

**Malibu Unification Negotiations Committee
Meeting Minutes**

**Tuesday, January 10, 2017
SMMUSD District Office Conference Room
1651 16th St., Santa Monica, CA 90404**

I. Call to Order / Roll Call

The committee called the meeting to order at 7:05 p.m. with the following committee members:

Tom Larmore

*Laura Rosenthal**

Paul Silvern

Manel Sweetmore

Debbie Mulvaney

**Ms. Rosenthal participated by telephone. She was located at the Sheraton Grand Sacramento Hotel, 1230 J Street, Sacramento, CA 95814. This information was included on the posted agenda and the meeting agenda was also posted at Ms. Rosenthal's location.*

Due to a change in his schedule, Mr. Delrahim was unable to attend the meeting in person. He was able to monitor the meeting by telephone from a remote location (300 Westwood Blvd. Los Angeles, CA 90024). Mr. Delrahim did not cast any votes.

II. Approve Meeting Minutes for December 13, 2016

Mr. Silvern offered a technical edit to the draft minutes. By consensus, the committee approved the corrected minutes of January 3, 2017.

III. Follow-up Items from Previous Meeting

A. Status report/discussion on SSC's review of revenue neutrality formula (Mr. Sweetmore, Mr. Larmore, Mr. Silvern)

Mr. Larmore and Mr. Sweetmore reported on the teleconference that they and Ms. Orlansky had with SSC consultants Robert Miyashiro and Mike Ricketts following SSC's review of the revenue neutrality formula and associated term sheets.

In sum, SSC concluded that the proposed revenue neutrality formula aligns with the principles adopted by the committee. While SSC found the formula has no major flaws, they did observe it will be complicated to implement. SSC's questions and comments about the formula pointed to sections in the term sheets that the committee needs to clarify and further explain. SSC also raised a handful of additional issues for the committee to consider addressing, such as what happens if an expected revenue source goes away. SSC agreed to follow-up with some practical suggestions about how to address the technical challenges and complexities associated with calculating the delta.

B. Status report/discussion on conversation with Board Chair (Ms. Orlansky)
Ms. Orlansky reported on her conversation with the Board Chair about the idea of holding a planning meeting on the schedule for the committee's submission of its report to the Board, obtaining public input from both communities, and the Board's discussion/action on the committee's recommendations.

Such a process/planning meeting would likely include the Board Chair, the new Superintendent, a representative from the Malibu Team, a representative from the Santa Monica team, Ms. Orlansky, and several District staff that the Board Chair and Superintendent decide would be beneficial to the discussion.

Mr. Silvern volunteered to be the Santa Monica Team representative and Ms. Rosenthal volunteered to be the Malibu Team representative. Ms. Orlansky agreed to relay the results of the committee's discussion to the Board Chair.

IV. Continuation of Worksession on Principles and Terms of Agreement

Handout: The latest term sheets that reflect the Committee's work to date.

Specific assignments that evolved from the committee's worksession were:

Mr. Silvern and Mr. Larmore will draft term sheet language to address what happens if external factors make it so things with the revenue neutrality formula cannot proceed as planned. This would include an arrangement for deferred payments if there is a year when Malibu cannot make an expected payment, and guidance for what sort of extreme unknown could trigger a return to the negotiating table.

Mr. Sweetmore, Mr. Larmore, and Ms. Orlansky will work on bringing greater clarity and explanation to the terms related to the revenue neutrality formula. Ms. Orlansky will do an initial draft that aims to respond to SSC's suggestions, and send that draft to Tom and Manel for more editing/polishing.

All committee members will continue to work on identifying sections of the term sheets that need additional editing for purposes of clarifying both the intent and implementation of the terms and conditions of agreement.

V. Discussion of the MUNC's report back to the Board

The committee discussed a number of options for the format and substance of documents to prepare as part of the committee's report back to the Board. The committee agreed to move forward with the following products:

- 1) A Memorandum Report to the Board (to be based on the outline prepared on what had been titled the "Executive Summary).*

2) *An edited version of the term sheets that is written in plain language to clarify and explain (as best as possible) the terms and conditions of agreement. These term sheet will travel as an attachment to the Memorandum Report. Where possible, an effort will be made to minimize the duplication of language contained in the Memorandum Report and term sheets.*

3) *The Appendix of resource materials. A table of contents to the Appendix will also travel with the Memorandum Report.*

In addition, the committee agreed that a press release will need to accompany the submission of the report. However, once the report is completed, the committee plans to ask the District's press officer to prepare a draft of this press release, which the committee will offer to review.

The committee then spent time reviewing the draft outline of the document titled "Executive Summary." Committee members offered suggestions on what to include in the next version, which will be structured as a Memorandum Report from the committee to the Board.

Ms. Orlansky agreed to make as much progress on the Memorandum Report as she has time for, responding to the feedback provided by the committee members. The next iteration will be available for the committee to work from at its next meeting, which is Monday, January 16, 2017.

VI. Public Comments

There were no public comments.

VII. Upcoming Meetings

A. Review and confirmation of Committee's upcoming meeting schedule:

- *Monday, January 16, 7-9 PM at Malibu City Hall*
- *Tuesday, January 24, 7-9 PM at the District Offices in Santa Monica*
- *Tuesday, January 31, 7-9 PM with location TBD*

VIII. Adjournment

The committee adjourned the meeting at 9:10 p.m.

MUNC Term Sheets

A “term sheet” is a nonbinding agreement that sets forth the basic terms and conditions under which an agreement is made. It serves as a template for developing a document that provides more details about an eventual agreement.

Attached are the latest versions of the MUNC’s term sheets, which are considered works in progress until the MUNC reaches its final decisions. The left-hand column of the term sheets lists the issues the MUNC identified as needing to be addressed in an agreement and any basic principles that the MUNC agreed to. The right-hand column summarizes the most recent terms and conditions the MUNC has tentatively agreed on.

This draft reflects the MUNC’s tentative decisions through its January 3, 2017 meeting.

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Introduction: General Principles for MUNC’s Agreement on Recommendations to the Board

The MUNC agrees that all terms and conditions of an agreement:

- 1) Must be financially viable for both SMUSD and MUSD. (Note: financial viability for each school district will need to be further defined.)
- 2) Must ensure a degree of predictability for both SMUSD and MUSD, to enable each school district to be able to plan ahead with a reasonable degree of resource certainty.
- 3) Must avoid establishing potential negative incentives for either SMUSD or MUSD. For example, creating a disincentive to pursue increased revenue or otherwise improve education in their schools.
- 4) Must be clear and understandable, legal, and enforceable.

Term Sheet for Topic #1, Operating Budget Impact

The term sheet below outlines the general principles and terms for a nonbinding MUNC agreement on a formula (and related procedures) for eliminating any significant adverse financial impact on SMUSD from separation; *financial impact* is defined as the difference in revenue per ADA in what SMMUSD would have been vs. revenue per ADA in a Santa Monica only district. The calculation of this difference in revenue per ADA is referenced as the “delta.” The phrase “revenue neutrality” refers to the goal of eliminating any significant adverse financial impact on SMUSD from separation, as measured by the delta.

Principle/Parameter	Terms of Agreement
A. REVENUE SOURCES	Unrestricted General Revenue:
A.1 Revenue sources to include in the formula for measuring the delta	A.1 Revenue Sources to Include 1. LCFF Revenue a. All categories of LCFF except State Aid b. LCFF State Aid 2. Other State Revenue a. Lottery Fund Revenue b. Mandated Cost Block Grant Revenue 3. Other Local Revenue a. Parcel taxes b. Leases and rentals c. City of Santa Monica contract d. City of Malibu contract e. Santa Monica sales tax: Prop Y; and new 2016 sales tax: Measure GSH 4. New sources of revenue established post-separation a. Revenue from any new revenue streams established and generated post-separation by Santa Monica. b. Revenue from a new Malibu parcel tax, equal to what residents currently pay to SMMUSD, which Malibu has identified as a prerequisite to separation.
A.2 Revenue sources to exclude in the formula for measuring the delta	A.2 Revenue Sources to Exclude and Rationale for Exclusion Education Foundation Revenue (currently SMMEF) – the rationale for exclusion is that this revenue is money raised by PTAs, businesses, etc. in each district respectively, and the committee does not want to create any disincentives for local fund raising efforts.

Principle/Parameter	Terms of Agreement
<p>B. STRUCTURE OF THE REVENUE NEUTRALITY FORMULA</p> <p>B.1 Principles behind the formula</p>	<p>On December 6, 2016, the Committee agreed to continue working from the “Latest Proposal” as the basis for building a consensus revenue neutrality formula. The Latest Proposal is based on the following principles:</p> <ol style="list-style-type: none"> 1) The formula is designed to provide predictable and stable budget growth for both SMUSD and MUSD. 2) A payment schedule from MUSD to SMUSD that in the aggregate equates to the cumulative delta (calculated annually as the difference between what revenue per ADA in SMMUSD would have been vs. revenue per ADA in SMUSD) but is adjusted based on MUSD’s ability to pay over time. 3) The formula for MUSD’s ability to pay is premised on holding MUSD’s annual budget growth to the LCFF cost-of-living adjustment rate (currently 2.67%), with revenue above that used toward payment of the cumulative delta. 4) Depending on the timing of payments, the total amount paid from MUSD to SMUSD will be adjusted to take the time value of money into consideration, based on the earnings rate paid to individual school districts by the centralized LACOE investment pool.
<p>B.2 Calculation and payment of the delta (including source of data and timing of annual calculation)</p>	<p>The delta will be calculated annually from the first year of separation (assumed to be 2018-2019) through 2029-2030. The payments of the cumulative delta, including interest accrued, will continue through 2034-2035. (See criteria for renegotiating the formula for what happens if implementation is delayed.)</p> <ul style="list-style-type: none"> • If what revenue per ADA in SMMUSD would have been <u>is greater than</u> revenue per ADA in SMUSD, then MUSD will owe a payment to SMUSD. • If what revenue per ADA in SMMUSD would have been <u>is less than</u> revenue per ADA in SMUSD, then MUSD will accrue a credit that can be counted towards a future payment.

	<p>Final calculations in the agreed-upon formulas should use data from the audited financial statements (“audited financials”) for SMUSD and MUSD, which are expected to be available in December of each year.</p> <p>The annual calculation of the delta should proceed as follows:</p> <ol style="list-style-type: none">1) The audited financials for the first fiscal year of separation will be available in December of the second fiscal year of separation.2) The formal calculation of the delta using these audited financials will be performed the following month, that is, in January of the second fiscal year of separation.3) The decision to use audited financials as the source of data means that there will be no payment (or credit) at the beginning of the first or second fiscal year of separation. The payment (or booking of a credit) at the end of the second fiscal year of separation will reconcile the delta for the first fiscal year of separation.4) This pattern of reconciling the delta for each fiscal year at the end of the next fiscal year will continue for the length of the payment agreement. <p><i>To add: Who will be assigned the role of calculating the annual delta?</i></p>
<p>B.3 Other components of the formula</p>	<p>The committee tentatively agreed to incorporate the following components into the formula:</p> <ol style="list-style-type: none">1) Minimum threshold amount for delta. The formula for calculating the annual delta should establish a minimum dollar amount (expressed in revenue per ADA for SMUSD) below which no payment will be owed from MUSD to SMUSD. The Committee tentatively established this minimum amount at a fixed \$100 per ADA.2) A tracking phase. The formula should retain a “tracking phase” (referenced in earlier proposals). The tracking phase would begin either three years after separation occurs or 2022-23, whichever is later. <p>Continued next page.</p>

	<p>If, during the tracking phase, there are three consecutive years during which the annually calculated delta (without regard to any credits Malibu may have accrued in previous years) is below some minimum threshold amount (tentatively established as less than \$100 per ADA), then the revenue neutrality arrangement ends except that any outstanding payments due from MUSD to SMUSD would still need to be paid.</p> <p>3) Criteria for renegotiating the formula/terms of payment.</p> <p>Any renegotiation should be conducted within the context of the basic principles outlined in the Committee’s recommendations to the Board.</p> <p>a. Everyone’s best efforts will aim for effectuating separation of SMMUSD into SMUSD and MUSD by 2018-2019. If, however, implementation is delayed beyond 2021-2022, then the formula and terms of payment will be revisited and open for renegotiation.</p> <p>b. Once separation has occurred, the criteria for opening a negotiation on the formula and terms of payment will be defined as a “significant change” in any of the key underlying assumptions in the formula or SSC’s projections, such as: the state’s LCFF guidelines; the LCFF annual cost-of-living increase; or changes in assessed valuations. (</p> <p>Note: Before it completes its work, the Committee will refine the criteria for renegotiation, which will also stipulate what terms remain in place during any period of renegotiation.)</p>
<p>B.4. Enforceability and legality of agreements</p>	<p>The structure of the formula will be included in the legislation and related documents that implement the separation of SMMUSD into SMUSD and MUSD.</p>
<p>C. IMPLEMENTATION</p>	<p>The Committee’s agreements on this item will feed into terms for Topic 5, Implementation Steps.</p>

Term Sheet for Topic #2, Balance Sheet Allocations

The term sheet below outlines the general principles and terms for a nonbinding MUNC agreement on the issues and sub-issues identified for Topic #2, Balance Sheet Allocations.

Principle/Parameter	Terms of Agreement
<p>Issue #1: Allocation method for dividing SMMUSD’s cash assets.</p> <p>The allocation of cash assets, i.e., ending fund balances at the time of separation, will be decided by fund, and will be guided by a method representing a fair and equitable division of the ending fund balances between SMUSD and MUSD.</p>	<p>For certain funds, this means that the allocation between SMUSD and MUSD will be based on a calculation of the pro rata Average Daily Attendance (ADA).</p> <p>For purposes of the one-time allocation of cash balances, the term “ADA method” refers to a three-year average of the ADA split between what will be SMUSD and MUSD. The three years will be the year that separation occurs and the prior two years. As a point of reference, the Santa Monica/Malibu ADA ratio was 84%/16%.</p> <p>The exceptions will be for funds where the relative source of revenue (i.e., SMUSD vs. MUSD) has been substantially different from the ADA ratio, or if there is an alternative, more equitable method of allocating a fund balance.</p> <p>The table that begins on the next page summarizes the recommended method of allocation for each fund.</p>

Note: The term sheet for Topic #2 continues on page X, following Table-1.

**Table-1
Summary of Recommended Allocation Method By Fund**

Fund	Method for Allocating Cash Balance in Fund	MUNC Comments
A. MAJOR FUNDS		
1. Unrestricted General Fund	ADA method	The ADA method for the Unrestricted General Fund is recommended because: it greatly simplifies the calculation required; and analysis of the revenue sources by line item for 2015-16 shows net contributions from Santa Monica and Malibu closely mirrors the ADA split. A similar analysis should be repeated at the time of separation to ensure this finding still holds.
2. Restricted General Fund	ADA method	The ADA method is recommended for the Restricted General Fund for the same reasons listed above for the Unrestricted General Fund.
3. Building Fund	<p>The Building Fund will contain the end-of-year cash balance of SMMUSD bond proceeds in the year prior to separation.</p> <p>This issue lends itself to a recommendation for a process because the exact allocation will depend on the status of projects in Santa Monica and Malibu at the time of separation. The recommended process is to delegate this allocation decision to Group 2, the second transition/implementation group appointed jointly by the respective Boards of SMUSD and MUSD.</p> <p>The guiding principle recommended for Group 2 to follow is to allocate the cash balance consistent with the decisions and commitments regarding projects and division of bond authority made prior to separation, and the status of projects underway at the time of separation, including that Malibu receives \$77 million (at minimum) out of ES's total of \$385 million.</p>	This is the same item listed as Issue #1C under Topic 3. See page x.
4. Bond Interest and Redemption Fund	N/A (Not Applicable)	There is no end-of-year cash balance in this fund to allocate.

Fund	Method for Allocating Cash Balance in Fund	MUNC Comments
B. SPECIAL REVENUE FUNDS		
1. Adult Education Fund	<p>Divide the fund balance based on the ratio (calculated as a three-year average) of students enrolled from each community in Adult Ed. The three years will be the year of separation and the prior two years.</p> <p>However, if MUSD does not plan to offer Adult Education, then the entire fund balance will be transferred to SMUSD.</p>	The source of revenue for this fund is the State, which pays school districts a set amount per student participating in Adult Education.
2. Child Development Fund	<p>Divide the fund balance based on the ratio (calculated as a three-year average) of students enrolled from each community in Child Development program(s). The three years will be the year of separation and the prior two years.</p> <p>However, if MUSD does not plan to offer a Child Development program, then the entire fund balance will be transferred to SMUSD.</p>	The source of revenue for this fund is the State, which pays school districts a set amount per student participating in Child Development programs.
3. Cafeteria Special Revenue Fund	ADA method	The ADA method is recommended because this fund gets its revenue from students in both Santa Monica and Malibu.
4. Deferred Maintenance Fund	The fund balance will be divided based on the percent of total floor area square footage in Santa Monica vs. Malibu buildings at the time of separation.	The purpose of this fund is to fund routine maintenance needs across all of SMMUSD's buildings, located in both Santa Monica and Malibu.

Fund	Method for Allocating Cash Balance in Fund	MUNC Comments
C. CAPITAL PROJECT FUNDS		
1. Capital Facilities Fund – developer fees	The fund balance will be divided based on a three-year average of the percent of total dollar amounts contributed from developments located in Santa Monica vs. Malibu. The three years will be the year of separation and the prior two years.	Development contributions by location are tracked annually, so the allocation method recommended should be relatively simple to implement.
2. Special Reserve for Capital Projects Fund – Tax increment Pass-Through Funding from the former Santa Monica Redevelopment Agency (RDA),	<p>The one-time allocation of the fund balance at the time of separation will be based on the ratio of total ES funds allocated to bond-funded projects in Malibu schools and bond-funded projects in Santa Monica schools.</p> <p>To be specific, the Santa Monica/Malibu allocation ratio will be 78/22. This is calculated as the allocation to Malibu of (at least) \$77 million out of 350.6 million, which is the amount remaining of \$385 million (the ES total) after subtracting the \$34.4 million allocated for system-wide technology improvements.</p>	<p>This fund pays for the annual debt service on the existing Certificates of Participation (COPs) for the 16th Street building (District Headquarters). The annual debt services for principle and interest is \$1.869M.</p> <p>\$5M of this fund is reserved to cover shortfalls occurring in Measure BB, and the balance is used to fund other capital projects as they are identified by the District as a priority. There has been no pattern established for using these funds for capital projects based on the project’s location in Malibu or Santa Monica.</p>
D. RETIREE BENEFIT FUND	<p>The MUNC recommends the details of this allocation be assigned to Group 2.</p> <p>The most equitable allocation of the cash balance in the Retiree Benefit Fund will need to be based on the most recent actuarial data available at the time of separation, and will be linked to how the liability for providing retiree health benefits is divided between SMUSD and MUSD at the time of separation.</p>	

Term Sheet for Topic #2 (continued from page X)

Principle/Parameter	Terms of Agreement
<p>Issue #2: Allocation method for dividing SMMUSD's land and buildings</p> <p>The committee agreed to consider the allocation of SMMUSD's land and buildings, or their asset value, in three categories:</p> <ol style="list-style-type: none"> 1) Schools; 2) Land/buildings used for SMMUSD activities that serve both Malibu and Santa Monica; and 3) Land/buildings that are a source of revenue for SMMUSD 	<p>Category 1: Schools</p> <ul style="list-style-type: none"> • School buildings will be allocated to the respective district where they are located. • To the extent MUSD does not provide for a continuation high school program in its own facilities, MUSD will be provided assurance that MUSD students who require enrollment in a continuation high school will be able to participate in SMUSD's continuation high school, which is currently located at Olympic High School in Santa Monica. (Whether this assurance of participation needs to be included in the special state legislation related to unification will be part of Group 1's research and recommendations on the details of implementation.) <p>Category 2: Land/buildings used for SMMUSD activities that serve both Malibu and Santa Monica. This category includes property located in Santa Monica: District Headquarters and Washington West.</p> <ul style="list-style-type: none"> • The District Headquarters building (located in Santa Monica) will be allocated to SMUSD, and SMUSD will assume sole responsibility for paying the outstanding debt owed on the COPs used to fund the purchase of this property. If the District Headquarters is ever sold, then the net proceeds will be divided between SMUSD and MUSD according to the "ADA method," as defined under the first balance sheet allocation issue. (See page X) • Washington West will be treated as if it were a school, and therefore will be allocated to Santa Monica as the district where it is located. <p>Category 3: Land/buildings that are a source of revenue for SMMUSD.</p> <ul style="list-style-type: none"> • The land/buildings that are a source of revenue (which are all located in Santa Monica) will be allocated to SMUSD. • However, if/when SMUSD sells any of the land/buildings that were a source of revenue for SMMUSD, the proceeds from the sale will be split between SMUSD and MUSD according to the "ADA method." (See page 2 of the term sheets for definition of the ADA method.)

<p>Issue #3: Allocation method for balance sheet liabilities (other than bond debt and environmental liability):</p> <ul style="list-style-type: none"> a. Certificates of Participation b. Compensated absences c. OPEB 	<ul style="list-style-type: none"> a. Certificates of Participation (COPs) The Certificates of Participation liability on SMMUSD's balance sheet reflects the debt owed on the financing for the District's Headquarters' building. SMMUSD's plan is to continue to pay the remaining debt associated with the COPs using RDA pass-through funds. As a result, at the time of separation, there may be no outstanding cash liability on the COPs to allocate between SMUSD and MUSD. b. Compensated absences The liability associated with compensated absences will "move" with the individual teacher or other staff member who has accrued this unused leave. In other words, post-separation, SMUSD will inherit the liability for personnel who are SMUSD employees, and MUSD will inherit the liability for personnel who are MUSD employees. c. OPEB (Other Postemployment Benefits) OPEB is a Government Accounting Standards Board (GASB) term that refers to the outstanding liability for paying benefits (other than pensions) to retired public sector employees. <p>The MUNC recommends the details of this allocation be assigned to Group 2.</p> <p>The most equitable allocation of OPEB liability will need to be based on the most recent actuarial data available at the time of separation, and will be linked to how the funds already set-aside for providing retiree health benefits is divided between SMUSD and MUSD at the time of separation.</p>
<p>Issue #4: Procedures (if any) for revisiting agreements reached on balance sheet allocations.</p>	<p>Given that Balance Sheet Allocations are expected to be a one-time division between SMUSD and MUSD at the time of separation, there will unlikely be any need to revisit the agreements made for Topic 2 items.</p>

Term Sheet for Topic 3, Allocation of Bond Debt and Authorization to Issue New Bonds

The term sheet below outlines the general principles and terms for a nonbinding MUNC agreement on the issues and sub-issues identified for Topic 3, Allocation of Bond Debt and Authorization to Issue New Bonds

Principle/Parameter	Terms of Agreement
<p>Bonds Issued by SMMUSD Before Separation</p> <p>Issue #1A: Method of allocating payments owed on bonds issued by SMMUSD before the date of separation.</p> <p>Issue #1B Approach to refinancing existing debt.</p> <p>I</p> <p>Issue #1C Method of allocating remaining “cash” generated by bonds issued by SMMUSD before separation.</p>	<p>#1A: Allocate SMMUSD’s existing bond debt between SMUSD and MUSD based upon the respective assessed values of Santa Monica and Malibu on the most recent assessment rolls as of the date of separation.</p> <p>#1B: The special state legislation and reorganization plan explicitly needs to address the issue of refinancing any of the existing SMMUSD debt that is allocated between SMUSD and MUSD at the time of separation. The intent is to provide that any decisions regarding refinancing of this debt can be made independently by SMUSD or MUSD, without need to coordinate with the other.</p> <p>In particular, as advised by Procopio (the MUNC’s legal consultant), language in the special legislation needs to specify that each successor district is treated as the issuing district (SMMUSD will not exist anymore) for purposes of Government Code section 53580 and related statutes, and that each is separately responsible for IRS tax compliance and continuing disclosures under SEC regulations.</p> <p>See terms for the one-time allocation of the Building Fund, page 3.</p>
<p>Issue #2: Method of allocating amount of authorized but not yet issued bonds.</p>	<p>This issue lends itself to a recommendation for a process because the exact allocation will depend on the status of projects and plans of SMUSD and MUSD at the time of separation. The recommended process is to delegate the allocation of authorized but not yet issued bonds between SMUSD and MUSD to Group 2, that is, the second transition/implementation group with members appointed jointly by the respective SMUSD and MUSD Boards of Education.</p>

	<p>The recommended guiding principles for Group 2 are to:</p> <ul style="list-style-type: none">• Allocate the authority consistent with decisions and commitments regarding projects and division of bond authority made prior to separation, including that Malibu receives \$77 million (at minimum) out of ES's total of \$385 million; and• Mutual respect for the needs and preferences of SMUSD and MUSD at the time the allocation decision is made.
<p>Issue #3: Method of issuing bonds post-separation.</p>	<p>After the date of separation, the decision by either SMUSD or MUSD to issue bonds is left to the sole discretion of each district. The same hold true for the debt owed on bonds issued after the date of separation.</p>

Term Sheet for Topic 4, Environmental Liability

The term sheet below outlines the general principles and terms for a nonbinding MUNC agreement on how to implement the Board’s objective, as stated in the Board’s December 17, 2015 Action Item, that “MUSD assumes responsibility for any remaining remediation of any contamination in Malibu schools and indemnifies SMUSD for any future claims arising from such remediation work or failure to undertake appropriate work.”

Principle/Parameter	Terms of Agreement
<p>A. Liability for environmental contamination in Malibu schools.</p> <p><u>Category (1)</u>: Contamination that is not known about at the time of separation.</p> <p><u>Category (2)</u>: Contamination that is known about before separation and for which SMMUSD has developed, approved, funded, and begun a remediation plan.</p> <p><u>Category (3)</u>: Contamination that is known about before separation but for which SMMUSD has not yet developed, approved, or funded a remediation plan.</p>	<p>The MUNC agreed to terms for three categories of liability, differentiated by whether the contamination in a Malibu school is unknown or known at the time of separation, and if known, how far along the remediation process is.</p> <p><u>Category (1)</u>: In sum, for environmental liability not known about at the time of separation, each district is on its own.</p> <p>Specifically, any source of environmental liability discovered post-separation will be the responsibility of the school district that owns the property where the liability exists. This includes responsibility for the cost of remediation as well any personal liability that arises related to this contamination. Further, each district will indemnify the other district against any environmental liability discovered post-separation.</p> <p><u>Category (2)</u>: The current ongoing remediation of PCBs, as contemplated in SMMUSD’s building replacement and renovation program will not be affected by separation and will continue to be funded after separation by the bond program. This program is scheduled to be completed by December 19, 2019.</p> <p>Any remediation project that is underway at the time of separation will be subject to further negotiation (by the “Transition Team”) at the time of separation to work out the logistics of project management and completion.</p> <p><u>Category (3)</u>: For this category of “known but not yet addressed at time of separation” contamination, each district will be liable for its own properties and in charge of developing, approving, funding, and implementing a remediation plan. For schools in Malibu, the portion of ES bonds allocated to Malibu are a potential source of funding for this remediation work.</p>

<p>B. Issues of liability for pending claims against SMMUSD that are specific to the Malibu school sites in the lawsuit brought by America Unites for Kids against SMMUSD.</p>	<p>On September 1, 2016, Judge Anderson issued his ruling on the America Unites for Kids lawsuit. The MUNC agreed that Judge Anderson's ruling is clear. Judge Anderson's ruling may remove this environmental liability issue from the Board's assignment to the MUNC.</p>
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Term Sheet for Topic 5, Implementation Steps

The term sheet below outlines the general principles and terms for a nonbinding MUNC agreement on what to recommend to the Board regarding implementation of the MUNC’s agreements on Topics 1 through 4.

Principle/Parameter	Terms of Agreement
<p>A. The MUNC’s final report will address next steps for the Board to take towards implementation of the agreements reached by the MUNC on Topics 1 through 4.</p> <p>B. The appointment and role of a “Group One” and “Group Two”</p>	<p>A. The MUNC’s report will address the next steps for the Board to take towards implementation by explaining the different options (e.g., petition to LACOE, special State legislation) that support for unification could take. However, the report will not include the details of these options because the MUNC believes that is beyond its charge.</p> <p>B. The MUNC will recommend that the two groups be appointed to assist with transition and implementation.</p> <p>Group One: The current Board should appoint a Group One to work on the things that need to happen between the time the Board approves moving forward with unification and the actual separation occurs.</p> <p>Candidate tasks for Group One mentioned already are:</p> <ul style="list-style-type: none"> • Drafting special state legislation at the Board’s direction; • Negotiating final arrangements for completing remediation and capital projects in Malibu schools that are underway at the time of separation. <p>Group Two: After separation occurs, the Board of SMUSD and Board of MUSD should appoint Group Two to work on the things that need to be resolved to ensure a smooth transition to the interactions of the two districts going forward.</p> <p>Candidate tasks for Group Two mentioned already are:</p> <ul style="list-style-type: none"> • Making recommendations for final decisions about the allocation of “cash” in the Building Fund at the time of separation and the allocation of authority to issue authorized but not yet issued bonds. <p>As the MUNC addresses each of the topics in the work plan, the “to do” list for Group One and Group Two will become more apparent.</p>

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Malibu Unification Negotiations Committee's
Report to the Board of Education of the Santa Monica-Malibu Unified School District

EXECUTIVE SUMMARY

Introduction

Points to include:

1. A few sentences about history of unification issue, to include context of SMMUSD's total budget and enrollment
2. A Board action in December 2015 established the MUNC to address the financial implications of unification of a separate Malibu United School District. In particular, the Board's action outlined: issues to be negotiated; objectives for the negotiation; selection of an impartial facilitator, the approach to providing resource support for the negotiations; the period of negotiation; and the process that would follow submission of a report from the Committee.
3. Note that the MUNC's negotiations on the financial implications of unification represent one component of a larger process required for the separation of SMMUSD into two independent schools districts: Santa Monica Unified School District (SMUSD) and Malibu Unified School District (MUSD).
4. Conclude with road map to Executive Summary, which is organized into three parts:
 - Part I: Overview of the Committee's Process
 - Part II: Summary of the MUNC's Negotiated Package of Terms and Conditions
 - Part III: Next steps

Part I: Overview of Committee Process

A. General

1. Appointment of MUNC members (note May 2016 change in Malibu Team member)
2. Selection and role of facilitator
3. Adoption of Ground Rules – highlight several provisions, for ex:
 - Guidelines for working collaboratively
 - Definition and process for consensus decision-making
4. Selection and role of consultants (Procopio, SSC Phase 1, and SSC Phase 2)
5. Use of working documents to guide and track Committee progress:
 - Plan of Work based on Board's assignment to MUNC
 - Term Sheets (updated after each meeting) to track tentative agreements on principles, terms, and conditions of agreement
6. Record of Committee Meetings
 - X meetings held; rotated locations between Santa Monica and Malibu
 - Agenda, minutes, handouts of all meetings posted on SMMUSD website

- B. Written sources of information used by the Committee for the basis of discussion and decision-making
1. Selected/relevant documents prepared previously by District staff, Financial Oversight Committee, and consultants hired by AMPS (WestEd and Neilson Merksamer, LLP)
 2. Information provided by legal consultants selected by MUNC (Procopio, LLP)
 3. Information provided by school finance consultants selected by MUNC (SSC)
 4. District staff and consultants (risk management, bond financing)

Reference that a complete list and copies of documents can be found in online Appendix.

Part II: Summary of Principles and Negotiated Terms and Conditions for an Agreement

A. General Principles

The MUNC adopted general principles to serve as guidelines for its negotiations. Specifically, the MUNC agreed that all terms and conditions of an agreement:

1. Must be financially viable for both SMUSD and MUSD.
2. Must ensure a degree of predictability for both SMUSD and MUSD, to enable each school district to be able to plan ahead with a reasonable degree of resource certainty.
3. Must avoid establishing potential negative incentives for either SMUSD or MUSD. For example, creating a disincentive to pursue increased revenue or otherwise improve education in their schools.
4. Must be clear and understandable, legal, and enforceable.

B. Highlights of Negotiated Terms and Conditions

Based on the Board's December 17, 2015 action to establish the MUNC, the Committee organized its negotiations into four key financial issue areas and a fifth category related to implementation. The Board's objectives for the Committee's negotiations in each issue area are outlined below, followed by a summary of the major terms and conditions of agreement negotiated by the Committee.

Issue #1: Operating Budget Impact of Separation

Board's objective for negotiations: The terms and conditions for separation must eliminate any significant adverse financial effect of separation on SMUSD.

Major Negotiated Terms and Conditions

- a. Definitions of terms for purposes of the negotiations
 - "Adverse financial effect" is the difference in revenue per ADA in what SMMUSD would have been vs. revenue per ADA in a Santa Monica only district.

- The Board's goal to eliminate any adverse financial effect is referenced as "revenue neutrality."
 - The "delta" is the calculation of the difference in revenue per ADA.
- b. A formula for accomplishing the Board's goal of revenue neutrality that includes agreement on:
- Principles behind the formula;
 - The sources of data to use in the formula;
 - The details of calculations to be performed and how to determine the amount and timing of payments from MUSD to SMUSD;
 - Projections of the delta and payments from MUSD to SMUSD over time.
- c. Criteria that would trigger a renegotiation of the formula.
- d. A method for ensuring the enforceability and legality of the agreement for revenue neutrality.

Issue #2: Division of SMMUSD's Cash Balances, Land, & Buildings

Board's objective for negotiations: The terms and conditions for separation will include a method(s) for the allocation of the cash in SMMUSD's General Fund Accounts and the Capital Facilities Fund at the time of separation. The method will be fair to both SMUSD and MUSD, considering the sources and uses of cash in the various funds.

Major Negotiated Terms and Conditions

- a. For each major fund, the Committee negotiated a method for dividing the cash balance at the time of separation.
- b. A method for categorizing and then dividing SMMUSD's land and buildings at the time of separation.

Issue #3: Bond-Related Items

Board's objective for negotiations: The terms and conditions for separation will include a method(s) that is fair to both SMUSD and MUSD for the: allocation of bond debt; refinancing of bond debt; and allocation of the authority to issue authorized by unissued bonds.

Major Negotiated Terms and Conditions

- a. Method for allocating payments on bond debt owed on bonds issued by SMMUSD before the date of separation.
- b. Approach to refinancing of the bond debt issued by SMMUSD before separation.
- c. Method of allocating the amount of authorized but not yet issued bonds.
- d. Method of issuing bonds by SMUSD and MUSD post-separation.

Issue #4: Environmental Liability

Board's objective for negotiations: The terms and conditions for separation will establish a structure under which MUSD assumes responsibility for any remaining remediation of any contamination in Malibu schools and indemnifies SMUSD for any future claims arising from such remediation work or failure to undertake appropriate work.

Major Negotiated Terms and Conditions

Approach to addressing three categories of environmental liability in Malibu schools, differentiated by whether it is known at the time of separation. Specifically:

- Contamination that is not known about at the time of separation;
- Contamination that is known about before separation and for which SMMUSD has developed, approved, funded, and begun a remediation plan; and
- Contamination that is known about before separation but for which SMMUSD has not yet developed, approved or funded a remediation plan.

Note: Another one of the Board's objectives was the dismissal of the pending lawsuit against SMMUSD or an enforceable agreement from the plaintiffs that SMUSD will be dismissed from the lawsuit. The Committee's understanding is that the September 1, 2016 ruling by Judge Anderson on the America Unites for Kids lawsuit essentially eliminated the Committee's need to address this objective as part of its negotiations.

Issue #5: Implementation

As the Board knows, there are several different avenues available (e.g., petition to LACOE, special State legislation) for moving towards implementation of a separate Malibu Unified School District. Negotiations on the details of this were beyond the scope of the MUNC's assignment. However, the Committee felt it was important to offer a recommendation on how to resolve the financial items identified in the report that, due to various reasons, cannot be finalized until either at the actual time of separation or in the time period post-separation.

For this purpose, the Committee recommends the appointment of two groups.

Group One: The SMMUSD Board should appoint a Group One to work on the things that need to happen between the time the Board approves moving forward with unification and the time that separation occurs.

Candidate tasks for Group One are:

- Drafting special state legislation at the Board's direction;
- Negotiating final arrangements for completing remediation and capital projects in Malibu schools that are underway at the time of separation.

Group Two: After separation occurs, the Board of SMUSD and Board of MUSD should appoint Group Two to work on the things that need to be resolved to ensure a smooth transition to the interactions of the two districts going forward.

Candidate tasks for Group Two are:

- Based on the status of capital projects at the time of separation, making final recommendations about the allocation of “cash” in the Building Fund.
- Based on the status of ES bond authority used at the time of separation, making final recommendations about the allocation of authority to issue authorized but not yet issued bonds.

With respect to what happens directly after the Committee submits its report to the Board, the Board’s December 17, 2015 action to establish the MUNC outlined a process, which is described below.

Part III. Next Steps

A. Summary of Next Steps as Outlined in the Board’s December 17, 2015 Action

Recap of what Board’s December 2015 action stated about the process following submission of the Committee’s report signed by both negotiating teams.

1. The signed report will be made available for public inspection;
2. Following a two-week period for public review, the Board will discuss the final written report from the Committee as a Discussion Item during a regular Board Meeting;
3. The Board may determine that changes to the negotiated agreement are required, based on comments from the public and its own discussion. Any such changes will be communicated to the Santa Monica negotiating team with a request that negotiations be reopened with the goal of incorporating the required changes.
4. If the Board determines that no changes in the negotiated agreement are required, then the final report will be presented to the Board as a Major Action item at the next regular Board meeting.

B. Summary of Board Conditions for the Determination of Successful Negotiations

The Board’s December 2015 action articulated four conditions for determining that the negotiations have been completed successfully. In sum:

1. The negotiating teams collectively determine that negotiations have achieved the Board’s objectives and present the evidence for their determination to the Board;
2. Any technical and legal concerns regarding the negotiated agreements have been resolved;
3. The Board determines that negotiations have achieved its objectives and formally approves the written report and related agreements as a Major Item during one of its regular public meetings;
4. The Malibu City Council formally approves the written report and related agreements during of its regular public meetings.

Malibu Unification Negotiations Committee's
Report to the Board of Education of the Santa Monica-Malibu Unified School District

APPENDIX

	Hyperlink
Committee's Working Documents	
Ground Rules Adopted by the MUNC, revised May 31, 2016	
Attachment: Role of the Facilitator, April 5, 2016	
Glossary	
Plan of Work, as revised August 8, 2016	
Term Sheets, as revised January XX, 2017	
Attachment to Term Sheets: Revenue Neutrality Model Projections (spreadsheet with "road map" on how to read it)	
What else?	
Memos/Reports/Presentations from Consultants Retained by Committee	
School Services of California (SSC)'s Presentation on School Financing in California (video)	
SMMUSD, Review of Prior Reports and Analyses of District Reorganization, prepared by SSC, August 1, 2016	
SMMUSD Reorganization Review and Analysis, Report Prepared by SSC for the Malibu Unification Negotiating Committee, September 14, 2016 (rev. 12/6/2016)	
Memorandum from John Lemmo, Partner, Procopio, with responses to the Committee's questions regarding general obligation bond allocation, July 21, 2016	
Memorandum from John Lemmo, Partner, Procopio, with responses to the Committee's questions regarding environmental liability, August 8, 2016	
What else?	

Data and Other Information from District	
Memorandum from Carey Option to the Board, Lease Update, July 15, 2016	
Presentation on SMMUSD's insurance program, provided by Jan Maez, Chief Financial Officer, and a representative from the Alliance of Schools for Cooperative Insurance (ASCIP), July 19, 2016	
Responses to Committee's questions: August 2016 and November 2016	
Inventory of SMMUSD's Land and Buildings, 8/22/2016	
Presentation from Jan Maez, CFO, to the Board on 2015-2016 Unaudited Actuals, September 1, 2016	
Bond Committee's Report to the Board (<i>get title and date from Debbie</i>)	
Presentation from Tony Hsieh, Keygent Advisors, SMMUSD Bond Program Overview, October 4, 2016	
What else?	
Background Documents (in chronological order)	
Feasibility Analysis of Proposed SMMUSD Reorganization, prepared by WestEd for AMPS, January 2013 and July 2015 Update	
Memorandum prepared by WestEd for AMPS, Reorganization Research Findings, November 12, 2013	
Memorandum from Marguerite Mary Leoni, Neilsen Mersamer, LLP, to AMPS, Questions Pertaining to Formation of Malibu Unified School District, September 22, 2014	
Financial Oversight Committee's memorandums to the Board on the financial implications of reorganizing the existing SMMUSD by forming a new Malibu Unified School District, July 15, 2015: <ul style="list-style-type: none"> • Implications Relating to Annual Operating Budgets • Implications Relating to the Division of Assets and Liabilities 	
Financial Oversight Committee's update to the Board on the budgetary implications of a Malibu unification, November 19, 2015	
Board of Education's Action to Establish the Malibu Unification Negotiations Committee, December 17, 2015	

Board of Education’s Action to appoint members of the Santa Monica Negotiation Team; action recognizes appointment of members by the City Manager to the Malibu Negotiating Team, January 21, 2016	
What else?	
Other Documents	
California Department of Education, District Organization Handbook, July 2010, Chapter 6, Legal Criteria Governing Reorganization Proposals	
Judge Anderson’s ruling on America Unites for Kids lawsuits vs. SMMUSD, September 1, 2016	
What else?	
Committee’s Agendas and Minutes	
#1 March 16, 2016	
#2 March 29, 2016	
#3 April 5, 2016	
#4 May 24, 2016	
#5 May 31, 2016	
#6 June 7, 2016	
#7 June 14, 2016	
#8 June 21, 2016	
#9 June 28, 2016	
#10 July 14, 2016	
#11 July 19, 2016	
#12 August 2, 2016	
#13 August 9, 2016	
#14 August 23, 2016	

#15	September 1, 2016	
#16	September 6, 2016	
#17	September 13, 2016	
#18	September 20, 2016	
#19	September 27, 2016	
#20	October 4, 2016	
#21	October 18, 2016	
#22	October 25, 2016	
#23	October 29, 2016	
#24	November 3, 2016	
#25	November 22, 2016	
#26	November 29, 2016	
#27	December 6, 2016	
#28	December 13, 2016	
#29	January 3, 2017	
#30	January 10, 2017	
#31	January 24, 2017	
#32	January 31, 2017	
MISSING ANY?		