

**Malibu Unification Negotiations Committee  
Meeting Agenda  
Tuesday, February 7, 2017**

**SMMUSD District Offices,  
Board 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 members present:*

*Tom Larmore*

*Laura Rosenthal*

*Paul Silvern*

*Manel Sweetmore*

*Debbie Mulvaney*

II. Approval of January 31, 2017 Meeting Minutes

*By consensus, the Committee approved the minutes of January 31, 2017.*

III. Continuation of Worksession and Editing on Committee's Report to the Board

Handout: The latest draft of the Committee Report to the Board

*The Committee considered and agreed on multiple edits to the latest versions of the Memorandum Report (V.8), Appendix A (V.1), Appendix B (V.3), Appendix C (V.8), Appendix D (V.1), and Appendix E (V.3).*

*The Committee received reports from Mr. Larmore and Mr. Silvern, the Committee's designated liaisons to the two domain readers of the Term Sheets, Mr. Lemmo and Ms. Maez. In sum:*

- *Mr. Larmore reported that Mr. Lemmo assessed the overall contents of the Term Sheets as reasonable, legal, and enforceable. As a result of Mr. Lemmo's guidance regarding the post-reorganization refinancing of existing debt (that would be allocated between SMUSD and MUSD at the time of reorganization), the Committee agreed to add the phrase, "to the extent that the rights of bond holders are not prejudiced" to the final paragraph on C-19 of the Term Sheets (V.8) and the comparable paragraph in the Memorandum Report.*
- *Mr. Silvern shared Ms. Maez's questions, comments, and suggested edits on various sections of the Term Sheets. In response to Ms. Maez's feedback, the Committee agreed to multiple global edits that included: replace "budget" with "revenue" in the places where the Committee's intent is "revenue;" and correct references to "cash assets" that technically are "Fund Balances."*

*Other edits agreed to by the Committee in response to Ms. Maez's feedback included: add a graphic to better communicate the Committee's recommendation regarding the annual calculation and payment cycle; modify the alternative method of dividing the Fund Balance in the Child Development Fund to more accurately reflect the source of funds; add that if any MUSD students attend SMUSD's continuation high school, then MUSD would pay the transportation costs for such students; and modify the description of how to calculate the share of net proceeds received by MUSD (if SMUSD ever decides to sell the District Headquarters) to take into account the outstanding balance on the Certificates of Participation at the time of reorganization.*

*Specific assignments and next steps that resulted from the editing session were:*

- *For the next version of Appendix A, Mr. Silvern will make some technical corrections to the map of the current District.*
- *Mr. Larmore and Mr. Silvern will draft clarifying edits to the bullet points that explain LCFF, and in particular, to the explanation of the revenue impact of becoming a Minimum State Aid or Basic Aid district.*
- *Mr. Larmore and Mr. Sweetmore will form a Subcommittee to reach mutually-acceptable language in the Topic #4 Term Sheet regarding the allocation of costs of a potential personal injury liability associated with the contamination of buildings in Malibu for which SMUSD is responsible for remediation.*
- *Mr. Silvern agreed to research the current interest rate earned by SMUSD and MUSD on funds deposited with the County of Los Angeles Treasurer's pooled investment account of short-term securities. The correct interest rate will be inserted in the Memorandum Report (page 12 of V.8) and the Term Sheets (page C-7 of V.8).*
- *For the next version of Appendix D, Mr. Sweetmore will draft the Guide to the sample projections, revise the spreadsheet itself to be more user-friendly (including adding line numbers), and insert a graphic that depicts the revenue growth projected in both SMUSD and MUSD. Once the next version of Appendix D has been drafted, it will be circulated for feedback so that Mr. Sweetmore can prepare a close-to-final version for review by the Committee at its next meeting.*
- *Ms. Orlansky and Mr. Silvern will work together so that by Friday, February 10, there are revised electronic versions of the Memorandum and the Appendices that reflect the Committee's discussion and decisions on February 7. These documents, in track changes mode, will be sent to the full Committee for review.*
- *Ms. Mulvaney and Ms. Rosenthal will take on the job of sharing "clean" PDF versions of Friday's documents with the respective community readers in Santa Monica and Malibu. Ms. Mulvaney and Ms. Rosenthal will aim to share the feedback from the community readers at the Committee's next meeting.*

- *Ms. Orlansky will consult with the Superintendent's Office about the production and distribution of the Committee's final Report, including preparing hard copies for the Board (perhaps with tabs or different colored pages to mark each Appendix) and posting a publicly available PDF version on SMMUSD's website.*

IV. Public Comments

*There were no public comments.*

V. Committee's future meeting schedule

- *The Committee agreed to meet next on Thursday, February 16, 2017.*
  - *The Committee agreed to start the February 16<sup>th</sup> meeting at 6:30 p.m. in order to provide extra time to work on the Committee's Report to the Board.*
  - *Mr. Sweetmore stated that he would be out of town on February 16<sup>th</sup>, but could participate in the meeting by telephone or Skype; Mr. Sweetmore will provide his remote address to Ms. Orlansky to include on the agenda.*
  - *For the convenience of the Santa Monica Team Members, Ms. Rosenthal offered to drive to Santa Monica for the February 16<sup>th</sup> meeting.*
  - *Ms. Orlansky agreed to check on space availability at the District Offices for a 6:30 p.m. start time on February 16, 2017.*
- *Other Committee meeting dates after February 16<sup>th</sup> will be determined next week.*

VI. Adjournment

*The Committee adjourned the meeting at 9:20 p.m.*

**MEMORANDUM REPORT**

To: Members of the Board of Education  
Santa Monica-Malibu Unified School District

From: The Malibu Unification Negotiations Committee

Date: February XX, 2017

Subject: Negotiated Terms of Agreement on the Financial Implications of Reorganizing SMMUSD into Two Separate Unified School Districts

This Memorandum Report is the Malibu Unification Negotiations Committee’s (the “Committee”) report to the Santa Monica-Malibu Unified School District (“SMMUSD” or the “District”) Board of Education (the “Board”) on financial issues involved in reorganizing the District into two separate K-12 public school districts: a Santa Monica Unified School District (“SMUSD”); and a Malibu Unified School District (“MUSD”). In its Action Item, approved on December 17, 2015, establishing the Committee, the Board directed the work to be conducted by two teams of negotiators representing the Santa Monica and Malibu communities, whose members were appointed by the Board and the Malibu City Manager, respectively.

Based on a previous analysis prepared by the District’s Financial Oversight Committee (“FOC”) and the District’s Chief Financial Officer, which found that reorganization could have different impacts on the finances of the two new districts under California’s system of K-12 public school funding, the Board specified that a priority issue for the Committee’s work should be to negotiate terms and conditions that would enable the reorganization to occur without a significant adverse impact on the financial condition of SMUSD.

After 11 months of work, the Committee’s two teams of negotiators have unanimously approved an integrated set of terms and conditions (the “Agreement”) for addressing all topics assigned to it by the Board, including an approach for mitigating potentially adverse financial impacts on a future SMUSD. This Report summarizes that Agreement. The remainder of this Report is organized in multiple sections listed in the table below, and is supplemented by Appendices with additional supporting information, including a detailed set of Term Sheets on each of four primary financial topics and a fifth topic dealing with implementation.

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The Committee thanks the Board for the opportunity to be of service to the District on this important matter and hopes that the Board and public find that the Committee's Agreement, as presented in this Report, satisfactorily responds to the Board's charge. The Committee looks forward to presenting this Report to the Board and other interested groups in Santa Monica and Malibu in the weeks ahead.

## Part I: Executive Summary

The District's approved General Fund budget for 2016-2017 is \$171.2 million, of which the Board approved \$150.5 million for expenditures with a projected fund balance of \$20.7 million. The District currently serves 11,003 Kindergarten through 12<sup>th</sup> grade students in the two non-contiguous coastal communities of Santa Monica and Malibu. (See map in Appendix A.) Approximately 84 percent of the District's students attend 12 schools located in the City of Santa Monica **on a daily basis**, and 16 percent attend four schools located in Malibu.

In December 2015, the Board approved an Action Item establishing the Committee to negotiate an agreement to resolve certain financial issues associated with a potential reorganization of the current District into two separate school districts (SMUSD and MUSD). The Board set the scope of financial issues to address and objectives for the negotiations.

The Committee consisted of six members, three appointed by the Board to represent the interests of a potential SMUSD, and three appointed by the Malibu City Manager to represent the interests of a potential MUSD. The Committee selected a facilitator, adopted organizational ground rules and guiding principles to frame negotiation particulars, and used Term Sheets to track its negotiations. The Committee also retained third-party legal and school finance experts.

After holding more than 35 meetings between March 2016 and February 2017, the Committee unanimously approved an Agreement. The Agreement meets the Board's objectives and aligns with the Committee's guiding principles that it must: be financially viable and ensure a degree of predictability for both SMUSD and MUSD; avoid establishing potential negative incentives for either new district; and be clear, understandable, legal, and enforceable.

**Overview of the Agreement.** The Agreement is a package of principles, terms, and related provisions, organized into five major topics, as follows.

**Topic #1: Operating Budget Impact of Reorganization.** The Agreement meets the Board's objective to eliminate any significant adverse financial effect of reorganization on SMUSD as a stand-alone district by including a Revenue Neutrality Formula (the "Formula") that:

- Specifies how to calculate the financial effect of reorganization on SMUSD annually through 2029-2030;
- Establishes a method for implementing a fair schedule of payments to SMUSD from MUSD that, in the aggregate, protects SMUSD's revenue from any significant adverse financial effect of reorganization;
- Calculates the payment owed in any single year in a way that takes Malibu's ability to pay into account, while also maintaining predictable and stable budget growth for both districts in an amount at least equal to a Cost-of-Living Adjustment (COLA);
- Provides for amending the length of the payment arrangement if the annual measurements show that SMUSD can exist at an earlier time without significant adverse financial effect from the reorganization; and
- Establishes methods and timetables for performing the calculations and making any required payments by MUSD.

**Topic #2: Division of the District's Assets (cash, land/buildings).** The Agreement meets the Board's objective to allocate the District's assets in a way that is fair to both MUSD and SMUSD and considers the sources and uses of cash in various Funds. Specifically, the Agreement:

- Outlines a method for dividing each Fund at the time of reorganization, either based on the relative number of students attending classes in Santa Monica and Malibu (currently 84%/16%), or a more equitable method based on the source and use of the Fund;
- Allocates all school buildings and land to the district where they are located; and
- Allocates the District's other land and buildings (all located in Santa Monica) to SMUSD, but with the provision that if the District Headquarters or a revenue producing property is ever sold, then MUSD will receive a share of the net proceeds.

**Topic #3: Bond-Related Items and Other Liabilities.** The Agreement meets the Board's objective to develop a method(s) that is fair to both SMUSD and MUSD to: allocate the District's existing bond debt; address the refinancing of existing debt; and allocate authorized but not-yet-issued bonds. Specifically, the Agreement provides that:

- Existing bond debt will be allocated based upon assessed property values in each new district, and each district will be authorized to refinance its share of the allocated debt without need to coordinate with the other; and
- Authorized but not-yet-issued bonds should be determined at the time of reorganization, depending on the status of projects and plans of SMUSD and MUSD at that time.

**Topic #4: Environmental Liability.** The Agreement recognizes that reorganization would not affect the District's ongoing PCBs (polychlorinated biphenyl) remediation plan for certain schools in Malibu, which is scheduled to be completed by December 2019.

The Agreement meets the Board's objectives on environmental liability by providing that sources of environmental liability for which no remediation plan has been developed (whether or not known at the time of reorganization) will be the responsibility of the district that owns that property in question, and that the districts will indemnify one another against such environmental liability.

**Topic #5: Implementation of the Committee's Recommendations.** After considering: (a) the complexities and inter-relationships of the financial topics addressed in the Agreement; and (b) advice from the Committee's legal and education finance consultants that some aspects of dividing the District's finances could only be accomplished via special State legislation, the Committee recommends special State legislation as the best approach for implementing reorganization in order to ensure a comprehensive and legally enforceable result.

While implementation details were beyond the Board's assignment, the Committee recommends two groups be formed to address the financial items that cannot be finalized until the actual time of reorganization or during the months immediately following reorganization. In sum, the Committee recommends a Group One to work on things that need to happen between the time the Board approves moving forward with reorganization and the time that reorganization occurs, and a Group Two to work on all remaining issues that must be resolved to ensure a smooth transition under the guidance of each district's Board of Education.

## Part II: Background

**General.** The District and Advocates for Malibu Public Schools (AMPS) have studied multiple issues related to a potential reorganization of SMMUSD into two separate, unified districts (SMUSD and MUSD). (A “unified” school district is defined as one that operates schools from kindergarten through high school. Paradoxically, State law refers to the process of separating one unified school district into two as “unification.” To avoid confusion, this Report uses the term “reorganization.”)

Among the many questions addressed, these studies paid particular attention to: (a) how to divide the finances of the current District between SMUSD and MUSD; and (b) the potential that reorganization could adversely affect the revenue per student in a stand-alone Santa Monica district as compared with the existing District. (See Appendix B.7, SSC’s Review of Prior Reports and Analyses of District Reorganization.)

During 2014 and 2015, the District’s Financial Oversight Committee (FOC) and consultants for AMPS analyzed many of the issues associated with dividing the District’s financial assets and liabilities between two potentially new districts. The FOC and District financial staff also performed a focused review on potential aggregate and per-student revenues in each new district as compared with the current District, which concluded that there was a distinct possibility that reorganization could, at least for a period of time, materially reduce revenue to SMUSD on a per ADA basis when compared to revenue per ADA without reorganization. (See Appendix B.23 and B.24 for the FOC’s reports to the Board.)

The reasons for a potential adverse financial effect on SMUSD are complex, and include the intricacies of how State funds are provided to local school districts in California. (See explanation below.) In addition, although a stand-alone SMUSD would keep certain revenues provided by the City of Santa Monica (currently shared with the Malibu schools), SMUSD would no longer receive property tax revenue generated in the Malibu community.

The major mechanism for distributing State funds to K-12 school districts in California is the Local Control Funding Formula (LCFF). Under LCFF:

- The State sets a target amount of revenue for each school district based upon ADA and certain other factors. Each district’s share of local property taxes is subtracted from this target and the State funds the difference;
- Any school district that receives enough local property tax revenue to come close to its LCFF target amount remains entitled to also receive an additional basic level of State funding, which is known as “Minimum State Aid;”
- A school district whose property tax revenue meets or exceeds its LCFF target amount (i.e. a “Basic Aid” district) also receives Minimum State Aid; and
- Either Minimum State Aid or Basic Aid status enables a local school district to provide a higher level of funding for its schools because it will continue to receive some level of State funding beyond its LCFF target.



The relevance of the State's funding formula to reorganization is that SMMUSD would likely achieve Minimum State Aid and then Basic Aid status sooner than would SMUSD alone due to the disproportionate amount of property tax revenue generated in MUSD on a per ADA basis. MUSD is likely to become a Basic Aid district immediately. (Appendix B.6, SSC's presentation on school finance in California, contains more explanation of these issues, including how LCFF affects the finances of reorganization.)

***The Board's Establishment of the Malibu Unification Negotiations Committee.*** On December 17, 2015, the Board unanimously adopted an Action Item (Appendix B.25) to establish the Committee to negotiate the financial implications of a potential reorganization of the current District into SMUSD and MUSD. **The Board's Action Item stated:**

The Board of Education expressed its unanimous desire for the co-existence of the Santa Monica Unified School District and the Malibu Unified School District as two excellent school districts serving their respective communities and providing the best educational opportunities for their respective students as long as it can be accomplished in a manner that does not have a negative impact on the financial condition of the remaining Santa Monica Unified School District. (Board Action Item, 12/17/2015)

The Committee consisted of two teams of negotiators. The District's Superintendent would appoint three members to represent the interests of a potential stand-alone SMUSD (the Santa Monica Team); and the City Manager of the City of Malibu would appoint three members to represent the interests of a potential stand-alone MUSD (the Malibu Team).

The Board directed the negotiating teams to appoint an impartial facilitator to assist in the negotiations and instructed both teams to "work cooperatively with one another and with their counterparts, to develop and agree upon terms that promote the aspirations of the Board." The Board set the scope and objectives for the negotiations, established a process to follow after the Committee submits a report, and outlined criteria for determining success of the negotiations. (See below.)

The Board's Action Item acknowledged that the Committee would likely require access to outside consultants to advise on school budgeting and finance and legal issues. Based on past discussions, the Board Action Item noted an expectation that AMPS would pay for any consultants the Committee hired, and that the appropriate agreements between the District and AMPS to implement this arrangement would be executed before negotiations started. The Board Action Item directed the District and AMPS to evenly split the facilitator's fees.

***The Board's Stated Objectives for the Committee's Negotiations.*** The Board's stated objectives for the Committee's negotiations are listed in the box on the next page.

The financial issues assigned to the Committee for negotiations address a subset of the statutory criteria for the State Board of Education to apply before approving the reorganization of a school district via the petition procedure contained in the State Education Code. (See Appendix B.28 for a link to the *California Department of Education, District Organization Procedures*.) The petition procedure outlined in the State Education Code is not the sole option for school district reorganization in California.

As discussed later in this Report, the Committee recommends an alternative approach in which all elements of the reorganization would be accomplished through special State legislation.

### **The Board's Objectives for the Committee's Negotiations**

- Elimination of any significant adverse financial effects of reorganization on SMUSD.
- Allocation of cash in the General Fund Account and the Capital Facilities Fund in a manner which is fair to both MUSD and SMUSD considering the sources and uses of cash in the various funds.
- Allocation of bond debt and authority to issue authorized but unissued bonds in a manner which is fair to both MUSD and SMUSD and establishment of any legal mechanisms that might be required to achieve fairness.
- Establishment of a mechanism that would permit refinancing of outstanding bonds in order to reduce property tax assessments.
- Establish a procedure under which agreements on the preceding four items can be revisited on a reasonable schedule.
- Establishment of 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.
- Dismissal of the pending lawsuit against SMMUSD or an enforceable agreement from the plaintiffs that SMUSD will be dismissed from the lawsuit.
- Receipt by the Board of a legal opinion from a firm selected by the Board with respect to any potential continuing exposure of SMUSD following reorganization and a conclusion by the Board that any such exposure is reasonable.

Source: Board Action Item, 12/17/2015, Recommendation No. A.16

***What Happens Following Receipt of the Committee's Report.*** The Board's Action Item outlined the following steps to follow the submission of a report to the Board, should the Committee collectively determine that negotiations achieved the Board's objectives:

- The signed report will be made available for public inspection;
- Following a two-week period for public review, the Board will discuss the final written report on the negotiations as a Discussion Item during a regular Board Meeting;
- The Board may determine that changes to the negotiated agreement are required, based on comments from the public and its own discussion. If so, the Board will communicate the required changes to the Santa Monica negotiating team and ask them to reopen the negotiations with the goal of incorporating the required changes. After the changes are incorporated, the written report will be modified as needed; and

- Alternatively, 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.

***The Board's Conditions for the Determination of Successful Negotiations.*** The Board's Action Item articulated the following four conditions for determining that the negotiations have been completed successfully:

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

### Part III: Overview of the Committee's Process

**Committee Members Appointed.** On January 21, 2016, the Board of Education approved the Superintendent's nomination of the three members of the Santa Monica Team and formally acknowledged the three members appointed to the Malibu Team by the Malibu City Manager. The members of the Committee are listed below.

Santa Monica Team	Malibu Team
Tom Larmore	Laura Rosenthal
Debbie Mulvaney	Manel Sweetmore
Paul Silvern	Makan Delrahim*

\* In April 2016, Mr. Delrahim replaced Kevin Shenkman, an original Malibu Team member. Mr. Delrahim served on the Committee until January 20, 2017, when he resigned due to an employment change.

Between March 2016 and February 2017, the Committee held more than 35 meetings. All Committee meetings were open to the public and the Committee operated under the rules of the State's Brown Act. The weekly meetings rotated between the District offices in Santa Monica and Malibu City Hall. Support with taking minutes was provided by the District for meetings held in Santa Monica and by City of Malibu staff for meetings held in Malibu. Appendix B.30 contains all of the Committee's meeting agendas and minutes.

**Committee's First Order of Business.** The Committee convened several pre-negotiation meetings in March 2016 to select a facilitator, develop the agreement between the District and AMPS regarding the payment of consultant fees, and begin the process of selecting consultants to provide legal support and expertise on school financing in California.

During its initial meetings, the Committee selected Karen Orlansky to serve as its facilitator and adopted Ground Rules that addressed expectations for Committee member conduct that makes for effective groups, meeting logistics, compliance with the Brown Act, public comments at Committee meetings, and the method adopted by the Committee for making decisions by consensus. The Ground Rules included a written agreement on the role of the facilitator. Appendix B-X contains the adopted Ground Rules.

The Committee selected Procopio, Cory, Hargreaves & Savitch LLP, a full-service law firm located in San Diego ("Procopio"), to provide legal support, and School Services of California, Inc. (SSC) to provide consultant services related to school budgeting and finance and appropriate retention agreements were executed by Procopio, SSC, AMPS and the District.

Early on, the Committee recognized that its discussions and subsequent public reporting would benefit from adopting a glossary that defined key words and phrases as well as acronyms for use during the negotiations. Appendix E contains the Committee's glossary, which was updated throughout the course of the group's work.

**Plan of Work.** To guide its work, the Committee adopted a Plan of Work that reflected the Board's charge to the Committee. The Committee organized its negotiations into four key financial topic areas:

- Operating budget impact of reorganization;
- Division of the District's assets (cash balances, land, buildings);
- Bond-related items and other financial liabilities; and
- Environmental liability

The Committee added a fifth category for addressing issues related to implementation of its recommendations. Appendix B.3 contains the Committee's Plan of Work.

**Principles Adopted to Guide the Negotiations.** The Committee adopted general principles to serve as guidelines for its negotiations. The Committee agreed that all terms of an Agreement related to the financial reorganization of the District into two separate districts:

- Must be financially viable for both SMUSD and MUSD;
- Must ensure a degree of predictability for SMUSD and MUSD, to enable each school district to be able to plan ahead with a reasonable degree of resource certainty;
- 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; and
- Must be clear and understandable, legal, and enforceable.

As the Committee worked its way through each of the four financial issue areas, where it proved useful to the negotiation process, the Committee developed additional guiding principles specific to the each topic.

**Term Sheets.** To track the progress of the Committee's negotiations, the Committee employed a set of "Term Sheets," one for each of the five topics in its Work Plan. The Term Sheets were updated after each meeting to reflect the Committee's discussion and decision-making, and as a package, served as the basis for documenting the principles, terms, conditions, and related provisions that constitute the unanimously approved Agreement. Appendix C contains the Committee's final Term Sheets.

**Resource Materials Used by the Committee.** Many resources informed the Committee's fact-finding, deliberations and decision-making. Appendix B to this Report contains a categorized listing of these resources, together with electronic links to access the referenced items.

**Part IV: Summary of the Negotiated Agreement**

As noted above, the Committee organized its negotiations into four major financial issue areas and a fifth one to address implementation of the Committee’s Agreement. After considering: (a) the complexities and inter-relationships of the financial topics addressed in the Agreement, and (b) advice from the Committee’s legal and education finance consultants that some aspects of dividing the District’s finances could only be accomplished via special State legislation, the Committee recommends special State legislation as the best approach for implementing reorganization in order to ensure a comprehensive and legally enforceable result.

The Board’s objectives and a summary of the major terms in the unanimously approved Agreement are summarized below.

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**Topic #1: Operating Budget Impact of Reorganization**

**Board’s Objective.** The Board’s primary objective for the negotiations was to eliminate any significant adverse financial effect on a Santa Monica-only district as a result of reorganization.

<b>Definitions Adopted for Topic #1 Negotiations</b>	
Average Daily Attendance (ADA)	The average number of pupils actually attending class; generally equal to 95-98 percent of enrollment. The State requires school districts to collect and report ADA data annually.
Financial Effect	The difference in Unrestricted General Fund revenue per ADA in SMUSD vs. what the revenue per ADA would have been if reorganization had not occurred and SMMUSD continued to exist.
Revenue Neutrality	The Board’s objective to eliminate any significant adverse Financial Effect on SMUSD from the reorganization of the District into two separate districts (SMUSD and MUSD).
Revenue Neutrality Formula (Formula)	The Committee’s agreed-upon method for calculating the Financial Effect of reorganization and related payment schedule that, in the aggregate, results in Revenue Neutrality in SMUSD
Delta	The annual measurement of the Financial Effect multiplied by SMUSD’s ADA. A negative value (i.e., the revenue per ADA for SMUSD is less than that which would have been realized by a theoretical SMMUSD) creates an obligation on the part of MUSD to make a payment in that amount to SMUSD. A positive value (the revenue per ADA for SMUSD exceeds that which would have been realized by a theoretical SMMUSD) will result in a credit to MUSD offsetting future payment obligations.
Cumulative Delta	The sum of the Delta for any fiscal year added to any amount of the Delta, plus interest, remaining unpaid from prior years. A positive Cumulative Delta balance represents a credit to MUSD that will be applied against future negative Deltas. A negative Cumulative Delta balance represents the amount of money owed to SMUSD by MUSD.

### ***Major Negotiated Terms***

The Committee approached Topic #1 in multiple steps by adopting common definitions and guiding principles, studying the fiscal assumptions and projections provided by the Committee's educational consultants (SSC), and developing and evaluating options for consistency with the guiding principles.

Through this process, the Committee reached unanimous agreement on a Revenue Neutrality Formula, which calculates the Financial Effect of reorganization on SMUSD and establishes a schedule of payments to SMUSD from MUSD that will maintain predictable and stable budget growth for both districts and, in the aggregate, eliminate any significant adverse financial effect of reorganization on SMUSD.

***Key Elements of the Revenue Neutrality Formula.*** The following points summarize the key elements of the Formula:

- An expert third party will perform the Revenue Neutrality Formula's annual calculations. The respective Boards of Education of SMUSD and MUSD will select a neutral third party, with expertise in K-12 public school financing in California to perform the annual calculations provided for in the Formula.
- Delta calculations will use data from the audited financial statements of SMUSD and MUSD, not from projections. In addition, calculations of per-ADA Unrestricted General Fund revenue for a theoretical SMMUSD will be derived from the audited financial statements and the State budget. Student counts will be based on ADA data reported to the State.
- The Formula specifies the revenue sources to include in the Delta calculation. All revenue sources to be counted are components of the Unrestricted General Fund, meaning that the funds are not earmarked for a particular program. A handful of Unrestricted General Fund revenue sources are excluded because they either would make no mathematical difference or could create a disincentive for pursuing increased revenue to support education.
- The sum of payments to SMUSD from MUSD over time will equate to the sum of all of the annual Deltas through 2029-2030, while the schedule of payments will take into account MUSD's ability to pay and financial needs as a new district. The Delta will be calculated and tracked each year beginning with the first year following reorganization through 2029-2030. In the aggregate, MUSD will pay SMUSD an amount equal to the sum of the annual Deltas over that period plus interest (if applicable). The actual payment owed in any one year will be calculated to maintain predictable and stable budget growth for both districts in an amount at least equal to a Cost-of-Living Adjustment. The Formula also provides for MUSD's need to ensure financial viability as a new district in the early years after reorganization.
- Any difference between the amount actually paid by MUSD and the amount of the Delta (less any remaining credits) will be carried forward into the next year with interest. The Committee agreed that the interest rate would be the rate earned by both SMUSD and MUSD on funds deposited with the County of Los Angeles Treasurer's pooled investments account comprised of short-term securities (currently 0.9XX%).

- If the Delta calculation demonstrates that (before 2029-2030), the two districts can operate independently without any significant adverse Financial Effect on SMUSD, then the Agreement provides for amending the original term of the Delta calculations. Beginning three years after reorganization or 2022-2023 (whichever is later), if there are three consecutive years in which the Delta is less than 0.5% of the applicable components of SMUSD's Unrestricted General Fund revenues, then the Revenue Neutrality arrangement ends, except that any outstanding payments due to SMUSD from MUSD must still be paid.
- Criteria for renegotiating the Formula. The Committee's sample projections (Appendix D) assume that the District's reorganization occurs in 2018-2019. The Agreement provides that the Formula stands so long as reorganization occurs by 2020-2021, but requires that if reorganization is delayed beyond 2020-2021, then the Formula and terms of payment will be revisited and open for renegotiation, based on the same principles adopted for the original negotiation. The Agreement also spells out other post-reorganization events (e.g., a major change in how the State provides funds to K-12 school districts) that would trigger a renegotiation of the Formula.

Appendix C (beginning on page C-2) contains further details about all aspects of the Agreement regarding Topic #1.

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## **Topic #2: Division of the District's Assets**

**Board's Objective.** Allocate the cash in SMMUSD's General Fund Accounts and the Capital Facilities Fund in a manner that is fair to both MUSD and SMUSD considering the sources and uses of cash in the various funds.

### **Major Negotiated Terms.**

The Committee approached Topic #2 by separating the assignment into negotiations on the District's cash balances and negotiations on the District's land and buildings. The Committee added three supplemental guiding principles regarding asset allocation:

- The allocation of cash assets 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 that takes the sources and uses of Funds into consideration
- The negotiated methods of asset division are intended for a one-time use because the division is expected to occur at the time of reorganization; and
- For items where the necessary data are not available at this time, the fair and equitable division between SMUSD and MUSD will be assigned to a group appointed closer to the time that reorganization actually occurs (see Topic #5 below).

The Committee studied information about the sources and uses of the various Funds, and an inventory of SMMUSD's land and buildings. The Committee then developed and evaluated options for consistency with the guiding principles and the Board's objectives. The terms of the Committee's unanimously approved Agreement on these issues are summarized below.



**Agreement on Dividing the District's Cash Assets.** The following methods were agreed to for dividing the District's cash assets between SMUSD and MUSD:

The ADA Method. For the ending balance in District Funds where the source of revenue (in relative terms) has essentially mirrored the number of students in Santa Monica and Malibu, the Agreement provides that the division of cash assets at the time of reorganization should be based on a calculation of each district's percentage share of total ADA in both districts. The current Santa Monica/Malibu ADA ratio is 84%/16%.

To account for changes in ADA counts between now and the time of reorganization, the Committee designed a calculation titled the "ADA Method," which is the three-year average of ADA in each district. The three years will be the school year that reorganization occurs and the prior two school years.

The Agreement identifies the following Funds as meeting the criteria for the ADA Method: the Unrestricted General Fund (excluding amounts raised by the Santa Monica-Malibu Education Foundation and deposited into the Unrestricted General Fund), the Restricted General Fund, and the Cafeteria Special Revenue Fund.

Alternative Methods. For the ending balance in Funds where the relative source of revenue (Santa Monica vs. Malibu) has not mirrored the ADA ratio, or if there is a more equitable way to divide a Fund Balance, the Committee designed an alternative method. The Agreement defines such alternative methods for the Adult Education Fund, Child Development Fund, Deferred Maintenance Fund, Capital Facilities Fund, and Special Reserve for Capital Projects Fund.

The Committee agreed that a decision on a fair and equitable allocation of the ending balance in the Building Fund (i.e., bond proceeds) should be deferred until a time closer to reorganization when the needed data are available. With respect to the Retiree Benefit Fund, the Committee believes that an actuary will need to be engaged to make the determination of a fair and equitable split of the ending balance in this Fund.

**Agreement on Dividing SMMUSD's Land and Buildings.** The Committee's Agreement for dividing the District's schools and other land/buildings provides that:

- School buildings will be allocated to the respective district where they are located;
- If MUSD decides not to provide for a continuation high school program in its own facilities, SMUSD will provide assurance to MUSD that its students will be able to participate in SMUSD's continuation high school (currently located at Olympic High School in Santa Monica);
- The Washington West property will be treated as if it were a school, and therefore will be allocated to SMUSD, where it is located;
- The District Headquarters building will be allocated to SMUSD, and SMUSD will assume sole responsibility for paying the outstanding debt owed on the Certificates of Participation used to fund the purchase of this property;
- The land/buildings that are a source of revenue are all located in Santa Monica and will be allocated to SMUSD; and

- If SMUSD ever sells the District Headquarters or any of the land/buildings that were a source of revenue for the District, the net proceeds from the sale will be split between SMUSD and MUSD according to the ADA method at the time of reorganization. SMUSD will have complete discretion regarding any such sale.

Appendix C (beginning on page C-11) contains further details about all aspects of the Agreement regarding Topic #1.

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### **Topic #3: Bond-Related Items and Other Liabilities**

**Board's Objective.** Develop a method(s) that is fair to both SMUSD and MUSD for: (a) allocation of bond debt; (b) refinancing of bond debt; (c) allocation of the authority to issue authorized but unissued bonds; and (d) allocation between SMUSD and MUSD of other District liabilities existing at the time of reorganization.

**Major Negotiated Terms.** The Committee developed three additional guiding principles for its Topic #3 negotiations:

- Post-reorganization, each district (SMUSD and MUSD) should, to the maximum extent possible, have sole discretion to make its own decisions regarding the issuance of new bonds and the refinancing of existing bond debt;
- Post-reorganization, any decisions regarding the allocation of authorized but-not-yet-issued bonds should align with decisions and commitments regarding projects and division of bond authority and cash proceeds in the Building Fund made before reorganization; and
- Decisions regarding the allocation of authorized but-not-yet-issued debt should place priority and mutual respect on the needs and preferences expressed by SMUSD and MUSD at the time the allocation decisions are made.

The Committee studied information available in District resource materials about the status of Measure BB and Measure ES bond funds, posed legal questions on bond-related issues to Procopio (see Appendix B.9), and spent time discussing and evaluating different methods and approaches. The terms of the Committee's unanimously approved Agreement are summarized below.

**Agreement on Bonds Issued by SMMUSD Before Reorganization.** With respect to the Measure BB and Measure ES bonds issued by the District before reorganization, the Agreement provides that:

- SMMUSD's bond debt should be allocated between SMUSD and MUSD based upon the respective assessed values of real property in Santa Monica and Malibu on the most recent assessment rolls as of the date of reorganization. This means that Santa Monica property will be assessed for SMUSD's proportionate share of the bond liability and property within MUSD will be assessed for its share; and

- With respect to refinancing this debt post-reorganization, the Committee agreed that SMUSD or MUSD should be authorized, without need to coordinate with the other, to make decisions regarding refinancing of its portion of the bond liability.

To accomplish the above, Procopio advises that language in the special State legislation regarding reorganization 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 of the two new districts be separately responsible for Internal Revenue Service tax compliance and continuing disclosures under Securities and Exchange Commission regulations.

**Agreement on the Allocation of Authorized But-Not-Yet-Issued Bonds.** The Agreement provides that Group 2 (one of the transition/implementation groups the Committee recommends be appointed, see page X) be directed to allocate (a) the authorized but-not-yet-issued bonds between SMUSD and MUSD, and (b) the amount of bond funds being allocated at the time, in a manner consistent with the following guidelines:

- Allocate the authority consistent with decisions and commitments regarding projects and division of bond authority as of the date of reorganization, including that MUSD receives at least \$77 million out of ES's total of \$385; million. This allocation decision must consider the Malibu completed projects, the allocation of authorized but-not-yet-issued bonds and the bond fund balance as well as the funds necessary to complete court ordered remediation, which must remain with SMUSD; and
- Mutual respect for the needs and preferences of SMUSD and MUSD at the time the allocation decision is made.

Appendix C (beginning on page C-18) contains further details about all aspects of the Agreement regarding Topic #3.

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#### **Topic #4: Environmental Liability**

**Board's Objectives.** The Board's objectives on the issue of environmental liability included:

- Establish a structure under which MUSD assumes responsibility for any remaining remediation of any contamination in MUSD schools and indemnifies SMUSD for any future claims arising from such remediation work;
- Dismissal of the pending lawsuit against SMMUSD or an enforceable agreement from the plaintiffs that SMUSD will be dismissed from the lawsuit; and
- Receipt by the Board of a legal opinion from a firm selected by the Board with respect to any potential continuing exposure of SMUSD following reorganization and a conclusion by the Board that any such exposure is reasonable.

With respect to the Board's objective regarding dismissal of the lawsuit brought by America Unites for Kids against SMMUSD, the Committee's understanding is that the September 1, 2016 ruling by Judge Anderson on this lawsuit essentially eliminated the Committee's need to address this objective.

While the court's decision is on appeal, the Committee understands that the issues on appeal are limited to: (a) whether attorneys' fees should be awarded to the plaintiff; and (b) whether the injunction imposed by the court on certain private parties should be reversed. The court's decision regarding the obligations of SMMUSD to complete remediation work has not been appealed.

**Major Negotiated Terms.** The Committee approached Topic #4 by dividing the assignment into two categories: (a) environmental contamination for which SMMUSD has developed, approved, funded and begun a remediation plan; and (b) environmental contamination for which no such plan has been developed, whether or not known at the time of reorganization.

The Committee studied District information and other resource materials that addressed issues of environmental liability specific to a possible reorganization of the District. The Committee posed legal questions to Procopio (See Appendix B.10) and spent time discussing and evaluating different methods and approaches to addressing the Board's objectives. The Committee's Agreement on environmental liability is summarized below.

***Agreement on Environmental Liability for Which SMMUSD Has Developed, Approved, Funded, and Begun a Remediation Plan***

**Remediation Plan.** The Agreement recognizes that the current ongoing remediation of PCBs (polychlorinated biphenyl) in certain Malibu schools, as contemplated in SMMUSD's building replacement and renovation program, will not be affected by reorganization. This remediation program will continue to be funded after reorganization (by the bond program) and is scheduled to be completed by December 2019.

The Agreement provides that any other remediation project which has been developed, approved, funded and begun by the District at the time of reorganization will be subject to further negotiation by Group 2 (see Topic #5, Implementation) to work out the logistics of project management and completion. The Committee recognizes that the District has no obligation or pending plans to conduct any such remediation project.

***Agreement on Environmental Liability Related to Contamination That Is Either Not Known About Before Reorganization or Is Known About Before Reorganization But For Which SMMUSD Has Not Yet Developed, Approved, or Funded a Remediation Plan.***

The Agreement provides that for environmental liability in this category, each district will be liable for its own properties and in charge of developing, approving, funding, and implementing a remediation plan. The Agreement also provides that MUSD will indemnify SMUSD for any liability associated with any contamination falling within this category in MUSD property, and SMUSD will indemnify MUSD for any liability associated with any contamination falling within this category in Santa Monica property.

Appendix C (beginning on page C-24) contains further details about the Agreement regarding Topic #3.

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## Topic #5: Implementation

In its action creating the Committee, the Board outlined the process that will occur directly after the Committee submits its report to the Board. (See page X.) With respect to the implementation of a school district reorganization, there are several different avenues available. In sum, these are a petition procedure outlined in the State Education Code, special State legislation, or through some combination of the two.

As stated earlier, the Committee recommends that the Board consider supporting processing the reorganization matter entirely through special State legislation, rather than the petition procedure outlined in the State Education Code or some combination of special State legislation and the Education Code procedure. The Committee believes that special State legislation would be the best approach for ensuring a comprehensive and legally enforceable result.

The Committee arrived at this recommendation after considering (1) the complexities and inter-relationships of the financial topics addressed by the Committee, and (2) advice of the Committee's legal and education finance consultants that some aspects of dividing the District's finances could only be accomplished via special State legislation.

Negotiations on the details of the implementation process were beyond the scope of the Board's objectives for the Committee. However, the Committee agreed 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 the effective date of reorganization or in the time period post-reorganization. For this purpose, the Committee recommends the appointment of two groups.

**Group One:** The SMMUSD Board should appoint Group One to work on the things that need to happen between the time the Board approves moving forward with reorganization and the time that reorganization becomes effective.

Candidate tasks for Group One are:

- Monitoring of any special state legislation being drafted at the Board's direction;
- Monitoring negotiations for project management and completion of capital improvement projects in MUSD schools that are underway at the time reorganization becomes effective;
- Monitoring negotiations for completing the remediation of environmental contamination in MUSD schools that are underway on the effective date of reorganization; and

**Group Two:** After reorganization becomes effective, the respective Boards of Education of SMUSD and MUSD should appoint Group Two to work on the logistics and any outstanding issues that need to be resolved to ensure a smooth transition.

Candidate tasks for Group Two are:

- Based on the status of capital projects at the time of reorganization, making final recommendations about the allocation of “cash” in the relevant Funds.
- Based on the status of ES bond authority used at the time of reorganization, making final recommendations about the allocation of authority to issue authorized but-not-yet-issued bonds.
- Making final recommendations regarding the allocation of the Fund Balance in the Retiree Benefit Fund.

## **V. Acknowledgements**

The Committee thanks the following individuals and organizations for their time and contributions to the Committee's work.

SMMUSD Board of Education  
City of Malibu  
Advocates for Malibu Public Schools

### District Superintendents

Dr. Ben Drati, SMMUSD Superintendent  
Dr. Chris King, former Interim Superintendent  
Dr. Sylvia Rousseau, former Interim Superintendent  
Dr. Sandra Lyon, former SMMUSD Superintendent

### SMMUSD Staff

Janece Maez, Associate Superintendent Business and Fiscal Services, Chief Financial Officer  
Sarah Wahrenbrock, Assistant to the Superintendent  
Diana Kamibayashi, Senior Office Assistant, Office of the Superintendent  
Maryanne Solomon, Webmaster  
Gail Pinsker, Community and Public Relations Officer  
Kim Nguyen, Senior Administrative Assistant, Fiscal Services  
Gary Bradbury, Risk Management

### SMMUSD Consultants/Contractors

Anthony Hsieh, Keygent Advisors LLC  
Alliance of Schools for Cooperative Insurance Programs (ASCIP)  
Theodore Scott Smith, SMMUSD contractor (assisted with taking minutes)

### City of Malibu Staff

Reva Feldman, City Manager  
Christi Hogin, City Attorney  
Mary Linden, Executive Assistant, City Manager's Office  
Kathleen Stecko, Senior Office Assistant, Planning Department

### Procopio, Cory, Hargreaves & Savitch LLP

John Lemmo, Partner

### School Services of California, Inc.

Robert Miyashiro, Vice President  
Mike Ricketts, Associate Vice President  
Kelly Saterfield, Governmental Relations Assistant

### Committee Facilitator

Karen Orlansky

**VI. Signatures of Agreement**

The members of the Malibu Unification Negotiations Committee certify that they have read, understood, and agreed to the terms of this Agreement as set forth in this Report and its Appendices

Tom Larmore \_\_\_\_\_ Date \_\_\_\_\_

Debbie Mulvaney \_\_\_\_\_ Date \_\_\_\_\_

Laura Zahn Rosenthal \_\_\_\_\_ Date \_\_\_\_\_

Paul J. Silvern \_\_\_\_\_ Date \_\_\_\_\_

Manel Sweetmore \_\_\_\_\_ Date \_\_\_\_\_



## **List of Appendices**

- Appendix A: Map of SMMUSD that depicts the boundaries of the District and shows the location of current schools.
- Appendix B: A categorized listing of electronic links to all the resources used by the Committee as the basis of discussion and decision-making, including the Committee's agendas, minutes, consultant reports and other documents.
- Appendix C: Term Sheets that contain details of the Committee's negotiated Agreement for each of five topic areas.
- Appendix D: An illustrative projection of calculations and payments for the proposed Revenue Neutrality formula as summarized in the Report and presented in more detail in the Term Sheet for Topic #1: Operating Budget Impact. The projection is based on the best information available at the time of this writing.
- Appendix E: Glossary of acronyms, terms, and phrases used in the Agreement.

**APPENDIX A:**

**MAP OF SANTA-MONICA MALIBU UNIFIED SCHOOL DISTRICT**



# Santa Monica-Malibu Unified School District

Date: 1/19/2017

**APPENDIX B:**  
**LIST OF RESOURCES**

**LIST OF RESOURCES**

This categorized list contains references to resources used by the Committee as the basis for discussion and decision-making. The third column directs the reader either to the correct Appendix in this Report or an electronic link to the resource listed.

Resource Number		Appendix Reference or Hyperlink
	<b>Committee's Working Documents</b>	
B.1	Ground Rules	
B.2	Glossary	Appendix E
B.3	Plan of Work	
B.4	Term Sheets	Appendix C
B.5	Sample Projections of Revenue Neutrality Formula	Appendix D
	<b>Memos/Reports/Presentations from Consultants Retained by Committee</b>	
B.6	Presentation to Committee on School Financing in California by School Services of California Inc.'s, July 14, 2016 (video)	
B.7	Review of Prior Reports and Analyses of District Reorganization, prepared by School Services of California, Inc., August 1, 2016	
B.8	SMMUSD Reorganization Review and Analysis, Report prepared by School Services of California, Inc., September 14, 2016 (includes December 6, 2016 revisions)	
B.9	Memorandum to the Committee with responses to questions on bond-related issues, prepared by John Lemmo, Partner, Procopio, July 21, 2016	
B.10	Memorandum to the Committee with responses to the Committee's questions on environmental liability, prepared by John Lemmo, Partner, Procopio, August 8, 2016	

	<b>Data and Other Information from the District</b>	
B.11	Memorandum to the Board, Lease Update, prepared by Carey Upton, July 15, 2016	
B.12	PowerPoint Presentation on SMMUSD's insurance program, provided by Jan Maez, Chief Financial Officer, and a representative from the Alliance of Schools for Cooperative Insurance Program (ASCIP), July 19, 2016	
B.13	Responses from the District to the Committee's questions: August 2016 and November 2016 <i>Q: Do you want to include? Documents include informally written answers and by themselves could be confusing.</i>	
B.14	Inventory of SMMUSD's Land and Buildings, provided to Committee on August, 22, 2016 <i>Q: Do you want to include? By itself, hard to decipher.</i>	
B.15	Presentation from District's Chief Financial Office, to the Board on 2015-2016 SMMUSD Unaudited Actuals, September 1, 2016	
B.16	Unaudited Financial Statements for 2015-2016, dated September 1, 2016	
B.17	Audit Report for the Year Ended June 30, 2016	
B.18	Measure BB and Measure ES Reports from Bond Advisory Committee, as of August 16, 2016	
B.19	PowerPoint Presentation from Tony Hsieh, Keygent Advisors, SMMUSD Bond Program Overview, October 4, 2016	
	<b>Background Documents (listed in chronological order)</b>	
B.20	Feasibility Analysis of Proposed SMMUSD Reorganization, prepared by WestEd for AMPS, January 2013 and July 2015	
B.21	Memorandum prepared by WestEd for AMPS, Reorganization Research Findings, November 12, 2013	

B.22	Memorandum from Marguerite Mary Leoni, Neilsen Mersamer, LLP, to AMPS, Questions Pertaining to Formation of Malibu Unified School District, September 22, 2014	
B.23	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"> <li>• Implications Relating to Annual Operating Budgets</li> <li>• Implications Relating to the Division of Assets and Liabilities</li> </ul>	
B.24	Financial Oversight Committee’s update to the Board on the budgetary implications of reorganization, November 19, 2015	
B.25	<i>Do you want to consider relocating this document, either to earlier in the list or as its own Appendix?</i> Board of Education’s Action Item (Recommendation No. A.16) to Establish the Malibu Unification Negotiations Committee, December 17, 2015	
B.26	Board’s Action to appoint members of the Santa Monica Team and recognize appointment of members by the City Manager to the Malibu Team, January 21, 2016	
	<b>Other Documents</b>	
B.27	Map of SMMUSD and current list of SMMUSD schools by location	Appendix A
B.28	California Department of Education, District Organization Procedures (Note: Chapter 6 contains the Legal Criteria Governing Reorganization Proposals, updated September 2016) <i>What do you think about this link? It’s to the entire set of procedures.</i> <a href="http://www.cde.ca.gov/re/lr/do/">http://www.cde.ca.gov/re/lr/do/</a>	
B.29	Judge Anderson’s ruling on America Unites for Kids lawsuits vs. SMMUSD, September 1, 2016	
B.30	<b>Committee’s Agendas and Minutes</b> <i>Q: One link to the SMMUSD page for all agendas and minutes or do you want all meetings separately listed and linked on their own?</i>	

	March, 7, 2016 (pre-negotiation meeting)	
	March 16, 2016 (pre-negotiation meeting)	
	March 29, 2016	
	April 5, 2016	
	May 24, 2016	
	May 31, 2016	
	June 7, 2016	
	June 14, 2016	
	June 21, 2016	
	June 28, 2016	
	July 14, 2016	
	July 19, 2016	
	August 2, 2016	
	August 9, 2016	
	August 23, 2016	
	September 1, 2016	
	September 6, 2016	
	September 13, 2016	
	September 20, 2016	
	September 27, 2016	
	October 4, 2016	
	October 18, 2016	
	October 25, 2016	



	October 29, 2016	
	November 3, 2016	
	November 22, 2016	
	November 29, 2016	
	December 6, 2016	
	December 13, 2016	
	January 3, 2017	
	January 10, 2017	
	January 16, 2017	
	January 24, 2017	
	January 31, 2017	
	February 7, 2017	
	Additional meetings	

**APPENDIX C:**

**TERM SHEETS**

## Appendix C: The Committee's Final Term Sheets

This Appendix contains the Committee's final Term Sheets, organized by the five topics in the Committee's Plan of Work. As a package, the Term Sheets outline the principles, terms, conditions, and other provisions of the Committee's Agreement.

After considering: (1) the complexities and inter-relationships of the financial topics addressed by the Committee, and (2) advice from the Committee's legal and education finance consultants that some aspects of dividing the District's finances could only be accomplished via special State legislation, the Committee recommends that the Board consider supporting processing the reorganization entirely through special State legislation, rather than the petition procedure outlined in the State Education Code or some combination of special State legislation and the Education Code procedure. The Committee believes that special State legislation would be the best approach for ensuring a comprehensive, timely, and legally enforceable result.

Appendix E, Glossary, contains a complete list of the acronyms and definitions of terms and phrases that the Committee adopted for its negotiations.

<b>Issue</b>	<b>Begins on Page</b>
Topic #1, Operating Budget Impact	C-2
Topic #2, Division of the District's Assets	C-11
Topic #3, Bond-related Items and Other Liabilities	C-18
Topic #4, Environmental Liability	C-23
Topic #5, Implementation	C-24

## Term Sheet for Topic #1, Operating Budget Impact

### I. The Board's Objective

The Board's objective for negotiations related to the operating budget was to eliminate any significant adverse financial impact on SMUSD as a stand-alone district.

The Board anticipated the possibility of a significant adverse financial effect after receiving, in the fall of 2015, a second report on the potential financial implications of reorganization from the District's Financial Oversight Committee and District's Chief Financial Officer. Based on updated financial data, the report concluded there was a distinct possibility that reorganization could, at least for a period of time, materially reduce revenue to SMUSD on a per ADA basis when compared to revenue per ADA without reorganization.

This concern was confirmed by the Committee's school finance consultant, School Services of California, Inc. (SSC), which prepared a 12-year revenue forecast for the existing District, and a future SMUSD and MUSD. SSC concluded that SMUSD could, indeed, experience a significant reduction in per-ADA revenues, as compared with the existing District over the same period, particularly in the latter years of the projection (i.e., potentially \$1,082 per SMUSD ADA, or \$9.4 million, in the 2028-2029 fiscal year).

The reasons for a potential adverse financial effect on SMUSD are complex, and include the intricacies of how State funds are provided to local school districts in California. (See next paragraph.) In addition, although a stand-alone SMUSD would keep certain revenues provided by the City of Santa Monica (currently shared with the Malibu schools), SMUSD would no longer receive property tax revenue generated from the Malibu community.

More specifically, the major mechanism for distributing State funds to K-12 school districts in California is the Local Control Funding Formula (LCFF). Under LCFF, the State sets a target amount of revenue for each school district based upon ADA and certain other factors. Each district's share of local property taxes is subtracted from this target and the State funds the difference. Any school district that receives enough property tax revenue to come close to or meet its LCFF target amount remains entitled to receive a basic level of State funding in addition, thereby achieving what is known as either "Minimum State Aid" or "Basic Aid" status.

Achieving either Minimum State Aid or Basic Aid status enables a local school district to provide a higher level of funding for its schools because it will continue to receive some level of State funding beyond its LCFF target. The relevance of this fact to reorganization is that SMMUSD would likely achieve Minimum State Aid and then Basic Aid status sooner than would SMUSD as a stand-alone district due to the disproportionate amount of property tax revenue generated in the Malibu community.

For further explanation of these issues, including how LCFF affects the finances of a District reorganization, and more about the significance of achieving Minimum State Aid and Basic Aid status, see Appendix B.X for SSC's presentation on school finance in California. For the details of the SSC long-range revenue forecasts, including a sensitivity analysis on key projection variables, see Appendix B.X.

## II. The Committee’s Approach

The Committee approached Topic #1 in multiple steps by first adopting common definitions and guiding principles, then studying the fiscal assumptions and projections provided by SSC, and finally, developing and evaluating Formula method and calculation options for consistency with the guiding principles.

Through this process, the Committee adopted a Formula, which calculates the Financial Effect of reorganization on SMUSD, and establishes a schedule of payments to SMUSD from MUSD that will maintain predictable and stable budget growth for both districts and, in the aggregate, eliminate any significant adverse Financial Effect of reorganization on SMUSD.

## III. Definitions Adopted for Key Words and Phrases

The Committee adopted the following terms and definitions to guide its work:

Average Daily Attendance (ADA)	The average number of pupils actually attending class, which generally falls within a range of 95-98% of enrollment. The State requires school districts to collect and report annual ADA data.
Financial Effect	The difference in revenue per ADA in a Santa Monica-only district vs. what the revenue per ADA would be if reorganization had not occurred.
Revenue Neutrality	The Board’s objective to eliminate any significant adverse Financial Effect on SMUSD from reorganization of the District into two separate school districts.
Revenue Neutrality Formula (Formula)	The Committee’s agreed-upon method for calculating the Financial Effect of reorganization and related payment schedule that, in the aggregate, results in Revenue Neutrality.
Delta	The annual measurement of the Financial Effect multiplied by SMUSD’s ADA. A <i>negative</i> value (i.e., the revenue per ADA for SMUSD is less than that which would have been realized by a theoretical SMMUSD) creates an obligation on the part of MUSD to make a payment in that amount to SMUSD. A <i>positive</i> value (the revenue per ADA for SMUSD exceeds that which would have been realized by a theoretical SMMUSD) will result in a credit to MUSD offsetting any future payment obligations.
Cumulative Delta	The cumulative sum of an annual Delta added to any amount of the Delta remaining unpaid from prior years. A positive Cumulative Delta balance represents a credit to MUSD that will be applied to future negative Deltas. A negative Cumulative Delta balance represents the amount of money owed to SMUSD by MUSD.

#### IV. Guiding Principles

The Committee designed the Formula based on the general principles the Committee adopted for all portions of an Agreement, plus a number of supplemental guiding principles developed specific to achieving Revenue Neutrality.

The general principles applicable to all terms in the Agreement are that they must: be financially viable for both SMUSD and MUSD; ensure a degree of predictability for both SMUSD and MUSD; enable each district to plan ahead with a reasonable degree of resource certainty; avoid establishing potential negative incentives for either SMUSD or MUSD to pursue increased revenue or otherwise improve education in their schools; and be clear and understandable, legal, and enforceable. (See Memorandum Report, page 10.)

The supplemental guiding principles developed specific to achieving Revenue Neutrality were:

- The Formula must provide for annual Delta calculations beginning with the first year following reorganization through fiscal year 2029-2030. The Committee agreed on fiscal year 2029-2030 as the last year for calculating the Delta because:
  - SSC’s revenue projections indicate that SMUSD would likely reach Basic Aid status in 2030-2031;
  - The projections (see Appendix D) indicate that payments to SMUSD from MUSD would continue for an estimated nine years beyond 2029-2030 due to the MUSD “ability-to-pay” principle (explained below); and
  - The time period was negotiated considering all other elements of the Agreement.
- The Formula must provide predictable and stable operating budget growth for both SMUSD and MUSD.
- If the Delta in any year would require a payment by MUSD that would cause MUSD’s operating budget growth to be less than a specified annual cost-of-living adjustment, the unpaid amount will be deferred for payment in future years, plus interest on the deferred amount. (This is the Malibu “ability-to-pay” principle.)
- In the aggregate, the payments to SMUSD from MUSD must equal the sum of the annual Deltas, plus any interest that has accrued.
- The Formula must provide for a “Delta Tracking Process” and criteria for modifying the number of years that the Formula remains in place based on evidence that SMUSD can stand alone without any significant adverse Financial Effect from reorganization.

The timing of reorganization could affect the above guidelines. The sample projections (Appendix D) illustrating the application of the Formula assume that reorganization occurs in 2018-2019. If reorganization occurs after 2018-2019 but before 2020-2021, the Agreement provides that the Formula would continue as presented. However, the Agreement provides that if reorganization is delayed beyond 2020-2021, then the Formula will be revisited and open for renegotiation, in case the revenue forecasting assumptions or other related K-12 school finance factors underlying the Formula change by that point in time. The Committee recommends that any renegotiation be conducted within the context of the basic principles outlined in this Report (See page C-9 for other criteria that would trigger a renegotiation.)

## V. Details of the Formula and Related Implementation Provisions

The balance of this Term Sheet outlines the details of how the Formula calculations translate into a schedule of payments or payment credits, and outlines several additional provisions related to Formula implementation. It is organized into the following explanatory sections:

- The method for annually calculating the Financial Effect of reorganization on SMUSD (i.e., the “Delta”).
- The method for annually calculating the payment to be made to SMUSD by MUSD based on the size of the Delta and MUSD’s “ability to pay.”
- The mechanics of a “Delta Tracking Provision” that could result in a reduction in the number of years during which the Delta is calculated.
- The designation of a third-party to perform the above calculations (including the timing of calculations and payments).
- Criteria for renegotiating the Formula, if required by a significant change in future events.

### A. The Method for Annually Calculating the Financial Effect of Reorganization on SMUSD

As defined above, the Delta is the annual measurement of the Financial Effect multiplied by SMUSD’s ADA.

#### 1. Sources of Data for the Formula

Average Daily Attendance Data: The student count used in the Formula will be ADA data, which is the average number of pupils actually attending classes. The State requires school districts to compile and report ADA data annually.

Audited Financial Statement Data: The calculations in the Formula will use data from audited financial statements for SMUSD and MUSD, which are generally available in December of each year. Calculations related to revenue per ADA for a theoretical SMMUSD will be derived from these financial data.

As explained below, the Formula uses data for certain components of Unrestricted General Fund revenue. To ensure that the needed data are available, the Committee recommends that SMUSD and MUSD require their respective auditors to provide a supplemental schedule in the audited financial statements that separately shows the revenues noted below. This format of reporting is already the District’s practice for preparation of the unaudited financial statements.

#### 2. Revenue Sources to Include and Exclude in the Delta Calculation

The Delta will be calculated using the components of Unrestricted General Fund revenue identified in the table below. As discussed later in this report, if the State changes the method under which it funds K-12 public schools from the current LCFF approach, representatives from SMUSD and MUSD will meet and confer in order to make reasonable changes, if necessary, to the Formula. If any of the locally generated sources of revenue in Santa Monica is terminated, it will be removed as an item of revenue in calculating the Delta.

Revenue Categories	Unrestricted General Fund Revenue Sources for Delta Calculations
State Revenue	<ul style="list-style-type: none"> <li>• All categories of LCFF revenue. (In fiscal year 2016-2017 LCFF revenue accounts for 62% of SMMUSD’s total revenue.)</li> </ul>
Locally-Generated Revenue	<ul style="list-style-type: none"> <li>• Parcel tax revenue</li> <li>• Revenue from leases and rentals</li> <li>• City of Santa Monica contract revenue</li> <li>• City of Malibu contract revenue</li> <li>• Santa Monica Measure Y and Measure GSH revenue</li> </ul>
New Sources of Local Revenue Generated Post-reorganization	<ul style="list-style-type: none"> <li>• Revenue from any new revenue sources established and generated post-reorganization by SMUSD. *</li> </ul>

\* Other new sources of revenue that MUSD generates post-reorganization will be incorporated into the assessment of MUSD’s “ability to pay” (explained further below), but will not be used in the Delta calculation. This is based on the general principle to avoid any disincentive for either new district to pursue increased revenue or otherwise improve education in their schools. New sources of locally generated SMUSD revenue are included in the Delta calculation because the relatively small amount (i.e., 16% ADA share) that would benefit MUSD is not considered a disincentive.

The Delta calculation will exclude the following sources of revenue applicable to the Unrestricted General Fund:

- Education Foundation Revenue (currently SMMEF) or any similar parent, PTA, and local business generated revenue program. The rationale for excluding revenue from these sources is that these monies are raised by local organizations in each district respectively, and exclusion aligns with the guiding principle not to create any disincentives for local fund raising efforts.
- Lottery Funding Revenue and Mandated Cost Block Grant Revenue (MBG). These two sources of State funds are allocated (as Unrestricted General Fund revenue) to each school district based on the same dollar amount per unit of annual ADA. As a result, revenue from these sources would have no effect on the calculation of the Delta.



## B. The Method for Annually Calculating the MUSD Payment (or Credit) Based on the Delta and MUSD's "Ability to Pay"

The Delta calculation will be performed each year beginning with the first year following reorganization through 2029-2030. (See page C-X for why this year was selected and how the year of reorganization could affect the Formula.) In the aggregate, MUSD will pay SMUSD an amount equal to the sum of the annual Deltas, plus interest (as applicable). The actual payment owed to SMUSD by MUSD in any single year will be calculated to maintain predictable and stable budget growth for both districts in an amount at least equal to an annual cost-of-living adjustment. This is further explained below.

The Formula incorporates MUSD's "ability to pay" in several ways. Specifically, the Formula:

- Takes into account the fact that the MUSD budget will need growth in the early years to ensure the financial viability of the new district, including the ability to fund one-time start-up costs and initiate a reserve fund.
- Provides that the MUSD budget will not experience a net reduction in its year over year budget due solely to a required payment to SMUSD.
- Provides that MUSD's annual budget can grow at a rate equal to a cost-of-living adjustment (COLA) equal to the published State Budget COLA percent increase, with a minimum increase of 50% of the percent change in MUSD district's Property Assessed Value for the year and a maximum increase of 80% of the percent change in MUSD district's Property Assessed increase for the year. (This calculation is called the "ability-to-pay COLA.")

As explained above, any sources of local MUSD revenue adopted after reorganization will be included in assessing MUSD's ability to pay but will not be included in revenue for calculating the Delta.

The mechanics of how the Formula determines the annual payment amount are outlined below:

- If, in any year through 2029-2030, the Delta is *negative*, MUSD will owe a payment in that amount to SMUSD, except to the extent that any credits remain available from prior years to offset the amount of that payment.
- The amount of the payment to be made by MUSD for any year will be the lesser of:
  - The amount of the negative Delta for that year (less any remaining credits) plus any unpaid amounts, plus interest, remaining from prior years; or
  - The amount by which MUSD's Unrestricted General Fund revenues for the year exceed its operating budget for the prior year adjusted by the ability-to-pay COLA.
- Any difference between the amount actually paid by MUSD and the amount of the Delta (less any remaining credits) will be carried forward into the next year with interest at the rate earned by both SMUSD and MUSD on funds deposited with the County of Los Angeles Treasurer's pooled investments account comprised of short-term securities (currently 0.9XX%).
-

No further calculation of the Delta will be made for any year beyond 2029-2030 and annual payments will be due to SMUSD from MUSD in an amount equal to the lesser of:

- Any Cumulative Delta from prior years, plus interest, or
- The amount by which MUSD’s Unrestricted General Fund revenues for the year exceeds its operating budget for the prior year adjusted by the ability-to-pay COLA.
- This procedure will continue for each year until all amounts owed to SMUSD by MUSD, including interest, have been paid in full.

To illustrate how the Formula would work in practice, Appendix D contains an illustrative projection of calculations and payments that assume reorganization occurs in 2018-19, a 2.67% annual COLA and all other revenue projection assumptions included in the SSC projections. Appendix D includes a guide for understanding how to interpret these illustrative projections.

### **C. The Mechanics of the “Delta Tracking Provision”**

The Agreement includes a provision that would end the annual calculation of the Delta before 2029-2030 if relatively small amounts are owed by MUSD for a specified period of time, because that would demonstrate that the two districts are operating independently with no significant adverse Financial Effect on SMUSD. This Delta Tracking Provision is outlined below.

- The tracking phase will begin either three years after reorganization occurs or 2022-23, whichever is later.
- During the tracking phase, if there are three consecutive years in which the Delta is less than 0.5% of the applicable components of SMUSD’s Unrestricted General Fund revenues, then the Revenue Neutrality arrangement ends, except that any outstanding payments due to SMUSD from MUSD must still be paid.
- If there remains a credit at that time arising from previous calculations of the Delta, SMUSD will not be required to make any payment to MUSD.

### **D. The Designation of a Third-Party To Perform the Delta Calculations and Annual Timing of Calculations and Payments**

#### *1. Designation of a Third-Party*

Following reorganization, the Boards of Education of SMUSD and MUSD will jointly designate a neutral third party, with expertise in K-12 public school financing in California, to perform the annual calculations provided for in the Formula. The two districts will share equally in any costs associated in hiring this neutral third party. The Committee agreed that the procedure for selecting the neutral third party be determined by Group 2, the second of two transition and implementation groups that the Committee recommends be appointed. (See page C-23.)

## 2. *Calendar of Calculations and Payments*

As noted above, the neutral third-party's calculations will use data from the audited financial statements for SMUSD and MUSD, which are assumed to be available in December of each year. It is expected that the initial annual calculations of the Delta and associated payment (or booking of credit) will proceed as follows:

- The audited financials for the first fiscal year of reorganization will be available in December of the second fiscal year of reorganization.
- The neutral third-party will perform the calculations of the Delta and associated payment or credit using these audited financials by no later than March 15<sup>th</sup> of the second fiscal year of reorganization.
- These calculations will be communicated by the neutral third party to SMUSD and MUSD no later than March 15<sup>th</sup> of the year following the first fiscal year after reorganization becomes effective.
- Annual calculations by the neutral third party shall be conclusive and binding on both districts except for arithmetical errors identified by either district within 30 days of the communication to the districts.
- The payment from MUSD to SMUSD, if any is due under the terms of this Agreement, will be paid no later than the following June 30<sup>th</sup>.

This pattern of calculating the Delta and the amount of any payment or credit for each fiscal year will continue for the length of time as specified elsewhere in the Agreement. It is understood that the decision to use audited financials as the source of data for the Formula means that there will be no payment (or credit) at the beginning of the first or second fiscal year of reorganization. As a result, the payment (or booking of a credit) before the end of the second fiscal year of reorganization will correspond to the Delta for the first fiscal year of reorganization.

## **E. Criteria for Renegotiating the Formula or Terms of Payment**

### 1. *Before Reorganization Occurs*

As noted above, the projections in Appendix D assume that reorganization will occur in 2018-2019. If, however, implementation is delayed beyond 2020-2021, then the Formula and terms of payment will be revisited and open for renegotiation. The Committee recommends that any renegotiation be conducted within the context of the basic principles outlined in this Report.

### 2. *After Reorganization Occurs*

**Provision for significant change in key underlying assumption.** If at any time when the Delta is to be calculated or MUSD is required to make a payment to SMUSD there has been a significant change in any of the key underlying assumptions in the Formula or SSC's projections, such as the manner in which the State provides funds for K-12 public schools or the manner in which property is taxed, either district may notify the other district that it wishes to meet and confer regarding the Formula and the terms of payment. If either district gives such a notice, the

districts will meet to discuss appropriate changes in the Formula by applying the basic principles utilized by the Committee and any other principles agreed upon by the districts.

**Provision for unexpected and costly event.** It is possible that a “force majeure” event may occur, such as an earthquake or major fire, that could adversely impact either or both districts and MUSD’s ability to make payments, due to a divergence of funds for emergency repairs, cleanup, obtaining alternate classroom or administrative facilities, or providing for other needs in order to maintain district operations and stable operating budget growth.

If such an event occurs and the Board of MUSD concludes that the financial effects of that event may prevent MUSD from making all or any portion of the next payment to SMUSD required under the Formula, then the following process applies:

- MUSD shall give written notice of that conclusion to SMUSD within 30 days of the event stating the basis for that conclusion (a “Force Majeure Notice”).
- If MUSD gives a Force Majeure Notice, it shall, within 45 days thereafter provide SMUSD with written notice (the “Payment Notice”) of the amount of such payment, if any, that it will be able to make given the need to divert operating budget funds to address emergency needs, including calculations supporting that conclusion.
- MUSD will, to the extent consistent with good accounting practice, first use reserve funds, amounts in other Funds and amounts available in a timely fashion from governmental, insurance and other sources, to cover the emergency costs before applying funds classified as Unrestricted General Fund revenue.
- To the extent set forth in the Payment Notice, MUSD’s obligation to make the next payment to SMUSD will be deferred for up to one year with the amount deferred being added to the Cumulative Delta. No further deferrals of that payment amount will be permitted.

## **Term Sheet for Topic #2, Division of the District's Assets**

### **I. The Board's Objective**

The Board's objective for negotiations on the division of SMMUSD's assets was to include a method(s) for the allocation of the cash in SMMUSD's General Fund Accounts and the Capital Facilities Fund (Fund or Funds, as applicable) at the time of reorganization. The Board directed that "the method will be fair to both SMUSD and MUSD, considering the sources and uses of cash in the various funds."

### **II. The Committee's Approach**

The Committee approached Topic #2 by separating the topic into two major categories:

- Develop a method(s) for dividing SMMUSD's cash assets (i.e., ending Fund Balances) at the time of reorganization; and
- Develop a method(s) for dividing SMMUSD's land and buildings at the time of reorganization.

The Committee added three guiding principles for the division of SMMUSD's assets, studied information about the sources and uses of cash in the various Funds, and reviewed an inventory of SMMUSD's land and buildings. The Committee posed questions to District staff to clarify its understanding of the Funds and most recent balance sheets, and reviewed what State law provides for the division of assets when school districts reorganize. Finally, the Committee developed and evaluated options, and reached unanimous Agreement on terms that align with the Board's objectives and the Committee's guiding principles.

### **III Guiding Principles and Definitions**

The Committee's methods for dividing SMMUSD's assets reflect its guiding principles that all terms in the Agreement must: be financially viable for both SMUSD and MUSD; ensure a degree of predictability for both SMUSD and MUSD; enable each school district to be able to plan ahead with a reasonable degree of resource certainty; avoid establishing potential negative incentives for either SMUSD or MUSD to pursue increased revenue or otherwise improve education in their schools; and be clear and understandable, legal, and enforceable.

The methods for dividing SMMUSD's assets also meet three more topic-specific principles:

- The allocation of cash assets 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 that takes the sources and uses of each Fund into consideration.
- The negotiated methods of asset division are intended to be applied only once at the time of reorganization.
- For a very few asset categories where the necessary data were not available to the Committee, the fair and equitable division between SMUSD and MUSD will be assigned to a group appointed closer to the time that reorganization actually occurs.

## A. Agreement on How to Divide SMMUSD's Cash Assets

The Committee's Agreement for dividing each Fund is described below in three categories:

- Cash assets to be divided using the "ADA Method;"
- Cash assets to be divided using an alternative method; and
- Cash assets to be divided based on information available closer to the time of reorganization.

### 1. *Cash Assets to be Divided Using the "ADA Method"*

For Funds where the source of revenue (in relative terms) has essentially mirrored the number of students in Santa Monica and the Malibu community, the Committee agreed that the fairest and most equitable method of division should be based on a calculation of the pro rata ADA between what will be SMUSD and MUSD. As a point of reference, the current Santa Monica/Malibu ADA ratio is 84%/16%.

To account for changes in ADA between now and the time of reorganization, the Committee agreed to a calculation method titled the "ADA Method," which is the three-year average of the ADA split between what will be SMUSD and MUSD. The three years will be the fiscal year that reorganization occurs and the prior two fiscal years.

The Funds to be divided using the ADA Method are listed below, along with each Fund's 2015-2016 ending cash balance, and the Committee's comments on why Agreement recommends the ADA Method.

<b>Name of Fund</b>	<b>Unrestricted General Fund (excluding SMMEF money)</b>
2015-2016 Ending Balance:	\$30,244,127

The bulk of the Unrestricted General Fund revenue comes from local property taxes and the State. State funding sources include LCFF revenue (the primary source of State financial support for K-12 public education), Lottery Fund Revenue, and Mandated Cost Block Grant Revenue. Local revenue deposited into the Unrestricted General Fund includes: parcel taxes; revenue from leases and rentals; revenue from SMMUSD's contract with the City of Santa Monica; revenue from SMMUSD's contract with the City of Malibu; and Santa Monica sales tax revenue from Measure Y and the recently adopted Measure GSH.

While the individual Unrestricted General Fund revenue line item categories do not each (by themselves) mirror the Santa Monica/Malibu ADA ratio, the Committee's analysis revealed that the total net contributions of revenues generated by each community to the Unrestricted General Fund closely mirror the ADA split. For this reason, plus the fact that it greatly simplifies the calculation required, the Committee agreed that a fair and equitable division of the Fund Balance in the Unrestricted General Fund should be based on the ADA Method. As a double-check on the fairness of using the ADA Method for this Fund, the Committee recommends that a similar analysis be repeated at the time of reorganization to ensure the mathematical finding cited above still holds.

Note: Funds raised by the Santa Monica-Malibu Education Fund (SMMEF) are also deposited into the Unrestricted General Fund, and the money SMMEF raises each year is for programs in the following school year. The Agreement provides that any SMMEF monies remaining at the time of reorganization be divided between SMUSD and MUSD based on the relative contributions to SMMEF (i.e., calculated as a percent of the total collected) made by each community during the year before reorganization occurs.

**Name of Fund**                      **Restricted General Fund**  
2015-2016 Ending Balance:    \$5,197,573

After also analyzing the degree to which each Restricted General Fund line item category originated in Santa Monica or the Malibu community, the Committee agreed that the Fund Balance in the Restricted General Fund should be divided between SMUSD and MUSD according to the ADA Method. Similarly, the Committee agreed that the source of line item revenue analysis for the Restricted General Fund be repeated at the time of reorganization to ensure the fairness of using the ADA Method.

**Name of Fund**                      **Cafeteria Special Revenue Fund**  
2015-2016 Ending Balance:    \$195,976

The Cafeteria Special Revenue Fund is for operation of the food service program. The ADA Method is recommended for allocating the Fund Balance at the time of reorganization because food service programs exist in both Santa Monica and Malibu, and students in both jurisdictions have contributed to the Fund. *Question for Jan: is this source/use of the Cafeteria Special Revenue Fund limited to students on Free and Reduced Meals?*

1. *Cash Assets to be Divided Using an Alternative Method*

For Funds where the relative source of revenue (i.e., Santa Monica vs. Malibu community) has not mirrored the ADA ratio, or if there is a more equitable way to divide a Fund balance, the Committee designed an alternative method. Provided for each Fund listed below is the projected Fund Balance from 2015-2016, a description of the agreed-upon allocation method, and any Committee's comments on this method.

**Name of Fund**                      **Adult Education Fund**  
2015-2016 Ending Balance:    \$659,900

The Adult Education Fund is a Special Revenue Fund. The source of revenue for this Fund is the State, which pays school districts a set amount per student participating in Adult Education

The agreed-upon allocation method is to divide the Fund Balance between SMUSD and MUSD 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 reorganization and the prior two years.

Note: If MUSD decides not to offer Adult Education, then the entire Fund Balance will be transferred to SMUSD.

**Name of Fund**                      **Child Development Fund**

2015-2016 Ending Balance:    \$\$234,491

The Child Development Fund is a Special Revenue Fund. The source of revenue for this Fund is the State, which pays school districts a set amount per student participating in Child Development programs.

The agreed-upon allocation method is to divide the Fund Balance between SMUSD and MUSD 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 reorganization and the prior two years.

Note: If MUSD decides not to offer a Child Development program, then the entire Fund Balance will be transferred to SMUSD.

**Name of Fund**                      **Deferred Maintenance Fund**

2015-2016 Ending Balance:    \$212,196

The Deferred Maintenance Fund is a Special Revenue Fund that funds routine maintenance needs across all of SMMUSD's buildings, located in both Santa Monica and Malibu.

The agreed-upon method of allocation is to divide the Fund Balance between SMUSD and MUSD will be based on the respective percentages of SMMUSD's total floor area square footage in Santa Monica and Malibu buildings at the time of reorganization.

**Name of Fund**                      **Capital Facilities Fund (developer fees)**

2015-2016 Ending Balance:    \$1,236,679

The Capital Facilities Fund is the repository of developer fees to SMMUSD. The agreed-upon allocation method will be to divide the Fund Balance between SMUSD and MUSD 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 reorganization and the prior two years.

Development contributions by location are tracked annually, so the allocation method recommended for this Fund should be relatively simple to implement.

**Name of Fund**                      **Special Reserve for Capital Projects Fund**

2015-2016 Ending Balance:    \$5,244,209

The Special Reserve for Capital Projects Fund is the repository of the tax increment pass through funding from the former Santa Monica Redevelopment Agency (RDA). This fund pays for the annual debt service on the existing Certificates of Participation (COPs) for the 16<sup>th</sup> Street building (District Headquarters). The annual debt service for principal and interest is \$1.869M.



\$5 million of this fund is reserved to cover shortfalls occurring in the Measure BB facilities bond program, 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.

The agreed-upon allocation method is to divide the undesignated Fund Balance at the time of reorganization between SMUSD and MUSD based on the ratio of total Measure ES funds allocated to bond-funded projects in Malibu schools and bond-funded projects in Santa Monica schools. 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.

3. *Cash Assets to be Divided Based on Information Available Closer to Reorganization*

The Committee agreed that the decision on a fair and equitable allocation of cash assets in the following two Funds should be deferred until a time closer to reorganization. The reasons for this are somewhat different for each Fund, as explained below.

<b>Name of Fund</b>	<b>Building Fund</b>
2015-2016 Ending Balance:	\$92,741,212

The Building Fund will contain the end-of-year cash balance of SMMUSD bond proceeds in the year prior to reorganization.

Because a fair and equitable allocation of the Fund Balance in the Building Fund will depend on the status of projects in Santa Monica and Malibu at the time of reorganization, the Agreement is for the allocation decision to be assigned to Group 2, the second of two transition and implementation groups the Committee recommends be appointed. (See page C-24.)

The guiding principle recommended for the eventual Fund Balance allocation is that it should be consistent with the decisions and commitments regarding projects and division of bond authority made before reorganization (including that the Malibu community receives \$77 million, at minimum, out of Measure ES's total of \$385 million), and the status of projects underway at the time of reorganization, The allocation of this Fund must also be made in conjunction with the allocation of authorized but not-yet-issued bonds (see note below).

Note: Since SMUSD will retain the obligation to pay for the completion of the court ordered remediation, the projected costs for any remaining remediation at the time of reorganization must be included in SMUSD's allocation when calculating the division of bond fund proceeds and authorized but-not-issued bonds. (See pages C-20 and C-23.)

**Name of Fund**                      **Retiree Benefit Fund**

2015-2016 Ending Balance:    \$5,120,174

The Committee recommends the details of allocating the Fund Balance in the Retiree Benefit Fund also be assigned to Group 2.

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 reorganization, and will be linked to how the liability for providing retiree health benefits is divided between SMUSD and MUSD at the time of reorganization. The Committee believes that an actuary will need to be engaged to make the determination of a fair and equitable split of this Fund.

**B. Agreement on How to Divide SMMUSD's Land and Buildings**

The Committee considered the allocation of SMMUSD's land and buildings in three categories: (1) schools; (2) land and buildings used for SMMUSD activities that serve students and/or faculty in both Malibu and Santa Monica; and (3) land and buildings that are a source of revenue for SMMUSD. The agreed-upon method and related provisions for dividing these assets between SMUSD and MUSD at the time of reorganization are described below.

*1. School Buildings and Land*

The Committee agreed that school buildings and associated land area should be allocated to the respective district where they are now located.

As a related provision to the allocation of school buildings, the Committee agreed that if MUSD decides not to 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.

*2. Land/Buildings Used for SMMUSD Activities That Serve Students and/or Faculty in Both Malibu and Santa Monica*

All of the property in this category is located in Santa Monica. The agreed-upon allocation method for each property is as follows:

- The District Headquarters building will be allocated to SMUSD, and SMUSD will assume sole responsibility for paying the outstanding debt owed on the Certificates of Participation used to fund the purchase of this property. If the District Headquarters is ever sold, which is to be within the sole discretion of SMUSD, the net proceeds will be divided between SMUSD and MUSD according to the ADA Method at the time of reorganization.
- The Washington West property will be treated as if it were a school, and therefore will be allocated to SMUSD as the district where it is located.

3. *Land/Buildings That Are a Source of Revenue for SMMUSD*

- The land/buildings that are currently a source of SMMUSD revenue (which are all located in Santa Monica) will be allocated to SMUSD, i.e., former Madison School site; 9<sup>th</sup> & Colorado properties; 16<sup>th</sup> & Colorado property other than the District Headquarters; and the Doubletree Hotel site.
- However, should SMUSD, in its sole discretion, sell any of the land/buildings that were a source of revenue for SMMUSD, the proceeds from the net sale proceeds will be split between SMUSD and MUSD according to the ADA method at the time of reorganization

## **Term Sheet for Topic #3, Bond-Related Items and Other Liabilities**

### **I. The Board's Objective**

The Board's stated objectives for the Committee were to develop a method(s) that is fair to both SMUSD and MUSD for: allocation of bond debt; refinancing of bond debt; allocation of the authority to issue authorized but unissued bonds; and allocation between SMUSD and MUSD of other SMMUSD liabilities existing at the time of reorganization.

### **II. The Committee's Approach**

The Committee divided Topic #3 into three assignments:

- Develop a method for allocating the amount of outstanding bond indebtedness between SMUSD and MUSD arising from bonds issued by SMMUSD before the date of reorganization and provide a method for each district to independently refinance the amount of its share of the indebtedness.
- Develop a method for allocating the amount of authorized but-not-yet-issued bonds between SMUSD and MUSD.
- Develop a method for allocating other SMMUSD liabilities between SMUSD and MUSD other than liabilities that might arise due to contamination of SMMUSD buildings (addressed in the Term Sheet for Topic #4.).

The Committee adopted common definitions and added supplemental guiding principles tailored for the negotiations on bond-related items, studied information available in background and other resource materials about the status of Measure BB and Measure ES bond funds, posed a series of legal questions on bond-related issues to the Procopio law firm retained to advise the Committee on these issues (see Appendix B.X), and spent time discussing and evaluating different methods and approaches to addressing the three assignments.

In sum, the Committee's Agreement on these issues (detailed below) aligns with the Board's objectives and the Committee's guiding principles.

### **III. Guiding Principles and Definitions For Bond-Related Issues**

The Committee's Agreements on bond-related issues align with the Committee's guiding principles that all terms in the Agreement must: be financially viable for both SMUSD and MUSD; ensure a degree of predictability for both SMUSD and MUSD; enable each school district to be able to plan ahead with a reasonable degree of resource certainty; avoid establishing potential negative incentives for either SMUSD or MUSD to pursue increased revenue or otherwise improve education in their schools; and be clear and understandable, legal, and enforceable.

The Committee developed three more guiding principles specific to its Topic #3 negotiations:

- Post-reorganization, each district (SMUSD and MUSD) should, to the maximum extent possible, be provided sole discretion to make its own decisions regarding refinancing of existing bond debt and the issuance of new bonds.
- Post-reorganization, any decisions regarding the allocation of authorized but-not-yet-issued bonds should be consistent with decisions and commitments regarding projects and division of bond authority and cash proceeds in the Building Fund made prior to reorganization.
- Decisions regarding the allocation of authorized but-not-yet-issued debt should place priority and mutual respect on the needs and preferences expressed by SMUSD and MUSD at the time the allocation decisions are made.

<b>Definitions for Terms Used in Topic #3 Negotiations</b>	
ES Funds*	Refers to the facility bond funds made available to SMMUSD as a result of Measure ES, which was approved by the voters in November 2012. Approval of Measure ES authorized the Board to issue bonds backed by assessments on real property in both Santa Monica and Malibu in an aggregate amount not to exceed \$385,000,000. At least 20% (\$77,000,000) was to be made available for Malibu schools.
BB Funds*	Refers to the facility bond funds made available to SMMUSD as a result of Measure BB, which was approved by the voters in November 2006. Approval of Measure BB authorized the Board to issue bonds backed by assessments on real property in both Santa Monica and Malibu in an aggregate amount not to exceed \$268,000,000.
* ES and BB Funds can only be used for capital projects and technology.	

**A. Agreement on Bonds Issued by SMMUSD Before Reorganization**

With respect to the Measure BB and Measure ES bonds issued by SMMUSD before reorganization, the Committee reached the following agreements:

- SMMUSD’s bond debt should be allocated between SMUSD and MUSD based upon the respective assessed values of real property in Santa Monica and the Malibu community as reflected by the most recent assessment rolls as of the date of reorganization. This means that Santa Monica property will be assessed for SMUSD’s proportionate share of the bond liability and property within MUSD will be assessed for its share.
- With respect to refinancing this debt post-reorganization, special State legislation and related reorganization documents should explicitly provide that SMUSD or MUSD can, without need to coordinate with the other, make decisions regarding refinancing of its portion of the bond liability.

To accomplish the above, Procopio advises that language in special State legislation needs to specify that each successor district is treated as the issuing district (because SMMUSD will not exist anymore) for purposes of Government Code Section 53580 and related statutes, and that each new district is separately responsible for Internal Revenue Service tax compliance and continuing disclosures under Securities and Exchange Commission regulations.

## **B. Agreement on the Allocation of Authorized But-Not-Yet-Issued Bonds**

As of this writing, an additional \$295 million remains in bonding authority under Measure ES that has been authorized but not issued.

The Committee agreed that this issue lends itself to allocation decisions at the time of reorganization because the exact amount of authorized but-not-yet-issued bonds will depend on the status of projects and plans of SMUSD and MUSD at the time of reorganization. The Committee's recommended process is to delegate the allocation of this outstanding bonding authority between SMUSD and MUSD to Group 2, the second of two transition and implementation group that the Committee recommends be appointed. (See page C-24.)

The Committee agreed that Group 2 should be directed to allocate the authorized but-not-yet-issued bonds consistent with the following two supplemental guiding principles the Committee adopted for bond-related items:

- Allocate the authority consistent with decisions and commitments regarding projects and division of bond authority made prior to reorganization, including that Malibu receives \$77 million (at minimum) out of ES's total of \$385 million and the decision regarding allocation of the Fund Balance of the Building Fund; and
- Mutual respect for the needs and preferences of SMUSD and MUSD at the time the allocation decision is made.

Note: Since SMUSD will retain the obligation to pay for the completion of the court ordered remediation, the projected costs for any remaining remediation at the time of reorganization must be included in SMUSD's allocation when calculating the split of bond fund proceeds and authorized but-not-issued bonds. (See Term Sheet for Topic #4, Environmental Liability.)

## **C. Allocation of District's Other Liabilities**

This final section of the Topic #3 Term Sheets provides the Committee's Agreement on three other balance sheet items. All three are liabilities (as opposed to assets), but are not addressed elsewhere in the Committee's Agreement.

### *1. 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. Consistent with the Committee's recommendation that the Headquarters building be allocated to SMUSD, that district will assume sole responsibility for paying the outstanding debt owed on the COPs used to fund the purchase of this property.

## 2. *Compensated Absences*

The Committee agreed that the liability associated with compensated absences should “move” with the individual teachers and other staff members who have accrued this unused leave. In other words, post-reorganization, SMUSD should inherit the liability for personnel who are SMUSD employees, and MUSD should inherit the liability for personnel who are MUSD employees.

## 3. *OPEB (Other Postemployment Benefits)*

OPEB is a Government Accounting Standards Board (GASB) term for the outstanding liability for paying benefits (other than pensions) to retired public sector employees.

The Committee agreed that the most equitable allocation of OPEB liability should be based on the most recent actuarial data available at the time of reorganization, and should be linked to how the funds already set-aside for providing retiree health benefits are divided between SMUSD and MUSD at the time of reorganization. Because the allocation of this liability depends on decisions that will be made closer to the time of reorganization, the Committee recommends the details of allocating the OPEB liability between SMUSD and MUSD be assigned to the second of two transition and implementation groups the Committee recommends be appointed. (See page C-24.)

## Term Sheet for Topic #4, Environmental Liability

### I. The Board's Objectives

The Board's objectives on the issue of environmental liability included:

- 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.
- Dismissal of the pending lawsuit against SMMUSD or an enforceable agreement from the plaintiffs that SMUSD will be dismissed from the lawsuit.
- Receipt by the Board of a legal opinion from a firm selected by the Board with respect to any potential continuing exposure of SMUSD following reorganization and a conclusion by the Board that any such exposure is reasonable.

With respect to the Board's objective regarding dismissal of the lawsuit brought by America Unites for Kids against SMMUSD, the Committee's understanding is that the September 1, 2016 ruling by Judge Anderson on this lawsuit essentially eliminated the Committee's need to address this objective. While the court's decision is on appeal, the Committee understands that the issues on appeal are limited to (a) whether attorneys' fees should be awarded to the plaintiff and (b) whether the injunction imposed by the court on certain private parties should be reversed; the court's decision regarding the obligations of SMMUSD to complete remediation work has not been appealed.

The Committee expressed no opinion with respect to any legal opinion the Board may wish to obtain in accordance with that objective.

### A. The Committee's Approach

The Committee approached Topic #4 by dividing the assignment into two categories: environmental contamination for which SMMUSD has developed, approved, funded and begun a remediation plan; and environmental contamination for which no such plan has been developed, whether or not known at the time of reorganization.

The Committee studied information in background and other resource materials that addressed issues of environmental liability specific to a possible reorganization of the District, posed legal questions to the Procopio law firm, and spent time discussing and evaluating different methods and approaches to addressing the Board's objectives.

The Committee's Agreement on environmental liability issues aligns with the Board's objectives and the Committee's guiding principles. The details are explained below. For the legal advice provide by Procopio to the Committee on environmental liability issues, see Appendix B.X.



## B. Guiding Principles

The Committee's Agreement on environmental liability is consistent with the Committee's guiding principles that all terms in the Agreement must: be financially viable for both SMUSD and MUSD; ensure a degree of predictability for both SMUSD and MUSD; enable each school district to be able to plan ahead with a reasonable degree of resource certainty; avoid establishing potential negative incentives for either SMUSD or MUSD to pursue increased revenue or otherwise improve education in their schools; and be clear and understandable, legal, and enforceable.

## C. Major Negotiated Terms

1. *Agreement on Environmental Liability for Which SMMUSD Has Developed, Approved, Funded, and Begun a Remediation Plan*

The District's current ongoing remediation of PCBs (polychlorinated biphenyl), as covered by the Court order and contemplated in SMMUSD's building replacement and renovation program, is scheduled to be completed by December 19, 2019. The Committee agreed that this ongoing remediation program, including the approach to use bonds funds to pay for it, would not be affected by reorganization.

The Committee agreed that if any part of this current ongoing remediation program has not been completed by the effective date of reorganization, SMUSD would be obligated to complete it under the terms of the court's order. The Committee also agrees that SMUSD will have no obligation to conduct or be responsible for any additional remediation of buildings in Malibu after the current ongoing remediation program covered by the Court order is completed.

If, however, the District chooses to undertake any remediation projects in Malibu buildings not covered by the Court order and that project is underway at the time of reorganization, the Committee recommends that the terms of project management and completion be subject to negotiation by Group 2.

In addition, if SMUSD becomes liable for any personal injury associated with the contamination of buildings in Malibu for which SMUSD is responsible for remediation, then MUSD will contribute a portion of the ultimate cost determined by the ADA Method.

2. *Agreement on Environmental Liability Related to Contamination That Is Either Not Known About Before Reorganization or Is Known About Before Reorganization But for Which SMMUSD Has Not Yet Developed, Approved, or Funded a Remediation Plan.*

For this category, the Committee agreed that SMUSD and MUSD will each be liable for its own properties and in charge of developing, approving, funding, and implementing a remediation plan. The Committee also agreed that MUSD will indemnify SMUSD for any liability associated with any contamination falling within this category in Malibu property, and SMUSD will indemnify MUSD for any liability associated with any contamination falling within this category in Santa Monica property.

## Term Sheet for Topic #5, Implementation

### I. Introduction

In its action creating the Committee, the Board outlined the process that will occur directly after the Committee submits its report to the Board. (See Memorandum Report, page 7.) With respect to the implementation of a district reorganization, there are several different avenues available. In sum, these are a petition procedure outlined in the State Education Code, special State legislation, or some combination of the two.

As stated earlier, the Committee recommends that the Board consider supporting processing the reorganization matter entirely through special State legislation, rather than the petition procedure outlined in the State Education Code or some combination of special State legislation and the Education Code procedure. The Committee believes that special State legislation would be the best approach for ensuring a comprehensive and legally enforceable result.

The Committee arrived at this recommendation after considering (1) the complexities and inter-relationships of the financial topics addressed by the Committee, and (2) advice of the Committee's legal and education finance consultants that some aspects of dividing the District's finances could only be accomplished via special State legislation.

Negotiations on the details of the implementation process were beyond the scope of the Board's objectives for the Committee. However, the Committee agreed 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 reorganization or in the time period post-reorganization.

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

#### A. Group One

The SMMUSD Board should appoint 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 reorganization occurs.

Candidate tasks for Group One are:

- Monitoring of any special state legislation being drafted to implement the Agreement.
- Monitoring negotiations for project management and completion of capital improvement projects in MUSD schools that are underway at the time of reorganization
- Monitoring negotiations for project management and completion of the remediation of environmental contamination in MUSD schools as a result of the Court order that is underway at the time of reorganization.

**B. Group Two**

After reorganization occurs, the respective Boards of Education of SMUSD and MUSD should appoint Group Two to work on the logistics and any outstanding issues that need to be resolved to ensure a smooth transition to the interactions of the two districts.

Candidate tasks for Group Two are:

- Based on the status of capital projects at the time of reorganization, making final recommendations about the allocation of “cash” in the relevant Funds.
- Based on the status of ES bond authority used at the time of reorganization, making final recommendations about the allocation of authority to issue authorized but-not-yet-issued bonds.
- Making final recommendations regarding the allocation of the Fund Balance in the Retiree Benefit Fund.

**APPENDIX D:**

**SAMPLE PROJECTIONS OF FORMULA**



MUNC Agreement Baseline Scenario

	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
SMMUSD Revenue	\$134,996,705	\$139,670,720	\$144,679,933	\$149,990,648	\$155,445,435	\$161,138,521	\$167,080,899	\$173,284,090	\$179,900,659	\$186,662,251
SMMUSD ADA	10,462	10,462	10,462	10,462	10,462	10,462	10,462	10,462	10,462	10,462
SMMUSD Rev/ADA	\$12,904	\$13,350	\$13,829	\$14,337	\$14,858	\$15,402	\$15,970	\$16,563	\$17,196	\$17,842
SM Only Rev/ADA	\$12,922	\$13,509	\$13,938	\$14,282	\$14,649	\$14,976	\$15,361	\$15,706	\$16,154	\$16,764
Diff - SM from SMMUSD per ADA	(\$18)	(\$159)	(\$109)	\$54	\$209	\$426	\$610	\$857	\$1,042	\$1,078
Cum Diff	(\$18)	(\$177)	(\$285)	(\$231)	(\$22)	\$405				
Shortfall for Agreement Period	\$156,724	\$1,382,688	\$947,544	(\$474,159)	(\$1,824,496)	(\$3,713,676)	(\$5,312,752)	(\$7,472,844)	(\$9,081,265)	(\$9,397,851)
Payments As Due (\$54,640,556)	\$0	\$0	\$0	\$0	\$0	\$3,525,375	\$5,312,752	\$7,472,844	\$9,081,265	\$9,397,851
Payments As Due per ADA	\$0	\$0	\$0	\$0	\$0	\$405	\$610	\$857	\$1,042	\$1,078
Total Rev with As Due Pmts/ADA	\$12,922	\$13,509	\$13,938	\$14,282	\$14,649	\$15,381	\$15,970	\$16,563	\$17,196	\$17,842
Payment Plan (\$57,018,807)	\$0	\$0	\$0	\$0	\$0	\$1,096,297	\$1,586,327	\$2,342,762	\$2,699,783	\$2,964,970
Malibu COLA allowance				2.67%	2.67%	2.67%	2.67%	2.67%	2.67%	2.67%
Interest Amt (\$2,402,034)	\$0	\$0	\$0	\$0	\$0	(\$24,534)	(\$62,416)	(\$114,854)	(\$180,455)	(\$247,232)
Balance to SM	(\$156,724)	(\$1,539,412)	(\$2,486,956)	(\$2,012,797)	(\$188,302)	\$2,453,369	\$6,241,592	\$11,485,391	\$18,045,541	\$24,723,207
Payment Plan Per ADA	\$0	\$0	\$0	\$0	\$0	\$126	\$182	\$269	\$310	\$340
SM + Pmt (Tot Revenue)	\$112,610,966	\$117,730,454	\$121,468,058	\$124,470,259	\$127,663,840	\$131,613,380	\$135,454,423	\$139,218,115	\$143,478,415	\$149,059,521
SM Only ADA	8,715	8,715	8,715	8,715	8,715	8,715	8,715	8,715	8,715	8,715
SM + Pmt per ADA	\$12,922	\$13,509	\$13,938	\$14,282	\$14,649	\$15,102	\$15,543	\$15,975	\$16,463	\$17,104
Diff per ADA vs as Due	\$0	\$0	\$0	\$0	\$0	(\$279)	(\$428)	(\$589)	(\$732)	(\$738)
Cum Diff by ADA	\$18	\$177	\$285	\$231	\$22	(\$282)	(\$716)	(\$1,318)	(\$2,071)	(\$2,837)
Cum Diff in Total	\$156,724	\$1,539,412	\$2,486,956	\$2,012,797	\$188,302	(\$2,453,369)	(\$6,241,592)	(\$11,485,391)	(\$18,045,541)	(\$24,723,207)

MUNC Agreement Baseline Scenario

	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35	2035-36	2036-37
SMMUSD Revenue	\$193,722,605	\$201,858,954	\$212,032,646	\$222,719,092	\$233,944,135	\$245,734,920	\$258,119,961	\$271,129,208	\$284,794,121
SMMUSD ADA	10,462	10,462	10,462	10,462	10,462	10,462	10,462	10,462	10,462
SMMUSD Rev/ADA	\$18,517	\$19,294	\$20,267	\$21,288	\$22,361	\$23,488	\$24,672	\$25,916	\$27,222
SM Only Rev/ADA	\$17,401	\$18,132	\$19,046	\$20,006	\$21,014	\$22,073	\$23,186	\$24,354	\$25,582
Diff - SM from SMMUSD per ADA	\$1,115	\$1,162	\$1,221	\$1,282	\$1,347	\$1,415	\$1,486	\$1,561	\$1,640
Cum Diff									
Shortfall for Agreement Period	(\$9,721,092)	(\$10,129,377)							
Payments As Due (\$54,640,556)	\$9,721,092	\$10,129,377							
Payments As Due per ADA	\$1,115	\$1,162							
Total Rev with As Due Pmts/ADA	\$18,517	\$19,294	\$19,046	\$20,006	\$21,014	\$22,073	\$23,186	\$24,354	\$25,582
Payment Plan (\$57,018,807)	\$3,515,503	\$4,089,301	\$4,696,657	\$5,339,159	\$6,018,466	\$6,736,308	\$7,494,487	\$8,294,886	\$143,903
Malibu COLA allowance	2.67%	2.67%	2.67%	2.67%	2.67%	2.67%	2.67%	2.67%	2.67%
Interest Amt (\$2,402,034)	(\$312,381)	(\$376,509)	(\$332,838)	(\$282,241)	(\$224,277)	(\$158,483)	(\$84,374)	(\$1,439)	\$0
Balance to SM	\$31,238,083	\$37,650,941	\$33,283,828	\$28,224,115	\$22,427,706	\$15,848,312	\$8,437,364	\$143,903	\$0
Payment Plan Per ADA	\$403	\$469	\$539	\$613	\$691	\$773	\$860	\$952	\$17
SM + Pmt (Tot Revenue)	\$155,168,193	\$162,111,403	\$170,683,073	\$179,691,292	\$189,157,947	\$199,106,019	\$209,559,632	\$220,544,115	\$223,090,494
SM Only ADA	8,715	8,715	8,715	8,715	8,715	8,715	8,715	8,715	8,715
SM + Pmt per ADA	\$17,805	\$18,601	\$19,585	\$20,619	\$21,705	\$22,846	\$24,046	\$25,306	\$25,598
Diff per ADA vs as Due	(\$712)	(\$693)	\$539	\$613	\$691	\$773	\$860	\$952	\$17
Cum Diff by ADA	(\$3,584)	(\$4,320)	(\$3,819)	(\$3,239)	(\$2,573)	(\$1,819)	(\$968)	(\$17)	\$0
Cum Diff in Total	(\$31,238,083)	(\$37,650,941)	(\$33,283,828)	(\$28,224,115)	(\$22,427,706)	(\$15,848,312)	(\$8,437,364)	(\$143,903)	\$0

**APPENDIX E:**

**GLOSSARY**



## Glossary

This glossary contains definitions for the acronyms, words, and phrases that the Committee used during the course of its work. The glossary includes four sections:

- Section A: Acronyms
- Section B: Terms Related to Schools and the Financing of California Schools
- Section C: Terms Adopted for Negotiations and Drafting the Agreement
- Section D: Terms Related to the Negotiation Process Itself

### Section A: Acronyms

ADA	Average Daily Attendance
AMPS	Advocates for Malibu Public Schools
COLA	Cost-of-Living Adjustment
COPs	Certificates of Participation
EL	English learner
EPA	Education Protection Account- Proposition 30
FOC	SMMUSD's Financial Oversight Committee
LACOE	Los Angeles County Office of Education
LCFF	Local Control Funding Formula
MPG	Mandated Cost Block Grant Revenue
MUSD	Malibu Unified School District
OPEB	Other Post-Employment Benefits
PCB	Polychlorinated Biphenyl
SBE	California State Board of Education
SMMEF	Santa Monica-Malibu Education Fund
SMMUSD	Santa Monica-Malibu Unified School District
SMUSD	Santa Monica Unified School District
SSC	School Services of California, Inc.

### Section B: Terms Related to Schools and the Financing of California Schools

#### Average Daily Attendance (ADA)

ADA is the average number of pupils actually attending class, and is generally equal to 95-98 percent of enrollment. The State requires school district to collect and report ADA data annually.

#### Local Control Funding Formula (LCFF)

The Local Control Funding Formula (LCFF), enacted in 2013-2014, is the primary mechanism for distributing State funds to K-12 school districts in California. It replaced the previous Revenue Limit financing approach, which had been operating for about 40 years. For school districts and charter schools, the LCFF establishes base, supplemental, and concentration grants in place of many previously separate tax revenue categories, general purpose block grants, and categorical programs.

Under LCFF:

- The State sets a target amount of revenue for each school district based upon ADA and certain other factors. Each district's share of local property taxes is subtracted from this target and the State funds the difference.
- Any school district that receives enough local property tax revenue to come close to or meet its LCFF target amount remains entitled to receive a basic level of additional State funding known as "Minimum State Aid"
- A school district that relies entirely on its property tax revenue is referred to as a "Basic Aid" district, but also received Minimum State Aid.
- Either Minimum State Aid or Basic Aid status enables a local school district to provide a higher level of funding for its schools because it receives some level of State funding beyond its LCFF target.

### **Minimum Guarantee for K-14 Education**

The Minimum Guarantee is a formula, established in 1987 by Proposition 98 that determines the minimum amount of State aid that must be allocated to K-14 educational agencies each year out of the state budget.

### **Other Postemployment Benefits (OPEB)**

OPEB is a term coined by the Governmental Accounting Standards Board (GASB) that refers to benefits (other than pensions) that U.S. state and local governments provide to their retired employees. These benefits principally involve health care benefits, but may include other services such as life insurance and disability.

### **Proposition 30**

Proposition 30, approved by California state voters in 2012, established higher temporary tax rates for the sales tax and personal income tax on high-income taxpayers. The sales tax rate increase generated about \$1.5 billion/year and expired at the end of 2016. The high-bracket income tax increase generates about \$6 billion/year and was scheduled to expire at the end of 2018, but under Proposition 55 approved by the voters in 2016, was extended until 2030.

### **Unification**

Under California State law, the organization or reorganization of a school district is referred to as "unification," regardless of whether it combines existing separate school districts into a new district, or divides an existing school into separate districts.

### **Unified School District**

A unified school district is one that operates schools from kindergarten through high school (K-12).

## **Section C: Terms Adopted by the Committee for Negotiations and Drafting the Agreement**

### **ADA Method**

A method for dividing assets between SMUSD and MUSD at the time of reorganization (or later time) that is based on a three-year average of the percentage share of total ADA in each district. The three years will be the school year in which reorganization becomes effective and the prior two school years. The current Santa Monica/Malibu ADA ratio is 84%/16%.

### **Agreement**

The Committee's integrated set of terms and conditions for addressing all topics assigned to it by the Board pursuant to a December 17, 2015 Action Item, as reflected in its Report and Term Sheets (Report Appendix C), which provide the details of the Agreement.

### **Board**

SMMUSD's Board of Education

### **Committee**

Malibu Unification Negotiations Committee, whose members were appointed by the Board (3 members) and City of Malibu City Manager (3 members).

### **Cumulative Delta**

The sum of the Delta for any fiscal year added to any amount of the Delta, plus interest, remaining unpaid from prior years. A positive Cumulative Delta balance represents a credit to MUSD that will be applied against future negative Deltas. A negative Cumulative Delta balance represents the amount of money owed to SMUSD by MUSD.

### **Delta**

The annual measurement of the Financial Effect multiplied by SMUSD's ADA. A negative value (i.e., the revenue per ADA for SMUSD is less than that which would have been realized by a theoretical SMMUSD) creates an obligation on the part of MUSD to make a payment in that amount to SMUSD. A positive value (the revenue per ADA for SMUSD exceeds that which would have been realized by a theoretical SMMUSD) will result in a credit to MUSD offsetting future payment obligations.

### **Delta Tracking Provision**

This is a provision in the Agreement for ending the annual calculation of the Delta before 2029-2030 if relatively small amounts are owed to SMUSD by MUSD for a specified period of time, because that would demonstrate that the two districts are operating independently with no significant adverse Financial Effect on SMUSD. (See C-X for details on the mechanics of the calculations.)

### **District**

Santa Monica-Malibu Unified School District

### **Financial Effect**

The difference in Unrestricted General Fund revenue per ADA in SMUSD vs. what the revenue per ADA would have been if reorganization had not occurred and SMMUSD continued to exist.

### **Formula**

The Revenue Neutrality Formula (see definition below).

### **Group One**

The first of two transition/implementation groups that the Committee recommends be appointed. Specifically, the Committee recommends the SMMUSD Board appoint Group One to work on the things that need to happen between the time the Board approves moving forward with reorganization and the time that reorganization actually occurs.

### **Group Two**

The second of two transition/implementation groups that the Committee recommends be appointed. Specifically, after reorganization occurs, the Committee recommends that the respective Boards of Education of SMUSD and MUSD appoint Group Two to work on the logistics and any outstanding issues that need to be resolved to ensure a smooth transition to the interactions of the two districts.

### **Malibu Ability-to-Pay Cost-of-Living Allowance (COLA)**

#### ***Needs to match definition agreed on in Term Sheets.***

The Cost of Living Allowance adjustment will be equal to the published State Budget COLA Percent, however it must be no less than a minimum increase of 50% of the percent change in MUSD's Property Assessed Value for the year and no more than a maximum increase of 80% of the percent change in MUSD's Property Assessed Value increase for the year and will be adjusted to fall within these parameters before being applied.

### **Measure BB Funds**

The facility bond funds made available to SMMUSD as a result of Measure BB, which was approved by District voters in November 2006. Approval of Measure BB authorized the Board to issue bonds backed by assessments on real property in both Santa Monica and the Malibu community in an aggregate amount of \$268,000,000.

### **Measure ES Funds**

The facility bond funds made available to SMMUSD as a result of Measure ES, which was approved by District voters in November 2012. Approval of Measure ES authorized the Board to issue bonds backed by assessments on real property in both Santa Monica and the Malibu community in an aggregate amount of \$385,000,000. At least 20 percent (\$77,000,000) was to be made available for Malibu community schools.

### **Procopio**

Procopio, Cory, Hargreaves & Savitch LLP, the law firm retained by the Committee to provide advice and legal support.

### **Reorganization**

The reorganization of SMMUSD into two separate K-12 public school districts: Santa Monica Unified School District (SMUSD) and Malibu Unified School District (MUSD).

*Note: While the Committee chose to adopt the term "reorganization," others refer to this process as "unification" or "separation."*

### **Revenue Neutrality**

The Board's objective to eliminate any significant adverse Financial Effect on SMUSD from the reorganization of the District into two separate districts (SMUSD and MUSD).

### **Revenue Neutrality Formula (the “Formula”)**

The Committee’s agreed-upon method for calculating the Financial Effect of reorganization and related payment schedule that, in the aggregate, results in Revenue Neutrality in SMUSD.

### **School Services of California, Inc. (SSC)**

The education finance consulting firm retained by the Committee.

### **Theoretical SMMUSD**

After a reorganization of SMMUSD occurs, “theoretical SMMUSD” is the term used to refer to what would have been SMMUSD had reorganization not occurred.

### **Topics**

The Committee’s Plan of Work organized the financial issues the Board directed the Committee to address into five major “topics” listed below.

- Topic #1: Operating Budget Impact
- Topic #2: Division of the District’s Assets
- Topic #3: Bond-related Items and Other Liabilities
- Topic #4: Environmental Liability
- Topic #5: Implementation

*CM Question: Does this final section of terms need to be included?*

### **Section D: Terms Related to the Negotiation Process Itself**

#### **Assumption**

Something that is accepted to be true or certain to happen without proof; a hypothesis that is taken for granted.

#### **Best Alternative to a Negotiated Agreement (BATNA)**

A party’s BATNA is the course of action that he or she would take if no agreement is reached in a negotiation.

#### **Brainstorming**

A structured group process for generating ideas in a free and open manner.

#### **Imply vs. Infer**

Imply means to express something indirectly; to hint at something. Infer means to surmise or deduce from indirect evidence.

Example: In a mystery novel, the author might imply who the guilty party is. From what she reads, the reader might infer who the guilty party is, but may or may not be correct.

#### **Interests**

The underlying concerns, desires, and needs that a party has around the issues that need to be resolved. Parties usually have multiple interests as opposed to a single interest, and the collection of interests reflects the needs/conditions that a party considers to be important in a satisfactory agreement. It can help to surface interests by exploring “why” a party wants something.

A person's values, point of view, plans, goals, and objectives influence their interests. A person's interests are based on what he or she likes and wants, but also what he or she fears and wants to avoid. It is fair to ask people to clarify and explain their interests, but an interest is not something that must be defended.

In Interest Based Bargaining (see definition below), an interest statement is more flexible and less specific than a position. Interest statements allow for open discussion and provide the basis for jointly exploring the issues and generating a variety of different solutions. Interests identified during negotiations can be grouped into three categories:

- **Mutual interests:** These are interests that negotiating parties have in common. For interests to be tagged as "mutual," they don't have to be identical or "mathematically equal" in terms of importance. For example, one party may have a greater interest or more immediate interest in something than the other, and yet the interest can be described as mutual.
- **Separate but non-conflicting interests:** These are interests that are different, but do not cause conflict between the negotiating parties. Sometimes, an interest that begins as a separate but non-conflicting one can become mutual as the negotiation continues – for example, if one party becomes willing to expand or evolve its initial interests.
- **Separate and conflicting interests:** In traditional bargaining, the frame of reference is positional and it is often assumed that, by definition, positions are in conflict. In IBB, the parties may be surprised to learn how many mutual and separate but non-conflicting interests they have. However, when separate and conflicting interests do exist, they will be easier to work through if they are openly identified.

### **Interest-based bargaining (IBB)**

Also referred to as "interest-based problem solving," "integrative bargaining," "mutual gains bargaining," and "win-win bargaining." IBB is an approach to problem solving that is designed to help parties express, understand, and build agreements around their underlying interests. It is premised on the idea that it is usually in the interest of both parties that to the maximum extent possible, the interests of both parties should be maximized in an agreed-upon resolution.

In contrast to the traditional "us vs. them" or "adversarial bargaining," (also known as competitive or positional bargaining) IBB uses problem solving skills and tools as a way of minimizing positional conflicts and achieving better outcomes for all parties.

The skills and tools involved include: active listening; converting positions into interests; sharing information and joint data collection; developing options; adopting principles for evaluating those options; and consensus decision making.

### **Options**

An option is one of several possible solutions intended to resolve a problem or issue. If only one option is put on the table, it is the same as a position and the parties really are engaged in positional bargaining.

### **Position**

A position is:

- A person's opinion on an issue.
- A person's point of view, adopted and held.
- What a person states he or she wants or does not want.

### **Principles**

Criteria used to decide which options should form the basis for a solution or settlement in interest-based bargaining or joint problem solving.

### **Tentative agreement**

Before parties sign off on a final agreement, tentative agreements may be reached on an issue or number of issues along the way. They are tentative in the sense that in interest-based bargaining, "nothing is agreed until everything is agreed." It is common practice to use "Term Sheets" to track agreements reached during the course of a negotiation.

### **Zone of Possible Agreement (ZOPA)**

If there is a resolution that both parties in a negotiation would prefer over impasse, then a ZOPA exists and a mutually beneficial settlement is possible.

## **Punch List for February 7 Meeting**

CM = Committee Member

### **General Observation**

For consistency, language for definitions, explanation, etc. that appear in more than one piece of report, e.g., Memorandum Report, Term Sheets, and Glossary, should be the same. As rounds of editing continue, the Committee will need to agree on which language should prevail.

### **Memorandum Report (V.8)**

#### Word Preferences and Outstanding (meaning still left to resolve) Issues

p.1, use of word “mitigating”

In other places in the report, the word “eliminating” is used. If the Committee chooses to use “mitigating,” then do you want to elsewhere?

p.3, in last sentence in first paragraph

Phrase “on a daily basis” in or out (one CM wants it in, another CM has edited it out)

p.6, highlighted paragraph, in or out.

One CM recommends deleting the highlighted paragraph because “unlike the objective, it does not contain a reference to a ‘significant’ negative impact.” Another CM feels strongly that it remain in the Memo.

p.9, first paragraph below table with names of CMs

Word “weekly” in or out. The reason raised for deleting is because meetings were not held every week.

p.12, County of Los Angeles Treasurer’s pooled investments account comprised of short-term securities (currently 0.9XX%). Does anyone know where to find the most current rate out to this level of detail?

p. 17, highlighted text under Environmental Liability. Will need to be edited to match Agreement on final language in Term Sheets.

#### Things to Notice

The following sections in the Memorandum Report were edited for consistency with latest versions of Term Sheet (V.8) or Glossary (V.3):

p.5, the four bullets that explain LCFF (now same as Glossary)



p.11, the definitions in the table (now same as Glossary)

p.14, FYI - definition of ADA Method (now same as Glossary)

p.16, FYI –highlighted sentence is a new one that matches added language in Term Sheets (V.8)

p. 18 and 19, the candidate tasks for Group 1 and Group 2 now match edits made to Term Sheets (V.8)

### **Appendix B (V.3)**

Questions for Committee highlighted in document.

### **Appendix C (V.8)**

Remaining issues to resolve in the Term Sheets (V.8):

- Environmental liability language (page
- Malibu ability-to-pay COLA (page
- Respond to comments from domain reviewers – Jan and John

CM Q: Does District expect to pay off COPs for District Headquarters in next few years?

CM Suggestion: Regarding “new sources of revenue” - add “equal to or less than residents currently pay.” (Sorry, I couldn’t figure out where in the Term Sheets this caveat should go.)

### **Appendix D (V.1)**

Committee had talked about preparing a Guide to accompany the projections spreadsheet, that is, something that lists the assumptions and caveats, and explains (in plain language) what the takeaways from the spreadsheet are.

- Does Committee still feel this is necessary?
- If yes, what does Committee want it to include? Who will draft?

### **Appendix E (V.3)**

Will need to ensure consistency with text throughout rest of Report.

One CM raised the question of whether the final section containing terms related to the negotiation process needs to be included?