

**Malibu Unification Negotiations Committee
Meeting Minutes**

Saturday, October 29, 2016

1:00 pm – 4:00 pm

Malibu City Hall

23825 Stuart Ranch Road, Malibu CA 90265

I. Call to Order / Roll Call

The committee called the meeting to order at 1:09 p.m. with the following committee members present:

Tom Larmore

Laura Rosenthal

Paul Silvern

Manel Sweetmore

Debbie Mulvaney

Makan Delrahim (arrived at 1:13 p.m.)

II. Approval of October 25, 2016 Meeting Minutes

- *Ms. Mulvaney offered one correction to the draft minutes.*
- *By consensus, the committee approved the minutes as corrected.*

III. Review/Approval of Committee letter/statement to the Board.

Ms. Orlansky reported that, based on the committee's October 25th guidance, she held follow-up conversations with SSC and Board President Lieberman to convey the outcome of the committee's discussion about SSC's briefing the Board on the Phase-1 reports on November 17, 2016. SSC confirmed that its PowerPoint presentation would be updated to reflect the report changes and additions requested by the MUNC; and Ms. Lieberman agreed to read a brief letter/statement from the MUNC to the Board directly before SSC's presentation.

Ms. Mulvaney reported that, based on the committee's October 25th guidance, she had spoken to Jon Kean, the new Board member. Mr. Kean plans to attend the SSC briefing and feels confident that any questions he has can be asked and answered.

By consensus, following some additional discussion about SSC's briefing to the Board, the committee agreed that:

- *The MUNC will not ask that its letter/statement (to be read by the Board President at the meeting) be included in the Board's written packet provided in advance;*
- *MUNC members will not participate in the Board's agenda item that includes SSC's presentation;*
- *Ms. Orlansky will follow-up with Ms. Wahrenbrock, Assistant to the Superintendent, with a request that Board Members be encouraged to watch SSC's presentation on Public School Finance in California, and that a direct link to the video be provided to the Board Members; and*
- *Following SSC's presentation to the Board, Ms. Orlansky will explore obtaining a tape of that agenda item for committee members to watch as soon as possible.*

Mr. Silvern and Mr. Delrahim agreed to prepare a draft of the committee's letter/statement for review and approval on November 3, 2016.

IV. Continuation of Worksession on Principles and Terms of Agreement

A. Summary of Discussion

The focus of the committee's worksession was on Topic 2, Operating Budget Impacts, and in particular, to the two revenue neutrality formulas under discussion. The issues discussed by the committee are summarized below.

- *The shared interests of the Santa Monica and Malibu communities, which included;*
 - *Reaching an agreement that works for both communities;*
 - *Not harming students in either district;*
 - *The need for a sturdy justification for the length of the revenue neutrality arrangement;*
 - *The recommended structure needs to be generally acceptable to the two communities while also being acceptable to the Board;*
 - *The need for smooth transitions; and*
 - *The need to avoid a financial shock to either SMUSD or MUSD.*
 - *The interest of the Santa Monica Team in a revenue neutrality formula that addresses the "out-year risk" to SMUSD, which is the potential for an increasing delta that was demonstrated in SSC's projections.*
 - *The interest of the Malibu Team in a revenue neutrality formula that provides a "downside protection" for MUSD, and provides Malibu with self-governance over its own schools.*
 - *Potential avenues for bridging the gap between the two proposals, such as: bringing in other aspects of the overall financial settlement; exploring net present value calculations; revisiting the lengths of time for the different elements of the formula; and the details of a downside protection provision for MUSD.*
 - *The "mirror-image" budgeting challenge that both SMUSD and MUSD will likely face post-separation, which will involve setting-aside reserves during certain years to minimize budgeting shocks in others.*
 - *The similarities and differences in the revenue per ADA and costs of operating SMUSD and MUSD post-separation.*
- ##### B. Updates to the Revenue Neutrality Proposals
- *The committee agreed to begin attaching calendar years to the two proposals, and to depict the formulas beginning in 2018-19. The committee also agreed to rename the proposals "Santa Monica" and "Malibu."*

- *Both teams agreed to link their respective proposals to 2028-29, which is the year that SSC's projections show a stable differential (the delta) would be reached. However, the Santa Monica proposal begins the four years of tapering after 2028-29; and the Malibu Team proposal includes tapering in the years leading up to 2028-29.*

Ms. Orlansky agreed to update the comparative table to reflect the committee's discussion and modifications, including columns that show the proposed calendar years for the different elements of the formula. (See handout for November 3, 2016.)

RECESS *The committee recessed at 3:08 p.m., and reconvened at 3:23 p.m. with all committee members present.*

By consensus, the committee decided to take up the discussion of bond-related issues at the next meeting. The reason was to provide members with sufficient time to review the MUNC's previous background material and discussions on bond-related issues.

Ms. Mulvaney reminded the committee that there were at least three bond-related categories to be considered: the allocation of existing bond debt; the allocation of authority to issue future ES bonds that have not yet been issued; and cash in the bond account. She noted that the committee previously agreed that some of this would need to be determined by a transition team, with the MUNC's recommendation concerning the process and not the actual allocation.

The committee briefly discussed Topic 5, Implementation Steps. By consensus, the committee agreed that two separate groups would be needed after the Board takes action on the MUNC's recommendations. Specifically:

Group One would be appointed by the current Board to work on the things that need to happen between the time the Board approves moving forward with unification and the time that actual legal separation occurs. Candidate tasks for Group One already mentioned are:

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

Group Two would consist of members appointed by the Board of SMUSD and Board of MUSD post-separation. Group Two's task would be to ensure a smooth transition to the interactions of the two districts going forward. Group Two would be the most likely entity charged with making final recommendations about certain bond-related issues that will need to be addressed based on current information after separation occurs.

V. Public Comments

There were no public comments.

VI. Upcoming Meetings

A. Topics for Next Agenda

- *Review and approval of the MUNC's letter/statement to the Board regarding SSC's briefing on the Phase-1 reports.*
- *Worksession on the terms and conditions of agreement, to begin with discussion of Topic 2, Allocation of Bond Debt and Authorization to Issue New Bonds. Background material for the bond discussion will be:*
 - *July 15, 2015 memo from the FOC to the Board on the Division of Assets and Liabilities;*
 - *September 22, 2014 memo from Ms. Leoni, Nielsen Merksamer Parrinello Gross & Leoni, LLP, to AMPS, re: Questions Pertaining to Formation of MUSD;*
 - *July 21, 2016 memo from John Lemmo, Procopio to the MUNC re: Reorganization of SMMUSD: Questions Regarding General Obligation Bond Allocation; and*
 - *October 4, 2016 PowerPoint Presentation to the MUNC from Tony Hsieh, Keygent Advisors, re: SMMUSD Bond Program Overview (the final version).*

B. Review and confirmation of Committee's November meeting schedule

- *Thursday, November 3, 6:30-8:30 PM at District offices in Santa Monica*
- *No meeting on Tuesday, November 8, 2016 (Election Day)*
- *Tuesday, November 15, 2016, 7-9 PM at Malibu City Hall*
- *Tuesday, November 22, 2016, 7-9 PM at District offices in Santa Monica*
- *Tuesday, November 29, 2016, 7-9 PM at Malibu City Hall*

VII. Adjournment

The committee adjourned the meeting at 3:49 p.m.

Comparison of Scenarios

The table below compares the revenue neutrality proposals currently being discussed. Since last week, a row was added to include an affordability measure for MUSD's ability to pay, the definition of "tracking phase" is clarified as part of "b" (separated from the length of the tracking phase), and a column added to show where agreement exists.

Characteristic of Formula	PS	MD	Agreement
a. The first five years of separation include a guarantee of 100% revenue neutrality to SMUSD	Yes	Yes	✓
b. Specifies a "tracking phase" as years during which the delta continues to be calculated annually and SMUSD is guaranteed 100% revenue neutrality. If the tracking shows three consecutive years for which the payment for SMUSD to attain revenue neutrality is zero (because the calculated delta is below some minimum threshold without regard to any credits Malibu might have received from previous years), then the revenue neutrality arrangement ends.	Yes	Yes	✓
c. Minimum number of years SMUSD would be guaranteed 100% revenue neutrality	8	6	
d. Maximum number of years SMUSD would be guaranteed 100% revenue neutrality	12	6	
e. Maximum number of years transfer of revenue (of any amount) could occur	16	10	
f. When does the tracking phase begin and what is its maximum length?	Tracking begins in year 6 and can continue through year 12	Tracking occurs in years 4,5, and 6	
g. Can any of the tracking years overlap with the first five years of guaranteed 100% revenue neutrality?	No	Yes, during years 4 and 5	
h. Years of tapering to zero payment	4 years (i.e., no payment in year 5)	4 years (i.e., no payment in year 5)	✓
i. Formula for tapering	Year 1 – 80% Year 2 – 60% Year 3 – 40% Year 4 – 20%	Year 1 – 80% Year 2 – 60% Year 3 – 40% Year 4 – 20%	✓
j. Affordability measure that reflects Malibu's ability to pay calculated delta	To be further defined	To be further defined	

Table revised 10/24/2016

MUNC Term Sheets

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

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

This draft reflects the MUNC’s tentative decisions through its October 25, 2016 meeting.

Topic	Begins on Page
Introduction: General Principles for MUNC’s Agreement on Recommendations to the Board	1
Topic 1, Balance Sheet Allocations	2
Topic 2, Allocation of Bond Debt and Authorization to Issue New Bonds	7
Topic 3, Operating Budget Impact	8
Topic 4, Environmental Liability	11
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Introduction: General Principles for MUNC’s Agreement on Recommendations to the Board

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

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

Note: This list will likely be expanded as the MUNC ‘s work continues.

Term Sheet for Topic 1, Balance Sheet Allocations

The term sheet below outlines the general principles and terms for a nonbinding MUNC agreement on the issues and sub-issues identified for Topic 1, Balance Sheet Allocations.

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

Note: The term sheet for Topic 1 continues on page 5, following Table-1.

Table-1
Summary of Recommended Allocation Method By Fund

Fund	Method for Allocating Cash Balance in Fund	MUNC Comments
A. MAJOR FUNDS		
1. Unrestricted General Fund	ADA method	The ADA method for the Unrestricted General Fund is recommended because: it greatly simplifies the calculation required; and analysis of the revenue sources by line item for 2015-16 shows net contributions from Santa Monica and Malibu closely mirrors the ADA split. A similar analysis should be repeated at the time of separation to ensure this finding still holds.
2. Restricted General Fund	ADA method	The ADA method is recommended for the Restricted General Fund for the same reasons listed above for the Unrestricted General Fund.
3. Building Fund	<i>Revisit during worksession on bonds.</i>	
4. Bond Interest and Redemption Fund	N/A (Not Applicable)	There is no end-of-year cash balance in this fund to allocate.
B. SPECIAL REVENUE FUNDS		
1. Adult Education Fund	<p>Divide the fund balance based on the ratio (calculated as a three-year average) of students enrolled from each community in Adult Ed. The three years will be the year of separation and the prior two years.</p> <p>However, if MUSD does not plan to offer Adult Education, then the entire fund balance will be transferred to SMUSD.</p>	The source of revenue for this fund is the State, which pays school districts a set amount per student participating in Adult Education.
2. Child Development Fund	<p>Divide the fund balance based on the ratio (calculated as a three-year average) of students enrolled from each community in Child Development program(s). The three years will be the year of separation and the prior two years.</p> <p>However, if MUSD does not plan to offer a Child Development program, then the entire fund balance will be transferred to SMUSD.</p>	The source of revenue for this fund is the State, which pays school districts a set amount per student participating in Child Development programs.

Table-1 continued from previous page.		
Fund	Method for Allocating Cash Balance in Fund	MUNC Comments
3. Cafeteria Special Revenue Fund	ADA method	The ADA method is recommended because this fund gets its revenue from students in both Santa Monica and Malibu.
Fund	Method for Allocating Cash Balance in Fund	MUNC Comments
4. Deferred Maintenance Fund	The fund balance will be divided based on the percent of total floor area square footage in Santa Monica vs. Malibu buildings at the time of separation.	The purpose of this fund is to fund routine maintenance needs across all of SMMUSD's buildings, located in both Santa Monica and Malibu.
C. CAPITAL PROJECT FUNDS		
1. Capital Facilities Fund – developer fees	The fund balance will be divided based on a three-year average of the percent of total dollar amounts contributed from developments located in Santa Monica vs. Malibu. The three years will be the year of separation and the prior two years.	Development contributions by location are tracked annually, so the allocation method recommended should be relatively simple to implement.
2. Special Reserve for Capital Projects Fund – Tax increment Pass-Through Fund from the former Santa Monica RDA	<i>Because the funds in this Special Reserve fund are treated similarly to SMMUSD bond proceeds, the committee agreed to revisit the allocation method for this fund until the committee's next discussion of bonds.</i>	
D. RETIREE BENEFIT FUND	<i>The MUNC requested Jan Maez and her team to review the most recent actuarial report and provide a recommendation back to the committee about the most equitable way to divide the Retiree Benefit Fund balance.</i>	The allocation will likely be linked to how the liability for providing retiree health benefits is divided between SMUSD and MUSD at the time of separation.

Term Sheet for Topic 1 (continued from page 2)

Principle/Parameter	Terms of Agreement
<p>Issue #2: Allocation method for dividing SMMUSD’s land and buildings</p> <p>The committee agreed to consider the allocation of SMMUSD’s land and buildings, or their asset value, in three categories:</p> <ol style="list-style-type: none"> 1) Schools; 2) Land/buildings used for SMMUSD activities that serve both Malibu and Santa Monica; and 3) Land/buildings that are a source of revenue for SMMUSD 	<p>Category 1: Schools</p> <ul style="list-style-type: none"> • With the possible exception of Olympic High School (see second bullet), schools will be allocated to the respective district where they are located. • Olympic High School (located in Santa Monica) may need to be in a separate category because it is SMMUSD’s only alternative high school and currently serves eligible students from both Malibu and Santa Monica. <p>Category 2: Land/buildings used for SMMUSD activities that serve both Malibu and Santa Monica.</p> <ul style="list-style-type: none"> • This category includes two buildings located in Santa Monica (District Headquarters and Washington West). • The committee considered several allocation options and underlying principles for allocating the land/buildings in this category, but has not yet reached any decisions. <p>Note: While bus yards might also fit into this category, the current set-up excludes them. Specifically: the bus yard in Malibu is on the campus of Malibu High School and the buses parked there only serve Malibu students; and the bus yard in Santa Monica serves students in both Santa Monica and Malibu, but is located on leased space, so is a liability and not an asset.</p> <p>Category 3: Land/buildings that are a source of revenue for SMMUSD.</p> <p>The Committee wants some additional information about SMMUSD’s revenue-producing assets before proceeding with additional discussion of this category. The Committee recognized that the allocation options and principles considered for Category 2 assets (above) may influence the decisions for allocating Category 3 assets.</p> <p>Table continues on next page.</p>

Principle/Parameter	Terms of Agreement
<p>Issue #3: Allocation method for balance sheet liabilities (other than bond debt and environmental liability):</p> <p>a. Certificates of Participation</p> <p>b. Compensated absences</p> <p>c. OPEB</p>	<p>a. Certificates of Participation (COPs) The Certificates of Participation liability on SMMUSD’s balance sheet reflects the debt owed on the financing for the District’s Headquarters’ building. SMMUSD’s plan is to continue to pay the remaining debt associated with the COPs using RDA pass-through funds. As a result, at the time of separation, there may be no outstanding cash liability on the COPs to allocate between SMUSD and MUSD.</p> <p>b. Compensated absences The liability associated with compensated absences will “move” with the individual teacher or other staff member who has accrued this unused leave. In other words, post-separation, SMUSD will inherit the liability for personnel who are SMUSD employees, and MUSD will inherit the liability for personnel who are MUSD employees.</p> <p>c. OPEB (Other Postemployment Benefits) OPEB is a Government Accounting Standards Board (GASB) term that refers to the outstanding liability for paying benefits (other than pensions) to retired public sector employees.</p> <p>The Committee agreed to wait for Jan Maez’ recommendation regarding allocation of the balance in the Retiree Benefits Fund before further discussion of OPEB.</p>
<p>Issue #4: Any other financial items related to balance sheet allocations or off balance sheet items?</p>	<p><i>The committee agreed to return to this issue after reviewing whether previous reports and other background materials had identified any items in this category.</i></p>
<p>Issue #5: Procedures (if any) for revisiting agreements reached on balance sheet allocations.</p>	<p>Given that Balance Sheet Allocations are expected to be a one-time division between SMUSD and MUSD at the time of separation, there will unlikely be any need to revisit the agreements made for Topic 1 items.</p>

Term Sheet for Topic 2, Allocation of Bond Debt and Authorization to Issue New Bonds

The term sheet below outlines the general principles and terms for a nonbinding MUNC agreement on the issues and sub-issues identified for Topic 2, Allocation of Bond Debt and Authorization to Issue New Bonds

Principle/Parameter	Terms of Agreement
<p>Issue #1: Method of allocating SMMUSD's issued bond debt.</p> <p>Issue #2: Method of allocating authority to issue future bonds that have been authorized but not yet issued.</p> <p>Issue #3: Mechanism for refinancing of SMMUSD's outstanding bonds</p> <p>Issue #4: Any additional financial items related to bonds that need to be addressed.</p> <p>Issue #5: Procedures (if any) for revisiting agreements reached on bond-related issues.</p>	<p><i>See Procopio's July 21, 2016 memorandum for alternatives presented by John Lemmo and discussed by the Committee, and information provided by Tony Hsieh to the Committee on October 4, 2016.</i></p>

	<p>3. If the January calculation shows that MUSD owes SMUSD a payment for the first year of separation, then the payment will be made no later than June 30, the last day of the second fiscal year of separation. Similarly, if the calculation shows that MUSD accrues a credit, then that credit will be booked on June 30, the last day of the second fiscal year of separation.</p> <ul style="list-style-type: none"> • The decision to use audited financials as the source of data means that there will be no payment (or credit) at the beginning of the first or second fiscal year of separation. The payment (or booking of a credit) at the end of the second fiscal year of separation will reconcile the delta for the first fiscal year of separation. • This pattern of reconciling the delta for each fiscal year at the end of the next fiscal year will continue for the length of the payment agreement.
<p>F. Criteria and purpose for reopening any of the agreed-upon formulas and/or other terms of payment</p>	<p><i>TBD</i></p>
<p>G. Terms that ensure both the enforceability and legality of agreements</p>	
<p>H. Steps involved in implementation, e.g., MOU, special legislation</p>	<p>The MUNC's agreements on this item will feed into terms for Topic 5, Implementation Steps.</p>

Term Sheet for Topic 4, Environmental Liability

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

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

	<i>Note: The MUNC expressed an interest in obtaining the latest estimates about the costs of remediation for the known but not yet addressed environmental contamination in Malibu schools.</i>
B. Issues of liability for pending claims against SMMUSD that are specific to the Malibu school sites in the lawsuit brought by America Unites for Kids against SMMUSD.	On September 1, 2016, Judge Anderson issued his ruling on the America Unites for Kids lawsuit. The MUNC agreed that Judge Anderson’s ruling is clear. Judge Anderson’s ruling may remove this environmental liability issue from the Board’s assignment to the MUNC.
C. Other?	

Term Sheet for Topic 5, Implementation Steps

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

Principle/Parameter	Terms of Agreement
<p>A. The MUNC’s final report will address next steps for the Board to take towards implementation of the agreements reached by the MUNC on Topics 1 through 4.</p> <p>B. The appointment and role of a “Transition Team.”</p>	<p>A. The MUNC’s report will address the next steps for the Board to take towards implementation by explaining the different options (e.g., petition to LACOE, special State legislation) that support for unification could take. However, the report will not include the details of these options because the MUNC believes that is beyond its charge.</p> <p>B. The MUNC will recommend that the Board appoint a “Transition Team” to work on the things that will need to happen between the time the Board approves moving forward with unification and the actual separation occurs.</p> <p>As the MUNC addresses each of the topics in the work plan, the “to do” list for the Transition Team will become more apparent. Candidate tasks for the Transition Team mentioned already are:</p> <ul style="list-style-type: none"> • Drafting special state legislation; • Negotiating final arrangements for completing remediation projects in Malibu schools that are underway at the time of separation.