



County of Orange

Modification to Agenda Item

DATE: October 17, 2008
TO: Darlene Bloom, Clerk of the Board
FROM: Thomas G. Mauk, County Executive Officer
SUBJECT: Modification to Agenda Staff Report
RE: Agenda Items #S44A for the 10/21/08 Board Meeting

RECEIVED
2008 OCT 17 PM 3:37
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Explanation:

Revision to Recommended Action No. #2. Revisions highlighted in yellow.

Revised Recommended Action

Approve expenditure of up to \$750,000 from Fund 130 toward construction of a pool at Foothill High School, and direct Clerk of the Board or designee to execute the submitted agreement between the County of Orange and Tustin Unified School District.

cc: Members, Board of Supervisors
Rob Richardson, County Executive Office
Ben De Mayo, County Counsel



County Executive Office
Memorandum

S44A

October 14, 2008

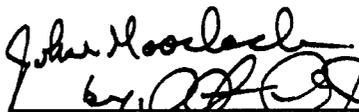
To: John Moorlach, Chairman
From: Thomas G. Mauk, County Executive Officer
Subject: Exception to the Rule 21

RECEIVED
2008 OCT 15 AM 8:33
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

The County Executive Office is requesting a supplemental for the October 21, 2008 Board Hearing Meeting.

Agency: County Executive Office
Subject: Third District Fund 130 Allocation
District: 3rd

Reason for supplemental: Requested by Supervisor Campbell.

Concur: 

John Moorlach, Chairman Board of Supervisors

cc: Rob Richardson, Assistant County Executive Officer



AGENDA STAFF REPORT

Agenda Item

S44A

ASR Control

MEETING DATE: 10/21/08
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 3
SUBMITTING AGENCY/DEPARTMENT: County Executive Office
DEPARTMENT CONTACT PERSON(S): Matt Petteruto, (714) 834-3330

SUBJECT: Third District Fund 130 Allocation

CEO CONCUR: [Signature]
COUNTY COUNSEL REVIEW: Approved Agreement to Form [Signature: Paul D. Whaley, Deputy County Counsel]
CLERK OF THE BOARD: Discussion Calendar, 3 Votes Board Majority
Budgeted: Yes, Current Year Cost: \$750,000, Annual Cost: N/A
Staffing Impact: No, # of Positions: N/A, Sole Source: No
Current Fiscal Year Revenue: N/A
Funding Source: General Fund 100%
Prior Board Action: Agenda Item #95 - 6/24/08

RECOMMENDED ACTION(S)

- 1. Find that the proposed allocation from Fund 130 District Community Priorities and Projects serves County public interests.
2. Approve expenditure of up to \$750,000 from Fund 130 toward construction of a pool at Foothill High School, and direct Clerk of the Board to execute the submitted agreement between the County of Orange and Tustin Unified School District.

SUMMARY:

Approve expenditure of up to \$750,000 from Fund 130 toward construction of a pool at Foothill High School, and direct Clerk of the Board to execute the submitted agreement between the County of Orange and Tustin Unified School District.

BACKGROUND INFORMATION:

Per Board direction on June 24, 2008, Fund 130 monies may be allocated for the following:

- o Park capital projects on any County or other park
- o Recreational programs or projects
- o Public school recreational programs and projects which are made available to the public
- o Use of any of the Orange County Public Libraries
- o Historical society capital projects

Allocations are subject to the majority approval of the Board of Supervisors. Allocation of funds for purposes other than capital projects on any County or city park are subject to a dollar for dollar match up to a stated limit as set forth by the Supervisor allocating the funds. The dollar for dollar match requirement may be waived upon approval of the majority of the Board of Supervisors.

Third District requests approval of expenditure up to \$750,000 toward construction of a 50 meter swimming pool at Foothill High School in the Tustin Unified School District (District). This agreement includes a dollar for dollar match requirement and the County's obligation for funding is contingent upon the District providing proof of the match. Replacement of the existing pool at Foothill High School has become a health and safety issue; thus, approval of this request will allow the District to meet a critical health and safety need. Use of the pool will be made available to the public.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

County Counsel, County Executive Office, Third District

ATTACHMENT(S):

Agreement Between the County of Orange and Tustin Unified School District

**AGREEMENT
BETWEEN COUNTY OF ORANGE AND TUSTIN UNIFIED SCHOOL DISTRICT
TOWARD CONSTRUCTION OF A POOL AT FOOTHILL HIGH SCHOOL**

This Agreement toward funding construction of a pool at Foothill High School (hereinafter "Agreement"), is made and entered into by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the Tustin Unified School District, hereinafter referred to as "DISTRICT," with a place of business located at 300 South C Street, Tustin, California 92780-3695. COUNTY and DISTRICT may be referred to herein as "party" or collectively as "parties."

RECITALS

WHEREAS, COUNTY, by Minute Order dated October 21, 2008, a copy of which is on file with the Clerk of the Board of Supervisors of Orange County and which by this reference is incorporated herein and made a part of hereof as if fully set forth, has determined, pursuant to Government Code Section 26227, to expend a portion of its general funds in an amount up to \$750,000 (hereinafter "the funds") for use by DISTRICT between October 22, 2008 and April 30, 2010 toward construction of a pool at Foothill High School, hereinafter referred to as "project."

WHEREAS, said project meets the social needs of the population of Orange County.

THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, the parties agree as follows:

1. EFFECTIVE PERIOD - TERMINATION DATE

The effective period of this Agreement shall be the period beginning October 22, 2008 and ending April 30, 2010, subject to the provisions of Section 14 of this Agreement. DISTRICT agrees that the funds received under this Agreement shall be disbursed on or before April 30, 2010 and that any and all funds remaining as of May 1, 2010, which have not been disbursed shall be returned by DISTRICT to COUNTY. No expense of DISTRICT will be reimbursed by COUNTY if incurred after April 30, 2010.

2. PROJECT PROPOSAL

DISTRICT agrees to comply with all provisions set forth in this Agreement for use of the funds in a professional, timely and diligent manner. The parties hereto agree that concerning matters not specifically contained within the body of this Agreement, the COUNTY's determinations will be final and the COUNTY will control the use of the funds.

DISTRICT agrees that the funds will be used toward construction of a 50 meter swimming pool at Foothill High School between October 22, 2008 and April 20, 2010.

COUNTY's obligations hereunder are contingent on DISTRICT providing funding for the project from a legally permissible source other than COUNTY in an amount equal to amount funded by COUNTY. COUNTY will not be obligated under this Agreement until DISTRICT provides proof of such legally permissible matching funding.

DISTRICT further agrees that lack of compliance constitutes grounds for COUNTY to pursue the remedies set forth in Section 14 of this Agreement and to reduce the level of payment that otherwise would be provided under Section 6 of the Agreement. Such reduction shall occur only as a result of action of the COUNTY Board of Supervisors. Before such reduction may be made, COUNTY shall provide DISTRICT with at least ten (10) days written notice of the proposed reduction and of the time and place where the Board of Supervisors shall consider the reduction.

3. REAL OR PERSONAL PROPERTY OR EQUIPMENT

Notwithstanding Section 1 herein, DISTRICT agrees to use any real or personal property or equipment that is acquired or improved with the funds for its entire useful life for the purposes, as described herein, for which the funds were granted to DISTRICT by COUNTY. DISTRICT agrees to notify COUNTY promptly if it ceases to use such property or equipment for the purposes described herein at any time before the end of its useful life. DISTRICT agrees to properly maintain, repair and keep in good working order all such property or equipment.

4. **PERMITS, LICENSES OR OTHER GOVERNMENTAL APPROVAL**

DISTRICT warrants that it will obtain and keep in full force and effect, during the term of this agreement and for the useful life of any real or personal property or equipment constructed, acquired or improved with the funds, all permits, licenses or other governmental approvals required for the project and for any services provided in or with property or equipment constructed, acquired or improved with the funds.

5. **MODIFICATION OF AGREEMENT TERMS**

The parties hereto agree that the terms agreed upon in Section 2 may be modified so long as the amount of the total grant is not increased or reduced and the basic goals and objectives of the project are not altered. However, no such modification shall be made without the prior written approval of the County Executive Officer or his designee.

6. **MAXIMUM UTILIZATION AND ACCESS TO RESIDENTS**

DISTRICT agrees that its level of operation will be adequate to ensure maximum utilization by the public of the property, equipment, programs and/or services funded by this Agreement and that an opportunity to use and enjoy said property, equipment, programs and/or services shall be granted to all residents of the COUNTY on the same conditions under which the residents of the target area may use and enjoy it.

7. **EVALUATION**

DISTRICT agrees and understands that evaluation is an essential condition to this Agreement and that COUNTY will evaluate DISTRICT in accordance with this Agreement. The parties hereto agree that at any time, and for any purpose, the County Executive Officer, or his designee, may call for an Evaluation to be conducted.

8. **PAYMENTS BY COUNTY**

Upon the effective date of this Agreement, COUNTY agrees to make periodic payments to DISTRICT upon receipt of invoice(s) from DISTRICT showing actual amounts expended by DISTRICT for the project, or DISTRICT may invoice County upon receipt of

invoice from service provider for approved project expenses as identified in Section 2. Total payment hereunder shall be limited to \$750,000.

9. CONFLICT OF INTEREST AND GRATUITIES

DISTRICT agrees and understands that COUNTY's funds shall not be used by DISTRICT to pay or reimburse any staff person or consultant who is a member or officer of the DISTRICT Board of Education or other official governing body of DISTRICT. DISTRICT warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by DISTRICT or any agent or representative of the DISTRICT with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement.

10. ACCESS AND RECORDS

DISTRICT shall keep true and accurate accounts, records and books in performance of this Agreement in accordance with generally accepted accounting principles. Unless otherwise agreed in writing by the County Executive Officer, or designee, DISTRICT shall maintain separate accounting records for all funds received from COUNTY under this Agreement. All accounting records and evidence pertaining to all costs of DISTRICT shall be kept available at DISTRICT's office or place of business during duration of this Agreement and thereafter for a period not less than five (5) years. DISTRICT shall make all of its records available to COUNTY upon request during regular business hours for the purpose of evaluation or auditing and shall furnish clerical assistance for these purposes to COUNTY as required. DISTRICT agrees to implement all accounting and/or record-keeping recommendations made by COUNTY. In the event DISTRICT does not make its books and financial records available to COUNTY, DISTRICT agrees to pay all necessary and reasonable expenses, including attorney's fees, incurred by COUNTY in obtaining the records and conducting an audit or evaluation.

11. INDEMNIFICATION AND INSURANCE

DISTRICT agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies for which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the performance provided by DISTRICT pursuant to this Agreement. If judgment is entered against DISTRICT and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, DISTRICT and COUNTY agree that liability will be apportioned as determined by the court or jury.

DISTRICT certifies that it has insurance coverage or self-insurance that is adequate to cover all risks associated with the project. If it has insurance covering the project, DISTRICT will add COUNTY as an additional insured.

12. INDEPENDENT CONTRACTOR

DISTRICT shall be considered an independent contractor and neither its employees nor subcontractors, agents or anyone else working under or on behalf of DISTRICT shall be considered an agent or an employee of COUNTY. Further, neither DISTRICT's employees nor subcontractors, agents or anyone else working under or on behalf of DISTRICT shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

13. ASSIGNMENT OR SUBCONTRACTING

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by DISTRICT without the express written consent of COUNTY. Any attempt by DISTRICT to assign or sub-contract the performance or any portion thereof of this

Agreement without the express written consent of COUNTY shall be invalid and shall constitute a breach of this Agreement.

14. NON-DISCRIMINATION

DISTRICT shall not unlawfully discriminate in any way with respect to performance of this Agreement, on the basis of race, religion, gender, sexual orientation, age, national origin, ancestry, medical condition, or physical or mental disability in violation of any applicable State or federal law or regulation, including but not limited to the federal Age Discrimination Act of 1975, Section 504 of the federal Rehabilitation Act of 1973, the Americans with Disabilities Act., the federal Civil Rights Act of 1964, Title VII of the federal Civil Rights Act of 1968, California Government Code section 11135 et seq., and the Unruh Civil Rights Act, as those acts may have been amended.

DISTRICT agrees that in the performance of this Agreement it will comply with all applicable requirements of California Labor Code Section 1735, California Government Code Section 12940 et seq., and federal statutes and regulations pertaining to employment discrimination, and will not engage in nor permit any subcontractor to engage in unlawful discrimination in employment of persons. This prohibition shall pertain to employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay and other forms of compensation; selection for training, including apprenticeship; and any other action or inaction pertaining to employment matters. DISTRICT acknowledges that a violation of this provision shall subject DISTRICT to all the penalties imposed for a violation of anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.

15. PROHIBITION AGAINST LOBBYING

DISTRICT shall not use any part of the funds received under this Agreement for the purpose of lobbying or for other activities intended to influence any legislation or the outcome of any election.

16. BREACH-SANCTIONS

If, through any cause, DISTRICT fails to fulfill in a timely and proper manner any of its obligations under this Agreement, or if DISTRICT violates any of the terms and conditions of this Agreement or any prior Agreement whereby COUNTY funds were received by DISTRICT, or if DISTRICT reports inaccurately, or if an Audit Report makes disallowances, DISTRICT shall promptly remedy its acts or omissions or repay COUNTY all amounts spent in violation thereof. For any such failures or violations, COUNTY shall have the right to:

- a. Discontinue project support until such time as DISTRICT fulfills its obligation under this Agreement or any prior Agreement between COUNTY and DISTRICT;
- b. Collect such outstanding amounts as are determined by COUNTY to be due COUNTY from DISTRICT;
- c. Terminate this Agreement by giving written notice to DISTRICT of such termination and specifying the effective date thereof.

The remedies for breach set forth in this Agreement do not preclude resort by either party to any other remedies provided by law.

17. SOLE AGREEMENT

This Agreement expresses all the understandings of the parties concerning all matters covered. No addition to or alteration of the terms of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement formally approved by the parties hereto. Any addition or alteration of the Agreement may be subject to approval by the COUNTY Board of Supervisors.

18. GOVERNING LAW AND VENUE

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil

Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

19. NOTICES

Where required to be given under this Agreement, notices shall be in writing and deemed given when transmitted or delivered personally or deposited in the United States mail, postage prepaid, certified, addressed as follows:

COUNTY: County Executive Office
County of Orange
333 W. Santa Ana Boulevard, 3rd Floor
Santa Ana, CA 92701-4062
Attn: Michelle Aguirre

DISTRICT: Tustin Unified School District
300 South C Street
Tustin, CA 92780-3695
Attn: Superintendent

20. AUTHORITY

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

21. EMPLOYEE ELIGIBILITY VERIFICATION

DISTRICT warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. DISTRICT shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. DISTRICT shall retain all such documentation for all covered employees for the period prescribed by the law. DISTRICT

shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the DISTRICT or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

22. COMPLIANCE WITH PRIVACY LAWS

DISTRICT warrants that, where applicable, it will maintain the confidential nature of information provided to it by its clients and in performance of this Agreement. DISTRICT will comply with all applicable State and Federal confidentiality and privacy laws.

23. AGREEMENT WITH TERMS AND CONDITIONS

DISTRICT acknowledges that it has read and agrees to all terms and conditions in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement with their respective signatures.

COUNTY OF ORANGE, a subdivision of the State of California

DATE: _____

BY: _____

TITLE: _____

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

DATE: _____

BY: _____
Deputy

TUSTIN UNIFIED SCHOOL DISTRICT

DATE: October 10, 2008

BY: 
Brock Wagner
TITLE: Deputy Superintendent
Planning and Operations

DATE: _____

BY: _____

TITLE: _____

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE CHAIRMAN
OF THE BOARD

Darlene J. Bloom
Clerk of the Board of Supervisors