



SMMUSD Financial Oversight Committee Minutes

Date: Wednesday, February 12, 2020

Time: 7:00 pm to 9:00 pm

Location: Testing Room, SMMUSD Admin Offices
1651 16th Street, Santa Monica, CA 90404

I. Call to Order

7:02 pm

Committee Members: Matthew Covington

Alex Farivar

Debbie Mulvaney

Jon Kean

Laurie Lieberman arrived @ 7:10 p.m.

Natalie Ricciardulli, SAMOHI student representative

Matthew Crawford

Marc Levis-Fitzgerald

Seth Jacobson

Michael Kremer

Staff:

Melody Canady

Gerardo Cruz

Carey Upton arrived @ 7:07 p.m. and departed @ 8:10 p.m.

Kim Nguyen

Absent:

Shawn Landres

Payal Maniar

Craig Foster

Gordon Lee

Shelly Slaugh Nahass

II. Approval of Agenda

7:02 pm

The committee unanimously approved the agenda.

III. Approval of FOC Meeting Minutes

7:05 pm

A motion was made by Ms. Mulvaney and seconded by Mr. Covington to approve the January 23, 2020 meeting minutes as amended.

Under Item I. Call to Order, Ms. Maniar arrived at 7:24 p.m. and Board Liaisons Kean, Foster and Lieberman were present. Mr. Lee was absent.

Under Item V. Assistant Superintendent, Business and Fiscal Report: Melody Canady, “*Staff will provide the committee with information at the February meeting regarding how the estimated ~~needs~~ need for the TRANS TRANS was off by a million dollars...The Superintendent’s Budget Advisory Committee (SBAC) consists of approximately 40 stakeholders and will meet in the coming weeks to discuss the current structural budget and future budget deficit.*”

AYES: Seven (7) (Mr. Covington, Mr. Crawford, Mr. Farivar, Mr. Jacobson, Mr. Kremer, Mr. Levis-Fitzgerald, Ms. Mulvaney)

STUDENT ADVISORY VOTE: One (1) (Ricciardulli)

NOES: None (0)

ABSENT: Four (4) (Mr. Landres, Mr. Lee, Ms. Slaugh Nahass, Ms. Maniar)

ABSTAIN: None (0)

IV. Assistant Superintendent, Business and Fiscal Report: Melody Canady (10 min)

7:06 pm

Ms. Canady and Mr. Cruz provided the committee with the projected gain/loss to explain the TRAns issuance and interest. The cost of early retirement incentive (SERP) Line 48 included the fees to Keenan and the cost of the annuity that was paid to the retirees.

Ms. Canady and Ms. Mulvaney reported the outcome of the final interviews for independent financial auditing service conducted in-person and telephonically on January 29, 2020. The firms interviewed were Cassollas Wilson Dominguez & Leavitt, EideBailly, Harshwal & Company, Moss Levy & Hartzheim, and Wilkinson Hudley King & Co LLP. All firms gave good interviews and after contacting several references, staff is recommending that the District moves forward and prepare contract documents with EideBailly. Primary in the decision was the fact that EideBailly is well versed with basic aid and have a large client base of similarly funded school districts to SMMUSD. EideBailly is formerly Vavrinek, Trine, Day & Co. LLP (VTD) who is well known in the auditing community. Furthermore, EideBailly will provide training to staff on topics such as ASB as needed at no extra cost.

Ms. Canady reported that SMMCTA ratified 2.25% ongoing and \$1,000 one-time payment off salary schedule. SEIU ratified 2.25% and 2 salary range changes. In addition, the health and welfare benefits cost were equalized for all employees regardless of hire date.

The multi-year projection/unrestricted general fund and 2019-20 Pooled Tax and Revenue Anticipation Notes, Series A-1 District Financing Summary may be found at the end of these minutes.

V. Discussion/Action Items

A. Memorial Park Agreement

7:55 pm

Mr. Upton provided the committee with an overview of the City of Santa Monica's invitation to contribute to the first phase of the development of Memorial Park. The District's participation would be approximately \$5M and would have first request/reservation for use of the fields. Staff is still working on termination and indemnification clause as it is a 2-part agreement (financial contribution and use of the park). The funds will be coming from Measure SMS.

A motion made by Ms. Mulvaney and seconded by Mr. Levis-Fitzgerald to recommend approval of the fiscal and use agreement by the Board of Education as presented with pending changes as discussed by Mr. Upton.

Mr. Upton's handouts may be found at the end of these minutes.

AYES: Seven (7) (Mr. Covington, Mr. Crawford, Mr. Farivar, Mr. Jacobson, Mr. Kremer, Mr. Levis-Fitzgerald, Ms. Mulvaney)

STUDENT ADVISORY VOTE: One (1) (Student Ricciardulli)

NOES: None (0)

ABSENT: Four (4) (Mr. Landres, Mr. Lee, Ms. Slauch Nahass, Ms. Maniar)

ABSTAIN: None (0)

B. Meeting Start Time

8:10 pm

The committee discussed the meeting start time.

C. Superintendent Budget Advisory Committee Meeting

8:15 pm

Mr. Jacobson reported on the overview of the first SBAC meeting. The next meeting scheduled for February 18, 2020 will have a more in-depth budget discussion. The Superintendent will recommend approximately \$4M in reductions with Board approval for the 2020-21 budget year. Recommendations made by SBAC will be submitted for the 2021-22 school year. The committee discussed various options for reductions to include another SERP offering.

Superintendent's Budget Advisory Committee (SBAC) Meeting materials may be found at: <http://www.smmusd.org/superintendent/SBACmeetings.html>

D. Measure R audit report

8:40 pm

Mr. Cruz reported that the Measure R budget is very close between projected revenue and actual expenditures. The District auditors noted no exceptions with the District's internal control procedures (a) revenue and expenditures need to be reflected in the general ledger, (b) understanding of internal control over revenues, (c) obtain understanding of internal controls over recording of expenditures and observe support for the allocations report and (d) compliance with expenditure provisions/restrictions. The Measure R audit report may be found at: <https://www.smmusd.org/cms/lib/CA50000164/Centricity/Domain/300/FinReports/MeasureRAuditReport1819.pdf>

VI. Ad hoc Subcommittee Report (35 min)

8:43 pm

A. Budget Recommendations: *Mr. Covington, Mr. Jacobson, Ms. Maniar*

There was no report.

B. Tax Revenue and Assessed Valuations: *Mr. Kremer, Ms. Mulvaney, Ms. Slauch Nahass*

There was no report.

C. Review of Prop YY and GSH projections: *Mr. Crawford, Mr. Farivar, Mr. Landres*

There was no report.

D. Financial Benefits of Sustainability: *Mr. Jacobson, Mr. Covington, Mr. Crawford*

The subcommittee reported that the District is working on filling the vacancy of the Sustainability Coordinator to continue the program with the funds already available. The committee is also looking at fundraising options and to encourage the Board to continue District's sustainability efforts.

E. Special Education: *Ms. Maniar, Mr. Kremer, Mr. Levis-Fitzgerald*

There was no report.

F. Bond Oversight: *Mr. Lee, Mr. Covington, Mr. Crawford, Mr. Kremer*

There was no report.

VII. Receive and File (Limited Discussion) None

VIII. Public Comments None

IX. Committee Comments

8:45 pm

Student Rep Ricciardulli reported that parents are being charged for field trips to Catalina. The committee requested an update on student fee legal settlement and its financial impact to the District.

X. Next Meeting: Tuesday, March 10, 2020 – Malibu City Hall Multi-Purpose Room

XI. Adjournment: The meeting adjourned at 8:50 p.m.

MULTI-YEAR PROJECTIONS / UNRESTRICTED GENERAL FUND

	A	B	C	D	E	F	G
		2019-20	2019-20	2019-20		2020-21	2021-22
Description		ADOPTED BUDGET	FIRST INTERIM	PROJECTED SECOND INTERIM	CHANGE B/W FIRST & SECOND	PROJECTED BUDGET	PROJECTED BUDGET
Revenue:							
1 Property Tax		89,789,181	89,789,181	89,789,181	-	93,528,640	97,455,072
2 Education Protection Account (EPA)		2,000,000	2,000,000	2,000,000	-	2,000,000	2,000,000
3 LCFF Transfer to Fund Fund 14		-	-	-	-	-	-
4 LCFF Transfer to Charter School		(20,000)	(20,000)	(20,000)	-	(38,000)	(38,000)
5 Prior Year LCFF Adjustment		-	-	-	-	-	-
6 Minimum State Aid		8,585,843	8,585,843	8,585,843	-	8,585,843	8,585,843
7 Subtotal LCFF Funding		100,355,024	100,355,024	100,355,024	-	104,076,483	108,002,915
8 Other Federal		13,000	200,000	200,000	-	13,000	13,000
9 Lottery		1,600,000	1,600,000	1,600,000	-	1,600,000	1,600,000
10 Mandated Reimbursement Block Grant		417,495	417,495	417,495	-	380,000	380,000
11 One-time Discretionary Funds		-	-	-	-	-	-
12 Other State Revenue		5,000	5,000	5,000	-	5,000	5,000
13 Meas. "R"		12,449,227	12,449,227	12,449,227	-	12,698,211	12,952,175
14 Meas. Y & GSH/ City of SM		15,553,168	15,553,168	15,553,168	-	15,864,231	16,181,516
15 Joint Use Agreement		9,554,280	9,554,280	9,554,280	-	9,745,365	9,940,273
16 SMM Ed Foundation Donation		-	-	-	-	-	-
17 SM Ed Foundation Donation		2,000,000	2,000,000	2,000,000	-	2,000,000	2,000,000
18 Malibu Ed Foundation (td) Donation		500,000	500,000	500,000	-	500,000	500,000
19 Lease & Rental		2,450,000	2,450,000	2,450,000	-	2,450,000	2,450,000
20 Revenue Associated with TRANS Issuance		-	-	721,262	721,262		
21 ORIGINAL ISSUE PREMIUM		-	-	353,750	353,750		
22 PROJECTED INTEREST EARNED		-	-	367,512	367,512		
23 All Other Local Income		984,430	1,138,185	1,138,185	-	1,180,000	1,140,000
24 Local General Fund Contribution		(30,602,201)	(30,340,654)	(30,340,654)	-	(31,214,245)	(31,838,530)
25 TOTAL REVENUE		115,279,422	115,881,724	116,602,987	721,262	119,298,046	123,326,349
26 Expenditure:							
27 Certificated Salary		53,921,221	53,942,958	55,744,160	1,801,202	56,580,323	57,429,028
28 Classified		18,725,883	18,589,749	19,421,243	831,494	19,712,562	20,008,250
29 Benefits		30,672,971	30,597,610	31,304,646	707,036	34,454,798	35,631,356
30 STRS		8,542,347	8,733,336	9,041,342	308,006	10,410,779	10,394,654
31 PERS		3,610,798	3,421,727	3,585,706	163,979	4,474,751	4,922,030
32 SOCIAL SECURITY & MEDICARE		2,251,261	2,240,019	2,329,746	89,727	2,328,426	2,363,352
33 HEALTH AND WELFARE		12,412,367	12,334,045	12,334,045	-	12,950,747	13,598,285
34 SUI		39,128	39,035	40,351	1,316	43,146	43,719
35 WORKERS COMP		2,834,082	2,841,358	2,953,646	112,288	3,204,301	3,252,366
36 OPEB		894,692	892,989	924,710	31,721	953,661	967,966
37 CASH IN -LIEU		88,296	95,101	95,101	-	88,986	88,986
38 Supplies/Books		3,719,326	3,796,567	3,796,567	-	3,000,000	3,000,000
39 Other Operational Costs		12,348,571	13,877,306	13,877,306	-	10,514,968	10,514,968
40 TRAVEL & CONFERENCE		205,633	258,464	258,464	-	258,464	258,464
41 DUES & MEMBERSHIPS		55,160	58,853	58,853	-	58,853	58,853
42 INSURANCE		1,307,468	1,307,468	1,307,468	-	1,307,468	1,307,468
43 UTILITIES		2,957,150	2,957,150	2,957,150	-	2,957,150	2,957,150
44 RENTALS, LEASES, REPAIRS		2,209,563	2,249,140	2,249,140	-	2,249,140	2,249,140
45 INTRA-FUND TRANSFERS FOR SERVICES		(30,092)	(80,507)	(80,507)	-	(80,507)	(80,507)
46 INTER-FUND TRANSFERS FOR SERVICES		(134,441)	(165,969)	(165,969)	-	(165,969)	(165,969)
47 CONSULTANTS & OTHER OPERATING		5,487,915	5,987,524	5,987,524	-	2,625,186	2,625,186
48 COST OF EARLY RETIREMENT INCENTIVE (SERP)		-	1,014,968	1,014,968	-	1,014,968	1,014,968
49 COMMUNICATIONS		290,215	290,215	290,215	-	290,215	290,215
50 Capital Outlay		130,000	215,600	215,600	-	100,000	100,000
51 Costs Associated with TRANS Issuance		75,000	1,035,241	606,489	(428,752)	-	-
52 UNDERWRITER'S DISCOUNT		-	-	30,557	30,557		
53 COST OF ISSUANCE		-	-	41,194	41,194		
54 INTEREST DUE		-	-	534,739	534,739		
55 Transfer to County Specialized Schools		-	-	75,000	75,000	75,000	75,000
56 Indirect		(1,162,959)	(1,191,961)	(1,191,961)	-	(1,000,000)	(1,000,000)
57 Fiscal Stabilization Plan (Budget Reductions)		-	-	-	-	(4,000,000)	(6,000,000)
58 GSH Technology Plan/Replacement		1,000,000	1,000,000	1,000,000	-	1,000,000	1,000,000
59 Interfund Transfer Out to Fund 12 CDS		1,000,000	1,000,000	1,000,000	-	1,000,000	1,000,000
60 LCAP Transfer Out to Fund 12 CDS		200,000	200,000	200,000	-	200,000	200,000
61 Interfund Transfer Out to Fund 13 FNS		900,000	900,000	900,000	-	900,000	900,000
62 Interfund Transfer Out to Fund 14 DefM		750,000	750,000	750,000	-	1,000,000	1,000,000
63 TOTAL EXPENDITURE		122,280,013	124,713,070	127,699,051	2,985,981	123,537,651	123,858,602
64 Increase (Decrease) Fund Balance		(7,000,591)	(8,831,346)	(11,096,064)	(2,264,719)	(4,239,605)	(532,253)
65 Beginning Fund Balance		22,439,368	22,439,368	22,439,368	0	13,608,022	9,368,417
66 Ending Fund Balance (net of lines 48-50)		15,438,777	13,608,022	11,343,304	(2,264,718)	9,368,417	8,836,164
67 Reserve - Revolving Cash, Prep-pays		251,984	251,984	251,984	-	251,984	251,984
68 Reserve - SERP Retirement Incentive Pymnt		1,014,968	-	-	-	-	-
69 Reserve - Deficitting Spending in 20-21		3,521,607	4,239,605	4,239,605	-	-	-
70 Reserve - Deficitting Spending in 21-22		1,623,304	532,253	532,253	-	-	-
71 Reserve - Deficitting Spending in 22-23		619,699	-	-	-	-	-
72 3% Contingency Reserve		5,047,523	5,126,775	5,240,455	113,680	5,069,718	5,156,206
73 Reserve Up to 2-months of Expenses		3,359,693	3,457,405	1,079,007	(2,378,398)	4,046,715	3,427,974
74 Unappropriated Balance		0	0	0	0	0	0

Los Angeles County Schools Pooled Financing Program
2019-20 Pooled Tax and Revenue Anticipation Notes, Series A-1
District Financing Summary

Santa Monica-Malibu Unified School District				Note Amount: \$ 23,505,000		Series: A-1		S&P Rating: SP-1+	
1. Key Dates		4. Projected Cash Deficit				6. TRAN Net Proceeds			
Pricing	08/14/19	Issuer Status		Large Issuer		Principal		\$ 23,505,000.00	
Delivery	08/28/19	Projected Deficit		\$ 17,925,619		Original Issue Premium		353,750.25	
First Set-Aside	01/31/20	Deficit Target		\$ 15,312,660		Underwriter's Discount		(30,556.50)	
Last Set-Aside	05/31/20	Deficit Period		mid December		Costs of Issuance		(41,194.24)	
Maturity	06/01/20	Deficit Target Date		02/27/20		Net Proceeds		\$ 23,786,999.51	
2. Set-Asides		5. Interest Cost Calculations				7. Projected Gain (Loss) from TRAN			
First Month	01/31/20	Interest Due		\$ 534,738.75		Original Issue Premium		\$ 353,750.25	
First Amount	\$ 11,752,500.00	Principal and Interest		24,039,738.75		Underwriter's Discount		(30,556.50)	
Final Month	05/31/20	True Interest Cost		1.169%		Costs of Issuance		(41,194.24)	
Final Amount	\$ 12,287,238.75	All-in True Interest Cost		1.399%		Interest Due		(534,738.75)	
3. Pricing						Projected Interest Earned		367,511.83	
						Projected Gain (Loss)		\$ 114,772.59	
Term (Days 360)	273								
Coupon	3.00%								
Yield	1.00%								
Price	101.505								

	Beginning			Balance Sheet	Ending	TRAN	Adjusted	Invested	Interest
Period	Cash Balance	Revenues	Expenditures	Transactions	Cash Balance	Activity	Ending Cash Balance	TRAN Balance	Earnings @ 2.13% (1)
July, 2019	\$ 32,214,413	2,239,949	621,700	(10,371,833)	\$ 23,460,829		\$ 23,460,829		
August, 2019	23,460,829	8,393,081	4,086,525	(4,535,365)	23,232,020	\$ 23,787,000	47,019,019	\$ 23,787,000	\$ 4,164
September, 2019	23,232,020	1,979,962	12,312,000	(1,246,430)	11,653,552	-	35,440,551	23,787,000	41,644
October, 2019	11,653,552	4,738,908	14,112,000	1,393,850	3,674,310	-	27,461,309	23,787,000	43,032
Nov 1-25, 2019	3,674,310	1,000,000	12,362,000	401,231	(7,286,459)	-	16,500,540	21,980,925	32,068
Nov 26-30, 2019	(7,286,459)	3,047,345	1,575,000	0	(5,814,114)	-	17,972,885	17,236,713	5,029
Dec 1-20, 2019	(5,814,114)	417,495	12,585,000	56,000	(17,925,619)	-	5,861,380	11,917,133	13,909
Dec 21-31, 2019	(17,925,619)	41,207,216	1,212,000	919,164	22,988,761	-	46,775,760	23,787,000	15,269
January, 2020	22,988,761	18,967,756	15,262,000	1,877,023	28,571,540	(11,752,500)	40,606,039	23,787,000	43,032
February, 2020	28,571,540	9,073,210	14,362,000	825,188	24,107,938	-	36,142,437	23,787,000	40,255
March, 2020	24,107,938	4,054,997	14,752,000	(50,632)	13,360,303	-	25,394,802	23,787,000	43,032
April, 2020	13,360,303	30,127,281	14,412,000	1,300,000	30,375,584	-	42,410,083	23,787,000	41,644
May, 2020	30,375,584	14,300,689	14,962,000	219,000	29,933,273	(12,287,239)	29,680,533	23,787,000	43,032
June, 2020	29,933,273	20,010,635	33,435,744	8,711,572	25,219,736	-	24,966,996	24,039,739	1,403
		\$159,558,524	\$ 166,051,969	\$ (501,232)		\$ (252,739)			\$ 367,512

(1) LA County's Treasury Pool Allocation Rate for June 2019. No interest compounding.

**FISCAL AND USE AGREEMENT
BETWEEN THE CITY OF SANTA MONICA
AND SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT**

This Fiscal and Use Agreement (“Agreement”) is entered into and effective as of this day of _____ 2020 (“Commencement Date”) by and between the City of Santa Monica (“City”) and the Santa Monica-Malibu Unified School District (“District”). City and the District may be individually referred to herein as “Party” or collectively referred to herein as “Parties.”

RECITALS

WHEREAS, Education Code section 10900 authorizes public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of community recreation that will contribute to general recreational and educational objectives for children and adults of this State; and

WHEREAS, under Education Code section 10905, two or more public authorities may cooperate with each other to carry out the purposes set forth in Section 10900, and to that end may enter into agreements with each other and may do any and all things necessary and convenient to aid and cooperate in carrying out said purposes; and

WHEREAS, the City and District are authorized to operate recreation facilities including parks and play fields and, by virtue of that authority, do operate and maintain such recreation facilities; and

WHEREAS, City owns and operates certain real property, commonly known as Memorial Park, located at 1401 Olympic Blvd, Santa Monica, California 90404 (the “Park”); and

WHEREAS, the Park is Santa Monica’s primary public park for diamond sports, including Little League baseball, youth Fastpitch softball, Santa Monica High School softball and baseball teams, and adult league softball. The park also houses the only public gymnasium and public skate park in Santa Monica; and

WHEREAS, for decades, the District has used the Park for softball, baseball and gym use (basketball practice and games) (“District Use”); and

WHEREAS, in November 2018, the voters overwhelmingly approved Measure SMS, a \$485 Million Dollar Bond Measure that limits expenditure of bond proceeds to the District’s Santa Monica schools, including, removing hazardous materials; upgrading building systems; upgrading water, sewer, and gas systems; improving energy efficiency; improving disabled access; replacing portable classrooms with permanent facilities; upgrading technology infrastructure; and upgrading athletic facilities; and

WHEREAS, District desires to use the Park areas designated as Combo Fields in Exhibit “A”, defined below; and

WHEREAS, City authorized funding for preliminary planning and design for expansion and redevelopment of the Park as part of its 2016-2018 Capital Improvements Program Adopted Biennial Budget; and

WHEREAS, the expansion and redevelopment of the Park consists of development of the existing 10.3-acre Park site (Parcel 1) and the adjoining 2.9-acre former Fisher Lumber site to the north of the existing Park, which was acquired by the City in 2005 (Parcel 2); and

WHEREAS, the two adjoining parcels are bound by Colorado Avenue to the northwest, 16th Street to the northeast, Olympic Boulevard to the southeast and 14th Street to the southwest; and

WHEREAS, the City's feasibility study and master planning analysis included site analysis, defined the project program requirements, and studied options to arrive at a conceptual master plan ("Memorial Park Master Plan" or "MPMP"), which is attached hereto as Exhibit "A"; and

WHEREAS, the MPMP was approved by the City Council on October 15, 2019, after extensive community outreach to park users, residents, and stakeholders; and

WHEREAS, due to funding constraints, the City has proposed development of the MPMP in three phases, which are identified as Phases 1-3 in the Phasing and Implementation Plan attached hereto as Exhibit "B"; and

WHEREAS, the estimated scope of Phase 1 as set forth in Exhibit "B" is within the scope of projects contemplated under Measure SMS; and

WHEREAS, the estimated Project Costs (as defined below) for Phase 1 is approximately \$30 million; and

WHEREAS, it is the intent of the Parties to work cooperatively and in partnership with one another to develop the Phase 1 for joint and community use using Measure SMS funds; and

WHEREAS, it is the intent of the District to participate in funding Phase 1 to ensure the District's Use of the Park continues as it has for decades; and

WHEREAS, City intends to pay all costs associated with Non-Construction Costs (as defined below) for Phase 1 to the extent not covered by other funding sources; and

WHEREAS, City intends to use the progressive design-build method of contracting for design and construction of Phase 1; and

WHEREAS, District intends to contribute \$5.0 Million Dollars to the City's construction of Phase I; and

WHEREAS, to commence design and construction of the Phase 1, the City shall advance funds towards the design and construction of Phase 1 and the City shall seek reimbursement from the District for all eligible Phase 1 expenditures as provided below; and

WHEREAS, discussions regarding Phases 2 and 3, including for funding and for shared use, are under consideration. This Agreement does not commit the District to fund Phases 2 and 3.

WHEREAS, once Phase 1 is completed, District will continue District's Use of the Phase 1 improved site as set forth in this Agreement; and

WHEREAS, the Parties agree that entering into the Agreement will benefit the community, providing facilities that promote and preserve their health and general welfare and will cultivate the development of good citizenship by providing adequate programs of community recreation; and

AGREEMENT

NOW, THEREFORE, it is mutually agreed by and between the Parties as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to provide the terms and conditions related to the funding and reimbursement of Phase 1 expenditures and for the use of the Park (Phase 1) once completed.
2. **Term.** This Agreement shall remain in force so long as the Park (Phase 1) remains under the City's ownership and control.
3. **Phase 1 Budget.** The Phase 1 Budget for Construction is estimated to be approximately \$25.6 million (hereinafter, "Phase 1 Budget").
 - 3.1 **District's Contribution.** District plans to contribute \$5.0 Million Dollars from Measure SMS tax-exempt bond funds toward Construction Costs (as defined below), contingent upon (i) District's written approval of 100% schematic design of the Phase 1 Project ("100% SD"), as described in Section 3.2, herein; and (ii) City's completion of the Phase 1 Project in accordance with the District approved 100% SD.
 - 3.2 **Process for Districts' Approval of 100% Schematic Design.** City shall cause its design-build contractor to provide the 100% SD, based upon the specifications set forth in Exhibit "D", herein. Upon completion of the 100% SD by the City's selected design-build contractor, City shall transmit the 100% SD to the District's designated representatives. District shall submit to City written confirmation that the 100% SD conforms to the Exhibit "D" specifications no later than fifteen (15) days from the City's transmittal of the 100% SD to District. In the event that District does not agree that the 100% SD conforms to the Exhibit "D" specifications within fifteen (15) days, the parties shall meet and confer in good faith no later than thirty (30) days from the City's transmittal of the 100% SD to District. If the parties cannot agree upon the 100% SD, either party has the right to terminate the Agreement in accordance with Section 11, herein. District agrees that City's selection of the design-build contractor shall be in City's sole and absolute discretion.
 - 3.3 **City's Contribution.** In addition to the acquisition costs for Parcel 2 in the amount of \$18,500,000, City has contributed or plans to contribute approximately \$4,550,000 toward Non-Construction Costs (as defined below) and approximately \$600,000 toward Construction Costs (as defined below), contingent upon: (i) City's and District's approval of 100% SD; (ii) the City's receipt of an enforceable financial commitment for no less than \$20,000,000 for Phase I construction costs from the Santa Monica Community College ("College"); and (iii) the guaranteed maximum price ("GMP") proposed by the City's

design-build contractor, based upon the approved 100% SD, resulting in a Phase 1 Budget of no more than \$25.6 million. If the Phase 1 Budget, based upon the approved 100% SD, is greater than \$25.6 million, then City may, in its sole and absolute discretion, either elect to proceed with construction of the Phase 1 project, based upon the adjusted GMP amount that will be the financial responsibility of City or terminate the Agreement in accordance with Section 11, herein.

3.4 **Characterization of Costs.** Non-Construction Costs include but are not limited to: Phase 1 planning, conceptual and preliminary design, final design and construction documents, and obtaining any required permits and entitlements for Phase 1. Construction costs include, but are not limited to, site preparation and demolition, grading/earthwork, general construction, and site furnishings. The exact amounts of non-construction and construction-costs will be itemized upon City's acceptance of the GMP amount.

3.5 Any modification to the City's and District's respective contributions requires written approval from the City and District.

4. **Phase 1 Schedule.** The Phase 1 Schedule is attached hereto and incorporated herein as Exhibit "C". The Phase 1 is scheduled to begin in the first quarter of 2020 and be completed in phases as set forth in the attached Exhibit "C".

5. **Intentionally Left Blank.**

6. **Reimbursement Structure.** The City and District shall each follow the following procedure for District's reimbursement to City for Eligible Costs:

6.1 **Eligible Costs for Reimbursement.** Construction Costs incurred during the Phase 1 construction phase of the Phase 1 shall be subject to reimbursement by the District ("Eligible Costs").

6.2 **Submission to District for Reimbursements.** City shall invoice District and District shall reimburse City for Eligible Costs incurred by City ("Reimbursements") in three installments as follows: (a) of \$1,250,000 upon completion of 25% of the construction; (b) of \$2,500,000 upon completion of 75% of the construction; and (c) of \$1,250,000 upon substantial completion of construction of Phase 1.

6.3 **Reimbursement Documentation.** City's invoices shall be accompanied by written documentation, itemized with sufficient detail to support the invoiced amounts. The invoice shall be accompanied by all relevant pay applications and proof of payment. The invoices shall be paid no later than sixty (60) calendar days following the date the applicable invoice is received by the District.

6.4 **Disapproved Reimbursements.** If the District disapproves Reimbursements, the District shall notify the City in writing within ten (10) calendar days of its determination to

disapprove Reimbursements and provide the grounds for such disapproval. If the City, in its sole discretion, determines that the reimbursements were wrongly disapproved by the District, the City and District shall meet and confer in good faith to resolve their dispute.

- 6.5 **Change Orders.** Phase 1 Scope Changes: Subject to Section 3.2, herein, City shall pay the cost of Change Orders if said Change Orders are due to an unforeseen condition at the Phase 1 site or if initiated by the City. District agrees not to initiate Change Orders or change in Phase 1 scope.
7. **Retention and Contingency Amounts.** The Parties acknowledge that pursuant to the construction agreement, ten percent (10%) of the construction contract amount will be held back by the City and issued as final payment to contractor within sixty (60) days of Phase I completion. A contingency amount may also be reserved.
8. **CEQA and Entitlements.** Notwithstanding any other provision herein, before Phase 1 construction commences, City shall obtain all necessary permits, approvals, and other entitlements from all applicable local and state agencies.
9. **Use of Park (Phase 1) by Parties.** The terms governing use of the Phase 1 facilities by the City and District are set forth below:
- 9.1 The District shall have the right to use the Combo Fields indicated in Exhibit "A" during the District's school year and summer programs, including the dates established by the District for: District programmed youth baseball and softball (collectively "District Programs"). The Parties shall meet and confer prior to: July 1, for the District's upcoming Fall academic semester; January 1, for the District's upcoming Spring academic semester; and May 1, for the District's upcoming summer programs. During each respective meet and confer, City and District shall establish the schedule of reserved times for District Programs (collectively, "District Scheduled Events").
- 9.2 Once the Parties agree upon the District Scheduled Events, City shall issue District a permit for the District Scheduled Events, which shall entitle District to first priority use of the areas designated in the permit for the District Programs on the days reserved for District Scheduled Events.
- 9.3 If District desires to use the Park (Phase 1), it shall follow the permit process set forth in Sections 9.1 and 9.2, herein. District may, upon ten (10) days' written notice to City, displace a third party user from an activity previously permitted through the Community & Cultural Services Department if said activity is for a permitted District Scheduled Event and the third party user can be relocated in a reasonable time prior to the occurrence of the District Scheduled Event.
- 9.4 No Park (Phase 1) use fee shall be charged for the District's use of the Park (Phase 1) and equipment when the activity is for a District Scheduled Event.

- 9.5 District shall have non-exclusive use of the on-site parking depicted and identified in the attached Exhibit "A" (the "Park Parking Lot"). District shall abide by City's posted signs concerning the use of the Park Parking Lot. District's use of the Park Parking Lot shall be on a first come, first served basis.
- 9.6 District is not required to pay City for utilities in connection with its use of the Park (Phase 1).
- 9.7 The City shall supply the minimum staff to support the District permits and to maintain safe facilities, at the City's sole discretion. The "minimum staff" may include, but shall not be limited to, custodians, and other personnel. District, at its sole cost and expense, shall provide and supplement staffing beyond that provided by the City. The City shall be required at its expense to install outfield fencing necessary for softball practices and games.
- 9.8 District is responsible for determining its appropriate staffing needs. District shall be permitted to supplement the minimum number of City staff with staff employed by District, where necessary. If District anticipates that there will be insufficient staffing at the Park (Phase 1) at any time during District's use of the Park (Phase 1), upon written request by District, City may, but is not obligated to, make staff available, at cost, to the District.
- 9.9 Neither District nor City shall not be required to make or construct any alterations including structural changes, additions or improvements to the Park (Phase 1) after the completion of the Phase 1. By District's entry and use of the Park (Phase 1) pursuant to this Agreement, District accepts the Premises in "AS IS" condition. City shall maintain the Park in accordance with the same standards as its other park facilities citywide. City will make reasonable efforts to ensure that any major repairs and maintenance requiring closure of portions of the Park shall be scheduled to not conflict with District's scheduled use.
- 9.10 The District shall repair, at its sole expense, any and all parts of the Park (Phase 1) that have been damaged by its use.
- 9.11 The Park (Phase 1) and associated areas ("Premises") may be monitored by a safety system or protocol implemented, maintained and operated by the City ("Safety Measures"). However, the Parties specifically acknowledge, understand, and agree that the Parties are neither responsible for nor have the obligation to supply, provide, establish, maintain, or operate Safety Measures for the Premises. The Parties further expressly acknowledge and agree that the Parties shall not be liable for and are hereby released from any and all responsibility for any damage, loss, or injury to the other Party or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Premises, regardless of whether a Party was able to, actually did, or failed to provide notice to the other Party of a safety incident

or situation occurring on the Premises which led to the damage, loss, or injury. The Parties make no warranties or representations as to the safety or security of the Premises, or Safety Measures. The Parties shall be responsible, at their sole cost, for supplying, providing, establishing, maintaining, and operating their own safety measures, protocols, personnel, or systems to encourage and ensure the security of the Party, its agents, officers, employees, licensees and invitees, and the Premises ("Party's Safety Measures").

- 9.12 The District shall submit written accident/incident reports to the City as soon as practicable but not more than twenty-four (24) hours after the occurrence of or District's receipt of information to the District's Facility Use Department and Risk Management office regarding any accident or incident that occurs at the Park (Phase 1) including related claims, arrest or criminal charges associated with District's use of the Park (Phase 1) or District's staff working at the Park (Phase 1). Submission of written accident/incident reports shall be made pursuant to the section entitled "Notices."
10. **Accounting Requirements and Record Retention.** City shall be responsible for maintaining an accounting system of all Phase 1-related costs, expenditures, and transactions. City shall retain Phase 1 records for a period of not less than three (3) years, including all books, papers, accounts, documents, source documents, evidence of payment, or other records as they relate to the Phase 1.
11. **Termination.**
- 11.1 **Termination Prior to Substantial Completion.** City and District shall each have the right to terminate the Agreement for cause and seek all remedies under law if City fails to construct the Phase 1 Project and/or District fails to reimburse the City in accordance with the provisions of this Agreement. Either party shall have the right to terminate the Agreement for convenience upon ten (10) days' written notice to the other party under the conditions stated in Sections 3.2 and 3.3, herein, in which event neither party has any obligation to the other after the termination for convenience becomes effective.
- 11.2 **Termination After Substantial Completion.** In the event that the City Manager reasonably determines that the District has failed to perform any of its material obligations under this Agreement, including but not limited to the District's failure to reimburse the City in accordance with Section 6.2, herein, the City Manager shall advise the Superintendent of the District of same in writing, and the City Manager and Superintendent shall promptly meet and confer regarding the basis for such determination and the steps that are reasonably necessary and appropriate to cure such failure, including an appropriate and sufficient time period for the District to cure ("District Cure Period").
- If, after such meet and confer process and District's Cure Period, the City Manager reasonably determines that such failure has not been sufficiently corrected and that the District's failure to perform such obligation continues a material default of this Agreement, the City Manager shall have the right to send written notice to the District specifying the nature of such failure and the steps necessary to cure and advising that this Agreement may be terminated unless such failure is cured within one (1) month from the

date of such notice. If the failure is not corrected within one (1) month from the date of such notice, the City Council may, after conducting a public hearing on the issue of termination, terminate this Agreement and or seek specific performance under this Agreement.

In the event that the Superintendent reasonably determines that the City has failed to perform any of its material obligations under this Agreement, including but not limited to the City's failure to allow use of the Park in accordance with Section 9, herein, the Superintendent shall advise the City Manager of same in writing and the City Manager and the Superintendent shall promptly meet and confer regarding the basis for such determination and the steps that are reasonably appropriate to cure such failure, including an appropriate and sufficient time for the City Manager to cure ("City Cure Period").

If, after such meet and confer process and City's Cure Period, the Superintendent reasonably determines that such failure has not been sufficiently corrected and that the City's failure to perform such obligation continues to materially deprive the District and the community of the benefits anticipated under this Agreement, the Superintendent shall have the right to send written notice to the City specifying the nature of such failure and the steps necessary to cure and advising that this Agreement may be terminated unless such failure is cured within one (1) month from the date of such notice. If the failure is not corrected within one (1) month from the date of such notice, the District's Board of Education may, after conducting a public hearing on the issue of termination, terminate this Agreement and/or seek specific performance of City's obligations under this Agreement.

12. **Indemnification.** To the fullest extent permitted by California law, each Party shall hold harmless, and indemnify the other Party and its board members, representatives, officers, consultants, employees, trustees, volunteers, and invitees against any and all loss, liability, damage, or expense, including any direct, indirect or consequential loss, liability, damage, or expense, for injury or death to persons, including employees of either Party, and damage to property, including property of either Party, arising out of or in connection with intentional, willful, wanton, reckless or negligent conduct resulting from the use, conduct or any activities of a Party related to this Agreement. However, neither Party shall be indemnified hereunder for any loss, liability, damage, or expense resulting from its sole negligence or willful misconduct.
13. **Insurance.** The Parties shall maintain, for the Term, at their own respective costs, their policy or policies of general liability and property insurance. Self-insurance authorized by state law and/or maintained by the Parties in their regular course of business for its other activities shall satisfy this requirement.
14. **Approval.** The Parties agree that the Agreement shall not be binding on the Parties until it has been approved by the City's and District's respective governing boards.

15. **Notices.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or either deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, email, or facsimile transmission, addressed as follows:

If to the City:

City of Santa Monica
1685 Main Street
Santa Monica, CA 90401
Attn: Assistant City Manager

With a copy to:
City Attorney
1685 Main Street
Santa Monica, CA 90401

If to the District:

Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, CA 90404
Attn: Assistant Superintendent for Business Services

With a copy to:
Orbach Huff Suarez & Henderson LLP
1901 Avenue of the Stars, Suite 575
Los Angeles, California 90067
Attn: Sarine A. Abrahamian, Esq.

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by certified or registered mail shall be effective three (3) days after deposit in the United States mail.

16. **Amendments to Agreement.** This Agreement may be amended or modified at any time by mutual agreement of the Parties. Any amendment or modification to this Agreement shall be in writing and shall be effective only upon approval by the City's and District's governing Boards.
17. **Independent Entities.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.
18. **Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties on the subject matter herein and supersedes all prior discussions, negotiations and agreements, whether oral or written, on the subject matter herein. This Agreement may be amended or modified only by a written instrument executed by both Parties.
19. **Each Party to Bear Own Costs and Attorneys' Fees.** Except as expressly set out in this Agreement, each Party shall bear its own respective costs, expenses and attorney's fees with respect to the Agreement.
20. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the internal laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which the City's administrative offices are located. The City and District waive their right to remove said action or proceeding to federal court.

21. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
22. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
23. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document. Counterparts hereof that are transmitted by facsimile or electronic transmission shall be given identical legal effect as an original.
24. **Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.
25. **Severability.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed, and the remaining provisions shall continue as valid, legal and enforceable.
26. **Amendments to Agreement.** This Agreement may be amended or modified at any time by mutual agreement of the Parties. Any amendment or modification to this Agreement shall be in writing and shall be effective only upon approval by the City's and District's governing Boards.
27. **Incorporation of Recitals and Exhibits.** The Recitals and each Exhibit attached hereto are hereby incorporated herein by reference.
28. **Time Is of the Essence.** Time is of the essence with respect to the Parties' obligations herein.
29. **Further Actions.** Each Party hereto shall execute, acknowledge and deliver such additional documents, and take such further action(s), as may be reasonably required from time to time to carry out each of the provisions, and the intent, of this Agreement.
30. **Neutral Construction.** This Agreement shall not be construed as if prepared by one of the Parties, but according to its fair meaning as a whole, as if both Parties had prepared it.
31. **No Third-Party Beneficiary.** Unless otherwise specified herein, this Agreement shall not confer or be construed to confer any rights or benefits to any person or entity other than the Parties.
32. **Force Majeure.** If either Party is unable, in whole or in part, to perform its obligations under this Agreement, by reason of the occurrence of fire, earthquake, casualty, unavoidable accident, failure of usual source of supply, strike, labor conditions, lockouts, war, acts of God, the enactment of any Federal, State, or municipal law or ordinance, or the issuance of any executive

or judicial order, whether Federal, State, or municipal, or of any other legally constituted authority, or any other cause not within the control of the Party claiming relief notwithstanding the exercise of due diligence, the Party shall give written notice to the other Party as soon as practicable after the occurrence. The obligations of that Party shall be suspended during the continuance of the cause stated in the notice, which the Party shall remedy or remove expeditiously. In such case, the obligations, terms, and conditions of this Agreement shall be extended for the period necessary to compensate for any suspension of performance.

33. **Authorization to Sign Agreement.** Each individual executing this Agreement on behalf of District represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of District in accordance with a duly adopted resolution of District's Board, and that this Agreement is binding upon District in accordance with its terms, and District shall, concurrently with its execution of the Agreement, deliver to City upon its request a certified copy of a resolution of its Board authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of City represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of City and this Agreement is binding upon City in accordance with its terms.

SIGNATURES ON NEXT PAGE

Accepted and agreed on the date indicated below:

ATTEST:

CITY OF SANTA MONICA
a municipal corporation

DENISE ANDERSON-WARREN
City Clerk

By: _____
RICK COLE
City Manager

APPROVED AS TO FORM:

LANE DILG
City Attorney

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

By: _____
Name: _____
Title: _____

Exhibit "A"
Memorial Park Master Plan
[Behind this page]

Exhibit “B”

**Phasing and Implementation Plan
[Behind this page]**

Exhibit "C"
Phase 1 Schedule

DATE	MILESTONE
October 15, 2019	City Council approval of Master Plan and direction to proceed with Design of Phase I and II, and modification of contract for CEQA
February 2020	City Council approval of progressive design-build contract
Spring 2020	Design review (FSAC, RPC, ARB (Hub building) and Environmental Clearance
November 2020	GMP Award for Construction
Winter 2020 – Spring 2022	Construction of Phase I inclusive of demolition of Former Fisher Lumber buildings

Exhibit "D"
District Design Specifications

Exhibit "E"
Typical District Scheduled Activities
[Dates are illustrative and vary from year to year]