussion with outside experts, and review of the proposed Library Foundation MOU, staff cannot recommend to the City Council to use the funds as described by the Library Foundation and recommended by the Library Board of Trustees.

As part of the Sierra Madre Public Library's Gift and Memorial Account, the funds donated by the Day Estate are currently invested in the Local Agency Investment Fund (LAIF), which is interest bearing and invested in accordance with all applicable local and State laws. Because the donation was made to the Sierra Madre Public Library, the funds, even if disbursed to an outside organization for use and investment, cannot be invested in any manner inconsistent with the laws and codes that govern Sierra Madre municipal investments.

STAFF RECOMMENDATION

Staff recommends the Library Board of Trustees review this report and provide direction to staff from four proposed alternatives.

ALTERNATIVES

1. The Library Board of Trustees may decide to not make any changes to the recommendation that the City Council transfer the Day Trust funds to the Library Foundation and further recommend the City Council execute the MOU as presented by the Library Foundation.

2. The Library Board of Trustees may decide to not make any changes to the recommendation that the City Council transfer the Day Trust funds to the Library Foundation, but not recommend the City Council execute the MOU as presented. The Library Board of Trustees may assign a subcommittee of Trustees to negotiate a legal MOU with staff which contains terms that are acceptable to the City. This MOU could be reviewed by the City Council and then forwarded to the Library Foundation for consideration.
3. The Library Board of Trustees may decide not to recommend the City Council transfer the Day Trust funds to the Library Foundation and instead continue to invest the funds through LAIF. The Library Board of Trustees would retain control of all Trust Funds, as well as all interest earned on the investment.
4. The Library Board of Trustees may provide an alternate recommendation to the City Council request additional information or research from staff.

BACKGROUND

Two long-time residents of Sierra Madre, Robert A. Day and Robert S. Day, provided a charitable contribution to the Sierra Madre Library in an amount of approximately \$750,000. The declaration of trust provided the following direction from the settlor: "It is SETTLOR'S desire, but not a requirement, that upon receipt by a Charitable Organization of a gift hereunder, such Charitable Organization set aside such gift in a fund to be known as the ROBERT A. DAY FUND, from which no more than \$25,000 shall be expended in any one calendar year for the operating expenses or capital expenditures of such organization, until such time as the Fund is completely exhausted."

The City began receiving distributions from the Trust in December of 2016. The most recent fund allocation of more than \$600,000 was received in January of this year. All funds received have been appropriately deposited into the City's Library Gift and Memorial Fund and have remained in the fund since deposit.

The Day Trust funds were left to the Sierra Madre Public Library, and the fiduciary agent responsible for the use and disposal of these funds is the Sierra Madre Library Board of Trustees. Education Code section 18951 states, "All money acquired by gift, devise, bequest, or otherwise, for the purposes of the library, shall be apportioned to a fund to be designated the library fund, and shall be applied to the purposes authorized in this chapter." The Library Board of Trustees, through applicable local and State laws are to administer the funds in compliance with the intentions and direction of the donor.

On June 10, 2020, a letter was sent to the City Council signed by Patricia Hall (in her capacity as Chair of the Library Foundation, not in her capacity as a member of the Board of Trustees), Julia Brady, President of the Friends of the Library, and Barry Ziff, then Chair of the Library Board of Trustees. The letter asks the City Council to transfer the funds of the Day Trust from the Board of Trustees to the Library Foundation. Included with the letter was an MOU for disbursement of the funds signed by Patricia Hall.

Though the Library Board of Trustees is the responsible party for the use of the Day Trust funds, it is an administrative arm of the City, not a separate legal entity. Education Code section 18910 states, "The public library shall be managed by a board of library trustees, consisting of five members, to be appointed by the mayor, president of the board of trustees, or other executive head of the municipality, with the consent of the legislative body of the municipality." Any transfer of funds from the Library Board of Trustees to another entity must be pursuant to an agreement between and approved by the City Council. The Trustees cannot unilaterally transfer the funds without the authorization of City Council and attempting to do so would be an abrogation of the responsibility of the Trustees under the prudent investor standard. Further, the Foundation and the Trustees cannot be the sole parties to this agreement because the Trustees are not a separate legal entity from the City of Sierra Madre.

As an administrative arm of the City, the Board of Trustees are subject to the same State and local laws as the City, including laws and regulations regarding the investment of funds. Specifically, the investments of both the Trustees and the City are restricted by Government Code section 53600 et seq. Additionally, the Trustees are obligated to present their investment policy annually and their financial reports quarterly to the City Council under Government Code section 53646, as well as their reports on the condition of the Library annually to the City Council and State Librarian under Education Code section 18927.

Prior to bringing the recommendation of the Library Board of Trustees to the City Council, City staff consulted with independent experts, asked for a legal opinion from the City Attorney, and completed research related to the recommended transfer of Day Trust funds.

SUMMARY

On June 24, 2020, after the recommendation of the Library Board of Trustees to the City Council to transfer the Day Trust funds to the Library Foundation, the City Council received a signed MOU from the Library Foundation for disbursement of the Day Trust funds.

In correlation with the recommendation by the Library Board of Trustees, City staff sought information and direction from independent experts, the City Attorney, and completed research in an effort to make a recommendation to the City Council.

The Government Code(s) referenced above restrict the types of investments municipalities can make, and also outline the obligations of the investing party. As an administrative body of the City of Sierra Madre, the Library Board of Trustees are bound by the same restrictions on investments found in the relevant Government Codes. Funds received by the Library cannot be invested in any manner inconsistent with these Codes. This remains true even if the funds are disbursed to an outside entity for investment. Taking this into account, the transfer of funds as recommended by the Library Board of Trustees, cannot be recommended by Staff to the City Council for approval.

In addition, City Staff sought examples from other Libraries to demonstrate a similar transfer of funds. No other Libraries could provide a similar situation after discussions with various Library Directors in the Los Angeles area, nor in consultation with outside counsel and foundations. The MOU, as proposed, does not comply with several elements of State investing law regarding

public disclosure of funds, does not acknowledge or reference relevant requirements for the investment of public funds, and does not comply with several elements of the California Debt and Investment Advisory Commission's Local Agency Investment Guidelines. Taking this into account, the MOU as presented cannot be recommended by Staff to the City Council for approval.

Based on the review of independent experts, the conclusions of the City Attorney, and the relevant research and determinations made by City staff, the proposed transfer of funds and execution of a memorandum of understanding with the Library Foundation cannot be recommended as an appropriate course of action to the City Council. However, it is important to note the City Council is not bound by a recommendation of staff and can execute the MOU with the Library Foundation and transfer the funds at their pleasure.

City staff recommends the Library Board of Trustees make a determination on how best to proceed given new information, while taking into consideration the information in the staff report.

The transfer of funds and the MOU are considered separate actions, meaning, the Library Board of Trustees can recommend to move both forward to City Council for consideration in September, or the Trustees can decide to modify the recommendation on one or both of these items, and then seek Council approval. The options before the Library Board of Trustees are listed in the "Alternatives" section of this report.

ATTACHMENTS

Day Estate Trust Documents

Proposed MOU from Library Foundation

Memorandum of Understanding for the Management and Disbursement of the Robert Day Trust

This Memorandum of Understanding (MOU) is made and entered by and among the City of Sierra Madre (Sierra Madre), a California municipal corporation, and the Sierra Madre Library Foundation (Foundation), a California public benefit corporation exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and Section 23701d of the California Revenue and Taxation Code, each a "Party" and, collectively, the "Parties."

WHEREAS, two long-time residents of Sierra Madre, Robert A. Day and Robert S. Day, recently became deceased; and

WHEREAS, they established a charitable remainder trust known as the Robert A. Day Fund (Trust), which designated gifts to a Charitable Organization to support the Sierra Madre Public Library (Library); and

WHEREAS, Sierra Madre has received funds from the Trust totaling \$_____; and

WHEREAS, the Foundation is a charitable organization established to accept, manage, and disburse funds to support the Public Library of the City of Sierra Madre; and

WHEREAS, prudent investment and management of the bequest will provide substantially greater long-term benefit to the Library by increasing principal and extending the period of annual distributions; and

WHEREAS, the Foundation is prepared to establish a restricted endowment fund in the name of Robert A. Day, secure professional financial management assistance, and otherwise take responsibility for managing these funds and making annual distributions to the library;

NOW, THEREFORE, incorporating the above recitals herein and exhibit attached, it is mutually understood and agreed by the Parties as follows:

1. PURPOSE. This MOU is entered into by and among the Parties to facilitate a cooperative and ongoing working relationship to comply with the testamentary wishes of Robert A. Day and Robert S. Day. This MOU is not intended to form a new legal entity.

2. ROLES AND RESPONSIBILITIES OF THE PARTIES

Each Party covenants that it has the authority to perform the activities required to accomplish the purposes of this MOU, and will cooperate to implement the following activities and other activities consistent with this MOU.

2.1 Sierra Madre shall transfer all funds currently held to the Foundation's designated bank account, pursuant to wire instructions provide by the Foundation.

2.2 Sierra Madre shall establish an internal monitoring system and designate staff responsible for requesting and receiving information from the Foundation regarding the Robert A. Day Fund, including, but no limited to, specific requests to fund library programs and operations.

2.3 The Foundation shall secure the services of licensed fiduciary to invest the majority of the funds in one or more pooled investment accounts, and reserve a minimum of \$25,000 in cash or equivalents in order to satisfy the annual distribution requirement set forth in the Trust.

2.4 The Foundation shall provide the Sierra Madre Library Board of Trustees, the City Manager, and any other person designated by Sierra Made with copies of financial statements received from the fiduciary on a quarterly basis

2.5 Upon request from either Party, the Parties agree that their respective Boards shall, after adequate public notice as prescribed in the California Government Code, meet to discuss and review the implementation of this MOU.

3. FUNDING. Each Party shall bear its own costs.

4. TERM. This MOU shall become effective upon each Party's execution and shall terminate upon the final distribution of funds from the Trust or the dissolution of the Trust by operation of law. The Parties may terminate this MOU sooner by unanimous written consent.

5. AMENDMENTS AND WAIVER. No amendment or waiver of any provision of this MOU shall be effective unless in writing and signed by each Party, and then such waiver or consent shall be effective only in the specific instances and for the specific purpose given.

6. NO LIABILITY. No Party, nor any board, director, officer, or representative of a Party, shall be responsible for any damage or liability occurring by reason of any other Party's performance or non-performance of its obligations under this MOU.

7. NOTICES. All notices and other communications given under the terms of this MOU must be in writing and served personally or by certified U.S. mail. Any such notice shall be addressed to the Parties as set forth as follows or to such other address as the Parties may hereafter designate by written notice. The date of receipt of the notice shall be the date of actual personal service or three days after the postmark on certified mail.

City of Sierra Madre

City Manager
City of Sierra Madre
232 West Sierra Madre Boulevard
Sierra Madre, CA 91024

Sierra Madre Library Foundation

Chair
Sierra Madre Library Foundation
P.O. Box 563
Sierra Madre, CA 91025

8. RELATIONSHIP OF PARTIES. The Parties shall remain at all times as to each other, wholly independent entities. No Party shall have the authority to incur any debt, obligation, or liability on behalf of another Party unless expressly provided by written agreement of the Parties. No employee, agent, or officer of a Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.

9. GOVERNING LAW. This MOU shall be interpreted, construed, and governed according to the laws of the State of California without regard to conflict of law principles.

10. VENUE. Any suit, action, or proceeding brought under the scope of this MOU shall be filed in the County of Los Angeles, State of California. The foregoing, however, shall not limit any Party's right to seek a change of venue under applicable law.

11. NO ATTORNEYS' FEES. The Parties agree that, in any action to enforce the terms of this MOU, each Party shall bear its own attorneys' fees and costs.

12. JOINTLY DRAFTED. Each Party acknowledges that it was represented by its legal counsel during the negotiation and execution of this MOU, and that it has had a full and fair opportunity to review and revise the terms of this MOU. Each Party further agrees that this MOU has been jointly drafted, and that no term contained herein shall be construed against or in favor of another Party.

13. SEVERABILITY. If one or more of the provisions contained in this MOU are invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired in any manner.

14. HEADINGS. Section headings in this MOU are included for convenience of reference only and shall not be given any substantive effect.

15. ENTIRE AGREEMENT. This MOU constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.

16. COUNTERPART EXECUTION. This Agreement may be executed in counterparts and each executed counterpart shall be effective as the original.

17. NO THIRD PARTY BENEFICIARIES. This MOU is not intended, and will not be construed, to confer a benefit or create any right on a third party or the power or right to bring an action to enforce any of its terms.

IN WITNESS WHEREOF, each Party hereby has caused this MOU to be executed as of the date and year written below:

CITY OF SIERRA MADRE

By: _____

Mayor

Date: _____

SIERRA MADRE LIBRARY FOUNDATION

By: _____

Chair

Date: _____

DECLARATION OF TRUST

THIS DECLARATION OF TRUST, made on November 16, 1997, between ROBERT A. DAY, hereinafter referred to as SETTLOR, and ROBERT A. DAY and ROBERT S. DAY, hereinafter referred to as TRUSTEE, is as follows:

1. NAME. This Trust shall be known as the ROBERT A. DAY LIVING TRUST.

2. TRANSFER OF PROPERTY. The SETTLOR hereby declares that he has transferred to the TRUSTEE the property described in Exhibit "A", attached hereto and by this reference made a part hereof. SETTLOR shall have the right at any time to name the TRUSTEE as beneficiary of life insurance policies and to add to this Trust other property acceptable to the TRUSTEE, which additional property, upon its receipt and acceptance by the TRUSTEE, shall become a part of the trust estate.

3. RECEIPT OF PROPERTY. The TRUSTEE hereby acknowledges receipt of the property set forth in Exhibit "A" and agrees to hold and manage such property and any additions of other property or insurance thereto, in trust for the uses and in the manner herein set forth.

4. DISPOSITIVE PROVISIONS. The principal and income shall be distributed as follows:

a. All income from the trust estate which is available for distribution shall be distributed to or for the benefit of SETTLOR, ROBERT A. DAY, during his lifetime; provided, however, that SETTLOR, at his option, may direct the TRUSTEE in writing to accumulate and add to the principal hereof all or part of such income. If at any time during the lifetime of SETTLOR, he should for any reason be in need of funds for his support, maintenance and care, in accordance with his standard of living, the TRUSTEE shall pay to or apply for his benefit such amounts from the principal of the Trust, up to the whole thereof, as the TRUSTEE may from time to time deem necessary or advisable for the purpose.

b. Upon the death of the SETTLOR, the rest and residue of the trust estate, including any distribution received by the Trust from the estate of the SETTLOR, shall be distributed as follows:

(1) The TRUSTEE shall pay SETTLOR'S last illness and funeral expenses, all federal and state death taxes without apportionment, legal, accounting and TRUSTEES' fees incurred in the administration of the trust, expenses incurred in the administration of SETTLOR'S estate and, at the option of TRUSTEE, such of SETTLOR'S debts and obligations as the TRUSTEE deems advisable.

(2) The entire rest and residue of the trust estate shall be held, managed and distributed as follows:

(a) DISTRIBUTION OF EXEMPTION EQUIVALENT. The TRUSTEE shall distribute to the TRUSTEE of the ROBERT S. DAY LIVING

TRUST created under Declaration of Trust dated November 16, 1997, wherein ROBERT S. DAY is SETTLOR and ROBERT S. DAY is TRUSTEE, an amount equal to the maximum amount which, after application of the unified tax credit under applicable federal estate and gift tax provisions of the Internal Revenue Code, then available, will result in the imposition of no federal estate tax on the Estate of SETTLOR, taking into account the deduction allowable by reason of the gift to the charitable remainder trust hereinafter provided and net value of all other property included in the gross estate of SETTLOR which passed, or has passed, whether under the Will of SETTLOR, by operation of joint tenancy, lifetime gifts, or otherwise, and the value of the Unitrust amount payable to the Recipient of such amount pursuant to the Charitable Remainder Trust created under Paragraph (b), below.

(b) DISTRIBUTION TO CHARITABLE REMAINDER TRUST. The remainder of the Trust estate shall be retained in trust by the successor TRUSTEE hereinafter named, as the Charitable Remainder Trust Trustee ("CRT TRUSTEE") of the ROBERT A. DAY UNITRUST ("CRT"). SETTLOR hereby declares his intention to establish by this gift a charitable remainder unitrust within the meaning of section 7 of Rev. Proc. 90-31 and section 664(d)(2) and (3) of the Internal Revenue Code (hereinafter referred to as "the Code").

(c) PAYMENT OF UNITRUST AMOUNT. In each taxable year of the Trust, the CRT TRUSTEE shall pay to ROBERT S. DAY (hereinafter referred to as "the Recipient") during the Recipient's life a unitrust amount equal to seven (7) percent of

the net fair market value of the trust estate valued as of the first day of each taxable year of the Trust (the "valuation date"). The unitrust amount shall be paid in quarterly installments.

(d) COMPUTATION OF FAIR MARKET VALUE. The CRT Trustee annually shall compute the net fair market value of the trust estate by taking into account all assets and liabilities thereof without regard to whether particular items are taken into account in determining the income of the trust. Net income of the trust shall be determined pursuant to the terms hereof and the provisions of section 643(b) of the Code and the Regulations thereunder. In the event that the net fair market value of the trust estate is determined incorrectly by the CRT Trustee for any taxable year, such Trustee shall pay to the Recipient (in the case of an undervaluation) or shall be repaid by the Recipient (in the case of an overvaluation) an amount equal to the difference between the amount that such Trustee should have paid to the Recipient if the correct value were used and the amount that such Trustee actually paid to the Recipient. Those payments or repayments shall be made within a reasonable period after the final determination of the correct value.

(e) DEFERRAL PROVISION. The obligation to pay the unitrust amount shall commence with the date of SETTLOR'S death, but payment of the unitrust amount may be deferred from such date until the end of the taxable year of the Trust in which occurs the complete funding of the Trust. Within a reasonable time after the end of the taxable year in which the complete funding of the Trust occurs, the CRT TRUSTEE must pay to the Recipient (in the

case of an underpayment) or receive from Recipient (in the case of an overpayment) the difference between: (i) any unitrust amounts actually paid plus interest compounded annually, computed for any period at the rate of interest that the federal income tax regulations under section 664 of the Code prescribe for the Trust for such computation for such period; (ii) the unitrust amounts payable, plus interest compounded annually, computed for any period at the rate of interest that the federal income tax regulations under section 664 prescribe for the Trust for such computation for such period.

(f) PRORATION OF THE UNITRUST AMOUNT. In determining the unitrust amount, the CRT TRUSTEE shall prorate the same on a daily basis for a short taxable year and for the taxable year ending with the Recipient's death.

(g) DISTRIBUTION TO CHARITY. Upon the death of the Recipient, the TRUSTEE shall distribute all of the then principal and income of the Trust (other than any amount due the Recipient or the Recipient's estate under the provisions above) in equal shares to each of the following Charitable Organizations which is at the time of distribution to it of any principal or income of the Trust, an organization described in Section 170 (c) and 2055 (a) of the Internal Revenue Code:

- i) The Sierra Madre Search and Rescue Team;
- ii) The Sierra Madre Volunteer Fire Department;

iii) The Sierra Madre Senior Citizens; and

iv) The Sierra Madre Public Library.

If none of such Charitable Organizations is such an organization, then the CRT TRUSTEE shall distribute such principal and interest of the trust estate to one or more Charitable Organizations which are qualified as such under Sections 170(c) and 2055(a) of the Internal Revenue Code. It is SETTLOR'S desire, but not a requirement, that upon receipt by a Charitable Organization of a gift hereunder, such Charitable Organization set aside such gift in a fund to be known as the ROBERT A. DAY FUND, from which no more that \$25,000 shall be expended in any one calendar year for the operating expenses or capital expenditures of such organization, until such time as the Fund is completely exhausted.

(h) ADDITIONAL CONTRIBUTIONS. No additional contributions shall be made to the Trust after the initial contribution. The initial contribution, however, shall be deemed to consist of all property passing to the Trust by reason of SETTLOR'S death.

(i) PROHIBITED TRANSACTIONS. The CRT TRUSTEE shall make distributions at such time and in such manner as not to subject the Trust to tax under section 4942 of the Code. Except for the payment of the unitrust amount to the Recipient, the CRT TRUSTEE shall not engage in any act of self-dealing, as defined in section 4941(d), and shall not make any taxable expenditures, as defined in section 4945(d). The TRUSTEE shall not make any investments that jeopardize the charitable purpose of the Trust,

within the meaning of section 4944 and the regulations thereunder, or retain any excess business holdings, within the meaning of section 4943(c).

(j) TAXABLE YEAR. The taxable year of the Trust shall be the calendar year.

(k) GOVERNING LAW. The operation of the Trust shall be governed by the laws of the State of California. The CRT TRUSTEE, however, is prohibited from exercising any power of discretion granted under said laws that would be inconsistent with the qualification of the Trust under section 664(d)(2) and (3) of the Code and the corresponding regulations.

(l) LIMITED POWER OF AMENDMENT. The CRT TRUSTEE shall have the power, acting alone, to amend the Trust in any manner required for the sole purpose of ensuring that the Trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of section 664(d)(2) and (3) of the Code.

(m) INVESTMENTS OF TRUST ASSETS. Nothing herein shall be construed to restrict the CRT TRUSTEE from investing the Trust assets in a manner that could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets.

c. Upon any division or distribution of the trust estate, the TRUSTEE is authorized to partition, allot or distribute the trust estate in undivided interests or in kind (or partly in kind) in such proportions thereof as such TRUSTEE shall determine to be most equitable, and the value which said TRUSTEE shall place

upon any property constituting any part of said trust estate for the purpose of effecting any such division or distribution shall be binding upon all persons and conclusive for that purpose. The TRUSTEE may sell such property as it may deem necessary to make such division or distribution and may retain property in the trust pending sale for such period of time as is reasonably required to expose the property to the market and to take into account market conditions prevailing during the period following SETTLOR'S death. Sale for the purpose of division or distribution shall not be construed as limiting in any way the general power of sale hereinafter mentioned.

5. POWERS OF THE TRUSTEE: To carry out the purposes of this Trust and subject to the limitations expressed elsewhere in this Trust, the named TRUSTEE is vested with the following powers and discretion as to the Trust and the trust estate.

a. To continue to hold any property, including stock of a corporate trustee.

b. To operate (at the risk of the trust estate and not of the TRUSTEE) any property or business received in this Trust so long as the TRUSTEE may deem such holding or operating advisable, the profits and losses resulting therefrom to inure to or be chargeable to the trust estate as a whole and not to the TRUSTEE.

c. To manage, control, improve, place, replace, renew or extend any encumbrance upon, grant options on or lease for any purpose (including hydrocarbon and other mineral exploration and extraction) on any term (whether or not extending beyond the

duration of the Trust); partition, divide, subdivide, create restrictions, easements and other servitude respecting, sell (with or without deferred payments); convey or exchange any or all of the property in the trust estate.

d. To hold securities, or bank or savings accounts or other property, in the name of the TRUSTEE, or in the name of its nominee, to deliver or authorize custody of securities to such nominee (with or without the disclosure of this Trust), at all times being responsible for the acts of such nominee affecting such property.

e. To borrow money for any trust purpose, upon such terms and conditions as the TRUSTEE may deem proper and to obligate the trust estate for repayment; to encumber the trust estate or any of its property by mortgage, deed of trust, pledge or otherwise, using such procedure to consummate the transaction as the TRUSTEE may deem advisable.

f. To lend funds to this trust estate for any trust purpose, such advances with interest at current rates to be a first lien on and to be repaid out of the principal or income, and to reimburse itself from principal or income for any loss or expense incurred by reason of the ownership or holding of any property in this Trust.

g. To invest and reinvest the principal, and income if accumulated; to purchase or acquire therewith every kind of property (real, personal or mixed) and every kind of investment (specifically including, but not by way of limitation, corporate obligations of every kind, common and preferred stocks, warrants,

puts, calls, and other types of options on securities, shares of investment trusts, investment companies, mutual funds, mortgage participation, notes secured by deed of trust, interests in general and limited partnerships), to open and maintain margin accounts, or to invest in any common or commingled trust fund or funds now or hereafter established by a corporate trustee, and operated under the control of said TRUSTEE solely for the investment of trust funds, all in a manner conforming with then existing law.

h. To have, respecting securities, all the rights, powers, and privileges of an owner, including without limiting the foregoing, the powers: (1) to give proxies and to pay calls, assessments, and other sums deemed by the TRUSTEE necessary for the protection of the trust estate; (2) to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and in connection therewith to deposit securities with and transfer title to any protective or other committee under such terms as the TRUSTEE may deem advisable; (3) to exercise or sell stock subscription, stock option or conversion rights; and (4) to accept and retain as an investment, regardless of any limitations elsewhere in this instrument relative to investments by the TRUSTEE, any securities or other property received through the exercise of any of the foregoing powers.

i. To compromise, arbitrate or otherwise adjust claims and to institute, compromise and defend actions and proceedings in favor of or against the trust estate; to maintain or institute foreclosure proceedings in any manner provided by law and, in the

TRUSTEE'S discretion, to purchase any property subject to such proceedings.

j. To carry such insurance as the TRUSTEE may deem advisable, including insurance insuring the life of any beneficiary of this Trust.

k. To appoint any person or entity to act on behalf of the TRUSTEE under a power of attorney, either general or limited, at all times being responsible for the acts of such attorney.

l. Notwithstanding anything in this document to the contrary, if at any time there are two TRUSTEES appointed as CO-TRUSTEES, either TRUSTEE, acting alone, can make deposits in or withdrawals from any trust financial institution or brokerage account, execute conveyances or assignments of trust assets or interests, and exercise any other power granted hereunder; any person involved in any transaction with the Trust can rely on the authority of either TRUSTEE acting alone to bind the Trust.

m. During the lifetime of SETTLOR, the TRUSTEE shall consult with SETTLOR concerning the purchase and sale of trust assets pursuant to this paragraph. Notwithstanding such duty of consultation, the TRUSTEE'S decisions respecting such purchase and sale shall be final.

n. Unless specifically limited, all discretions conferred upon the TRUSTEE shall be absolute, and the exercise or non-exercise thereof shall be conclusive on all persons interested in these trusts. The enumeration of certain powers of the TRUSTEE shall not limit its general powers, the TRUSTEE being vested with and having all the rights, powers and privileges which an absolute

owner of the same property would have (subject to the discharge of the fiduciary obligations of such TRUSTEE).

6. GENERAL PROVISIONS.

a. No interest of any beneficiary in the principal or income of this Trust and no part of any such interest shall under any circumstances be subject to the claims of his or her creditors or others nor to any legal or equitable process, and the same may not be voluntarily or involuntarily alienated, encumbered or in any way subjected to anticipation except as expressly provided in this Trust. The TRUSTEE, however, may deposit income or principal payable to the beneficiary to his or her credit in any bank designated in writing by that beneficiary.

b. Until the TRUSTEE shall receive written notice of any birth, any marriage, any death, or the occurrence of any other event upon which the right to payments from these trusts may depend, the TRUSTEE shall incur no liability to persons whose interest may have been affected by that event for disbursements made in good faith; but nothing herein contained shall limit or affect the liability of any persons receiving any such disbursements to deliver or pay the same to the person entitled thereto under the provisions hereof.

c. The TRUSTEE may make payments to any beneficiary under disability by making such payment to the guardian or guardians of the person or of the estate of such beneficiary, or, if such beneficiary is a minor, to his or her parents or either of them, to the guardian or guardians of his or her person or estate,

or directly to such minor. Payments to any beneficiary under disability may also be applied by the TRUSTEE for the benefit of such beneficiary. All such payments shall be a full discharge to the TRUSTEE therefor.

d. Except as otherwise specifically provided in this Trust, the determination of all matters with respect to what is principal and income of this trust estate and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Act from time to time existing. Any such matter not provided for whether in this Trust or in the Revised Principal and Income Act shall be determined by the TRUSTEE in the TRUSTEE'S absolute discretion.

e. The TRUSTEE shall be entitled to a reasonable compensation for its services hereunder which shall be based upon the prevailing charges of corporate trustees for the administration of comparable assets in the community in which such TRUSTEE is located.

f. Following the death of SETTLOR, the TRUSTEE shall render, at least annually, to each beneficiary then entitled to benefits under the terms of the Trust, an annual accounting which shall be in substantial conformity with the requirements for trust accounting under the applicable provisions of the California Probate Code.

g. Except as otherwise provided in this instrument, SETTLOR has intentionally and with knowledge omitted to provide for his heirs.

If any beneficiary under this trust, or any person who is or claims to be any heir of SETTLOR, singly or in conjunction with any other person or persons, contests in any court the validity of this trust or of SETTLOR'S last will or seeks to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that such will or any of its provisions is void, or seeks otherwise to void, nullify, or set aside this trust or any of its provisions, then that person's right to take any interest given to him or her by this trust, by SETTLOR'S will or by intestate succession shall be determined as it would have been determined if the person had predeceased the execution of this Declaration of Trust without surviving issue. The provisions of this paragraph shall not apply to any disclaimer of any person of any benefit under this trust or under any will.

The TRUSTEE is hereby authorized to defend, at the expense of the trust estate, any contest or other attack of any nature on this trust or any of its provisions.

7. SUCCESSOR TRUSTEE. Any TRUSTEE shall have the right to resign as TRUSTEE at any time. Should either original TRUSTEE resign or cease for any reason to serve as TRUSTEE, the other original TRUSTEE shall serve as sole TRUSTEE. Should both original TRUSTEES resign or for any reason cease to serve as TRUSTEES, BANK OF AMERICA NT & SA (including any successor of said Bank, whether by merger, transfer, consolidation or otherwise) shall serve as TRUSTEE. All authority and powers, including discretionary powers, conferred upon the original TRUSTEE shall pass to the successor

TRUSTEE. No TRUSTEE shall be required to furnish bond. Any successor TRUSTEE shall have no responsibility for the acts or omissions of a predecessor TRUSTEE while acting as TRUSTEE, nor shall any successor TRUSTEE have any duty to obtain redress for any breach of trust which the predecessor TRUSTEE may have committed.

A TRUSTEE shall be removed as TRUSTEE upon the agreement of a successor TRUSTEE or CO-TRUSTEES to serve as TRUSTEE or CO-TRUSTEES if, in the opinion of the physician who is then attending such presently serving TRUSTEE, he or she is (1) unable to properly provide for his or her personal needs, (2) substantially unable to perform his or her duties as TRUSTEE, (3) substantially unable to manage his or her personal financial affairs, or (4) otherwise incompetent. Such physician shall incur no liability to any person, Trust, or estate by reason of his opinion concerning the competency of the TRUSTEE, and the Trust shall hold such physician harmless from all claims, costs and damages, including reasonable attorneys' fees, arising by reason of such physician's opinion.

8. REVOCATION AND OTHER RESERVED RIGHTS. At any time prior to the death of SETTLOR, by written notice to the TRUSTEE, SETTLOR may change any beneficiary or alter any provision of the Trust, and SETTLOR may revoke this Trust (in whole or in part) or withdraw all or any part of the principal or income of the trust estate. Upon the death of the SETTLOR, this Trust and the trusts created shall be irrevocable.

9. MISCELLANEOUS. This Trust is entered into in the State of California and shall be interpreted and controlled by the laws of that State. For all purposes under this Declaration of Trust, adopted children shall be treated as being the natural children of their adoptive parents. Persons dying within four (4) months after the death of SETTLOR shall be treated as having predeceased SETTLOR.

IN WITNESS WHEREOF, I have hereunto set my hand, in the capacities first above designated, on the date first above written.

SETTLOR:

Robert A. Day
ROBERT A. DAY

TRUSTEE:

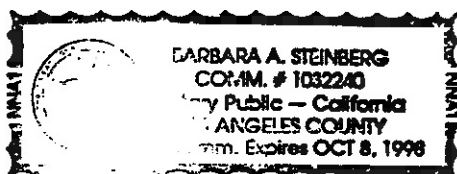
Robert A. Day
ROBERT A. DAY

Robert S. Day
ROBERT S. DAY

State of California)
)
County of Los Angeles)

On November 16, 1997, before me, the undersigned Notary Public, personally appeared ROBERT A. DAY and ROBERT S. DAY, ~~personally known to me~~ - OR - proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.



Barbara A. Steinberg
SIGNATURE OF NOTARY

EXHIBIT "A"

1. Real property located at 609 Miraposa Avenue, Sierra Madre, California 91024.
2. Account at SmithBarney, 10960 Wilshire Boulevard, Los Angeles, California 90024.

EXHIBIT "A"



Library Board of Trustees

Rich Procter, Chair
Rod Spears, Vice-Chair
Patricia Hall, Trustee
Shannon King, Trustee
Barry Ziff, Trustee

SIERRA MADRE PUBLIC LIBRARY AGENDA REPORT

Library Site Plan

To: Library Board of Trustees

From: Christine Smart, City Librarian
Gabriel Engeland, City Manager

Date: August 26th, 2020

STAFF RECOMMENDATION

Staff recommends the Library Board of Trustees discuss, narrow options, review with stakeholders, and provide direction among the alternatives at the September 9 meeting.

ALTERNATIVES

1. The Library Board of Trustees may determine it is in the best interest of the Library to raze the current building and construct a new building. The design put forward recently is estimated to cost \$17 million and require a 40 year bond. In order to fund the construction voters would have to approve a property tax increase. This vote could take place at any future regularly scheduled municipal election. In order to qualify for the ballot signatures would need to be gathered from Sierra Madre residents in numbers sufficient to qualify.
2. The Library Board of Trustees may determine is in the best interest of the Library to repair and expand the current building. The estimate to repair and expand the current building, and improve the vacant lot, is estimated to be \$5 million +/- . In order to fund the expansion, including improvement to the Library and the vacant lot adjacent to the Library building, voters would have to approve a property tax increase. This vote could take place at any future regularly scheduled municipal election. In order to qualify for the ballot signatures would need to be gathered from Sierra Madre residents in numbers sufficient to qualify.
3. The Library Board of Trustees may determine is in the best interest of the Library to repair and the current building and improve the adjacent vacant lot. The estimate to repair the current building, and improve the vacant lot, is estimated to be \$2.5-\$3.5 million +/- . In order to fund these improvements, the Library Board of Trustees would

need to plan for budget appropriations annually over 2-6 years +/- . An increase in property taxes is not needed for this option. Additional fundraising through private organizations may be needed.

4. The Library Board of Trustees may determine is in the best interest of the Library to repair the current building. The estimate to repair the current building, including all ADA, electrical, seismic, wiring, and other deficiencies, is estimated to be \$1.2 - \$2 million +/- . In order to fund the repair, the Library Board of Trustees would need to plan for budget appropriations annually over 2-3 years +/- . An increase in property taxes is not needed for this option.
5. Provide other direction not listed as an alternative.

SUMMARY

The Library Board of Trustees has completed numerous studies and plans with regards to the current Library Building. To date, a formal recommendation has not been made to the City Council on what the Trustees believe to be the best and most viable path forward for the Library.

At the June 23, 2020 Council meeting, the City Council asked the Board of Trustees to formally determine if the vacant lot adjacent to the Library building would be used by the Library or could be included as a potential site for low income housing as mandated by the State's Regional Housing Needs Assessment (RHNA) laws.

In preparation for this discussion, staff identified a number of alternatives for use of the vacant lot should the Library Board of Trustees recommend the property be included in planning for Library services as part of an overall Library campus. Proposed development plans for temporary improvements include a covered stage with lighting, sound amplification, seating, all including ADA components, to accommodate outdoor Library programming.

If permanent improvements are to be considered a decision on the scope of changes to the current building and timeframe, will determine when and how to proceed. Permanent proposed improvements include the development of a Library Park which would utilize the current and the vacant parcel to develop Library programming, an amphitheater, outdoor seating, park space, bench space, and internet.

Staff has also prepared an analysis to include the vacant lot as a potential site for low-income housing to be included in the upcoming housing element.

Prior to determining how much, if any, money should be invested into the Library campus idea, the City Council needs a recommendation on when, and if, the Library Board of Trustees believes a property tax for expansion of the current building, or construction of a new building, is feasible. Without having a recommendation to include scale of plans and timeframe, the City Council cannot commit funds to improve the current vacant lot beyond temporary improvements, as outlined above. Staff recommends the Library Board of Trustees review this report and provide direction to staff from four proposed options.