



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Mary Linden, Executive Assistant

Approved by: Steve McClary, City Manager

Date prepared: August 10, 2022 Meeting date: August 22, 2022

Subject: Misappropriated Malibu Library Set Aside Funds (Mayor Pro Tem Silverstein and Councilmember Uhring)

RECOMMENDED ACTION: At the request of Mayor Pro Tem Silverstein and Councilmember Uhring, direct the City Manager to send a letter to the Los Angeles County Library (County) requesting that Malibu Library Set Aside Funds allocated for uses not permitted in the Memorandum of Understanding (MOU) between the City and County be cancelled and/or returned to the Set Aside Fund.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action. Should the County adhere to the request, all returned funds will be available in the Set Aside Fund for future allocation toward approved uses outlined in the MOU.

WORK PLAN: This item was included as Item No. 7.a. in the Adopted Work Plan for Fiscal Year 2022-2023.

DISCUSSION: Services for the Malibu Public Library are paid for from a portion of property tax paid by Malibu property owners. The yearly difference in the amount of property tax reserved for the County Library and the cost of providing Base Level services at the Malibu Library are placed into the designated Malibu Library Set Aside Fund.

In September 2008, the City and County executed a Memorandum of Understanding (MOU) to govern the use of Set Aside Funds (Attachment 1). The MOU established a structure in which the expenditure of the excess funds generated from the taxes that Malibu residents pay could be spent on the Malibu Library and its services. In March 2018, the City and the County executed an amendment to the MOU extending the term until 2044, with two possible five-year extensions. All other terms remained the same.

Each year, the City Council Library Subcommittee considers proposed uses for the available Set Aside Funds and provides a recommendation to the City Council. The City Council may approve the recommended expenditures or make adjustments to the amounts recommended. The County provides an annual summary of library costs, including Set Aside Funds, as well as the remaining Set Aside Fund balance.

Mayor Pro Tem Silverstein and Councilmember Uhring have prepared a memorandum (Attachment 2) detailing Set Aside Funds they believe were misappropriated for uses not included in the MOU. They are requesting that the Council direct the City Manager to formally request that the County return or cancel any funds that were used for or allocated to purposes not authorized in the MOU to the Malibu Set Aside Fund.

ALTERNATIVES: The Council may alternatively direct staff to research and provide a detailed accounting of the Malibu Library Set Aside Fund, including all allocations authorized by the City Council from 2013 to present, and bring the results back to the Council.

ATTACHMENTS:

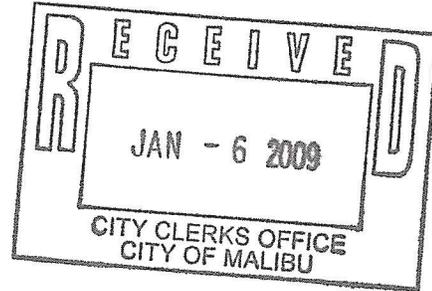
1. MOU between City and County on Use of Set Aside Funds
2. Memorandum from Mayor Pro Tem Silverstein and Councilmember Uhring dated August 9, 2022

MARGARET DONNELLAN TODD
COUNTY LIBRARIAN

December 17, 2008

Pamela Conley Ulich
Mayor
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265-4861

Attention: Reva Feldman
Administrative Services Director



**EXECUTED MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY LOS ANGELES AND THE CITY OF MALIBU**

Enclosed, for your records, is the executed Memorandum of Understanding (MOU) between the County of Los Angeles and the City of Malibu. This MOU will govern the use of property tax dollars apportioned to the County from property within the City of Malibu for the purposes of providing Library services at the Malibu Branch of the Public Library.

The above referenced matter was approved by the Board of Supervisors on November 12, 2008, item 23. A copy of the adopted Board letter is also enclosed for your reference.

If you have any questions or need additional information, please contact Malou Rubio at (562) 940-8450.

Sincerely,

A handwritten signature in cursive script that reads "Margaret Donnellan Todd".

Margaret Donnellan Todd
County Librarian

MDT:MR:bf

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Enclosures (2)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding Agreement (“MOU”) is entered into by and between the City of Malibu, a California municipal corporation (hereinafter “City”) and the County of Los Angeles, a political subdivision of the State (hereinafter “County”).

RECITALS

- A. The County of Los Angeles Public Library (hereafter "County Library") desires to improve the facility and services offered at the Malibu Branch of the Public Library System ("Branch");
- B. The City of Malibu ("City") desires an improved library facility and enhanced library services for everyone who uses the facility;
- C. County Library and City both wish for City to remain within the County Library System;
- D. County Library and City both recognize that a majority of the property taxes paid by City property owners reserved for the County Library System are actually used to fund the Branch and its services; but that over the past several years, the amount of such property taxes collected from City property owners has exceeded the operating costs of the Branch; and
- E. County Library and City both believe that these excess funds should primarily be used to implement the recommendations made in the 2005 Community Library Needs Assessment, which will accomplish the mutually desired improvement in the facility and services of the Branch.

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants set forth herein, the parties agree as follows:

BASE SERVICE LEVELS

1. The County Library is the exclusive owner of all land on which the Branch sits as well as the contents and collection housed within the Branch, with the exception of certain materials within the Arkel Erg Memorial Mountaineering Collection. The Branch is a 15,926 square foot building consisting of a community meeting room, public restrooms, public space with adult and children's areas, staff work areas, a basement, and the Bookmobile garage. Utilities for the Branch are provided as part of the service for the entire property. The current library materials collection is approximately 85,400 items. The Branch houses three special collections: The Arkel Erg Memorial Mountaineering Collection, The Peter A. Horn Senior Citizen Collection, and The Sean Matthews Collection.
2. The current service levels ("Base Levels") at the Branch are as follows: The Branch is open 6 days a week for 50 hours a week (Mondays and Tuesdays 10 am to 8 pm; Wednesdays and Thursdays 10 am to 6 pm; and Fridays and Saturdays 10 am to 5 pm). The Branch full time staff consists of one Community Library Manager (Librarian III), one Reference Librarian (Librarian I), one Children's/Teen Librarian (Librarian I), and one Library Assistant I. The Branch currently provides reference services, public access Internet computers, WIFI and children's and young adult programming including

regularly scheduled toddler and preschool storytimes. The County Library currently conducts routine maintenance and repair of the Branch facilities including janitorial upkeep, landscaping/groundskeeping, and technological systems (telephones, internet connections etc.)

3. By signing this MOU, the City acknowledges that the County Library retains sole responsibility for adjusting the Base Levels at the Branch and throughout the County Public Library System. Neither the County nor the City is obligated to continue enhancements above the Base Level at any time. County agrees that any change to the Base Levels at the Branch will be made on a fair and consistent basis relative to Base Level spending at other branches of the County Library System. Further, should sources of funding to the Public Library System that are not available as of the date of this MOU become available during the pendency of this MOU, County agrees to make these sources available to the Branch on a fair and consistent basis relative to the other branches. County agrees that it will not arbitrarily reduce Base Levels at the Branch in an effort to reduce the overall availability of Set Aside Funds for enhancements at the Branch.

SET ASIDE FUNDS

4. Currently, approximately 2.45% of the ad valorem property tax revenue generated from property located within the City is reserved for the support of the County Free Library System in accordance with the provisions of Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

5. For purposes of this MOU, "Set Aside Funds" shall refer to the yearly difference in the amount of property tax received from City property owners and reserved for the County Library, and the cost of providing Base Level services at the Branch.

6. In each fiscal year since 2004-2005 (July 1, 2004 – June 30, 2005), County Library has placed Set Aside Funds in a separate budgetary fund with the intent of improving the Branch's facility and providing more enhanced services and programs at the Branch. The parties agree that the current amount of Set Aside Funds accumulated in this fashion is \$1,945,000, collected over the years as follows: Fiscal Year 2004-05, \$521,000; Fiscal Year 2005-06, \$603,000; Fiscal Year 2006-07, \$821,000. The parties mutually acknowledge that the amount of Set Aside Funds varies from year to year and will continue to do so in the future

7. Absent extraordinary circumstances the County Library shall, for the duration of this MOU, continue to place Set Aside Funds in a separate fund within the County Library's budget. However the parties acknowledge that in case of a countywide fiscal emergency, the County may, after notice to the City, discontinue placing Set Aside Funds in the separate fund. The parties acknowledge that a countywide fiscal emergency would necessitate a reduction in funding for all branches of the County Library. County therefore agrees that any reduction in Set Aside Funds made in response to a countywide fiscal emergency under this section shall be made fairly and in a manner consistent with reductions at other branches receiving the equivalent of Set Aside Funds such that any

percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch. Further, County agrees that, in the event of countywide fiscal emergency, any reduction of Base Levels at the Branch will be made fairly and in a manner consistent with reductions at other branches such that any percentage cut at the Malibu Branch Library will not exceed the percentage cut at any other branch.

8. All Set Aside Funds currently in the separate account, and those which will be placed in the separate account during the pendency of this MOU, will be used solely to improve Branch facilities and services unless this MOU is unilaterally terminated by one of the parties before expiration. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect until all Set Aside Funds so accrued have been spent in accordance with the process established in Section 13, *infra*. However, if this MOU is terminated, any unexpended Set Aside Funds remaining in the separate account shall be spent in accordance with Section 28 *infra*.
9. The parties agree that any facility and collection improvements purchased with Set Aside Funds at the Branch shall remain the property of the County Library.
10. If the City obtains property for the construction of a new library branch, it shall notify County that the City desires to use the Set Aside Funds to assist in funding the construction of the new library branch and the parties shall meet to amend this MOU accordingly.

SET ASIDE FUND EXPENDITURES

11. Set Aside Funds may be used for both one-time improvements at the Branch, such as capital improvements and materials purchases, and for on-going service enhancements at the Branch (such as increased Library hours on Sunday or increased staffing levels), and for additional needs as outlined in the 2005 Needs Assessment.
12. Set Aside Funds may not be used by either party as security for any loan or bond.
13. The City and County Library shall meet immediately upon approval of this MOU to discuss the use of Set Aside Funds from the date of approval through the following June 30. Thereafter, for the duration of this MOU, the City and County Library shall meet in November of each year to discuss the use of Set Aside Funds in the fiscal year beginning on the following July 1. No less than four weeks before each of the required November meetings, the City Council of City shall take formal action to approve a prioritized list of issues to be discussed at the yearly meeting. If the City Council fails to approve such a list, the County Library shall assume that City issues and priorities remain unchanged from the most recent previously approved list provided by the City. The purpose of these meetings is to reach agreement on an expenditure program for the Set Aside Funds in the next fiscal year; however, these meetings are advisory in nature and nothing in this section is intended to divest the County Library, or the County of Los Angeles, of any authority to control or use Set Aside Funds. This section shall not be construed as a limit to the frequency of meetings between the parties and the parties hereby express a

willingness to meet as frequently as necessary to resolve issues related to Set Aside Funds or the Branch. The provisions of this section shall survive the natural expiration of this MOU and shall continue in effect so long as Set Aside Funds are required by any provision of this MOU to be spent on Branch enhancements.

14. It is the intent of the parties that the first use of Set Aside Funds shall be to renovate the interior of the Branch, as recommended by the 2005 Community Library Needs Assessment. The interior renovation shall include, at minimum, new lighting, new carpet, new paint, and compliance with current Americans with Disabilities Act requirements.
15. It is anticipated that the City will be primarily responsible for designing and delivering the interior and exterior renovations of the Branch contemplated by this MOU. However, the County may perform such tasks at the City's request. A separate project agreement, signed by both parties, shall be used to describe each party's specific responsibilities for the Branch renovation project.
16. All final plans for renovation of the Branch must be reviewed by each party to assure compliance with zoning and building codes, and all final plans are subject to the mutual approval of City and County.
17. Except as specifically provided herein, all costs associated with the physical

construction of the interior renovation described in this MOU will be paid from Set Aside Funds provided by the County, except that the cost of County Library and City administrative staff time devoted to this project shall not be charged to the Set Aside Fund.

OTHER PROVISIONS

18. If during the duration of this MOU or anytime thereafter, the City notifies the Los Angeles County Board of Supervisors that the City no longer desires to be a part of the County Free Library System, (pursuant to California Education Code section 19116 or any other means), any unspent Set Aside Funds accrued at any time shall remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch, and this MOU shall terminate at the time such notice is provided if it is still in operation at the time notice is given. The provisions of this section shall supersede all other provisions of this MOU including the provisions of sections 8 and 28. And, the provisions of this section shall survive the natural expiration or other termination of this MOU and shall continue in effect until all Set Aside Funds accrued have been spent.
19. The Parties hereby acknowledge that the expenditure of any Set Aside Funds are subject to, and conditioned upon, ongoing approval by the County's Board of Supervisors and that such approval is not certain.
20. The City acknowledges that Set Aside Funds are the only funds that shall be used by the

County Library to enhance facilities and services at the Branch, other than an increase in the Base Levels; and that neither the County Library nor the County of Los Angeles is under any obligation to expend funds from any other source for this purpose. This MOU shall not be construed to place any limitations on the City's ability to raise funds for contribution to the Branch or for library services within the City, nor shall it limit the right of City or County Library to apply for and receive grants or State bond proceeds for library purposes.

21. In the performance of its obligations under this MOU, the parties shall comply with all applicable laws, regulations, standards and ordinances.
22. The City shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the City's acts and/or omissions arising from and/or relating to this MOU.
23. The County shall indemnify, defend and hold harmless the City, its elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the County's acts and/or omissions arising from and/or relating to this MOU.

24. All notices of matters under this MOU shall be given in writing by first class mail, personal delivery or facsimile. Mailed notices shall be addressed as set forth below, but either party may change its address by giving written notice thereof to the other in accordance with the provisions of this section:

CITY: City of Malibu
ATTN: City Manager
23815 Stuart Ranch Road
Malibu, CA 90265

COUNTY LIBRARY: County of Los Angeles Public Library
ATTN: Margaret Donnellan Todd
7400 East Imperial Highway
Downey, CA 90242

25. The laws of the State of California shall govern the interpretation and enforcement of this MOU. Any action, suit or proceeding related to or arising from this MOU shall be filed in the Los Angeles County Superior Court.

26. The term of this MOU shall be from the date of complete execution of this MOU by both parties until June 30, 2019 unless sooner terminated as provided elsewhere herein. However, the term of this MOU shall be automatically extended one (1) time for an

additional five (5) years unless written objection to extension is given at any time by either party. Objection by any party to the automatic extension provisions of this MOU shall not be considered termination of the MOU by that party for purposes of Section 28 of this MOU. At the expiration of this MOU the County Library will cease placing Set Aside Funds in a separate account; however unless this MOU has been terminated by either party, and under the terms and procedures of Sections 8 and 13 of this agreement, *supra*, Set Aside Funds accrued during the pendency of this MOU shall be used to enhance Branch facilities and services until such funds are exhausted.

27. Any amendments to this MOU shall be in writing and executed by both parties.

28. Either party may unilaterally terminate this MOU for any reason upon 120 days written notice. As described in Section 8 *supra*, upon termination of this MOU, any remaining Set Aside Funds will be used as follows:
 - 28.1 If County terminates the MOU, any remaining Set Aside Funds will be used solely to improve Branch facilities, services, and programs above Base Levels.
 - 28.2 If City terminates the MOU, any remaining Set Aside Funds will remain in the control of the County Library to spend in its sole discretion, including at County Library facilities other than the Branch.
 - 28.3 If the MOU is terminated by mutual written agreement of the City and the County, the parties shall agree upon the use or uses of the remaining Set Aside Funds as part of the termination agreement.

29. This MOU is made and entered into for the sole benefit of the parties hereto. No other person or entity shall have any right of action based upon any provision of this MOU.
30. This MOU shall be deemed to have been prepared jointly and equally by the parties, and none of its terms shall be construed against any party on the ground that the party prepared the MOU or caused it to be prepared.
31. This MOU constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings, both written and oral. This MOU may not be modified or amended except in a writing signed by all parties hereto.
32. If any provision of this MOU or the application thereof to any person or circumstance is held invalid, the remainder of this MOU and the application of such provision to other persons or circumstances shall not be affected thereby.
33. The persons executing this MOU on behalf of each of the parties warrant and represent that they have the authority to execute this MOU on behalf of the party for whom they execute and have the authority to bind the party to the obligations hereunder.

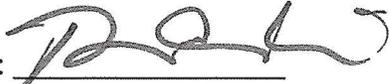
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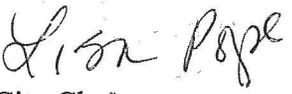
IN WITNESS WHEREOF, the parties have executed this MOU as of the dates set forth below.

CITY OF MALIBU

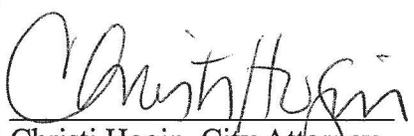
By: 
Pamela Conley Ulich
Mayor

Dated: 9/11/08

ATTEST:


City Clerk

APPROVED AS TO FORM:


Christi Hogin, City Attorney

COUNTY OF LOS ANGELES

By: 
Margaret Donnellan Todd
County Librarian

Dated:

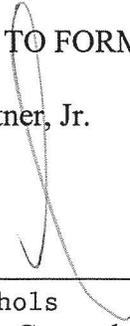
ATTEST:

SACHI HAMAI
Executive Officer-Clerk
of the Board of Supervisors

By NOT APPLICABLE

APPROVED AS TO FORM:

Raymond G. Fortner, Jr.
County Counsel

By 
Brandon Nichols
Deputy County Counsel

MARGARET DONNELLAN TODD
COUNTY LIBRARIAN

November 12, 2008

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23 NOV 12 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL OF MEMORANDUM OF UNDERSTANDING
WITH THE CITY OF MALIBU
(SUPERVISORIAL DISTRICT 3) (3 VOTES)**

SUBJECT

The Public Library is recommending Board approval of a Memorandum of Understanding ("MOU") with the City of Malibu. This MOU will govern the use of property tax dollars apportioned to the County from property within the City for the purposes of providing Library services at the Malibu Branch of the Public Library. The MOU is effective upon execution by the City and County and will continue through June 30, 2019 unless earlier terminated or extended. There is an automatic five-year extension that will extend the MOU to 2024 unless objected to by one of the parties.

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the County Librarian to execute the attached MOU governing the use of property tax dollars apportioned to the County from property within the City for the purposes of providing Library services at the Malibu Branch.

PURPOSE/JUSTIFICATION FOR RECOMMENDED ACTION

The Public Library is recommending approval of the MOU on the grounds that it establishes a cooperative and mutually beneficial relationship with the City of Malibu,

provides for the City's continued participation in the County Library System and the benefits the County System derives therefrom, and for the improvement of the services provided at the Malibu Branch of the Public Library.

Implementation of Strategic Plan Goals

Approval of this recommended action is consistent with the County's Strategic Plan Goals in the areas of Service Excellence (1), Organizational Effectiveness (3), and Fiscal Responsibility (4).

FISCAL IMPACT/ FINANCING

The Public Library has established a special budgetary fund for the City of Malibu. The Public Library during each budget planning year, will determine the City's property tax revenues in excess of operating costs and set-aside this amount in the City's fund. The total accumulated reserve is \$2,646,000 based on excess property tax collections since Fiscal Year (FY) 2003/04 through FY 2006/07. It is the intent of the City and County to use the accumulated funds for a major renovation of the Malibu Library.

There is no other fiscal impact.

FACTS/PROVISIONS/ LEGAL REQUIREMENTS

Under the provisions of Education Code section 19100 et seq., cities may elect to participate in the County's Public Library System. When they do, the cost of providing library services within the city is provided to the County by an apportionment of property tax revenues derived from property located within the city. Cities may later choose to leave the County System and these revenues are then redirected back to the city.

When the City of Malibu incorporated in 1991, the City elected to continue to be a part of the County of Los Angeles Public Library. However, in recent years, the apportioned amount of property taxes collected from the City has exceeded the cost of Library services provided within the City. And, in each budget fiscal year since FY 2005/06, the Library has set aside this difference in a special budgetary fund with the intent of improving Library services at the branch located in the City ("Malibu Branch").

In 2003, the County Library under direction from the Board provided revenue and cost information including property tax revenue to all the 51 cities served by the County Library. At that time, the City of West Hollywood, the City of Manhattan Beach and the

City of Malibu each approached the County Library with concerns that the library service provided to their cities was inadequate for their communities. They recognized that significant revenue was being collected in their cities for library service but that funding was not being directly used to improve library service in their cities. They requested that those funds be more directly used to raise the standard of service. As a result of that request, the County Library began to set aside excess funds to improve both the buildings and service levels.

These cities are committed to staying in the County System but recognize if they do not receive adequate library service for their communities, they may be forced to leave county service and establish their own city libraries. The loss of these cities would be detrimental to the County System as well as to the residents of those cities.

In 2003, the Board of Supervisors approved an agreement with the City of West Hollywood for set aside funds to be used toward the construction of a new library. Ground breaking for that new library is set for April 2009. The City of Manhattan Beach has also requested that funds be held for the construction of a new library or for the major renovation and expansion of the existing facility. It is anticipated that once these construction projects are complete, the increased operating costs of these two improved facilities will eliminate the disparity between the cost of service and the revenue collected .

The City of Malibu has requested an MOU. The proposed MOU is based on the Community Library Needs Assessment study which was commissioned by the City and County in 2005. This study identified a number of opportunities for improving Library services in the City including a major renovation of the 1970 facility. Staff from the Public Library and the County Counsel's Office have been meeting with the City to discuss how the recommended improvements could be made using funds already set aside for this purpose and to establish protocols governing the use of funds derived from future differences between property tax monies received by the County and the cost of providing Library services ("set aside funds"), if any. These discussions have culminated in the development of the attached MOU.

The MOU establishes current levels of Library service at the Malibu Branch. And, it provides that, absent a County-wide fiscal emergency, existing and future set aside funds will be used for improving Library services at the Malibu Branch. The MOU also establishes an ongoing process for the City and County to meet to jointly discuss priorities for the use of these funds and library-service improvement. The MOU was structured to provide adequate protections for the County. The MOU recognizes that

the County retains the sole responsibility for adjusting base service levels and all improvements remain the property of the County Library. In addition, the County can cancel the MOU at anytime. Further, during a fiscal emergency, the MOU provides that the County may reduce library service in the City so long as the reduction is done in a fair and consistent manner in comparison with other communities served by the County Library System. Should the revenue contributed by the City decrease, the County has no obligation to continue enhanced services and may adjust the baseline service if revenues do not support the base line service.

The MOU will begin on approval of the City and County and will terminate on June 30, 2019. There is one five year extension which will occur automatically unless first objected to by the City or County. For the duration of the MOU, the City has agreed to participate in the County Library System.

The MOU may be terminated for any reason 120 days after notice is given by the terminating party. If the County unilaterally terminates the MOU before the natural expiration date, any set aside funds accrued prior to termination must be spent on service improvements at the Malibu Branch of the Library. If the City unilaterally terminates the MOU before the natural expiration date, all funds remain the County's to spend at its sole discretion.

CONCLUSION

Please return a conformed copy of the adopted stamped Board letter to the Public Library and Office of the County Counsel.

Respectfully submitted,



MARGARET DONNELLAN TODD
County Librarian

MDT:bf

Attachment (1)

c: Chief Executive Officer
County Counsel
Auditor-Controller

MEMORANDUM IN SUPPORT OF COUNCILMEMBER PROPOSAL

From: Malibu Councilmembers Bruce Lee Silverstein and Steve Uhring

To: Malibu City Manager Steve McClary

Dated: August 9, 2022

Re: Proposal that City Council Direct that the City Manager Demand that the County Cancel and/or Return Funds Misappropriated from the Malibu Library Set Aside Fund

In addition to cancelling the \$500K contribution approved by a 2-1 vote of the City Council on May 23, 2022, we propose that the City Council also direct the City Manager to submit a letter to the County requesting the cancellation and/or return to the Malibu Library Set Aside Fund (the “Malibu Library Fund”) of more than \$1.5 million the County has disbursed and/or been authorized to be disbursed from the Malibu Library Fund in violation of the express terms of the Memorandum of Understanding (the “MOU”) that governs the development and use of the Malibu Library Fund. This includes more than \$350,000 that previously was contributed to the County Library Foundation in violation of the express terms of the MOU.

As discussed more fully herein, prior City Councils approved an arrangement that permitted the County to use funds legally dedicated to the exclusive use of the Malibu Branch of the County Library (the “Malibu Library”) and/or the construction of a new branch of the County Library in west Malibu (a “West Malibu Library”) in exchange for agreeing to the allocation of substantial, albeit materially lesser, funds to the Malibu Boys and Girls Club (the “MB&GC”). Without that deal, the City lacked a way to use the Malibu Library Fund for the MB&GC, and the City Council would have been confronted with the Hobson’s Choice of (i) denying substantial grant requests by the MB&GC, which were supported by multiple residents, or (ii) using substantial funds from the City’s General Fund for those grant requests, which was opposed by multiple other residents. The County appears to have gone along with the arrangement because it allowed the County to subsidize its own general library expenses with funds legally earmarked specifically for the Malibu Library and/or a possible West Malibu Library.

It would be naïve to believe the County’s claim that its recent request that the City Council cancel its approval of a \$500,000 contribution to the County Library Foundation is the result of opposition by a minority of the City Council and a handful of vocal residents. As demonstrated by the Board of Supervisors’ approval of overnight ESHA camping in the Santa Monica Mountains over the concerted

opposition of the full City Council and more than 250 Malibu residents, the County could care less about the will of the Malibu community when it comes to matters that extend beyond Malibu (or even when they impact only Malibu). This same dynamic is illustrated by the Board of Supervisors' decision to repurpose Campus Kilpatrick to house violent offenders – which threatens the health, safety, and welfare of the Malibu community.

We believe that the true reason for the County's unprecedented rejection of a half-million-dollar contribution approved by a majority of the City Council is that the City forwarded to the County various questions we and various residents raised respecting the legality of many times that amount of funds previously disbursed from the Malibu Library Fund by or at the direction of the County, which we believe to reveal a decade-long "looting" of the Malibu Library Fund for general county expenses that are outside the legal uses of the Malibu Library Fund specified in the MOU that governs the development and use of the Malibu Library Fund. By asking that the approval of the \$500,000 contribution approved by a 2-1 vote of the City Council be cancelled, the County hopes to avoid further scrutiny of the more extensive disbursements from the Malibu Library Fund that are equally problematic.

To understand the reason that the County's substantial disbursements from the Malibu Library Fund are improper, it is necessary to understand the history, purpose, and meaning of the MOU that governs the development and use of the Malibu Library Fund.

The History and Purpose of the MOU Governing the Library Set-Aside Fund

The Malibu Library is a branch of the County Library System, located on County-owned Civic Center property. The County uses funding generated by Malibu property taxes to maintain and operate the Malibu Library.

In 2004, the City (led by then-Councilmember Pamela Conley Ulich) came to realize that Malibu's property taxes allocable to library services far exceeded the funds the County required to maintain and operate the Malibu Library. As such, Malibu property taxes were being used largely to subsidize library services and programs throughout the County Library System.

Acting under the threat that Malibu would withdraw from the County Library System – and thereby retain the property taxes allocable to library services – the County informally agreed that excess library funds generated by Malibu property taxes would be set aside in a reserve account, which ultimately came to be the Malibu Library Fund.

In 2006, the County and Malibu began negotiating a formal agreement that would govern the use of Malibu's property tax dollars for library programs and services.

As negotiations with the County dragged on, the City Council (again led by Councilmember Ulich) determined to proceed with Malibu's withdrawal from the County Library System. Specifically, on March 10, 2008, the City Council adopted Resolution No. 08-15 authorizing the Malibu's withdrawal from the County Library System. That Resolution was to become effective July 1, 2009.

Although the City Council voted to cause Malibu to withdraw from the County Library System, the City Council also agreed to authorize the continuation of negotiations over the terms of a formal agreement governing the unused Malibu property taxes earmarked for library services. Those negotiations continued into the early summer of 2008 and resulted in the MOU that obviated the need for Malibu's withdrawal from the County Library System.

The MOU was presented for the City Council's approval on July 28, 2008. As explained in the Council Agenda Report for Item 6.A of that meeting:

The MOU establishes a structure for the expenditure of the excess funds available to be spent on the Malibu Library by the County. Once the MOU has been executed, the set aside funds may be used either for one-time improvements such as capital improvements and purchases of materials or for on-going service enhancements.

On July 28, 2008, the City Council approved the MOU and adopted Resolution No. 08-47 repealing Resolution No. 08-15 authorizing the City's withdrawal from the County Library System.

The MOU was executed on September 11, 2008.

The Terms of the MOU Governing the Malibu Library Fund

For present purposes, the material recitals and sections of the MOU are the following:

Recital C of the MOU states that "County Library and City both wish for City to remain within the County Library System."

Recital D of the MOU states that "County Library and City both recognize that a majority of the property taxes paid by City property owners reserved for the County Library System are actually used to fund the Branch and its services; but that over

the past several years, the amount of such property taxes collected from City property owners has exceeded the operating costs of the Branch.” For purposes of the MOU, the term “Branch” is defined to mean the Malibu branch of the County Library located in the Civic Center area, which is referred to herein as the Malibu Library.

More specifically, Section 4 of the MOU recites that “approximately 2.45% of the ad valorem property tax revenue generated from property located within the City is reserved for the support of the County Free Library System.” To put a finer point in this provision, the annual property taxes of all taxable Malibu property currently exceed \$200 million, which means that the property taxes from Malibu properties account for upwards of \$6 million per year dedicated to the Malibu Library.

Section 7 of the MOU mandates that “the County Library shall, for the duration of this MOU, continue to place Set Aside Funds in a separate fund within the County Library’s budget.” Section 5 of the MOU defines the term “Set Aside Funds” to mean “the yearly difference in the amount of property tax received from City property owners and reserved for the County Library, and the cost of providing Base Level services at the Branch.” For purposes of this Memo, the Set Aside Fund is referenced as the “Malibu Library Fund.”

Section 8 of the MOU mandates that the Malibu Library Fund “will be used *solely to improve Branch facilities and services.*” (Emphasis added). This is the centerpiece of the MOU.

Expanding upon Section 8 of the MOU, Section 11 of the MOU sets forth the permissible uses of the Malibu Library Fund, explaining that “Set Aside Funds *may be used for both one-time improvements at the Branch*, such as capital improvements and materials purchases, *and for on-going service enhancements at the Branch* (such as increased Library hours on Sunday or increased staffing levels), *and for additional needs as outlined in the 2005 Needs Assessment.*” (Emphasis added).

Additionally, Section 10 of the MOU contemplates that possible use of the Malibu Library Fund for the construction of a West Malibu Library, stating: “If the City obtains property for the construction of a new library branch, it shall notify County that the City desires to use the Set Aside Funds to assist in funding the construction of the new library branch and the parties shall meet to amend this MOU accordingly.”

The permissible uses of the Malibu Library Fund are further constrained by Section 12 of the MOU, which provides that “Set Aside Funds may not be used by either party as security for any loan or bond.”

Lastly, Section 13 of the MOU provides as follows:

[T]he City and County Library shall meet in November of each year to discuss the use of Set Aside Funds in the fiscal year beginning on the following July 1. No less than four weeks before each of the required November meetings, the City Council of City shall take formal action to approve a prioritized list of issues to be discussed at the yearly meeting. If the City Council fails to approve such a list, the County Library shall assume that City issues and priorities remain unchanged from the most recent previously approved list provided by the City. The purpose of these meetings is to reach agreement on an expenditure program for the Set Aside Funds in the next fiscal year; *however, these meetings are advisory in nature and nothing in this section is intended to divest the County Library, or the County of Los Angeles, of any authority to control or use Set Aside Funds.*”

(Emphasis added).

To put a finer point on Section 13, the take-away is that (i) the County Library and the County have authority and control over the use of Malibu Library Fund, and (ii) the City Council’s approval of allocations from the Malibu Library Fund is advisory and not binding on the County Library or the County. Of course, the terms of the MOU do constrain the use of the Malibu Library Fund by creating legally binding restrictions upon and uses of the Malibu Library Fund, which must be honored without regard to the advisory views of the City Council.

The MOU has many other terms, but the provisions identified above are the only ones that deal with the permissible and impermissible uses of the Malibu Library Fund.

The Proper Use of the Malibu Library Fund Under Councilmember Conley Ulich’s Watch

For the first few years after the MOU was executed, Councilmember Ulich served as Malibu’s representative on the “Los Angeles County Library Commission,” which oversaw the growth and use of the Malibu Library Fund. Councilmember Ulich served in that capacity through the conclusion of her second term in office, which ended in 2012. During that period, Councilmember Ulich served as a

watchdog on Malibu’s behalf to ensure that the Malibu Library Fund was properly grown and used in accordance with the terms of the MOU Councilmember Ulich had fought to create.

In accordance with the MOU, the Malibu Library Fund was used primarily to renovate the Malibu library between 2008 and 2012 (i.e., the balance of Councilmember Ulich’s second term) – all proper uses of the Malibu Library Fund pursuant to the MOU. As reported in a Library Subcommittee Agenda Report in 2014:

The City and the County cooperatively used the set aside-funds to renovate the Malibu Library. The newly renovated Malibu Library opened in April of 2012.

Prior to the opening in April 2012, the Council and the County agreed to fund the following additional services from the Set Aside fund:

- Increased service hours from 37 hours a week to 50 hours a week. The cost for the additional service hours is \$85,000 a year.
- The addition of an enhanced existing collection with materials specific to Malibu. The cost of the collection enhancement was a one-time \$25,000 cost.
- The establishment of a deferred maintenance reserve. The cost for the deferred maintenance reserve is \$100,000 a year.
- The hiring of a Teen Librarian. The cost of the Teen Librarian is \$130,000 a year.
- The establishment of a Malibu Library Speaker Series program that provides a minimum of six guest speakers a year. The cost of a speaker series is \$75,000 a year.

As previously noted, all of expenditures from the Malibu Library Fund approved through 2012 fit perfectly within the parameters of Section 8 of the MOU.

The Systematic Misuse of the Malibu Library Fund Following Councilmember Ulich’s Departure from the City Council

Soon after Councilmember Ulich “termed out” and left the City Council, the Malibu Library Fund began to be used for multiple purposes outside the negotiated confines of the MOU. The following decade saw the Library Subcommittee’s and City Council’s wrongful advisory approval of millions of dollars of expenditures from

the Malibu Library Fund for programs and services throughout the County and outside of Malibu – all in violation of the express terms of the MOU.

On May 8, 2013, the Administration and Finance (A&F) Subcommittee reviewed the Fiscal Year 2013- 2014 General Fund Grant applications for the General Fund Grant Program, including an application for \$50,000 from the MB&GC. Rather than recommend any funding for the MB&GC, the A&F Subcommittee recommended that the city staff work with the County to determine whether Library funding could be made available for the MB&GC.

A few weeks later, in connection with the budgeting process for Fiscal Year 2013-2014, the city staff noted the A&F Subcommittee’s recommendation respecting the MB&GC’s potential access to Library funding. Specifically, the Council Agenda Report for Item 4.D of the May 28, 2013 City Council Meeting includes the following statement on page 9:

The Boys and Girls Club of Malibu applied for a General Fund Grant. The A&F Subcommittee recommended that staff work with the Malibu Library to use Library funding to help fund some of the needs of the Boys and Girls Club. This issue will be presented to Council as a separate item for consideration.

There is no specific reference to the Malibu Library Fund being used for the MB&GC, and there is no specific reference in the Council Agenda Report to the use of the Malibu Library Fund for any purpose other than capital improvements to the Malibu Library – which was specifically permitted by the MOU.

Later in the budgeting process for Fiscal Year 2013-2014, the City Council approved the A&F Subcommittee’s recommendation to direct the staff to work with the County to determine whether Library funding could be made available for the MB&GC. Although use of the Malibu Library Fund for the MB&GC did not square with the MOU’s requirement that Malibu Library Fund be used “*solely to improve Branch facilities and services*,” the County identified multiple programs it viewed to be sufficiently related to the Malibu Library to justify the expenditure of \$113,000 of Malibu Library Funds for the MB&GC.

As explained in the Council Agenda Report for Item 7.A. of the September 9, 2013 Regular Meeting of the City Council:

The County of Los Angeles Public Library Staff has identified \$113,100 of funding that could be used by the Boys and Girls Club. Programs and services funded through the Library must follow the

strategic plan to expand community partnerships of the County of Los Angeles Public Library. Potential new programs and services that the Library can fund for the Boys and Girls Club include a Part-Time Librarian who will work at the Club (\$60,000); Programs for At-Risk Youth (\$19,000); Bilingual Family Programs (\$13,500); a Library Learners Program and Goals for Graduation (\$5,300); Career Launch (\$7,500); and Information Technology Equipment including a computer that is connected to Public Library System (\$7,800). All of these potential programs are above and beyond existing programs and staffing that the Boys and Girls Club has included in its annual budget. The Boys and Girls Club has reviewed these potential programs and services and has indicated that only the Part-Time Librarian would be a beneficial new program for their organization.

The proposed use of the Malibu Library Fund for programs at the MB&GC was not included on the Agenda for the September 9, 2013 City Council Meeting and was not approved at that meeting. Moreover, there does not appear to be an Agenda for any City Council meeting thereafter that included a proposal to recommend the expenditure of any part of the Malibu Library Fund for the MB&GC in 2014, much less \$113,000 of that fund.

On October 30, 2013, the Library Subcommittee formally recommended that the City Council approve the expenditure of \$350,000 from the Malibu Library Fund in 2014, consisting entirely of the following four items:

- \$85,000 to continue the increased service hours of 50 hours a week and work with the County to determine what days and hours the Malibu Library should be open.
- \$100,000 for the previously established deferred maintenance reserve.
- \$65,000 for a part-time Teen Librarian. This is a reduction from a full-time position from the prior year.
- \$100,000 for the Malibu Library Speaker Series program with a minimum of 10 speakers a year.

As with the prior expenditures from the Malibu Library Fund, all expenditures formally recommended by the Library Subcommittee for 2014 fit perfectly within the parameters of Section 8 of the MOU.

The Library Subcommittee Agenda Report for the October 30, 2013 meeting referenced the \$113,000 of library programs at the MB&GC previously identified by the County, but the Library Subcommittee did not recommend the expenditure of such funds.

On November 25, 2013, the City Council approved the Library Subcommittee's recommendation of \$350,000 of expenditures from the Malibu Library Fund in 2014. While referencing the \$113,000 of library programs at the MB&GC previously identified by the County, the City Council similarly did not approve a recommendation of that expenditure for 2014.

The Library Subcommittee did not meet again to discuss expenditures from the Malibu Library Fund until November 10, 2014, when the Library Committee met to recommend expenditures for 2015. When the Library Subcommittee met on November 10, 2014, they were informed that \$523,000 had been expended from the Malibu Library Fund in 2014, which was \$173,000 more than the Library Subcommittee or the City Council had recommended for expenditure in 2014. The additional expenditures consisted of the following.

- \$113,000 for the Malibu Boys and Girls Club (includes a part-time Teen Librarian)
- \$5,000 for the purchase of DVDs and books on CDs.
- \$5,000 for Common Core Standards materials
- \$50,000 for a Family Place program at the Malibu Library (\$25,000) and one at another County library (\$25,000).

Between November 25, 2013 (when the City Council approved the \$350,000 of expenditures recommended by the Library Subcommittee) and November 10, 2014 (when the Library Subcommittee convened for the first time after November 25, 2013 to discuss further uses of the Malibu Library Fund) there is no Agenda of a City Council meeting that includes a proposal that the City Council approve the additional \$173,000 in expenditures from the Malibu Library Fund for the MB&GC, much less County Library programs outside of Malibu – which is unequivocally prohibited by Section 8 of the MOU.

To the contrary, when the 2014-15 Budget was presented to the City Council for approval in late May of 2014, the “Fiscal Year 2014-15 Work Plan” included the following statement of “Management and Administrative Services”:

Oversight of Library Services and Use of Library Set Aside Funds

The City and the County Library launched the 2014 Speaker Series in January 2014 with Tom Shadyac as the first speaker of the year. Ten speaker events are scheduled based on the following subjects: Arts, the entertainment industry, the environment, education, food, literature, motivation, science, sports and travel. Notable speakers include Carol Muskes-Dukes, Michael Shermer, Jesse Billauer, Rafe Esquith and Jodi Hilty. Library Set Aside Funds are being used to provide additional service hours at the Malibu Library, fund a teen librarian and enhance the library's collections.

This was the sole reference to the Malibu Library Fund in the Budget presentation for Fiscal Year 2014-15, and there was no reference to any expenditures from the Malibu Library Fund for the MB&GC or any other programs, much less County Library programs outside of Malibu.

The unauthorized 2014 expenditure of \$25,000 for a Family Place program at a County library other than the Malibu Library was the County's first improper incursion into the Malibu Library Set Aside Fund for library programs outside of Malibu. The City's *quid pro quo* for failing to balk at the unauthorized diversion of \$25,000 of Malibu property taxes to offset the general costs of the County Library System was the County's willingness to allow a \$113,000 expenditure for the MB&GC that also did not fall squarely within the narrow parameters of the MOU's permissible uses of the Malibu Library Fund. Because the use of the Malibu Library Fund for programs at the MB&GC obviated the City Council's need to consider a grant of those funds from the City's General Fund, nobody on the City Council objected to dipping into the Malibu Library Fund to offset the City's general expenses, and the City Councilmembers were unfazed by the County's relatively *de minimus* \$25,000 price-tag for facilitating this contravention of the terms of the MOU. In organized crime terms, the \$25,000 diversion was the County's "taste" of the funds impermissibly skimmed off the top of the Malibu Library Fund. Little did the City Council realize that the County's appetite for Malibu's tax dollars is insatiable.

After the first \$25,000 of the Malibu Library Fund poured into the County's coffers, the proverbial floodgate was opened for the County to return to its historical practice of using Malibu's excess property tax funds for general County Library expenses – the very act that gave rise to Malibu's aborted withdrawal from the County Library System that was the genesis of the MOU in the first place.

What began as a seemingly inconsequential trade of \$25,000 to the County in exchange for the County turning a blind eye to the use of \$113,000 of the Malibu Library Fund for the MB&GC in 2014 has expanded into a scheme by which the City Council has now provided advisory approval of the diversion of more than \$2 million of Malibu's property taxes to offset the County Library's expenses for programs and services outside of Malibu.

Specifically, the City Council provided advisory approval of the Library Subcommittee's recommendation of the following expenditures over the past 7 years:

- \$43,000 for Special Collections in other libraries (low-income communities) in Fiscal Year 2015-16;
- \$92,000 for "Family Place programs" in other libraries in Fiscal Year 2015-16;
- \$50,000 for a roving special children's collection to be used throughout the County Library system in Fiscal Year 2016-17;
- \$75,000 for the "Family Place programs at the Malibu Library and other libraries as needed (to be determined by the County Librarian)" in Fiscal Year 2016-17;
- \$50,000 for a discretionary fund to be used as needed by the County Librarian throughout the County Library system as needed in Fiscal Year 2016-17;
- \$100,000 for "100 E-Book readers and software (50 for the Malibu Library and 50 to be used throughout the County Library system)" in Fiscal Year 2016-17;
- \$148,673 for "Programs throughout the County Library System" in Fiscal Year 2017-18;
- \$150,000 for "Programs throughout the County Library System" in Fiscal Year 2018-19;
- \$50,000 for Refresh of ten Family Place Libraries in Fiscal Year 2018-19;
- \$300,000 for Executive Director Library Foundation 2-year salary/benefits;

- \$140,000 for “Management Fellow for Education Programs” in each of Fiscal Year 2019-20, Fiscal Year 2020-21, and Fiscal Year 2021-22; and
- \$50,000 for “Family Place Programs throughout the County library system” in each of Fiscal Year 2019-20, Fiscal Year 2020-21, Fiscal Year 2021-22, Fiscal Year 2022-23.

Combined with the half-million-dollar contribution to the County Library Foundation that Councilmembers Farrer and Pierson approved through a 2-1 vote on May 23, 2022, that brings to more than \$2 million the total amount of Malibu Property Taxes in the Malibu Library Fund contractually reserved for use exclusively for the Malibu Library and/or the potential construction of a West Malibu Library that the City Council has provided advisory approval for the County Library System’s use outside of Malibu – all in violation of the express terms of the MOU.

In exchange for this multi-million dollar pay-off, the County has agreed to distribute between \$400,000 and \$800,000 from the Malibu Library Fund to benefit the MB&GC.

We know that nobody likes to hear us say this, but this arrangement is the textbook definition of corruption. Whether or not anyone personally benefitted from this arrangement, the carefully crafted operation of the MOU was corrupted to the tune of nearly \$3 million.

The Misuse of the Malibu Library Fund Continues Despite Being Identified by New City Staff and Councilmembers

It bears repeating that Section 8 of the MOU mandates that the Malibu Library Fund “*will be used solely to improve Branch facilities and services,*” and Section 10 of the MOU contemplates that possible use of the Malibu Library Fund to build a West Malibu Library.

Consistent with Section 8 of the MOU, the City Council Agenda Report for Item 6.A. of the May 23, 2022 Regular Meeting of the City Council reports:

As of June 30, 2021, the Set Aside Fund totaled approximately \$14.1 million *to be used solely to improve Malibu Library facilities and services.*

(Emphasis added). The same statement appears in the Library Committee Agenda Report for 2022. No similar statement appears in any prior Council Agenda Report or Library Subcommittee Agenda Report going back to 2015.

It bears noting that the 2022 Council Agenda Report and Library Subcommittee Agenda Report are the first reports respecting the Malibu Library Fund prepared by Ruthie Quinto, who was then serving as Interim Assistant City Manager following Lisa Soghor's departure. Ms. Quinto also is the City Treasurer and was the first senior member of the city staff hired by Steve McClary following Reva Feldman's departure.

We were elected to the City Council in November of 2020. At the organizational meeting at which members of subcommittees are appointed, we advocated that one of us to be placed on the Library Subcommittee, on which Councilmembers Farrer and Pierson had sat for the prior two years. The other three members of the City Council rejected our requests and reappointed Councilmembers Farrer and Pierson to the Library Subcommittee.

Since that time, the City Council has twice been asked to approve advisory allocations from the Malibu Library Fund – on June 28, 2021 and on May 23, 2022.

In connection with June 28, 2021 City Council meeting, we both challenged the propriety of various past and proposed uses of the Malibu Library Fund, including the prior contribution of \$350,000 to the County Library Foundation, among other uses. We were assured by the city staff that such uses were permissible. After receiving that assurance, we agreed to support the advisory proposal for 2021-22, but made clear that we would be examining the matter more carefully going forward and that our approval should not be viewed as an endorsement of any allocations beyond those for the Malibu Library.

The May 23, 2022 meeting of City Council was attended by only three Councilmembers. The one of us who attended that meeting raised the question of the propriety of the proposed half-million contribution to the County Library Foundation from the Malibu Library Fund and objected to the proposed contribution. Following a somewhat heated debate, Councilmembers Farrer and Pierson voted to follow their own recommendation as the Library Subcommittee to approve the proposed contribution. The proposal passed by a 2-1 vote.

Amazingly, no other member of the City Council and no former member of the City Staff has publicly questioned the legality of the use of the Malibu Library Fund for purposes other than those identified in the MOU.

THERE ALSO MAY BE AN ISSUE OF A GIFT OF PUBLIC FUNDS

* * *

It is hereby proposed that the City Council should not only rescind the half-million-dollar gift to the County Library Foundation, but the City Council also should demand repayment of the more than \$1.5 million the County misappropriated from the Malibu Library Fund since 2014. It is no excuse that the City Council granted its advisory approval of the Library Subcommittee's recommendation of these improper expenditures. Rather than go along with the City Council's advisory recommendations, the County had a fiduciary responsibility to question the recommendations and decline to authorize expenditures that are outside the terms of the MOU. Pursuant to Section 13 of the MOU, the County retained the right and responsibility for administering the Malibu Library Fund in accordance with the terms of the MOU, and the County's disbursement of more than \$1.5 million in funds to benefit the County is a form of improper self-dealing.