

Attachment to Recommendation No. A.24
Master Facilities Use Agreement Between
the City of Santa Monica and the
Santa Monica-Malibu Unified School District.

Attached are comments from the SMMUSD Financial Oversight Committee on the Draft Master Facilities Use Agreement with the City of Santa Monica. This document has been provided to members of the Board of Education and is posted for public review.

Financial Oversight Committee of the
Santa Monica-Malibu Unified School District

February 14, 2005

Ms Emily Bloomfield, President
and Members of the Board of Education
Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, CA 90404

Re: Draft Master Facilities Use Agreement With City of Santa Monica

Dear Ms Bloomfield and Board Members:

The Financial Oversight Committee (FOC) offers the following comments on the draft Master Facilities Use Agreement (“Draft Agreement”) between the Santa Monica-Malibu Unified School District (“District”) and the City of Santa Monica (“City”), dated January 18, 2005, in response to a request from the Board of Education (“Board”) during its February 3 meeting. The FOC discussed the Draft Agreement at length at its January 25 and February 7, 2005 meetings. In framing these comments we also considered background information provided by Superintendent Deasy regarding the negotiation process that resulted in the current draft, a letter prepared by the Harding, Larmore *et al.* law firm, comments by members of the public during our February 7 meeting, and our members’ individual familiarity with the public record of discussion about this issue before the Board and the City Council.

In keeping with the Board’s request, we have organized our comments into three general categories: (1) material inconsistencies we see between the Draft Agreement and the Term Sheet, dated May 5, 2005, which was agreed to by both the Board and the City Council, and which was supposed to be the basis for preparing the Draft Agreement; (2) errors in mathematical formulas or other calculation factors that are central to the financial commitments embodied in the Draft Agreement; and (3) ambiguous language that could cause confusion among the parties as they implement the Draft Agreement in future years.

Material Inconsistencies With the Term Sheet

One of our most significant concerns^a about the Draft Agreement is that it focuses much too narrowly on *City* use of School District facilities, rather than “community use of school facilities,” as clearly stated in the Term Sheet (Term Sheet, para. 1), and “community use of school facilities when they are not required for District use,” as stated in the City staff report^b that transmitted the term sheet to the City Council (Staff Report, p. 1).

^a The FOC is also very concerned about the basic structure of the Draft Agreement as an exchange of City funds for use of District facilities, whereas the history of the public discussion about this issue, and the public record of the apparent intent of the parties to the Draft Agreement is clearly much broader. We understand, however, that this structure is based on a strongly held City position, which the Board has chosen to accept.

^b Memorandum to Mayor and City Council from City Staff, Request for Direction to Staff Regarding Proposed Terms for a New Contract Providing Payments to the Santa Monica-Malibu Unified School District in Exchange for Community Access to School Facilities, May 11, 2005 Council Meeting. (Hereinafter “Staff Report”).

We recommend the following specific changes to more accurately reflect the intentions of the parties, as stated in the Term Sheet and the Staff Report:

1. Title. The title of the Draft Agreement itself should be modified to simply say, “Agreement.”
2. Recital A. Recital A should be modified to read as follows: “For many years, the City and District have worked together to promote the health and welfare of the community’s children and youth by providing recreational opportunities and programs which foster good citizenship **and facilitating the provision of such opportunities and programs by Santa Monica’s many youth-serving non-profit organizations.**”
3. Recital B. Recital B should be modified to read as follows: “Many **City and non-profit** programs for children, youth and their families take place at public parks, playgrounds, play fields, and other City-owned recreational facilities.”
4. Recital F. Recital F should be modified to read as follows: “The District owns and operates school sites within the City which include playgrounds, play fields, recreational facilities and buildings. **Many recreational programs serving youth in the community, including City-run programs and programs provided by non-profit organizations, take place on District school campuses in Santa Monica.**”
5. Recital G. Recital G should be modified to read as follows: “The City and District desire to enter into a master agreement which will allow City **and community** use of school facilities **within the boundaries of** the City to meet certain recreational and other needs during hours when the facilities are available for City **and community** use and will allow the District to benefit from the **community’s** use of the facilities through the generation of revenues for the maintenance of the District’s education programs.”
6. Paragraph No. 3. The heading of this paragraph should be modified as follows: **“COMMUNITY USE OF SCHOOL DISTRICT PREMISES.”**
7. Paragraph No. 4. The heading of this paragraph should be changed to read, **“AFTER HOURS USE OF SCHOOL DISTRICT PREMISES.”** The first sentence of this paragraph should be revised as follows: “The Premises shall be used by the City **and community (including non-profit youth-serving organizations)** to provide supervised and unsupervised recreational opportunities, child care, enrichment classes, and other services.”

Although it is not specifically addressed by the Term Sheet, the FOC believes that the Draft Agreement fails to express the parties’ (and community’s) clear intent in supporting City funding of the District, as demonstrated by the public record of discussion before the Board and the City Council -- the critical importance of having excellent public schools to the overall quality of life in Santa Monica, including attracting quality businesses, increased property tax and other local revenues, among others. Recitals should be added to express this intent, because they are important in guiding the periodic renegotiation conferences required by the Draft Agreement.

Accordingly, we recommend that the following additional recitals be added to the Draft Agreement:

- **The City Charter recognizes the value of public schools in Santa Monica by providing for the establishment of a Board of Education, and by specifying the City's authority to financially assist local public schools. The City has increased its expenditure limits in part for the purpose of allowing financial aid to the public schools.**
- **The City and community receive substantial benefits from having excellent public schools in Santa Monica. Excellent public schools prepare students to become civic, cultural, academic and business leaders, help attract quality businesses to the community, increase property values, generate local tax revenues, help to deter criminal activity, reduce community problems such as poverty, drug use and teen pregnancy, help provide an educated work force, and contribute to the overall quality of life in Santa Monica.**
- **The overall purpose of this Agreement is to enable and ensure that the City provides the School District with stable financial support on an on-going basis. This Agreement is intended to ensure that the children of the community and the public institution that most directly affects and shapes their lives, the public schools, share directly in the prosperity of the City.**

For related reasons, the FOC also recommends that the first sentence of the Compensation paragraph be revised as follows:

Paragraph No. 5.A. "In consideration of City and community use of School District facilities in Santa Monica and the many other City and community benefits derived from having excellent public schools (including increased City tax revenues), tThe City shall pay the District initial base payments totaling Six Million Dollars (\$6,000,000) annually."

Calculation and Other Technical Issues

The FOC recommends that the Board request revisions or further clarifications about the following calculation and other related technical issues in the Draft Agreement which concern the amount of funding to be provided to the District.

1. Paragraph No. 1 re: Options to Extend Term. Although the Term Sheet states that the initial five-year term of the agreement has two 2.5-year options to extend, we are concerned that the even split of the total five years of extension complicates both consideration of periodic increases, and the timing of payments to the District. We recommend, instead, one three-year extension and one additional two-year extension, both defined in terms of fiscal years.
2. Paragraph No. 5A re: Annual Payments. The Compensation paragraph calls for payments to the District to be in two equal installments payable on December 31 and June 30. This is inconsistent with District expenditure patterns, and given the scale of City fund balances each year, does not appear to be required for City cash flow reasons.

The FOC recommends, instead, an annual lump sum payment on July 1. If funds must be paid in two equal installments, we recommend half on July 1, the beginning of the fiscal year, and half on January 1, the beginning of the second half of the fiscal year.

3. Paragraph No. 5B re: CPI Adjustment. This paragraph should be revised as follows, primarily in order to correct an ambiguity as to whether the second payment each year (assuming it remains after February) is subject to CPI adjustment:

“Adjustments Based on the Consumer Price Index. **The Annual Base Payment for each fiscal year, beginning in the fiscal year commencing July 1, 2005, shall be increased by an amount equal to the percentage change in the Consumer Price Index For All Urban Wage Earners and Clerical Workers for the Los Angeles-Riverside-Orange County, CA MSA (“CPI”) between February of the preceding calendar year to February of the calendar year in which such fiscal year commences, except that such increase shall not be less than two percent and not more than four percent.**”

We note, parenthetically, that the Term Sheet and the Draft Agreement use the wage earners and clerical workers version of the CPI, and not the more general measure of inflation reflected in the All Urban Consumers version of the CPI. It is unclear why the wage earners and clerical workers version was selected for use in assessing changes in City revenues.^c

4. Paragraph No. 5C(1) re: Adjustment Considerations. The periodic adjustment conferees are told to look at three factors: the “state” of community use of school facilities, the fiscal status of the City and the fiscal status of the District. However, the conferees are instructed about how to evaluate only one of these factors: the fiscal status of the City. Mention of the others raises questions:
 - a. Are the conferees supposed to consider the extent of community use of facilities? If so, how? If their use has not increased, is that supposed to lead to a potential reduction in City funding? If their use has significantly increased, is that supposed to favor an increase irrespective of the City’s fiscal status? Rather than the three factors currently referenced, when it is really only the City revenues that are relevant, it seems appropriate to focus instead on City revenues and the purpose of the agreement as set forth in the Recitals, as modified by the recommendations above.
 - b. When this paragraph speaks of “holding payments constant for 2007/2008,” presumably there was no intent to delete the CPI adjustment, but only not to further increase the base payment amount. This point should be clarified.

^c Although the two versions of the CPI generally move in a similar direction, albeit with different absolute values, the spending habits of the two populations that are measured by each index can result in more distinct differences over short time periods like those that apply to the periodic adjustment considerations in the Draft Agreement. The Urban Wage Earners and Clerical Workers version of the CPI is based on the expenditures of families living in urban areas who meet certain hourly employment criteria, and represents about 32% of the US population. The All Urban Consumers version represents about 87% of the US population and is based on the expenditures of all families living in urban areas. As its name suggests, the Urban Wage Earners and Clerical Workers version is most often used as the inflation index for labor wage adjustments, or public agency expenditures that are dominated by labor costs. “Big Eight” City revenues (e.g., property tax, sales tax, hotel bed tax, etc.), which are the focus of the adjustment conferences, arguably change in response to more general inflation impacts.

- c. In addition to the “objective” to have recommendations to the City Council and School Board by March 1, 2007, the contract should require that such recommendations be presented by April 1, 2007, or whatever other date is necessary in order to fit within the budgetary discussions of both entities. The timing may be important because the District will need to know the amount which will be funded during the next fiscal year before the City Council would normally complete its budget approval in June. Therefore, the Agreement should require the City Council to make that decision at this early stage, particularly when the City’s contribution is measured by financial results that will be available and not subject to change between March and June.
5. Paragraph No. 5C(3) re: Adjustment Formula for Higher-Growth Revenue Years. In the January 2007 meeting, the conferees will be looking at increases in the City’s “Big Eight” revenues for both a two-year and two one-year time periods and comparing those increases with CPI increases. However, there seems to be a time mismatch. The two-year revenue increases are apparently based upon a comparison of results from the 2003/04 fiscal year through the 2005/06 fiscal year. However, the Draft Agreement’s definition of CPI uses February - February, which is inconsistent with the term of the two fiscal years in question. The same issue is presented in comparing the annual increases in revenue to the annual increase in CPI. These problems may reflect a lack of clarity about annual CPI adjustments during the initial and subsequent base years, as distinguished from CPI calculations applicable to the periodic adjustment calculations.
6. Paragraph No. 5C(5) re: Adjustment Formula for Slower-Growth Revenue Years. This paragraph is not clear whether it is addressing the two-year period or the two fiscal years individually. It starts out with the former by using the word “cumulative” (which seems to be the logically correct result), but ends up with the latter by requiring that the increase be “at least CPI in 2004/2005 and 2005/2006.” Further, if the payments are reduced for 2007/08, there is no mechanism for restoring the decrease for 2008/09 other than the 7.5% super-increase specified in Paragraph 5C(7). It would seem that if City general fund revenues are back on track, then the payments should be restored.
7. Paragraph No. 5C(6) re the 2009 Adjustment Conference. This paragraph suffers from some of the same difficulties described above regarding the January 2007 adjustment conference. In addition, the paragraph should be more specific about the details of the formula to be used. Obviously, this conference will be looking at general fund revenue increases in 2006/2007 and 2007/2008 rather than those from two years earlier.

Further, if the contract is extended for 2.5 years, the procedure for considering the second extension should be spelled out. When does the conference committee meet given that the contract would expire on December 31, 2011? When would a decision be made regarding funding for the second half of the fiscal year 2011/2012? The Draft Agreement states that the conference committee would be only setting the 2012/2013 base funding level.

Ambiguous Language

There are a few additional items in the Draft Agreement which the FOC believes should be clarified in order to avoid any confusion or misunderstanding among the parties in implementing the agreement.

Accordingly, we recommend the following:

1. Paragraph No. 5.A. re: Valuation of District Facilities. It is unclear why, in Paragraph 5A, reference is made to the fact that the District has not appraised the value of its facilities when this has no bearing on the compensation. We recommend that this third sentence be removed.

2. Paragraph No. 5.A. and Paragraph No. 15 re: Amendments. Inasmuch as Paragraph No. 13 covers this issue, the fourth sentence in Paragraph 5.A. and the last sentence of Paragraph No. 15 appear to be redundant and could be deleted.

Finally, we also recommend that additional provisions be added to the Draft Agreement to address the following issues:

- The agreement should not be affected by any withdrawal of Malibu from the District.

- The agreement should specify that the District retains ultimate control over all of its property, including decisions about their temporary or permanent closure, taking into account safety, educational and financial needs.

- The agreement should specify that the District may expend the funds received pursuant to the agreement in its sole and absolute discretion.

The FOC appreciates the opportunity to provide these comments on the Draft Agreement, and we hope you find them useful in continuing your discussions with the City. I will be available at the Board meeting on February 17 to respond to any questions you may have about these comments.

Sincerely,

FINANCIAL OVERSIGHT COMMITTEE

By: _____
Paul J. Silvern, Chair

cc: FOC Members
Superintendent Deasy