

## 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.

The five Topics in this Appendix C are organized as shown in the table below. Appendix E, Glossary, contains a 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>
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## Term Sheet for Topic #1, Impact of Reorganization on SMUSD and MUSD Revenues

### I. The Board's Objective

The Board's objective related to the impact of reorganization on SMUSD and MUSD revenues 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 the 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 budget and finance consultant, School Services of California, Inc. (SSC), which prepared a 12-year revenue projections 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 projections.

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, which are 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 TK-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, as SMMUSD does today, is entitled to also receive an additional amount of State funding, which is known as "Minimum State Aid." A district that receives a combination of local property tax revenue, some State LCFF funding and Minimum State Aid is known as a Minimum State Aid district;
- A school district whose property tax revenue meets or exceeds its LCFF target amount (i.e. a "Basic Aid" district), as would be the case for MUSD immediately upon reorganization, but which would not occur in SMMUSD in the absence of reorganization or in SMUSD for many years, also receives Minimum State Aid; and
- A Minimum State Aid or Basic Aid district can provide a higher level of funding for its schools than a district that does not qualify for Minimum State Aid (e.g., SMUSD, at least for several years).

The relevance of the State's funding formula to reorganization is that SMMUSD would likely maintain Minimum State Aid status and then achieve 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 that would no longer be available to SMUSD. MUSD is likely to become a Basic Aid district immediately. (See Appendix B.7 for a link to SSC’s presentation on school finance in California, which contains more explanation of these issues, including how LCFF affects the finances of reorganization.)

For further explanation of these issues, see Appendix B.7 for a link to a video of SSC’s presentation on school finance in California, and Appendix B.9 for a report that contains SSC’s long-range revenue forecasts, including a sensitivity analysis on key variables.

**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 a formula and calculation approach for resolving the anticipated per-ADA revenue reduction in SMUSD, consistent with the guiding principles.

Through this process, the Committee adopted an approach to calculate the revenue impacts of reorganization on SMUSD, and established a method for determining a schedule of payments to SMUSD from MUSD that will maintain predictable and stable revenue growth for both districts and, in the aggregate, would eliminate any significant adverse per-ADA revenue impacts from reorganization on SMUSD.

**III. Definitions Adopted for Key Words and Phrases**

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

<b>Definitions Adopted for Topic #1 Negotiations</b>	
Average Daily Attendance (“ADA”)	ADA is the average number of pupils actually attending class each school day and generally equals 95-98 percent of enrollment. The State requires school districts to collect and report ADA data at two times during the school year: P1 (October) and P2 (April). All ADA references in this Report are to the P2 ADA.
Financial Effect	The difference in Unrestricted General Fund revenue per ADA in SMUSD vs. what that 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 (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.

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 future payment obligations.
Cumulative Delta	The sum of the Delta for any fiscal year added to any amount of the Delta, plus interest where applicable, 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.

#### 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 specifically for achieving Revenue Neutrality.

The general principles applicable to all terms in the Agreement are that they must: (a) be financially viable for both SMUSD and MUSD; (b) ensure a degree of predictability for both SMUSD and MUSD; (c) enable each district to plan ahead with a reasonable degree of resource certainty; (d) avoid establishing potential negative incentives for either SMUSD or MUSD to pursue increased revenue or otherwise improve education in their schools; and (e) be clear and understandable, legal, and enforceable. (See Memorandum Report, page 11.)

The supplemental guiding principles developed specifically for achieving Revenue Neutrality are summarized below. Appendix D contains an illustrative Revenue Neutrality Formula Projection (the “Illustrative Projection”), which the Committee developed based on the best information available at the time of this writing.

- The Formula must provide for annual Delta calculations beginning with the first fiscal year that reorganization becomes effective 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 fiscal year 2030-2031;
  - ✓ The Illustrative Projection indicates that payments to SMUSD from MUSD would continue for an estimated seven years beyond fiscal year 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 revenue growth for both SMUSD and MUSD. The Formula assumes that a new MUSD parcel tax is passed that is

equal to at least 90% of the parcel tax currently paid by the Malibu community for SMMUSD.

- If the Delta in any year would require a payment by MUSD that would cause MUSD's operating revenue 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 criteria for modifying the number of years that the Formula remains in place based on evidence that SMUSD can stand alone financially without any significant adverse Financial Effect from reorganization. (The Agreement refers to these criteria as the "Delta Tracking Process.") If the number of years that the Formula remains in place is shortened, then any outstanding payments due to SMUSD from MUSD must still be paid.

The timing of reorganization could affect the above guidelines. The Illustrative Projection (see Appendix D) assumes that reorganization becomes effective in fiscal year 2018-2019. If reorganization becomes effective after fiscal year 2018-2019 but before or during fiscal year 2020-2021, the Agreement provides that the Formula would continue as presented. However, if reorganization is delayed beyond fiscal year 2020-2021, the Agreement provides that the Formula will be revisited and open for renegotiation in case the revenue forecasting assumptions or other related TK-12 school finance factors underlying the Formula change. The Committee recommends that any renegotiation be conducted within the context of the basic principles outlined in this Agreement. (See page C-10 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 neutral third-party to perform the above calculations and provisions for SMUSD and MUSD to share equally in the associated costs.
- Criteria for renegotiating the Formula or terms of payment, in the case of a significant change in a key underlying assumption or unexpected future event.

**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 each school day, and generally falls within a range of 95-98% of enrollment. As noted earlier, the State requires school districts to collect and report ADA data at two times during the school year: P1 (October) and P2 (April). The ADA Data used in the Formula will be the P2 ADA.

Audited Financial Statement Data: The calculations in the Formula will use revenue data from audited financial statements for SMUSD and MUSD, which are generally available in December of each year following the fiscal year ending in June. Calculations related to future revenue per ADA for a theoretical SMMUSD (i.e., meaning an assumption that reorganization had not occurred) 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*

This section outlines the sources of Unrestricted General Fund revenue to include and exclude in the Delta calculation. The table below lists the Unrestricted Revenue Sources to include in Delta calculations. Below the table is an explanation of the Unrestricted Revenue Sources to exclude in Delta calculations.

<b>Revenue Categories</b>	<b>Unrestricted General Fund Revenue Sources to Include in Delta Calculations</b>
LCFF Revenue	<ul style="list-style-type: none"> <li>All categories of LCFF revenue (including property tax, State and Minimum State Aid revenue).</li> </ul> <p>In fiscal year 2016-2017, LCFF revenue accounts for 62% of SMMUSD’s total Unrestricted General Fund revenue.</p>
Locally-Generated Revenue	<ul style="list-style-type: none"> <li>Parcel tax revenue (SMUSD and MUSD)</li> <li>Revenue from leases and rentals (SMUSD and MUSD)</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. (See the next paragraph for information on new revenue sources generated post-reorganization by MUSD.)</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 in Section B 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 other Unrestricted General Fund revenue sources to exclude in the Delta calculation are listed below with an explanation of the rationale behind exclusion.

- 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 would be 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.

As discussed later in this Term Sheet, if the State changes the method under which it funds TK-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, consistent with the Guiding Principles adopted for this Agreement. 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.

## **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 that reorganization becomes effective through fiscal year 2029-2030. (See page C-4 and C-5 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 revenue 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 revenue 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 MUSD revenue will not experience a net reduction in its year over year revenue due solely to a required payment to SMUSD.

- Provides that MUSD’s ability-to-pay will be based on an annual Cost-of-Living Adjustment (COLA). The COLA will be the published State Revenue COLA, but if necessary, will be adjusted so that it will be no less than 50% and no more than 80% of the annual percentage change in the total assessed value of real property within MUSD.

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 to SMUSD are outlined below:

- If, in any year through fiscal year 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 revenues for the prior year adjusted by the MUSD 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 composed of short-term securities (currently 1.00%).
- No further calculation of the Delta will be made for any year beyond fiscal year 2029-2030, but annual payments will continue to 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 revenue for the prior year adjusted by the MUSD 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.

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

The Agreement includes a provision that would end the annual calculation of the Delta before fiscal year 2029-2030 if only 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 becomes effective or fiscal year 2022-2023, 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, plus interest if applicable, 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*

After reorganization becomes effective, the Boards of Education of SMUSD and MUSD will jointly select a neutral third party, with expertise in TK-12 public school financing in California, to perform the annual calculations provided for in the Formula. The two districts will agree on a fair and reasonable fee associated with the performance of this work, and share equally in the costs. 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 Topic 5, Implementation.)

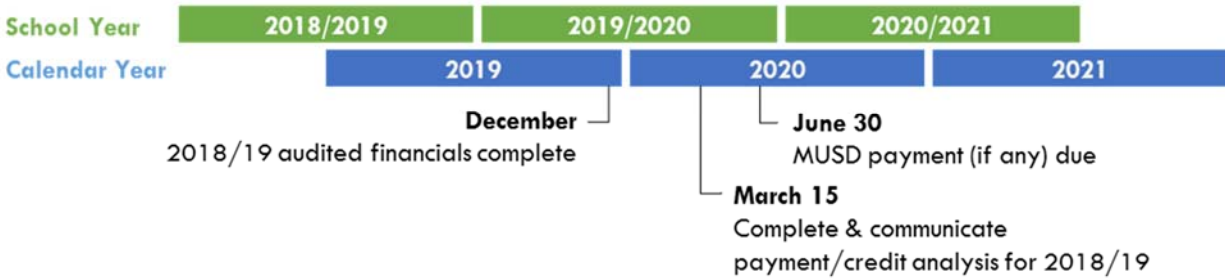
*2. Calendar of Calculations and Payments*

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 following the fiscal year ending the prior June 30. 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 after reorganization becomes effective.
- 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 second 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 June 30<sup>th</sup> of the second fiscal year after reorganization becomes effective.

The graphic below depicts the first cycle of annual calculations and payments after reorganization becomes effective (i.e., fiscal year 2018-2019, commencing July 1, 2018).

**Calculation and Payment Timeline**



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 that, due to the annual schedule for preparing and reporting the results of school district audits, 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 after reorganization becomes effective. As a result, the payment (or booking of a credit) at the end of the second fiscal year after reorganization becomes effective (i.e., June 30, 2020 in the above illustration) will correspond to the Delta for the first fiscal year after reorganization becomes effective (i.e., 2018-19 in the above illustration).

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

*1. Before Reorganization Becomes Effective*

As noted above, the mechanics of the Formula as well as the Illustrative Projection assume that reorganization becomes effective in fiscal year 2018-2019. If, however, implementation is delayed beyond fiscal year 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 Agreement.

*2. After Reorganization Becomes Effective*

- **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 TK-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 revenue growth.

If such an event occurs and the Board of MUSD concludes that the financial effect 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 revenue 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 Fund Balances in SMMUSD's General Fund Accounts and the Capital Facilities Fund ("Fund" or "Funds," as applicable) at the time reorganization becomes effective. The Board directed that the method be fair to both SMUSD and MUSD, considering the sources and uses of revenue 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 ending Fund Balances at the time reorganization becomes effective ("Fund Balances"); and
- Develop a method(s) for dividing SMMUSD's buildings, land, and school buses at the time reorganization becomes effective.

The Committee added three guiding principles for the division of SMMUSD's Fund Balances, studied information about the sources and uses of revenue in each Fund, and reviewed an inventory of SMMUSD's buildings and land. 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: (a) be financially viable for both SMUSD and MUSD; (b) ensure a degree of predictability for both SMUSD and MUSD; (c) enable each school district to be able to plan ahead with a reasonable degree of resource certainty; (d) avoid establishing potential negative incentives for either SMUSD or MUSD to pursue increased revenue or otherwise improve education in their schools; and (e) be clear and understandable, legal, and enforceable.

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

- The allocation of Fund Balances between SMUSD and MUSD will be decided by Fund, and will be guided by a method representing a mutually agreed-upon fair and equitable division that considers the sources and uses of revenue in each Fund;
- The negotiated methods of asset division are intended to be applied only once at the time reorganization becomes effective; and
- In a few cases, where the data needed to make a fair and equitable division will not be available until closer to the time reorganization becomes effective, there will be a

recommendation to postpone the final allocation decision until that information becomes available.

#### **IV. Agreements on Methods for Dividing Assets**

##### **A. Agreements on Dividing SMMUSD’s Fund Balances**

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

- Fund Balances to be divided using the “ADA Method;”
- Fund Balances to be divided using an alternative method; and
- Fund Balances to be divided based on information available closer to the time that reorganization becomes effective.

##### *1. Fund Balances to be Divided Using the “ADA Method”*

For the District Funds where the source of revenue (in relative terms) has essentially mirrored the number of students in Santa Monica and the Malibu community, the division of the Fund Balance when reorganization becomes effective should be based on a calculation of each district’s percentage share of total ADA in both districts. The current Santa Monica/Malibu community 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 three fiscal years immediately preceding the fiscal year when reorganization becomes effective.

The Funds to be divided using the ADA Method are listed below, along with each Fund’s fiscal year 2015-2016 ending Fund Balance, and the Committee’s comments on why the Agreement designates 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 TK-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 community 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 directly before reorganization becomes effective to ensure the mathematical finding cited above still holds.

Funds raised by the Santa Monica-Malibu Education Foundation (SMMEF) are also deposited into the Unrestricted General Fund, and the money SMMEF raises each year is for programs in the following fiscal 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 fiscal year immediately before reorganization becomes effective.

**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 directly before reorganization becomes effective 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.

*2. Fund Balances 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 Fund Balance from 2015-2016, a description of the agreed-upon allocation method, and any comments from the Committee 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 revenue source 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 Education. The three years will be the three fiscal years immediately preceding the fiscal year when reorganization becomes effective. 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 a combination of the State (which pays school districts a set amount per student participating in Child Development programs) and fees paid by the parents of children enrolled in pre-school programs on selected school campuses.

The agreed-upon allocation method is to divide the Fund Balance between SMUSD and MUSD based on the revenue produced by Child Development programs in the fiscal year during which reorganization is approved. Specifically, the ending Fund Balance of revenue produced by Child Development programs located in Santa Monica schools will be allocated to SMUSD, and the ending Fund Balance of revenue produced by Child Development programs located in Malibu schools will be allocated to MUSD.

**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 based on the respective percentages of total floor area in SMMUSD buildings located in Santa Monica versus the Malibu community at the time reorganization becomes effective.

**Name of Fund**                      **Capital Facilities Fund (developer fees)**  
2015-2016 Ending Balance:    \$1,236,679

The Capital Facilities Fund is the repository of statutory developer fees paid 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 percentage of payments generated from developments located in Santa Monica versus the Malibu community. The three years will be the three fiscal years immediately preceding the fiscal year when reorganization becomes effective.

Development contributions by location are tracked annually, so the allocation method recommended for this Fund should be relatively easy 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 City of 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 District Headquarters building. The annual debt service for principal and interest is \$1.869 million.

\$5.0 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 the District identifies them as a priority. There has been no pattern established for using these funds for capital projects based on project location in the Malibu community or Santa Monica.

The agreed-upon allocation method is to divide the undesignated Fund Balance between SMUSD and MUSD at the time reorganization becomes effective 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 SMUSD/MUSD allocation ratio will be 78%/22%. This is based on an allocation to the Malibu community of (at least) \$77.0 million out of \$350.6 million, which is the amount remaining from the \$385.0 million Measure ES total bond authorization after subtracting \$34.4 million allocated for District-wide technology improvements.

*3. Fund Balances to be Divided Based on Information Available Closer to Reorganization*

The Committee agreed that the decision on a fair and equitable allocation of the Fund Balances 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 Fund Balance of SMMUSD bond proceeds in the year prior to when reorganization becomes effective.

A fair and equitable allocation of the Fund Balance in the Building Fund will depend on the status of projects in Santa Monica and the Malibu community at the time reorganization becomes effective. Because this information is so time-dependent, the Agreement is that developing a recommendation for the allocation of the Building Fund be assigned to Group 1, the first of two transition and implementation groups the Committee recommends be appointed. (See Topic #5, Implementation.)

The guiding principles recommended for the eventual Fund Balance allocation is that it should be consistent with the decisions and commitments regarding projects and division of bond proceeds made before reorganization (including that the Malibu community receives \$77.0 million, at minimum, out of Measure ES's total of \$385.0 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 PCBs remediation in Malibu schools, 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 Topic #4, Environmental Liability.)



**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 1.

The most equitable allocation of the Fund Balance in the Retiree Benefit Fund will need to be based on the most recent actuarial data available at the time reorganization becomes effective, and will be linked to how the liability for providing retiree health benefits is divided between SMUSD and MUSD at that time. The Committee believes that a professional actuary will need to be engaged to make the determination of a fair and equitable split of this Fund.

**B. Agreement on Dividing SMMUSD’s Buildings, Land, and School Buses**

The Committee considered the allocation of SMMUSD’s buildings, land, and school buses in four categories: (1) schools; (2) school buses and bus yards; (3) land and buildings used for SMMUSD activities that serve students and/or faculty in both the Malibu community and Santa Monica; and (4) 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. In such a case, MUSD will pay the cost of transporting MUSD students to the continuation high school program in SMUSD.

*2. School Buses and Bus Yards*

The Committee agreed that, at the time of reorganization, the school buses used to transport students in Santa Monica will be allocated to SMUSD, and the school buses used to transport students in the Malibu community will be allocated to MUSD. In addition, each district will make its own decision about how to store and maintain its bus fleet.

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

The agreed-upon allocation method for the property in this category located in Santa Monica 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 (COPs) used to fund the purchase of this property. However, should

SMUSD ever elect to sell the District Headquarters, any net cash proceeds (minus the outstanding COPs balance at the time of reorganization) will be divided between SMUSD and MUSD according to the ADA Method calculated at the time reorganization becomes effective.

- 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.

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

- The buildings/land that are currently a source of SMMUSD revenue (and 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 ever elect to sell any of the buildings/land that were a source of revenue for SMMUSD, any net cash proceeds will be split between SMUSD and MUSD according to the ADA method calculated at the time of reorganization.

The Agreement acknowledges that SMUSD will retain sole discretion regarding the leasing, financing, disposition and use of the District Headquarters building and all assets that are currently a source of SMMUSD revenue and will have no obligation to MUSD to maximize or generate any cash proceeds from any disposition thereof or to pay to MUSD any portion of any proceeds received from the leasing or financing thereof.

And finally, the District's land on Malibu Canyon Road will be allocated to MUSD.

## **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 (are) fair to SMUSD and MUSD to: (a) allocate the District's existing bond debt; (b) address the refinancing of existing debt; (c) allocate authorized but not-yet-issued Measure ES bonding authority; and (d) allocate other District liabilities between SMUSD and MUSD 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 that reorganization becomes effective 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 Measure ES 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. (See Topic #4, Environmental Liability.)

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 (Appendix B.10), and spent time discussing and evaluating different methods and approaches to addressing the three assignments.

In sum, the Committee's unanimously approved 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: (a) be financially viable for both SMUSD and MUSD; (b) ensure a degree of predictability for both SMUSD and MUSD; (c) enable each school district to be able to plan ahead with a reasonable degree of resource certainty; (d) avoid establishing potential negative incentives for either SMUSD or MUSD to pursue increased revenue or otherwise improve education in their schools; and (e) be clear and understandable, legal, and enforceable.

The Committee developed the following additional 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; and
- 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 made before reorganization, and place priority and mutual respect on the needs and preferences delineated 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 the Malibu community 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.	

#### **IV. Agreement on Allocation**

##### **A. Agreement on Bonds Issued by SMMUSD Before Reorganization Becomes Effective**

With respect to the Measure BB and Measure ES bonds issued by SMMUSD before reorganization becomes effective, 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 when reorganization becomes effective. 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, State legislation and related reorganization documents, to the extent that the rights of bond holders are not prejudiced, should 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 State legislation needs to specify that each successor district is treated as the issuing district for purposes of Government Code Section 53580 and related statutes. In addition, the State legislation should specify 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 Measure ES 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 the allocation of this remaining bonding authority should occur at the time reorganization becomes effective because it will depend on the status of projects and plans of SMUSD and MUSD at that time. The Committee's recommended process is to delegate the task of making a final recommendation for allocating this outstanding bonding authority to Group 1, the first of two transition and implementation groups that the Committee recommends be appointed. (See Topic #5, Implementation.)

The Committee agreed that Group 1 should be directed to develop its recommendation for allocating the authorized but-not-yet-issued bonding authority consistent with the following guidelines:

- Allocate the authority consistent with decisions and commitments regarding projects and division of bonding authority made prior to reorganization, including that Malibu receives \$77 million (at minimum) out of ES's total of \$385 million, and mutual respect for the needs and preferences delineated by SMUSD and MUSD at the time of reorganization.
- To be specific, the allocation decision should take into account: (a) the status of current projects in Malibu schools; (b) previous decisions regarding authorized but-not-yet-issued bonds; and (c) the bond fund balance.

Finally, since SMUSD will retain the obligation to pay for the completion of Court-ordered remediation of contamination in Malibu schools, the projected costs for any remaining remediation at the time reorganization becomes effective must be included in SMUSD's allocation when calculating the split of bond fund proceeds and authorized but-not-yet-issued bonds. (See 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. Consistent with the Committee's recommendation that the District's Headquarters 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*

Compensated absences are an employer's accrued liability for absences that employees will be paid for, such as vacation and sick leave. 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, when reorganization becomes effective, SMUSD should inherit the liability for personnel who are SMUSD employees, and MUSD should inherit the liability for personnel who are MUSD employees.

Because the allocation of this liability depends on decisions that will be made closer to when reorganization becomes effective, the Committee recommends the details of allocating the compensated absences liability between SMUSD and MUSD be assigned to Group 1, the first of two transition and implementation groups the Committee recommends be appointed. (See Topic #5, Implementation.)

### *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 reorganization becomes effective. 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 between SMUSD and MUSD also be assigned to Group 1.

## Term Sheet for Topic #4, Environmental Liability

### I. The Board's Objectives

The Board's objectives on the issue of environmental liability, as stated in the Board's Action Item of December 17, 2015, were:

- 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 the creation of 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 second objective regarding 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 (the "Court Order") essentially eliminated the Committee's need to address this objective. (See Appendix B.28 for a copy of the Court Order.)

While the Court Order 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 in the Court Order on certain private parties should be reversed. The portion of the Court Order 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 the final objective.

### A. The Committee's Approach

The Committee approached the first objective by dividing the assignment into two categories: remediation of contamination required under the Court Order; and any other environmental contamination, whether or not known at the time reorganization becomes effective.

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. See Appendix B.11 for the legal advice provided by Procopio to the Committee on environmental liability issues.

## **B. Major Negotiated Terms**

### *1. Agreement on Remediation Obligations of SMMUSD Under the Court Order*

SMMUSD's obligations to complete remediation of PCBs (polychlorinated biphenyl) in Malibu school buildings, to the extent required by the Court Order is included in SMMUSD's building replacement and renovation program and is scheduled to be completed by December 31, 2019. The Committee agreed that this ongoing remediation program, including the use of ES Measure bond funds to pay for it, would not be affected by reorganization.

The Committee agreed that if any part of this 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 Order, with the terms of project management and completion being subject to negotiation by Group 2, the second of two transition/implementation groups the Committee recommends be appointed. (See Topic #5, Implementation.) p

### *2. Agreement on the Obligation to Remediate Contamination Beyond that Covered by the Court Order*

The Committee agreed that after reorganization becomes effective:

- SMUSD will have no obligation to conduct, be responsible for or be liable for any inspection, remediation or contamination of any land or building in MUSD beyond that mandated in the Court Order;
- SMUSD will be responsible for any remediation obligation arising from contamination in any land or building located in Santa Monica which is owned by SMUSD and in charge of, and responsible for, developing, approving, funding and implementing any required remediation plan arising from such contamination;
- Except to the extent of the obligations imposed on SMMUSD by the Court Order which have not been satisfied, MUSD will be responsible for any remediation obligation arising from contamination in any land or building owned by MUSD and in charge of, and responsible for, developing approving, funding and implementing any required remediation plan arising from such contamination;
- Except to the extent arising out of the performance by SMMUSD of the obligations imposed on SMMUSD by the Court Order, MUSD will indemnify SMUSD for, and defend SMUSD against, any liability, cost or claim (other than liability, cost or claim for personal injury) arising from any contamination in any land or building owned by MUSD or the performance of, or failure to perform, any remediation work associated with such contamination;
- SMUSD will indemnify MUSD for, and defend MUSD against, any liability, cost or claim (other than liability, cost or claim for personal injury) arising from any contamination in any land or building owned by SMUSD or the performance of, or failure to perform, any remediation work associated with such contamination;



- MUSD will indemnify SMUSD for, and defend SMUSD against, any liability, cost or claim for personal injury arising from any contamination in any land or building owned by MUSD whenever such liability, cost or claim is brought by an individual whose first exposure to such contamination occurred following the effective date of reorganization;
- SMUSD will indemnify MUSD for, and defend MUSD against, any liability, cost or claim for personal injury arising from any contamination in any land or building owned by SMUSD whenever such liability, cost or claim is brought by an individual whose first exposure to such contamination occurred following the effective date of reorganization; and
- Each of SMUSD and MUSD will reserve all rights against the other in connection with any liability, cost or claim for personal injury arising from contamination in any land or building owned by SMMUSD whenever such liability, cost or claim is brought by an individual whose first exposure to such contamination occurred prior to the effective date of reorganization.

## 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 8.) With respect to the implementation of District reorganization, there are several different avenues available. In sum, these avenues are a petition procedure outlined in the State Education Code, State legislation, or some combination of the two.

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

The Committee arrived at this recommendation after considering (a) the complexities and inter-relationships of the financial topics addressed by the Committee, and (b) advice of the Committee's legal and education finance consultants that some aspects of dividing the District's finances could only be accomplished via 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 the actual time reorganization becomes effective or in the 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 reorganization and the time that reorganization becomes effective. The Committee recommends that Group One consist of senior officials and domain experts from both Santa Monica and Malibu who can collaborate to meet the interests of the future SMUSD and MUSD, consistent with the Guiding Principles behind the Agreement outlined in this Report.

Candidate tasks for Group One are:

- Monitoring of any State legislation being drafted after the Board resolves to support and implement reorganization consistent with the Committee's Agreement.
- Making final recommendations about the division of the Fund Balances in the Funds where the allocation method depends on the status of capital projects and expenditures at the time reorganization is scheduled to become effective. (This must be done in conjunction with the next task.)

- Making final recommendations about the apportionment of bonding authority for authorized but-not-yet-issued Measure ES Bonds based on the allocation of Fund Balances as described in the bullet above, as well as the funding necessary for SMUSD to complete the required remediation of Malibu schools.
- With the assistance of a professional actuary, making final recommendations regarding the allocation of the Fund Balance in the Retiree Benefit Fund, and liabilities associated with Compensated Absences and Other Post-Employment Benefits.

## **B. 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. The Committee recommends that Group Two include the Superintendents and Chief Financial Officers from SMUSD and MUSD, as well as Board Member representation from each district.

Candidate tasks for Group Two are:

- Determining the process for SMUSD and MUSD to jointly select a neutral third party to perform the annual Delta calculations, negotiate reasonable and appropriate fees for this work, and evenly split the costs.
- Monitoring negotiations between SMUSD and MUSD for project management and completion of the Court-ordered remediation of environmental contamination in MUSD schools.