

OPERATIONAL TRANSFER AGREEMENT BETWEEN THE SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, REPRESENTING THE INTERESTS OF THE FUTURE SANTA MONICA UNIFIED SCHOOL DISTRICT, AND THE CITY OF MALIBU, REPRESENTING THE INTERESTS OF THE FUTURE MALIBU UNIFIED SCHOOL DISTRICT

This Operational Transfer Agreement (“Agreement”) is entered into and effective ____, 2025 (“Effective Date”), between the Santa Monica-Malibu Unified School District (“SMMUSD”), representing the interests of the future Santa Monica Unified School District (“SMUSD”), and the City of Malibu (“City”), representing the interests of the future Malibu Unified School District (“MUSD”), hereinafter referred to as the “Parties”, and with respect to the following Recitals, which are incorporated by reference into this Agreement.

The purpose of this Agreement is to provide the framework for how the Parties will work together during the time preceding the formation of the future MUSD and the reorganization of SMMUSD into SMUSD, hereinafter referred to the “Transition Period”, and to provide guidance for certain activities/actions which may require collaboration after the Transition Period. The framework of this Agreement defines how the Parties will work together to manage the transition of Confidential Data; Educational Services; Other Student Related Services; Staffing Assignments; Human Resources; Maintenance, Operations and Facilities; Allocation of Real Property; Allocation of Other Assets and Liabilities; Fiscal Implications; and Communications.

It is the intent of the Parties to provide for a smooth and transparent Transition Period to assist themselves, other involved public entities and the public, in understanding how all aspects of providing public education services will transition from SMMUSD to the future SMUSD and MUSD.

A. RECITALS

WHEREAS, SMMUSD is the current provider of preschool through twelfth grade public education for students residing within the cities of Santa Monica and Malibu, a portion of the City of Westlake Village, and contiguous adjacent unincorporated territory of Los Angeles County; and,

WHEREAS, SMMUSD and Malibu have agreed that the formation of an independent Malibu Unified School District is in the best interest of all SMMUSD students; and,

WHEREAS, SMMUSD and Malibu have agreed to pursue the formation of MUSD from designated territory within SMMUSD with the intention of the two resulting public unified school districts serving the communities of Santa Monica and Malibu, respectively; and,

WHEREAS, Education Code section 35511(a)(2) allows for the action to form a new unified school district from all or parts of one or more existing unified school districts; and,

WHEREAS, on the Separation Date (as defined below), SMUSD will become the primary provider of preschool through twelfth grade public education for students in the City of Santa Monica, California, which boundaries are reflected and included in **Exhibit A**, attached and incorporated in this Agreement (“SMUSD Boundaries”); and,

WHEREAS, on the Separation Date, MUSD will become the provider of preschool through twelfth grade public education for students in the City of Malibu, a portion of the City of Westlake Village, and contiguous adjacent unincorporated territory of Los Angeles County, which boundaries are reflected and included in **Exhibit B**, attached and incorporated in this Agreement (“MUSD Boundaries”); and,

WHEREAS, the Parties have agreed upon a revenue sharing plan that is memorialized in a Property Tax Revenue Sharing Agreement that allocates a sufficient share of funding to enable each successor educational entity to provide a similar level of service at each school site as prior to separation; and,

WHEREAS, the parties have agreed to work collaboratively during the Transition Period to facilitate the transition from SMMUSD to SMUSD and MUSD.

NOW, THEREFORE, the parties agree as follows:

B. DEFINITIONS

1. For the purposes of this Agreement, the following terms shall have the meanings set forth below:
 - a. “Fund Balance” shall mean assets, including cash and accounts receivable, less liabilities, including accounts payable, referred to as Ending (Fund) Balance, June 30 in the state’s Standardized Account Code Structure (SACS) Unaudited Actual reports.
 - b. “JPA” shall mean the Joint Exercise of Powers Agreement to Establish the Malibu USD Transition and Implementation Joint Powers Authority.
 - c. “Malibu Transition Team” shall be the consultants engaged by the City of Malibu assigned to facilitating and implementing the steps necessary to initiate operations of MUSD.

- d. "Revenue Sharing Agreement" shall mean the Property Tax Revenue Sharing Agreement entered into between SMMUSD and Malibu that sets forth the allocation of revenues between the Parties post-separation.
- e. "Separation Date" shall mean the 1st of July in the year whereby the separate Malibu Unified School District and Santa Monica Unified School District become officially operational as authorized by the California Department of Education.
- f. "Successor Entity" shall mean, individually, the future school districts, referred to herein as SMUSD or MUSD, and collectively as the "Successor Entities", which exist after the Separation Date, regardless of the legal process by which each agency is formed or identified.
- g. "Transition Period" shall begin when this Agreement and the Revenue Sharing Agreement are collectively ratified by both the City of Malibu and the SMMUSD and will continue up to and including the Separation Date.
- h. "Unification" shall mean the formation of an independent Malibu Unified School District from territory within the Santa Monica-Malibu Unified School District.

C. AGREEMENT

1. Sharing of Information

- a. The Parties will need to collaboratively share certain public records as well as certain non-public proprietary information and student data, which will likely require SMMUSD to provide resources, staff time, and assistance associated with the Unification.
- b. As California public agencies, the Parties are subject to the California Public Records Act (CPRA). (Gov. Code § 7920.000 et seq.) Both Parties shall continue to share public records with each other in accordance with their respective obligations under all relevant provisions of the CPRA.
- c. In addition to public record information, SMMUSD shall share non-public records and other data with the City in accordance with the official information privilege which states that an agency does not waive protection of non-public information to another public agency under the official information privilege. (Gov. Code, § 7921.505(c)(5); Evid. Code § 1040(a), (b).) Pursuant to this official information privilege, the Parties mutually agree that no non-public/official information shared between the Parties shall be subject to disclosure pursuant to the CPRA except as otherwise may be required by law.

- d. SMMUSD will share such non-public records/official information with the City with the understanding that the following must occur: (i) a disclosure must be made to a governmental agency that agrees to treat the disclosed material as confidential; (ii) only persons authorized in writing by the person in charge of the agency are permitted to obtain, review, or use the information; and (iii) any information obtained by the agency shall only be used for purposes that are consistent with existing law.
- e. The Parties acknowledge and explicitly agree that as a school district, SMMUSD is subject to certain privacy regulations outlined in the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99), as may be amended from time to time (“FERPA”) as well as certain pupil records laws found in Education Code § 49060, et seq. (collectively, “Pupil Records Laws”). The Parties further agree that City, its employees, agents, or representatives may be provided access to certain requested Student Educational Records (as defined under Pupil Records Laws) in connection with the negotiation of the Unification. City and SMMUSD acknowledge that they are subject to and will fully comply with the privacy regulations outlined in the Pupil Records Laws for the handling of such information. City shall not disclose and/or use any Student Educational Records except to the extent necessary to finalize the SMMUSD Reorganization and as expressly permitted by the Pupil Records Laws. City shall implement and maintain administrative, physical, and technical safeguards, at its sole cost and expense, that prevent any collection, use, and/or disclosure of, or access to, Student Educational Records that this Agreement does not expressly authorize, including without limitation, an information security program and/or protocols that meet the standards of industry practice to safeguard such Student Educational Records and City hereby agrees to defend, indemnify and hold harmless SMMUSD, for any damages associated with City’s handling of Student Educational Records.
- f. To the extent applicable, SMMUSD hereby designates City as a “school official” with “legitimate educational interests” in SMMUSD’s records, as those terms have been defined under the Pupil Records Laws and their implementing regulations. The Parties acknowledge that the City will create, access, and/or maintain Student Educational Records under this Agreement only as part of the SMMUSD Reorganization. SMMUSD hereby grants permission to City to use Student Educational Records for such purposes, for the limited timeframe and for the limited purposes set forth herein
- g. The Parties agree to perform the following duties in regard to any data provided under this Agreement:
 - i. Not disclose the information to any other party without the consent of the parent or student;
 - ii. Use the data for no purpose other than in relation to the SMMUSD Reorganization;
 - iii. Require all employees, contractors, and agents of any kind to comply with all applicable provisions of FERPA and other federal and California laws and regulations with respect to the data shared under this Agreement; and

- iv. Maintain all data obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce, or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose of this Agreement. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding students, are subject to the provisions of this Agreement in the same manner as the original data. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from the Parties to any other institution or entity.

2. Educational Services

- a. General Educational Services During the Transition Period, SMMUSD Assistant Superintendent of Educational Services will participate in developing a transition plan with the Malibu Transition Team which will describe how instructional services will be transitioned from SMMUSD to MUSD after Unification.
- b. Special Education Services SMMUSD Special Education Director will participate in developing a transition plan with the Malibu Transition Team which will describe how special education services will be transitioned from SMMUSD to MUSD after Unification.
 - i. SMMUSD shall provide a list to the Malibu Transition Team of all ongoing mediations and litigation involving future MUSD students receiving special education services as well as the name and contact information of the attorney representing the district.
 - ii. SMMUSD will provide copies of all agreements with the parents of future MUSD students attending schools in Non-Public School (NPS) or residential RTC facilities, and all information, including cost and supervision responsibilities related to those placements.
 - iii. Digital copies for all future MUSD students with disabilities shall be provided to the Malibu Transition Team one year prior to the Separation Date.
- c. Local Control and Accountability Plan (LCAP)
 - i. Existing levels of services identified in the SMMUSD LCAP for Unduplicated Students, as defined in Education Code Sections 2574(b)(2) and 42238.02(b)(1)), shall be provided by the MUSD to its Unduplicated Students.

3. Other Student Related Services

a. Inter/Intra-District Transfers

- i. At the beginning of the Transition Period, SMMUSD shall provide the Malibu Transition Team with a list of all students attending schools which shall be conveyed to MUSD via an interdistrict or intradistrict attendance permit.

1. MUSD will honor existing permits awarded by SMMUSD and allow such students to continue their enrollment in MUSD schools.

b. Food Services

- i. SMMUSD Food Services Director will participate in developing a transition plan with the Malibu Transition Team which will describe how food services operations will be transitioned from SMMUSD to MUSD post-separation.
- ii. Any student meal accounts at Malibu schools that have a remaining balance at the Separation Date shall be transferred to MUSD.

c. Transportation

- i. SMMUSD Transportation Director will participate in developing a transition plan with the Malibu Transition Team which will describe how transportation operations will be transitioned from SMMUSD to MUSD post-separation.

4. Staffing Assignments

- a. Employee assignments are governed by Education Code Sections 35555-35559, 44035, 44955, and 45121, and described in the California Department of Education “School District Organization Handbook”, the relevant sections of which are included as **Exhibit E**.

- i. SMMUSD and the Malibu Transition Team shall follow the provisions of the Education Code and California Department of Education Handbook regarding employee assignments and rights.

- b. Initial Employee assignments for the post-separation period shall be determined by December 31 in the calendar year prior to the Separation Date.

- c. SMMUSD and the Malibu Transition Team shall work with SMMUSD employees and their respective bargaining groups to determine whether employee assignments for specialized departments, such as special education, can be identified at an earlier date.
- d. SMMUSD and Malibu Transition Team members will hold meetings in each school where employees may be impacted, providing employees with information and an opportunity to ask questions.
- e. SMMUSD shall keep City informed about labor discussions during the Transition Period that may affect or relate to school district separation.

5. Human Resources

a. Health and Related Insurance for Employees

- i. SMMUSD shall coordinate with insurance providers to ensure continuity of employee benefits.
- ii. If SMMUSD is considering a change in insurance/benefit providers, in addition to the collective bargaining process, SMMUSD will share any considered changes to employee benefits with the Malibu Transition Team prior to making any changes.
- iii. The Malibu Transition Team will meet with labor partners and SMMUSD staff to ensure the seamless transition of health and welfare benefits for employees and retirees of the MUSD.

b. Retirement Benefits

- i. SMMUSD shall coordinate with the Los Angeles County Office of Education (LACOE) for the transition with PERS and STRS regarding a change in employer to ensure continuity of service so that employee retirement benefits are not adversely impacted by the school district reorganization.

c. Sick Leave Balances

- i. SMMUSD employees transferring to MUSD will maintain their sick leave balances upon transfer to MUSD.

d. Vacation Balances

- i. SMMUSD employees transferring to MUSD will keep up to 24 vacation days or the maximum number of days allowed in the SMMUSD employee contract, or whichever is less.

- 1. SMMUSD shall pay out all vacation liability above that amount at the Separation Date on or reasonable after the Separation Date in alignment with its customary payroll processing practices.

6. Facilities, Maintenance, and Operations

- a. SMMUSD will provide the Malibu Transition Team with a schedule/list of all scheduled maintenance, upgrades, and grounds work expected to occur on Malibu school sites and any other real property that will be transferred to MUSD each year, including its 10-year schedule for replacing all equipment, roof replacement, septic pumping and maintenance, and any other maintenance information necessary to maintain such properties.

- b. At the Separation Date, SMMUSD will provide the MUSD with instructions and control access for the HVAC and security systems at Malibu school sites.

- c. MUSD Administrative Headquarters

- i. SMMUSD shall progress, without unreasonable delay, the construction/installation of the MUSD Administrative Headquarters prior to the Separation Date in coordination with the Malibu Transition Team and the Parties will work cooperatively to develop a mutually agreeable solution to the central office facilities needs of MUSD.

- 1. The MUSD Administrative Headquarters identified in this Section will be funded from the proceeds of General Obligation Bonds authorized under School Facilities Improvement District (SFID) No. 2 (the SFID located in the Malibu area of SMMUSD).

- ii. All existing portable classrooms as of the Separation Date that are SMMUSD owned and currently located in the future MUSD area of SMMUSD, including the Malibu High/Middle School (MHS/MMS) campus and Webster Elementary campus, shall become the property of MUSD.

- iii. The MUSD District Office will be temporarily located on the Malibu Elementary School (MES) campus as conceptually shown in **Exhibit C**.
 - 1. All portables located on the MES campus as of one year prior to the Separation Date will be removed and returned to the leasing company.
 - 2. All portables located on the upper MHS/MMS campus as of one year prior to the Separation Date will be removed and relocated to the MES campus.
 - 3. In consultation with the Malibu Transition Team, the portables will be reconfigured and remodeled for meeting rooms and office space.
 - 4. If the secured entry for the MES campus impacts the new portables, a new secure entry will be created for the MES campus.
- iv. To the extent the location of the MUSD Administrative Headquarters may be determined by the City to be better sited at an alternative location or completed via alternative means, SMMUSD shall not delay or withhold reasonable approval of such modification in location or means for completion of such facilities.

d. Facilities Improvements and Planning

- i. The Malibu Transition Team will be consulted and participate in any planning for school facility improvements by SMMUSD during the Transition Period at any Malibu school sites, except for work orders or routine maintenance, and/or property owned in the territory that will become MUSD, including the following:
- ii. Improvements funded from general obligation (GO) bonds or other SMMUSD funding sources.
- iii. Reasonable improvements in design documents for Malibu area schools in order to accommodate plans for an independent MUSD as identified by the Malibu Transition Team.
- iv. Power and technology infrastructure that will be needed for MUSD to operate independently as well as other improvements identified by the Malibu Transition Team.

1. Representatives from the Malibu Transition Team shall be included in the Malibu Facilities District Advisory Committee meetings.
 2. During the Transition Period, the City shall receive notification of permanent facility improvements occurring in the territory that will become SMUSD for expenditures funded from non-SFID 1 funding sources, except for work orders or routine maintenance.
- v. SMMUSD and the Malibu Transition Team shall discuss decisions that may result in a facilities-related budgetary impact to MUSD or involve the spending of shared funding sources.
 - vi. To the extent funding is available and approvals are received, SMMUSD will continue to progress without unreasonable delay, remaining projects in the Measure M (SFID 2) bond, including tying Webster Elementary into the new sewer system.
 1. If the projects are not complete prior to separation, SMMUSD will use commercially reasonable efforts to transfer such project contracts to MUSD and provide MUSD with all relevant plans, specifications, documentation of approvals, funding, and other information necessary to complete such projects and MUSD shall accept such contract transfers.
 - vii. SMMUSD shall actively complete applications for State School Facility Program funding for all eligible projects on Malibu school sites and notify the Malibu Transition Team of project application and funding status.
 1. SMUSD shall provide MUSD with all information and data in its possession reasonably necessary to file required Office of Public School Construction (OPSC) expenditure reports and respond to audit requests if such deadlines occur after the Separation Date for funding applications submitted prior to the Separation Date.

e. Information Technology

- i. To the extent reasonably practicable, all technology devices, infrastructure and systems located in Malibu schools, as of the date of this agreement, will be transferred from SMMUSD to MUSD.

1. SMMUSD will port phone numbers for all Malibu schools to MUSD.
- ii. In consultation with SMMUSD Information Technology (IT) staff, Malibu will hire a technology consultant or consulting firm during the Transition Period to advise the Malibu Transition Team and SMMUSD IT staff on the most effective strategies for splitting SMMUSD's technology network into separate and independent networks for SMUSD and MUSD.
 1. SMMUSD IT staff will work cooperatively and accommodate the reasonable recommendations of the technology consultant which will address, at a minimum:
 - a. Identifying a central location for a new MUSD network technology.
 - b. Developing a timeline for creating a new MUSD system for critical technology-based programs and applications, including the creation parallel systems where the new MUSD systems are up and running approximately one year prior to separation so that troubleshooting can occur prior to the Separation Date.
 - c. Determining the best short-term and long-term solutions for hard wire internet connections to Los Angeles County Office of Education (LACOE).
 - d. Determine the best site based and cloud-based services for MUSD.
- iii. SMMUSD will work with the Malibu Transition Team, starting approximately 18 months prior to the Separation Date, to create redundant systems to facilitate a smooth transition when MUSD begins operations.
 1. SMMUSD will identify and provide office space adjacent to SMMUSD IT staff for the Malibu Transition Team IT consultant starting approximately 18 months prior to the Separation Date.
- iv. Until the Separation Date, SMMUSD will continue to repair and replace older technology in Malibu schools using standards common to all SMMUSD schools.

- v. SMMUSD will hire or retain a data transfer employee or outside consultant that will support data transfer from SMMUSD to MUSD for the various digital applications.

- 1. The cost of this position will be reimbursed by the City prior to the Separation Date.
- 2. The Malibu Transition Team will participate in the hiring of the data transfer person, with the intent of employing this person at MUSD post-separation.

7. Allocation of Real Property Assets

- a. All real property currently located within the territory of MUSD will be transferred to MUSD post-separation, likewise, all real property currently located within the territory of SMUSD will be allocated to SMUSD post-separation, as shown in **Exhibit D**.
- b. SMMUSD will provide the Malibu Transition Team with an inventory of all real property owned by SMMUSD, including identification of the use of the asset, Assessor's Parcel Number (APN), address, acreage, and square footage of any buildings six months prior to the Separation Date .
- c. The Vista Pacifica site lease shall be transferred to MUSD.
- d. SMMUSD will provide the Malibu Transition Team with any joint use agreements related to Malibu school sites six months prior to the Separation Date.

8. Allocation of Other Assets, Liabilities, & Fund Balances

- a. Division of Other Assets. Non-real property assets of SMMUSD will be divided between SMUSD and MUSD in the following manner:
 - i. All furniture, equipment, tools, and vehicles owned by SMMUSD and currently located and exclusively serving school sites or properties in the Malibu area of the SMMUSD will become the property of MUSD.
 - 1. Includes maintenance, grounds, food services, transportation equipment as well as classroom and office furniture and equipment.

- ii. All furniture, equipment, tools, and vehicles owned by SMMUSD and currently located and exclusively serving school sites or properties in the Santa Monica area of the SMMUSD will become the property of SMUSD.
 - 1. Includes maintenance, grounds, food services, transportation equipment as well as classroom and office furniture and equipment.
- iii. Furniture, equipment, and vehicles owned by SMMUSD that serve school sites and properties in both the Malibu and Santa Monica areas of the SMMUSD (the “Centrally Located Assets”) will be retained by SMUSD.
 - 1. SMUSD will compensate MUSD for twenty two percent (22%) the insured replacement as determined by SMMUSD’s insurance carrier, the value of all Centrally Located assets that will be retained and/or utilized by the future SMUSD based on the listing of all vehicles, units, and equipment maintained by the SMMUSD Maintenance and Operations Department with valuation occurring within six (6) months after the Separation Date.
 - a. The compensation for these assets may be allocated from SMUSD to MUSD over the first three (3) years of MUSD operations, with 50% of the allocation occurring on the Separation Date and the remaining 50% allocated in years two (2) and three (3), with 25% allocation on July 1 of each year.
- iv. To the extent permitted by law and applicable contracts, all solar panel Power Purchase Agreements (PPA) Agreements for Malibu area school sites will be provided to the Malibu Transition Team and transferred to MUSD effective the Separation Date.
- b. Division of Current Assets. Current Assets include Cash, Investments, Accounts Receivable, Due from Other Agencies, Stores, Prepaid Expenditures, and Other Receivables.
 - i. Cash in each fund will be allocated between SMUSD and MUSD in the same proportion as identified in Allocation of Fund Balance of this Section.
 - 1. “Cash” for allocation purposes will include balances listed as Cash in County Treasury, Cash with Fiscal Agent, and Collections Awaiting Deposit. In addition, the Cash balance will be increased for Accounts

Receivable as of June 30 and reduced by Accounts Payable as of June 30.

- ii. All other non-Capital Assets besides Cash and Accounts Receivable will remain with SMUSD as the successor district.
- c. Division of Liabilities – Short Term Liabilities. Short-term Liabilities include Accounts Payable, Due to Other Agencies, and Current Loans and Unearned Revenue as defined in SACS.
 - i. Accounts Payable will be netted with Cash and Accounts Receivable as discussed above in Section 8.b.i.1.
 - ii. Other Short-term Liabilities will remain with SMUSD as the successor district.
- d. Division of Liabilities – Bonded Indebtedness and Lease Obligations. The bonded indebtedness and lease obligations of SMMUSD will be allocated between SMUSD and MUSD in the following manner:
 - i. Outstanding General Obligation Bond (GO Bond) repayment obligations will remain in effect based on current taxpayer responsibilities. Currently outstanding bonds will continue to be repaid by all taxpayers within the existing boundaries of SMMUSD in the same manner as bonds are currently repaid.
 - 1. SMUSD taxpayers will continue to repay outstanding GO Bonds and future issuances of SFID 1.
 - 2. MUSD taxpayers will continue to repay outstanding GO Bonds and future issuances of SFID 2.
 - 3. The repayment of all outstanding non-SFID GO Bonds of SMMUSD will continue to be repaid by the entire SMMUSD tax base based on the assessed value in each area as defined in Exhibit A and Exhibit B.
 - 4. SMUSD will assume responsibility for ongoing debt administration, compliance reporting, future issuance, and refinance of all outstanding GO Bonds of SMMUSD, except for outstanding SFID 2 bonds.

5. MUSD will assume responsibility for ongoing debt administration, compliance reporting, future issuance, and refinance of all outstanding SFID 2 GO Bonds.
- ii. Certificates of Participation (COPs) currently outstanding as of June 30, 2024, would become the sole responsibility of SMUSD.
 1. To the extent any COPs are contemplated and entered into after June 30, 2024 for the purpose of advancing SFID GO Bonds, such COPs shall be the responsibility of the entity served by the SFID for which funds are being advanced.
 - iii. Any other lease obligations of SMMUSD existing as of the Separation Date would be allocated to SMUSD and/or MUSD based on the utilization of the proceeds from the lease.
 1. The Parties shall review and agree on the appropriate allocation of these leases.
- e. Division of Liabilities – Employment-Related Liabilities. The employment-related liabilities of SMMUSD will be allocated between SMUSD and MUSD in the following manner:
- i. Pension, Other Post Employment Benefit (OPEB) liabilities and other employee benefit related liabilities and associated assets, if any, shall be allocated between SMUSD and MUSD based on actual employee assignments determined by an actuarial study completed as soon as possible once employee assignments are identified.

As soon as practicable, the results of the actuarial study shall be reviewed by the Parties who shall thereafter, make the determination of allocation of such liabilities and associated assets, if any. Should the Parties be unable to reach an agreement on this allocation, the JPA will do so.
 - ii. SMMUSD employees transferring to MUSD will keep up to 24 vacation days or the maximum number of days allowed in the SMMUSD employee contract, or whichever is less.
 1. SMMUSD shall pay out all vacation liability above that amount at the Separation Date on or reasonable after the Separation Date in alignment with normal payroll processing.

- f. Allocation of Fund Balances. Fund Balances will be proportionately allocated between SMUSD and MUSD consistent with the terms and conditions of the Property Tax Revenue Sharing Agreement based on estimated Fund Balances on the Separation Date, with a true-up allocation on October 1 immediately following the Separation Date after the Unaudited Actual Financial Statements are completed, in the following manner.
- i. Unrestricted General Fund (Fund 01) Balance will be allocated with 78% allocated to SMUSD and 22% allocated to MUSD, with a minimum allocation to MUSD of five million five hundred thousand dollars (\$5,500,000).
1. If the Unrestricted General Fund Balance allocation to MUSD results in a fund balance of less than seven million five hundred thousand dollars (\$7,500,000), then there shall be an adjustment to the Property Tax Transfer Amount, as described in Section 9 of the Revenue Sharing Agreement, in the second and third year of operations of MUSD.
 - a. The revenue sharing amount shall be adjusted in the second year of operations of MUSD in an amount equal to 66.67% of the MUSD deficit spending in the Unrestricted General Fund in the first year of operations, as described in Section 9.a. of the Revenue Sharing Agreement.
 - b. The revenue sharing amount shall be adjusted in the third year of operations of MUSD in an amount equal to 33.33% of the MUSD deficit spending in the Unrestricted General Fund in the second year of operations, as described in Section 9.b. of the Revenue Sharing Agreement.
 2. Any Unrestricted General Fund Balance allocation in excess of 22% of the SMMUSD Unrestricted General Fund Balance, including adjustments occurring in the second and third year of MUSD operations, shall be reimbursed by MUSD to SMUSD as an adjustment to the Revenue Sharing Agreement in the final year of revenue sharing, as described in Section 9.c. of the Revenue Sharing Agreement.
 3. The JPA shall oversee the adjustments to the Property Tax Transfer Amount as described in this Agreement and the Property Tax Revenue Sharing Agreement.

- ii. Restricted General Fund (Fund 01) Balance will be allocated proportionately based on the location of the students generating the funds.
 - 1. For revenues that are received for a specific student(s) or site-specific program, which MUSD is operating, a corresponding amount of the Fund Balance will be allocated to the Successor Entity that will be providing services to the student(s) or the site-specific program.
 - 2. For revenues that are received for programs or purposes that are located in both the Santa Monica and Malibu areas of SMMUSD, a corresponding amount of the Fund Balance will be allocated based on the percentage of participating student enrollment, as determined through CALPADS Form 1.17 certified data in each area of SMMUSD for each restricted program in the year prior to the Separation Date.
- iii. Student Body Fund (Fund 08) Balance will be allocated by school.
- iv. Adult Education Fund (Fund 11) Balance will be allocated to SMUSD.
- v. Child Development Fund (Fund 12) Balance will be allocated to SMUSD based on the percentage of students in MUSD and SMUSD.
- vi. Cafeteria Fund (Fund 13) Balance will be allocated proportionally based on the percentage of students qualifying for free and reduced lunch in the respective areas of the SMMUSD as defined in Exhibit A and Exhibit B.
- vii. Deferred Maintenance Fund (Fund 14) Balance will be allocated proportionally based on the square footage of buildings in each area of the SMMUSD.
- viii. Building Fund (Fund 21-Bonds) Balance shall be allocated based on the SFID in which the bond proceeds were generated.
- ix. Capital Facilities Fund (Fund 25-Developer fees) Balance shall be allocated based on the funds collected in each area of SMMUSD to each subsequent entity serving that territory.
- x. County Schools Fund (Fund 35-State Bond) Balance shall be allocated based on the school for which the funds were received.

- xi. Special Reserve for Capital Outlay (Fund 40) Balance shall be allocated based on the source of the funds.
 - xii. Bond Interest and Redemption Fund (Fund 51) Balance shall be allocated based on the SFID in which the bond proceeds were generated.
 - xiii. Retiree Benefits Fund (Fund 71) Balance shall be allocated based on an actuarial study completed as soon as possible once employee assignments are identified.
 - xiv. prior to the Separation Date and the identification of the employees that will be assigned to the respective SMUSD and MUSDs.
- g. Any assets, liabilities or fund balances not identified in this Agreement or uncertainties related to asset, liability, or fund balance distribution shall be allocated proportionately between SMUSD and MUSD at the discretion of the JPA.

9. Claims Liabilities

- a. SMMUSD may be subject to claims liabilities resulting from court orders or other settlements which include both monetary considerations and provisions of services.
- b. To the extent such claims liabilities require provision of services for students, the requirements shall continue for such students with services provided by the entity providing educational services to the student.
- c. In the event that monetary claims are unpaid as of the Separation Date, but incurred prior to separation, SMUSD shall be responsible for these claims after separation.
- d. To the extent there are unidentified claims originating from prior to the Separation Date, liability for such claims shall be that of SMUSD.
- e. Any claims liability identified in Sections 9(b) and Section 9(c) above may be satisfied with procurement of insurance policies to cover the liabilities of SMMUSD.
- f. SMMUSD shall arrange for, and MUSD and SMUSD shall jointly fund, costs associated with insurance policies to cover legacy claims liabilities of SMMUSD.

- i. The cost of such insurance policies shall be shared by SMUSD and MUSD post separation with premiums and other costs allocated based upon the ratio of students in each successor entity's enrollment as compared to the combined enrollment for each entity at the Separation Date.
- g. In the event that such insurance is insufficient to cover claim liabilities of Section 9.c. and d., the Parties shall allocate and pay for any remaining balance in proportion to the Parties' respective student enrollment at the Separation Date.

10. Reimbursement of Staff Assistance Costs

- a. At times during the term of this Agreement, SMMUSD will provide support, including, but not limited to, staff time and resources, to the City related to the data sharing obligations hereunder. When the City requests such support and the SMMUSD support is unrelated to SMMUSD's other activities related to the SMMUSD Reorganization, the City shall agree to reimburse SMMUSD for any staff time and costs expended by SMMUSD staff for providing such data/information
- b. City shall submit written requests to SMMUSD for staff assistance, and such requests shall identify the tasks to be performed with an accompanying requested timeline. SMMUSD will evaluate the request and, within five (5) days of the City's request, SMMUSD will provide a written estimate of the staff time to be incurred to assist with the City's request. If necessary, SMMUSD can work with the City to refine the request to the extent it is vague, uncertain or ambiguous or in the event that it requires additional information, but SMMUSD shall provide the estimate of staff time no later than ten (10) days after the City submits its written request for staff assistance, provided the City has timely explained any aspect of its request SMMUSD has deemed vague, uncertain or ambiguous.
- c. Upon approval of the estimate of staff time by the City, SMMUSD shall track time and expenditures associated with all City-initiated requests for staffing and/or assistance through a designated project/resource code.
- d. SMMUSD will submit invoices to the City on a monthly basis for all approved time. The City will pay SMMUSD for that time as it accrues at the then current hourly rate for the staff time incurred. Such invoices shall be paid within 45 calendar days of submittal.
- e. Notwithstanding the foregoing, no reimbursement will be required for SMMUSD's provision of public data or records provided to the City or vice versa, except as provided for in the CPRA.
- f. The City and SMMUSD will define and establish a mutually agreed upon means of transfer for requesting and receiving data.

11. Budgetary/Fiscal Adjustments to Operations

- a. It is anticipated that prior to separation, SMMUSD shall continue to make enrollment-related budget adjustments to “right-size” operations to manage sufficient fund balances for the future SMUSD and MUSD.
- b. Once this Agreement, as well as the Revenue Sharing Agreement and JPA Agreement have been approved by both SMMUSD and Malibu governing bodies, the SMMUSD staff shall engage with the Malibu Transition Team whenever expenditure adjustments to Malibu schools are considered.
- c. Malibu shall publicly support the right-sizing decisions if Malibu agrees those decisions are in the best interest of the future MUSD.

12. Communications

- a. During the Transition Period, SMMUSD and the City will collaborate in the development and issuance of all press releases, or other public forms of communications, related to updates and information about the formation of the SMUSD and MUSD successor entities.

13. Dispute Resolution. The Parties shall diligently cooperate with one another and with the person(s) appointed to resolve the dispute and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of such dispute. All disputes shall be decided in accordance with this Agreement and general principles of California law as hereto described.

- a. Initial Dispute Resolution. If there is a dispute or difference arising out of or in connection with this Agreement, the Parties shall first attempt to resolve the dispute by convening a meeting within five (5) business days after the date that a written request for dispute resolution is submitted by one of the Parties. That meeting will include the Superintendents of each Party. There shall be at least one meeting to attempt to resolve the dispute at this level, but the Parties may continue to negotiate in this manner until one or both Parties submits a request for Dispute Resolution by an Independent Arbiter.
- b. Dispute Resolution by an Independent Arbiter. If the dispute cannot be resolved with the Initial Dispute Resolution process, then the dispute will be submitted to an Arbiter to be agreed upon by the Parties. If the Parties cannot agree, each Party shall select an Arbiter within ten (10) calendar days and those Arbiters shall jointly select a third Independent Arbiter (“Independent Arbiter”) within (10) calendar days. Within fifteen (15) calendar days of the of the selection of the Independent Arbiter, each Party shall separately submit the following written information to the Independent Arbiter: (a) an explanation of the nature of the dispute; (b) the Party’s position; (c) the dollar amount

and/or financial impact of the dispute; and (d) any supporting documents the Party believes will aid the Independent Arbiter in arriving at a decision. The Independent Arbiter can, but does not have to, request additional information from either Party. The Independent Arbiter will issue a written decision within forty-five (45) calendar days of the Independent Arbiter receiving the requested written information of the Parties. The decision of the Independent Arbiter shall be final.

- c. Nothing in this Agreement, however, shall be construed as making final the decision of any Independent Arbiter on a question of law, which shall be settled in accordance with the laws of the State.

Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the Parties as to those matters therein contained and supersedes any and all prior or contemporaneous agreements, representations, and understandings of the Parties. This Agreement may be amended at any time by mutual agreement of the Parties, but any such amendment must be in writing, dated, and signed by the Parties and attached hereto.

- 14. Attorneys' Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, not including the Dispute Resolution described in Section 13, each Party shall bear their own attorneys' fees, including any such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.
- 15. Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.
- 16. Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the Parties.
- 17. Representation by Counsel. The Parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.
- 18. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that venue for any dispute shall be in Los Angeles County, California.
- 19. Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the Parties only and do not limit or expand the contents of any such section or subsection.
- 20. Exhibits. The exhibits attached to this Agreement and the numbers therein are demonstrative. Each exhibit is intended to be dynamic and will be used annually to calculate the

aforementioned formulas based on the accurate and relevant data available to the Parties each fiscal year.

21. No Assignment. Neither Party may assign this Agreement in whole or in part without the consent of the other.