Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: February 11, 2014
TO: Scott Chadwick, Chief Operating Officer
FROM: City Attorney
SUBJECT: Effect of Restrictive Language Contained in the Grant Deed for the Old Central Library Property

INTRODUCTION

As part of consulting services being provided by Civic San Diego (Civic) to the City of San Diego, Civic is examining reuse of the now vacated Central Library building located at 820 E Street in downtown San Diego. In that context, the question has arisen of whether certain language in the deed conveying the property to the City limits the use of the property.

QUESTION PRESENTED

Does the restrictive language contained in the 1899 deed conveying the property at 820 E Street to the City of San Diego for a public library restrict the City’s use of the property for that purpose in perpetuity?

SHORT ANSWER

No. The language in the habendum clause of the 1899 deed stating that the City shall have the property “as a site for a building for a public library and reading-room” is directory language indicating the intent of the parties at the time, and does not create a condition subsequent or right of termination. At most, the language creates a covenant that the City fulfilled by using the site for a public library building for over 100 years.

BACKGROUND

On December 29, 1899, George W. Marston, a prominent businessman in San Diego at the time, sold the City one-half of a city block in Horton’s Addition for $17,000 (the Property). The City had recently received a $50,000 grant from Andrew Carnegie for the construction and furnishing of a public library, and was looking to acquire suitable property for its construction. Earlier in December 1899, Mr. Marston assembled the Property by purchasing two blocks from Alice W. and George W. Hazzard for $4,750, one block from J.P. and Mary A. Christensen for $2,250,
and another three blocks from the Hazzards for $10,000, for a total investment of $17,000.¹ Two weeks later, George W. and Anna L. Marston sold the property to the City for the same amount.² The Marston Deed grants the Property to the City “forever” in exchange for $17,000. This granting clause does not reference any conditions on or purpose for the grant. After the granting clause is the property description, and then this habendum³ clause:

To Have and to Hold, all and singular, the said premises, together with the appurtenances, (except as above stated), unto the said party of the second part, its successors and assigns forever, for the public use as a site for a building for a public library and reading-room.

The City opened the Carnegie library in 1902 and operated it until 1952. At that time the City constructed a new library on the same site, opening in 1954. The City operated the Central Library on the Property until 2013 when the City opened a new library building at Park Boulevard and 11th Avenue. The City now seeks to use the Property at 820 E Street for a different purpose.

ANALYSIS

Restrictive language in a deed is interpreted based upon the manner in which the property was acquired and the intent of the parties. Such language can be a condition subsequent subject to a right of forfeiture, a covenant or contractual promise, or directory language reflecting the intent of the parties. Language in a deed stating that property shall be used for a specific purpose is viewed differently depending on whether the property was contributed for public use (i.e., dedicated) or acquired by purchase, and whether the deed contains forfeiture language. (See authorities cited below.)

I. The Library Property Was Acquired by Purchase, Not Dedication

Generally, property that is dedicated to public use must be used for the purpose stated. 26 Cal. Jur. 3d Dedication § 5 (2008). For a “dedication” of private property to a public use, the property is contributed without compensation to the owner, often for a specific purpose, and accepted by the public entity for that purpose. Id. §§ 1, 14. When a dedication is made “for a specified, limited, and definite purpose, the subject of the grant cannot be used for another and different purpose.” Id. § 17 (citing Roberts v. City of Palos Verdes Estates, 93 Cal. App. 2d 545

¹ See grant deeds from Alice W. Hazzard et al. to George W. Marston dated December 12, 1899 (Hazzard Deeds), attached hereto as Attachments 2 and 3; and grant deed from J. P. Christensen et al. to George W. Marston dated December 13, 1899 (Christensen Deed), attached hereto as Attachment 4.
² See grant deed from George W. Marston et al. to City of San Diego dated December 29, 1899 (Marston Deed), attached hereto as Attachment 1.
³ While a granting clause typically contains the words that transfer an interest, and specifies the rights transferred, a habendum clause defines the extent of the interest being granted and any conditions affecting the grant, such as an estate granted for a limited period of time. Black’s Law Dictionary 769, 778-79 (9th ed. 2009); 3 Miller & Starr, Cal. Real Estate § 8:2 (3d. Ed. 2013).
(1949)); see also, 10 Cal. Real Estate § 26:28 (Miller & Starr 3d ed. 2013). A dedication resembles both a grant and a gift and is distinguishable from the acquisition of land by purchase. 26 Cal. Jur. 3d Dedication § 1 (2008).

In this instance, the City did not acquire the Property through dedication. The City paid the Marstons $17,000 for the Property. (See Marston Deed; and Ordinance No. 687, Approving Site for Carnegie Library, dated December 27, 1899 (Ordinance), attached hereto as Attachment 5.) The amount paid to the Marstons for the Property was the same amount the Marstons paid to acquire the Property from other private parties. (See Hazzard Deeds and Christensen Deed.) The Marstons were fully compensated for the property, and accordingly, the property was acquired by purchase and not by dedication. For that reason, the restrictions that typically apply to a public entity’s use of dedicated property do not apply here.

II. The Restrictive Language in the Deed Did Not Create a Condition Subsequent or Right of Termination

A condition subsequent in a deed is a qualification, restriction, or limitation on the conveyance that terminates the estate granted if the condition occurs. 26 Cal. Jur. 3d Deeds § 209 (2008). Because the consequence is so extreme, the law strictly construes conditions. Id. § 210. Restrictive language in a deed will not be construed as a condition if another reasonable interpretation applies. Id. (citing, inter alia, Fitzgerald v. Cnty. of Modoc, 164 Cal. 493 (1913); and Savanna Sch. Dist. of Orange Cnty. v. McLeod, 137 Cal. App. 2d 491 (1955)).

Generally, the courts will not find that restrictive language in a deed rises to the level of a condition subsequent unless the deed includes language providing for termination in the event that the condition is breached. 26 Cal. Jur. 3d Deeds § 223 (2008). A forfeiture will not be applied unless the language of the deed expressly and unmistakably provides for it. Id. § 210; Walton v. City of Red Bluff, 2 Cal. App. 4th 117, 124 (1991).

In Fitzgerald, the plaintiff conveyed land to Modoc County by deed that included, after the property description, the following language: “To be used as and for a county high school ground and premises, for the [C]ounty of Modoc, [S]tate of California.” 164 Cal. at 494-95. The court found that this language is not sufficient to create a condition subsequent because a condition subsequent can be “created only by apt and appropriate language which ex proprio vigore establishes that only a conditional estate was conveyed . . . .” Id. at 495. Further, “the apt and appropriate words evidencing that the grant is on condition subsequent are found in a provision for forfeiture and right of re-entry.” Id. Since the deed did not contain right of forfeiture language, the clause could not be a condition subsequent:

Under no decision of this or any other court, within our knowledge, has language such as is here used ever been construed to create a condition subsequent. At the least it is but a declaration of the purpose for which the grantor expected the land would be used. At the most it is but a covenant.
Id.

By comparison, in Walton, the city was granted property via two deeds “for the uses and purposes of a public library.” 2 Cal. App. 4th at 123. Both deeds contained the same restrictions on use and forfeiture clauses:

If the property herein conveyed shall at any time, be abandoned by the said Town of Red Bluff, or if the said property shall cease to be used, for library purposes, by said Town, or shall be put to [any] use other [than] the uses and purposes, herein specifically referred to . . . then the grant and conveyance herein made shall cease and terminate, and the title to the said property and all the improvements thereon shall at once revert to the party of the first part or to her heirs or assigns.

Id. As the city no longer used the property for library purposes, the court held that the city had violated the express condition of the grant, and the property should be returned to the grantors. Id. at 134.

Like the language in the deed in Fitzgerald, the language in the Marston Deed is not sufficient to create a condition subsequent. It states the purpose of the land transfer (to provide a site for a public library building) but does not include language indicating that the grant would terminate if the property is not used for library purposes. “[T]he grantor did no more than to indicate his purpose in making the deed and the use to which he expected the land to be put.” Fitzgerald, 164 Cal. at 497; see also Eldridge v. See Yup Co., 17 Cal. 44 (1860) (overruled on other grounds by Willard v. First Church of Christ, Scientist, 7 Cal. 3d 473 (1972)) (language in habendum clause stating that property is for use of a Chinese church was merely direction with no effect on the title).

III. At Most, the Language in the Deed Creates a Covenant that Has Been Fulfilled

A. Language That is Not Sufficient to Form a Condition May Create a Covenant

Restrictive language in a deed that does not create a condition may be sufficient to create a covenant. Fitzgerald, 164 Cal. 493. A covenant is in the nature of a contractual promise; it is an agreement between the parties to do or not do certain things in regard to the use of the land. 26 Cal. Jur. 3d Deeds § 236 (2008). A violation of a covenant has no validity on the effect of the title, but may give rise to an action for damages or injunctive relief. Id. A covenant may also create a trust relationship and an obligation to use the premises for the purpose stated in the deed. Id; Marshall v. Standard Oil Co. of Cal., 17 Cal. App. 2d 19, 24 (1936).

The court in Marshall found that a trust was created where the deed stated that the land being conveyed was to be used for street purposes, but then also stated:
Reserving and Providing, however, that the land herein conveyed is to be used exclusively for street purposes, said street to be known as Ocean Avenue, and the grantor reserves unto itself or its assigns the right to use said land for water, sewer, or gas pipes, telephone and electric lines and poles, railroads, conduits, or any other public utility.

17 Cal. App. 2d at 521 (emphasis added).

The court distinguished the importance of this language, found in the granting clause, from cases where the language is found in the habendum clause. In the habendum clause, such purpose language “does not debase the fee, or whatever interest is conveyed in the granting clause.” Id. at 522. In contrast, placing the restriction in the granting clause indicated the intent of the grantor to convey the right to use the property for a specific purpose. Id. Moreover, use of the word “exclusively” and the city’s acceptance of the deed, showed “the acceptance of the trust therein imposed to use the property for an exclusive purpose.” Id. at 522-23. Also important to the court’s finding of a covenant was the fact that the grantor, an oil company, owned the property on either side of the strip of land being conveyed, and oil extraction on the conveyed land would affect the grantor’s interests. Id. at 524-25. The city’s lease of the property for oil extraction was a breach of that trust.

It is clear from the language of the Marston Deed and the circumstances surrounding it, that the Marstones and the City intended that the Property be used as the site to build the new Carnegie library. It does not appear, however, that the parties intended to impose a trust for that purpose. The purpose language consists of one phrase tacked onto the end of the typical habendum clause; it is not included in the granting clause or repeated elsewhere. The language does not include words mandating use of the property for a library, or words of exclusivity for that purpose. And, unlike Marshall where the land was conveyed for the nominal sum of ten dollars (17 Cal. App. 2d at 521), the transaction here was apparently at market value with no apparent consideration supporting restricted use of the property. Likewise, and also unlike Marshall, there does not appear to be any benefit running to the Marstones by virtue of continued or limited use of the Property for library purposes. 17 Cal. App. 2d 19; see also later-enacted Cal. Civ. Code § 1468 (requiring that an express benefit inure to the grantor’s own property for a covenant to run with the land).

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4 The Resolution of the Board of Trustees of San Diego Library, dated Dec. 30, 1899, attached hereto as Attachment 6, and the Ordinance of the City’s Common Council authorizing purchase of the Property show that the City raised the funds to purchase the Property by selling other property in Horton’s Addition for $9000 and actively fundraising (through the Carnegie Library Site Subscription Committee) for the remaining $8000. See Report of the Carnegie Library Site Subscription Committee, dated Mar. 18, 1901, attached hereto as Attachment 7. Note that “Geo. W. Marston” gave a $1000 donation as part of the “subscription” drive for the library site, and did not seek to use that donation as consideration for a condition through the grant deed. Id.
B. If a Covenant Was Created, the City Has Fulfilled It

If the language in the Marston Deed created a covenant, the next question is whether the City is in breach of or has satisfied the covenant to use the Property “as a site for a building for a public library and reading-room.” Id. In interpreting the language contained in deeds, the usual rules of contract construction apply. 26 Cal. Jur. 3d Deeds § 157 (2008). There is no need to reference these rules, however, when the language is clear and unambiguous on the face of the document. Id. ("[A]rbitrary rules of construction are not to be invoked when the intention of the parties can be plainly discovered without their aid..." Id.)

In Savanna, the 1904 deed in question conveyed property for “public school purposes only” and “as a consideration for th[e] conveyance” the grantee “shall build and maintain a public school building on said land...” 137 Cal. App. 2d at 492. The deed also contained a right of reversion in the event that the grantee failed to do so. Id. The school district built and maintained a school until 1931, and then another on the same site until 1949, at which time the building was abandoned as unsafe. The trial court found that the use of the property for a high school for 45 years “constituted a full performance...of all the terms and provisions of the questioned deed...” Id. at 496.

The Savanna court cited the rationale used by the court in Hasman v. Elk Grove Union High Sch., 76 Cal. App. 629 (1926), that “to maintain” does not necessarily mean to keep it going forever. 137 Cal. App. 2d at 495. Thus, the deed was satisfied when the school district in good faith, built and operated a school on the property for 29 years until it was necessary to change the location. Id.

In both Savanna and Hasman, the courts strictly construed the language of the deeds in favor of the grantee and to avoid forfeiture under the right of reversion, an issue that does not exist here. Nonetheless, it is useful to compare the more explicit language contained in the Savanna and Hasman deeds (“for public school purposes only...as a consideration for this conveyance...shall build and maintain,...said land shall revert...upon a failure...to erect and maintain...” (Savanna, 137 Cal. App. 2d at 492) and “for the purpose of maintaining thereon a high school, otherwise the...property shall revert” (Id. at 494) with the language in the Marston Deed (“for the public use as a site for a building for a public library and reading-room”). Based on the plain language of the Marston Deed, the parties intended the Property be used as the site for construction of a library. The language does not require that the Property be used for that purpose forever, or restrict the City from changing that use in the future.

The circumstances at the time of the conveyance support this plain language reading of the Marston Deed. Newspaper accounts from the time relate that the City had received a cash grant from Andrew Carnegie to be used for construction of a public library, but not for acquisition of the property. See newspaper clippings from 1899 – 1901, attached hereto as Attachment 8, available from the California Digital Newspaper Collection, Center for Bibliographic Studies and Research, University of California, Riverside, at http://cdnc.ucr.edu, and from the San Diego Union. The City was actively looking for a site. Id. The sale of the Property to the City met that immediate need, and the City built and maintained the intended Carnegie Library on the Property...
for 50 years, and then built and maintained another library on the Property. Together, the City maintained a library on the Property for over 100 years.

Based on these facts, even if the language in the Marston Deed created a covenant, the City fully satisfied the covenant when it built the Carnegie library on the Property, as intended by the parties.

CONCLUSION

The City’s Property at 820 E Street was purchased by the City from the Marstons for the purpose of building a public library. The language contained in the Marston Deed, “for the public use as a site for a building for a public library and reading-room,” reflects the City’s intent to acquire property for the construction of a library, and the Marstons’ intent to sell property to the City for that purpose. This statement of purpose does not, however, create a condition subsequent or include a right of forfeiture. It also does not appear to create a contractual covenant. However, even if it did, that covenant was fulfilled when the City built the intended Carnegie library on the Property. The City is not legally required to continue to use the Property as a site for a public library and reading-room.

JAN I. GOLDSMITH, CITY ATTORNEY

By

Carrie L. Gleeson
Deputy City Attorney

CLG:jdf
Attachments:
Marston Deed
Transcription of Marston Deed
Hazzard Deeds
Christenson Deed
Ordinance of the Common Council
Resolution of the Board of Trustees
Report of the Carnegie Library Site Subscription Committee
Newspaper clippings
cc: Deborah Barrow, Director, San Diego Public Library
Jim Barwick, Director, Real Estate Assets
Bill Fulton, Director, Planning Neighborhoods & Economic Development
Ron Villa, Deputy Chief Operating Officer
THIS INDENTURE, made the 28th day of December in the
year of our Lord, one thousand eight hundred and ninety-nine,
between George W. Harston and Anna L. Harston, his wife, re-

didents of the city of San Diego, county of San Diego, State of California, the parties of the first part, and the City of San
Diego, a municipal corporation situated in the county of San
Diego, State of California, and organized and existing under
and by virtue of the laws of the State of California, party of
the second part, WITNESSETH:

That the said parties of the first part for and in con-
cideration of the sum of seventeen thousand dollars ($17,000.00)
and costs of the United States of America, to them in hand paid
by the said party of the second part, the receipt whereof is
hereby acknowledged, do by these presents grant, bargain and
sell, convey and assure unto the said party of the second part,
its successors and assigns forever, all those certain lots,
pieces and parcels of land situated in the City of San Diego,
County of San Diego, State of California, and described as fol-
lores, to wit:

Being Lots lettered "B", "C", "D", "E", "F", and "G", in
Block number forty-seven (47) of Horton's Addition to the
said City of San Diego, being the south one-half (1/2) of
said block, according to the official map of said Horton's Addi-
tion, as by L. L. Rockland, and filed for record in the
office of the County Recorder of the said County of San
Diego, on the 31st day of July, 1871, at the request of
A. E. Horton; together with all and singular the tenements,
hereditaments, and appurtenances thereto belonging, or in any-
wise appertaining, (except the buildings and improvements on
said premises), and the reversion and reversions, remainder and
remnants, rents, issues and profits thereof.
TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances, (except as above stated), unto the said party of the second part, its successors and assigns forever, for the public use as a site for a building for a public library and reading-room.

And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons, whosoever, lawfully claiming, or to claim the same, shall and will warrant, and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereto set their hands and seals the day and year first above written.

[Signature]

[Signature]
ACKNOWLEDGMENT.

STATE OF CALIFORNIA,  )
COUNTY OF SAN DIEGO.  ) s.

On this 26 day of December,
in the year 1899, before me,  

a Notary Public in and for the said county of San Diego, re-
siding therein, duly commissioned and sworn, personally ap-
peared George W. Marston and Anna L. Marston, his wife,
known to me to be the persons whose names are subscribed to
the within instrument, and acknowledged to me that they exe-
cuted the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
notarial seal at my office in the said County of San Diego,
State of California, the day and year first above written.

Notary Public in and for the county
of San Diego, State of California.
State of California,  
County of San Diego.

On this 12th day of December, A.D. Eighteen hundred Ninety-nine, before me, [Notary Public], a Notary Public, in and for said County, residing therein, duly commissioned and sworn, personally appeared Alice W. Hazard and George W. Hazard, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my seal, at my office, in County of San Diego, State of California, the day and year in this Certificate first above written.

[Signature]

Notary Public in and for the County of San Diego, State of California.

[Stamp]
We, Alice W. Hazzard and George H. Hazzard, husband and wife of
San Diego, California,

For and in consideration of the sum of Four Thousand Seven Hundred
and Fifty ($4,750.00) Dollars,

Do hereby Grant to George W. Harsten,

of the same place,

All that Real Property Situated in the City of San Diego
County of San Diego, State of California, bounded and described as follows:

Lots E and F in Block Forty-seven (47) of Horton's Addition
to San Diego, according to the map thereof filed in the
County Recorder's office of said County, excepting, and reser-
vining therefrom, all the buildings and improvements on said
lots or on any of them; and the said grantees do hereby
except and reserve from this conveyance and grant and the terms
thereof, all the improvements now upon said above described
real property, or upon any part thereof,

To have and to hold the above granted and described premises, unto the said
Grantee his heirs and assigns forever,

Witness our hand this 17th day of December 1899

Signed and Executed in presence of

[Seals]
State of California, County of San Diego.

On this 12th day of December A. D. Eighteen Hundred Ninety-nine, before me, a Notary Public, in and for said County, residing therein, duly commissioned and sworn, personally appeared Alice W. Haskell and George F. Haskell, husband and wife.

I, the above-named Notary Public, being well and duly authorized and sworn, do hereby certify that the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in County of San Diego, State of California, the day and year in this Certificate first above written.

[Signature]
Notary Public in and for the County of San Diego, State of California.
We, Alice W. Hazzard and George W. Hazzard, husband and wife of
San Diego, California,

For and in consideration of the sum of Ten Thousand ($10,000.00) Dollars,

Do hereby Grant to George W. Hazzard

of the same place.

All that Real Property Situated in the City of San Diego,
County of San Diego, State of California, bounded and described as follows:
Lots C, D, and E in Block Forty-seven (47) of Horton's Addition to San Diego, according to the map thereof filed in the County Recorder's office of said County, excepting and reserving therefrom, all the buildings and improvements on said lots or on any of them; and the said grantees do hereby except and reserve from this conveyance and grant and the terms thereof, all the improvements now upon said above described real property, or on any part thereof.

To have and to hold the above granted and described premises, unto the said Grantee his heirs and assigns forever,

Witness our hands this 12th day of December, 1880.

Signed and Executed in presence of

Alice W. Hazzard
George W. Hazzard
State of California, ss.
COUNTY OF SAN DIEGO.

On this 13th day of December, in the year one thousand eight hundred and ninety-nine before me, Chris. U. Bell, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared

J. P. Christensen and Mary A. Christensen, his wife

known to me to be the persons whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in San Diego, County of San Diego, State of California, the day and year in this certificate first above written.

Notary Public in and for the County of San Diego, State of California.
We, J. P. Christensen and Mary A. Christensen, his wife, of San Diego, California.

For and in consideration of the sum of

Two thousand two hundred and fifty DOLLARS,

Do hereby grant to George W. Marston of the same place

All that real property situated in the City of San Diego,

County of San Diego, State of California, bounded and described as follows: Lot "P" in Block Forty seven (47) of Horton's Addition to San Diego, according to the official map thereof on file in the office of the County Recorder of said San Diego County

To have and to hold the above granted and described premises, unto the said Grantee

his heirs and assigns forever.

Witness our hand and seal this 13th day of December, 1899

Signed and executed in the presence of

J. P. Christensen

Mary A. Christensen
AN ORDINANCE APPROVING THE SELECTION OF A SITE FOR A BUILDING FOR A PUBLIC LIBRARY AND READING ROOM; AUTHORIZING THE PURCHASE OF LAND FOR SUCH SITE; APPROPRIATING MONEY FOR THE PURCHASE OF SUCH LAND; AND AUTHORIZING THE BOARD OF LIBRARY TRUSTEES OF SAID CITY TO ADVERTISE FOR BIDS AND LET A CONTRACT FOR THE PURCHASING OF PLANS AND SPECIFICATIONS FOR A BUILDING FOR SUCH PURPOSE.

WHEREAS, there is now a free public library and reading room in the City of San Diego, California, organized and existing under and by virtue of an Act of the Legislature of the State of California, entitled, "An Act to establish free "public libraries and reading rooms", approved April 26th, 1880, (Statutes of 1880, page 231); and,

WHEREAS, said free public library and reading room now consists of several thousand volumes of valuable books, magazines and publications; and,

WHEREAS, Hon. Andrew Carnegie has offered to donate and give to the said City of San Diego the sum of $50,000.00, and the said City is about to acquire from the said Hon. Andrew Carnegie the sum of $50,000.00 by gift for the purpose of erecting and equipping a building for such library and reading room; and,

WHEREAS, the said Act of the Legislature of the State of California provides that said Board of Library Trustees shall have the power, with the consent and approval of the legislative authority of the said City of San Diego, California, to purchase real estate and erect and equip such a building for such library and reading room; and,

WHEREAS, the said Council of the said City of San Diego has acquired within the sum of $5000.00 by and
From the sale of the South half of lot lettered "p" in Block 10 of Horton's Addition to the said City of San Diego, which sum of $9,000.00 has been placed in the "Library Fund" of said City and to the credit of the said "Library Fund" to be used for the purpose of purchasing real estate for the public use of erecting thereon a public building for a free public library and reading room in said City; and,

WHEREAS, the said Board of Library Trustees are authorized by the said Act of the legislature to select a site for a building for such public library and reading room, with the consent and approval of the Common Council of the City of San Diego; and,

WHEREAS, the said Board of Library Trustees has selected as such site for such building the following described real property, situated, lying and being in the City of San Diego, County of San Diego, State of California, and more particularly described as follows, to-wit: Being lots lettered "m", "m", "m", "m", "m", and "m" in Block numbered Forty-seven (47) of Horton's Addition to the said City of San Diego according to the official map thereof on file in the office of the County Recorder of the said County of San Diego, State of California; and,

WHEREAS, said Common Council, being the Legislative branch and authority of the said City of San Diego, is desirous of approving the site so selected by the said Board of Library Trustees for said building, and to give its consent and approval, and to authorize the said Board of Library Trustees to purchase said real property above described for a site for such building and to authorize the use, by the said Board of Library Trustees, of the said sum of $9,000.00, or any other sum or sums of money, which may hereafter be invested or
given to the said city for the purpose of purchasing such real estate for such site, in the purchase of said real estate, as a site for said building; and to also give its consent and approval to and to authorize the said Board of Library Trustees to advertise for competitive bids and to let a contract for the preparation and publishing to the said Board of Library Trustees of plans and specifications for said building to be so erected on said site; provided that no money other than the said sum of $500,000.00, which the said Hon. Andrew Carnegie has offered to donate for said purpose, shall be used by the said Board of Library Trustees in procuring said plans and specifications for said building for said purpose, unless it may or shall be hereafter donated for said purpose;

THEREFORE, BE IT ORDAINED, by the Common Council of the City of San Diego, as follows:

Section 1. That the Common Council of the said city of San Diego, California, being the Legislative authority and branch of said city of San Diego, hereby approves the selection, by the said Board of Library Trustees of the said city of San Diego, of the said lots lettered "G", "H", "I", "K", "L", and "M" in the said block numbered forty-seven (47) in said Horton's Addition to the said city of San Diego, as a site for said building for a free public library and reading room; that said Common Council hereby gives its approval and consent to and hereby authorizes and empowers the said Board of Library Trustees to purchase the said described real property for a site for the erection of said building, provided that at the time of making such purchase or any agreement to so purchase said land, there shall be in the "Library Fund" of said city the amount to be so used in making such purchase; that said Common Council hereby gives its consent and approval
to and hereby authorizes and empowers and directs the said Board of Library Trustees to use the said sum of $9,000.00, XXX XX XXXX XXX XXX XXX in said "Library Fund", together with any other sum or sums of money heretofore or hereafter donated to said city, for such purpose, and in said fund, for and in the purchase of the said real property for the said site for such building for a free public library and reading room; and that said sum of $9,000.00 (Nine thousand Dollars) be and the same is hereby appropriated for the purpose of so purchasing said real property; that said Council hereby gives its approval and consent to and hereby authorizes and empowers said Board of Library Trustees to advertise for competitive bids and let a contract for the furnishing of plans and specifications for the erection of said building for such purpose, when a sufficient part of the said sum of $50,000.00 has been paid into the said "Library Fund" by the said Hon. Andrew Carnegie to pay therefor; provided that the cost of said plans and specifications shall be paid out of the said sum of $50,000.00; that all sums of money donated to or acquired by said city by gift for any of said purposes shall be deposited in the Treasury of said City and to the credit of the "Library Fund" thereof, and shall be used only for the purpose or purposes for which such money has been donated, given, or appropriated, and shall be paid out of said Treasury only upon verified orders and demands, duly authenticated by said Board of Library Trustees, and duly audited and allowed by the Auditing Committee of said City of San Diego.

Section 2. That the title to all such property, real and personal, which has been so acquired by gift or donation, or which may hereafter be acquired by gift, donation, or purchase under or pursuant to the terms of this ordinance, for
any of the said purposes, and particularly the said real property to be so purchased for the site for said building for said library and reading room, shall vest, be, and remain in the said City of San Diego.

Section 3. That this ordinance shall take effect and be in force from and after its passage and approval.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. That the city clerk of the said City of San Diego, be, and he is hereby, authorized and directed to publish or cause to be published this ordinance, immediately after its approval, once in the official newspaper of said City, respectively.

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Auditor's Certificate.

I hereby certify that the appropriation made, or indebtedness incurred, by reason of the provisions of the annexed ordinance for the purchasing library site and plant can be made or incurred without the violation of any of the provisions of the Charter of the City of San Diego, California.

Dated: 2-16-1899

[Signature]

Auditor of the City of San Diego, California.
Passed and adopted by the Board of Delegates of the City of San Diego, California, this 26th day of December, 1899, and signed in open session thereof by the President of said Board, December 26, 1899.

J.W. Barnes

President of the Board of Delegates of the City of San Diego, California

Passed and adopted by the Board of Aldermen of the City of San Diego, California, this 26th day of December, 1899, and signed in open session thereof by the President of said Board, December 26, 1899.

E.B. Voss

President of the Board of Aldermen of the City of San Diego, California

I hereby approve the foregoing Ordinance this 27th day of December, 1899.

G.P. Lippincott

Mayor of the City of San Diego, California

Attest:

Joe R. Fundamental, City Clerk.

By:... Deputy.

Auditor's Certificate.

I hereby certify that the appropriation made, or indebtedness incurred, by reason of the provisions of the annexed Ordinance, are true.

Library site and plans specifications for building can be made or incurred without the violation of any of the provisions of the Charter of the City of San Diego, California.

Dated Dec. 27, 1899.

Chief of the City of San Diego, California.
ORDINANCE NO. 687

Filed JAN 21, 1904

GEO. D. GOLDMANN
City Clerk,

By H. M. MC挟
 County Clerk
STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, ss.

In the matter of Ordinance No. 87.

H. B. Hakes, being duly sworn, deposes and says:

That he is a resident of San Diego County, over eighteen years of age, and not interested as a party or otherwise in the above named matter.

That he is the principal clerk of the printers of the San Diego Union and Daily Bee, a newspaper published daily at the City of San Diego, in the above named County and State; that as such principal clerk he has charge of all the advertisements published in said newspaper; that the said notice of which the annexed clipping is a copy, has been published in said newspaper for the period of one day, to wit: upon the 4th, days of January, 1900, and that said publication was made in the newspaper proper, and not in a supplement.

Subscribed and sworn to before me, this June 4th, 1900.

Jas. A. Chadwick,
City Clerk.
BE IT ORDAINED, by the Common Council of the City of San Diego, as follows:

Section 1. That the Common Council of the City of San Diego, California, being the legislative authority, hereby and of said City of San Diego, hereby approves the said Board of Library Trustees, and of the said City of San Diego, of the saidLOCAL BOARD OF LIBRARY TRUSTEES to dispose of the property, for the said building to be so occupied, and for the purchase of said building, for the public library and reading room, that said said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 2. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 3. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 4. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 5. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 6. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 7. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 8. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 9. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 10. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 11. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 12. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 13. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 14. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 15. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 16. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 17. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.

Section 18. That the said Board of Library Trustees, and of the said City of San Diego, hereby authorizes and empowers the said Board of Library Trustees to advertise for competitive bids, for the purchase of said building, for the public library and reading room.
BE IT RESOLVED, By the Board of Library Trustees of the City of San Diego, California, as follows:

That, pursuant to the authority vested in this Board of Library Trustees by Ordinance No. 687 of the ordinances of the City of San Diego, California, entitled, "An Ordinance approving the selection of a site for a building for a Public Library and Reading-room; authorizing the purchase of land for such site; appropriating money for the purchase of such land; and authorizing the Board of Library Trustees of said city to advertise for bids and let a contract for the furnishing of plans and specifications for a building for such purpose," approved on the 27th day of December, 1890, and an Act of the Legislature of the State of California, entitled, "An Act to establish Free Public Libraries and Reading-rooms," approved April 26th, 1880, this Board of Library Trustees purchase from George W. Marston those certain pieces or parcels of land lying, being and situate in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Lots lettered "B", "E", "F", "G", "H", and "I" in Block numbered Forty-seven (47) of Horton's Addition to the said City of San Diego, according to the official map of said Horton's Addition, made by L. L. Lockling; and filed for record in the office of the County Recorder of the said County of San Diego, State of California, on the 21st day of July, 1871, at the request of A. E. Horton, for the sum of Seventeen Thousand ($17,000.00) Dollars for the public use as a site for a building for a Public Library and Reading-room, and that the said real property above described be, and the same is hereby purchased from the said George W. Marston for
such purpose and for said sum of Seventeen Thousand Dollars ($17,000.00); that the claim of the said George W. Marston, when duly verified and presented to this Board of Library Trustees for the said sum of Seventeen Thousand Dollars ($17,000.00), as and for the purchase price of said real property, shall be allowed and ordered paid out of the "Library Fund" of the said City of San Diego, upon the execution and delivery by the said George W. Marston of a deed conveying to said City of San Diego a good and perfect title to said real property; said deed to be delivered to the President of this Board at said City, and that, thereafter, the President of this Board be, and he is hereby authorized and directed to file said deed for record in the office of the county Recorder of the County of San Diego, State of California.

Auditor's Certificate.

I hereby certify that the appropriation made, or indebtedness incurred, by reason of the provisions of the annexed resolution for a library building can be made or incurred without the violation of any of the provisions of the Charter of the City of San Diego, California.

Dated: June 30, 1899

[Signature]
Auditor of the City of San Diego, California.
San Diego, March 18th, 1901.

TO THE BOARD OF TRUSTEES OF SAN DIEGO LIBRARY:

I take pleasure in handing you herewith a report of the Carnegie Library Site Subscription Committee.

Trusting you will find the same satisfactory, and expressing the hope that you will meet no further delay in completing the Library building, I am

Very respectfully yours,

R. H. Young, sec'y Subscription Com.
SUBSCRIPTIONS FOR CARNEGIE LIBRARY SITE.

Geo. W. Harston 1000.00
Wednesday Club 500.00
James Phelen 500.00
Mrs. B. R. Arnold 250.00
J. B. Grant, Jr. 250.00
G. W. Hazzard 250.00
Mrs. G. W. Hazzard 250.00
gan Diego Retail
Druggist's assn. 200.00
Mrs. Amy Strong 200.00
Mrs. C. T. Pickas 200.00
D. C. Collie 200.00
Mrs. Bell Decker 200.00
Henry Timkin 200.00
H. W. McNaib 200.00
Geo. Fuller 200.00
W. A. Nevin 175.00
Dr. A. Grove, Exec. 150.00
W. T. Neal 125.00
Mrs. J. Allyn 100.00
Garrettson Inv. Co. 100.00
First Nat. Bank 100.00
John Long 100.00
S. W. Irwin 100.00
J. D. Water Co. 100.00
H. B. Morris 100.00
Johnson & Connell 100.00
Mrs. E. Hughes 100.00
M. A. Dunton 100.00
School children fund 100.00
Henry Phipps 100.00
Mrs. Geo. Keating 100.00
W. N. King 100.00
Philip Morse 100.00
G. W. Hitchcock 100.00
W. S. Hardy 75.00
F. F. Wright 75.00
J. A. Brown 75.00
Teachers' fund 50.50
C. F. Kessler 50.00
J. H. Clinkscales 50.00
Russ Lumber Co. 50.00
Mrs. Eula Keith 50.00
Bennett & Cooper 50.00
J. D. Lumber Co. 50.00
M. E. Hellier 50.00
West Coast Lumber Co. 50.00
Dr. B. J. Burnham 50.00
Mrs. C. M. Heller 50.00
E. Herman 50.00
D. C. Reed 50.00
Gumamaca R.R. 50.00
E. H. Gepp 50.00
W. J. Little 50.00
E. E. Hardware Co. 25.00
W. D. Bowen 25.00
H. D. Doctolittle 25.00
Mrs. A. J. Sherman 25.00
Brewster Hotel 25.00
A. H. Ingersoll 25.00
Todd & Hawley 25.00
W. S. Lage 25.00

7883.50

13 subscribers
Forward, 7888.50

H. Moser 25.00  
D. W. Stearns 25.00  
W. H. Doud 25.00  
A. Swivel 25.00  
F. W. Braun & Co. 25.00  
Mrs. Pauline Kingston 25.00  
M. N. 25.00  
R. C. Lockwood 25.00  
Oscar Trippett 25.00  
L. L. Works 25.00  
Mrs. Dr. Bailey 25.00  
A. F. Cornell 15.00  
J. E. Forward 15.00  
E. J. Lewis 15.00  
Craig Bros. 10.00  
Otto Peterson 10.00  
J. C. Packard 10.00  
E. S. Jennings 10.00  
E. E. Schaeffer 10.00  
Geo. Wade 10.00  
C. R. Sellers 10.00  
M. W. Jenks 10.00  
Arm & Jones 10.00  
B. T. Riggs 10.00  
Hamilton Bros. 10.00  
C. Nordhoff 10.00  
Harry Landis 10.00  
J. P. Bush 10.00  
S. L. Ward 10.00  
Geo. Goldman 10.00  
Nye & Misen 10.00  
Mrs. B. T. Phillips 10.00  
Geo. Buckner 10.00  
J. A. Boyd 5.00  
G. H. McKean 5.00  
Quon Mace & Co. 5.00  
L. N. Skinner 5.00  
M. O. Mason & Co. 5.00  
C. W. Ernsting 5.00  
J. E. Schwartz 5.00  
Mrs. C. A. Williams 5.00  
J. Lewis 5.00  
A. Stabile 5.00  
P. W. Dixon 5.00  
Simpson & Farnie 5.00  
Mrs. F. A. Shepard 5.00  
H. W. Vincent 5.00  
G. L. Baker 5.00  
H. Butts 2.50  
J. Capner & Sons 2.50  
J. T. Watson 1.00  

$6479.50

The above items have all been paid in cash, except $350.00 for which notes were given that are still in hand.
REPORT OF CARNEGIE LIBRARY SITE COMMITTEE.

Total cost of the South half of block 47 of Horton's Addition to San Diego, $17000.00
paid by the city, 9000.00
Raised by Subscription Com. 8000.00 17000.00

RECEIPTS.
In cash and notes, (see attached list) 8479.50

EXPENDITURES.
Paid towards the cost of Library site, 8000.00
Expense of canvass, of collecting subscriptions, abstracts, revenue stamps, etc., 597.00 8597.00
Deficit, carried by the committee, 117.50

Respectfully submitted,
CARNEGIE LIBRARY SITE SUBSCRIPTIONS COM'N.

For R.H. Young, Sec'y.
San Diego, July 26.—Andrew Carnegie has offered to give $50,000 for a public library building in San Diego. The offer is made in a letter just received from him by Mrs. A. H. Horton, one of the library trustees. The conditions are that the site shall be donated and the library maintained as in the past. The trustees will meet to consider the matter tomorrow. There is no doubt that the terms of the offer will be accepted.

ANDREW CARNEGIE'S GIFT TO SAN DIEGO

Millionaire Will Donate $50,000 for a New Public Library Building.
SAN DIEGO, July 26.—Andrew Carnegie, the multi-millionaire, made a proposition to the public library trustees of San Diego to $50,000 for a new library building, providing the citizens of San Diego guarantee to maintain the institution in the future as they have in the past. This guarantee will, of course, be given.

The offer is the result of correspondence carried on between A. E. Horton, one of the trustees, and Mr. Carnegie for some time, and he now positively agrees to give the amount mentioned. The trustees will hold a meeting to-morrow to take action in the matter and ask public-spirited citizens to donate a site for the building. The cost of maintaining the library heretofore has been about $600 a year.

Andrew Carnegie Thanked.

SAN DIEGO, Aug. 1.—The library trustees to-day sent a cablegram to Andrew Carnegie thanking him for his tender of $50,000 for a library building for the city and formally accepting the generous gift. The trustees issued a call for proposals for a site for the new library, and they may be made until August 4.
San Diego, Sept. 2.—The much agitated question of a site for the new library building for San Diego for which Andrew Carnegie recently donated $50,000, is in a fair way to be settled soon, as at a meeting of the library trustees held this morning after considering the various sites offered, a majority of the committee voted to accept the site offered by John H. Gay for $30,000. This site is bounded by A and B and Seventh and Eighth streets and is an entire block.

Los Angeles Herald, 10 April 1900 — San Diego's Library [ARTICLE]

San Diego's Library

San Diego, April 9.—The library trustees of this city, who have for three weeks past been examining plans for the new $50,000 Carnegie library building, today accepted the designs of architects Ackerman and Ross of New York city and will at once advertise for bids for construction under these designs. There were about 20 contestants.

San Francisco Call, Volume 87, Number 75, 14 August 1900 — San Diego Library Bids Too High. [ARTICLE]
SAN DIEGO, Aug. 12.—Bids for the new Carnegie Library of this city, for which Mr. Carnegie donated $50,000, were opened this morning by the library trustees on the accepted design of New York architects. The lowest bid received was $85,800 over $15,000 more than the fund donated and this does not include any interior furnishings. The architects guaranteed that the work could be done on their plans for $46,000 or they were to receive no pay for them. The matter is now held up with the hope that Mr. Carnegie will increase his donation to cover the amount required.

Carnegie Adds to His Gift.

SAN DIEGO, July 3.—Andrew Carnegie, who recently gave San Diego $50,000 for a public library building, which is now in course of construction, has now contributed $10,000 additional for furnishing and otherwise making the library attractive.

San Francisco Call, Volume 87, Number 110, 20 March 1901 — San Diego's Library Dedicated. [ARTICLE]

Back
SAN DIEGO, March 19.—Several thousand persons witnessed the exercises held this morning connected with laying the cornerstone of the public library building for this city, for which Andrew Carnegie donated $50,000. The exercises were under the direction of Grand Master J. A. Foshay of San Francisco, of the Grand Lodge of Masons, and members of the local lodges participated. Philip Morse was president of the day and Judge M. A. Luce grand orator.
LIBRARY IS LOCATED
COUNCIL INSTRUCTS THE TRES
SAYARD HALF BLOCK
Both Boards Were Committee
Street Ordinance Becomes
A Law January 1st - The Tank Ordin
ance Repealed

The public library building, which
Andrew Carageige will build for this
city at a cost of not less than $500,000,
will be located on the north side of
E street, between Eighth and Ninth
streets. That was the final decision of
the council last night and by a large
majority. The question was first
considered in joint session and first
came up on the report of the lib
ary committee. It was decided to locate
the section of the Half block for
the location of the library building.
That decision was unanimously adopted.

Then followed the adoption of a joint
resolution, the effect of which will be
to secure an abstract of the prop
erty, authorizing the library trustees
to purchase the property for the loca
tion of the library building, and also to advertise for bids and accept the lowest bid.

Delegate Reiker wanted to know if
the city council had ever heard of the
idea of giving a free city of the city
amount of $50,000 and the undervaluing of the
property to pay over that amount in the proceeds of the Half block.

President Watson-Wilson has long
pleaded, in general, for the admission of the City of San Diego. He
is an ardent supporter of the American
city. He is a strong advocate of the
admission of the city. He is a strong advocate of the
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