



# *CITY COUNCIL AGENDA REPORT*

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MEETING DATE: 10/20/03

ITEM NUMBER:

**SUBJECT:** Agreement Governing Use of Education Contribution

**DATE:** 10/10/03

**FROM:** City Attorney's Office

**PRESENTATION BY:** Linda Nguyen, Deputy City Attorney

**FOR FURTHER INFORMATION CONTACT:** Linda Nguyen 714-754-5134

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## **RECOMMENDATION:**

1. Approve and authorize Agreement Governing Use of Education Contribution between the City of Costa Mesa and the Costa Mesa High School Foundation.
2. Approve and authorize Agreement Governing Use of Education Contribution between the City of Costa Mesa and the Estancia & TeWinkle Schools Foundation.

## **BACKGROUND:**

In December 2001, the City entered into a Development Agreement with C.J. Segerstrom & Sons, Segerstrom Properties LLC and Henry T. Segerstrom Properties LLC (collectively, the "Segerstoms") for the development of the property now commonly known as the Home Ranch Project. As part of the consideration for entering the Development Agreement, the City required the Segerstoms to provide the City with certain community benefits. One of those benefits was a \$2,000,000 contribution for expanding educational advancement opportunities and facilities in Costa Mesa. Fifty percent of the \$2,000,000 would be committed to advancing school programs and facilities at Estancia High School and TeWinkle Middle School and fifty percent would be committed to advancing school programs and facilities at Costa Mesa High School. As required by the Development Agreement, the \$2,000,000 has been paid to the City and is now being held in a separate account.

Earlier this year, the City Council decided that the \$2,000,000 contribution should be managed by two new foundations. In August 2003, attorneys provided by the Segerstoms completed the legal steps to form two non-profit corporations, the Costa Mesa High School Foundation and the Estancia & TeWinkle Schools Foundation. Each foundation will adopt bylaws that contain provisions reflecting the City Council's proposal adopted on January 21, 2003, which sets forth how each foundation is organized and how each foundation can spend its contribution. The Development Agreement also authorizes the City to enter into any agreements with the foundations managing the contribution as may be necessary to ensure that the contribution be used for the exclusive benefit of Costa Mesa students. Once the City approves and authorizes the agreements governing the use of the contributions, the City can release the contribution money to the foundations.

## **ANALYSIS:**

The following are the significant provisions of the agreements:

- Each foundation promises to use its share of the contribution in accordance with the terms of the Development Agreement and its respective bylaws.
- In the event a foundation uses its grant for an unauthorized purpose, the agreements require that the foundation replace the misused money as much as possible with funds from other sources available to the foundation.
- Each foundation is required to have the City's Director of Finance co-sign all expenditures using money from its share of the contribution and exceeding \$5000.
- Each foundation is required to adopt an investment policy subject to the approval of the City's Director of Finance.
- The City has the right to demand the return of the grant funds if the foundations use any portion of their grant for an unauthorized purpose.

## **ALTERNATIVES CONSIDERED:**

The City could choose not to enter into these agreements and rely on the rights established for it in the bylaws of the foundations.

## **FISCAL REVIEW:**

There is no financial impact of this Agreement on the City's resources. As for the foundations' grant funds, these funds are considered "public funds." Therefore, a fiduciary duty is created to ensure the "safety" of the funds and that the funds are used for the appropriate public purpose as defined within the agreement with the foundation governing their use.

By requiring each foundation using money from its share of the contribution to have the City's Director of Finance co-sign all expenditures exceeding \$5000, oversightory control is maintained by the City for all major expenditures of the foundations. This oversight control will minimize the possibility of the foundations using their grant funds for unauthorized purposes. Further, by requiring each foundation to adopt an investment policy subject to the approval of the City's Director of Finance, the City can be assured that the foundations' investment activities protects the safety of the grant funds.

## **LEGAL REVIEW:**

This Staff Report has been prepared by the City Attorney's Office and no further legal review is required.

**CONCLUSION:**

These agreements are presented to the City Council for your consideration. The above analysis highlights the significant provisions of the agreements.

Staff is ready to answer any questions you may have or to obtain any additional information you may want.

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LINDA NGUYEN  
Deputy City Attorney

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TOM WOOD  
Acting City Attorney

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MARC R. PUCKETT  
Director of Finance

**DISTRIBUTION:**

- ATTACHMENTS:**
- 1 [Agreement Governing Use of Education Contribution Between City and Costa Mesa High School Foundation](#)
  - 2 [Costa Mesa High School Foundation Bylaws](#)
  - 3 [Agreement Governing Use of Education Contribution Between City and Estancia & TeWinkle Schools Foundation](#)
  - 4 [Estancia & TeWinkle Schools Foundation Bylaws](#)