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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Joshua Daniels - General Counsel
Andrea Epps – Deputy General Counsel

Board Meeting Date April 22, 2020

Subject Approval of Indemnification Agreement with Lodestar Lighthouse Charter School.

Action Requested Approval by the Board of Education of the Indemnification Agreement with Lodestar Lighthouse Charter School in support of the designation as a public works projects constituting an Essential Governmental Function.

Background The Board is being asked to approve an Indemnification Agreement with Lodestar Lighthouse Charter School to provide the District with adequate provision in light of their inclusion on a Resolution identifying certain construction projects as “Essential Governmental Functions” pursuant to Order No. 20-04. On March 31, 2020, the County of Alameda issued Order No. 20-04 (“Order”) directing all individuals living in the County to continue sheltering at their place of residence, except for Essential Activities, Essential Governmental Functions, Essential Travel, work for Essential Businesses, or performance of Minimum Basic Operations, all as defined in the Order. The Order defines “Essential Businesses,” including, among other things, construction, but only of the types enumerated in Section 13.f.v, among which types the order lists “public works projects if specifically designated as an Essential Governmental Function by the lead governmental agency.” The District is the lead governmental agency for District construction projects and projects on District-owned property. Lodestar Lighthouse is constructing facilities on privately-own property but the District serves as the charter school’s authorizer. Therefore, the District has agreed that with adequate legal protections (in the form of indemnification) the time sensitive construction project should be identified as an Essential Governmental Function by a lead governmental agency.



Recommendation	Approval by the Board of Education of the Indemnification Agreement with Lodestar Lighthouse Charter School providing the District with legal protection while the construction project is designated as a public works projects and an Essential Governmental Function.
Fiscal Impact	N/A
Attachment	Indemnification Agreement with Lodestar Lighthouse Charter School

**INDEMNIFICATION AGREEMENT REGARDING OAKLAND UNIFIED
SCHOOL DISTRICT DESIGNATION OF LODESTAR PROJECT AS AN
ESSENTIAL GOVERNMENTAL FUNCTION PURSUANT TO ALAMEDA
COUNTY HEALTH OFFICER ORDER NO. 20-04**

This Indemnification Agreement (hereinafter “Agreement”) is entered into as of April 9, 2020, by and between the OAKLAND UNIFIED SCHOOL DISTRICT (“District”) and LIGHTHOUSE COMMUNITY PUBLIC SCHOOLS (“Charter”). District and Charter are collectively hereinafter referred to as the “Parties.”

WHEREAS, the Health Officer of the Alameda County Department of Health Services (“County Health Officer”) issued a “shelter in place” Order on March 16, 2020 (“Initial Order”) pursuant to the authority under California Health & Safety Code Sections 101040, 101085, and 120175; and

WHEREAS, the State Health Officer (“State Health Officer,” collectively with the County Health Officer, the “Health Officers”) issued a “shelter in place” Order, designated N-33-20, on March 19, 2020 (“Statewide Order”), which has been revised several times since its issuance, pursuant to the authority granted the Governor under Government Code sections 8567, 8627, and 8665, and to the State Health Officer under Health & Safety Code 120125, 120140, 131080, 1201 30(c), 120135, 120145, 1201 75 and 120150; and

WHEREAS, the Health Officer of the Alameda County Department of Health Services issued a “shelter in place” Order 20-04 on March 31, 2020 (“Current Order”) pursuant to the authority under California Health & Safety Code Sections 101040, 101085, and 120175, superseding the March 16th Order; and

WHEREAS, under the Current Order, public works construction projects may continue only if they meet certain requirements specified therein; and

WHEREAS, one such requirement is that the lead governmental agency determine that such public works projects are an “essential governmental function”; and

WHEREAS, the Oakland Unified School District (“District”) is the lead governmental agency for District construction projects and is the authorizing agency for the Lighthouse Charter School (“Charter”); and

WHEREAS, the Charter is actively constructing the Lodestar project located at 701 105th Ave., on privately-owned property in the City of Oakland, financed with private capital, permitted by the City of Oakland (the “Project”), and therefore, does not typically require District approval of construction projects; and

WHEREAS, as the District is the authorizing agency for the Charter, Charter has requested that District include its Project on its list of projects that it has deemed are “essential governmental functions” (hereinafter, the “Essential List”) to permit the work to continue without interruption or delay; and

WHEREAS, the District is willing to make such determination in exchange for an indemnification from the Charter in the event any claim is later brought against the District as a result of the District including the Project on the Essential List.

NOW, THEREFORE, for value received and in consideration of the mutual covenants and conditions as set forth below, the Parties agree as follows:

1. District will provide a written determination to Charter that the Project is on the Essential List by close of business, Friday, April 3, 2020.

2. In the event that District, its board, its Superintendent or other employee(s) are named in any administrative or legal proceeding arising from the District's inclusion of the Project on the Essential List, the Charter hereby agrees to defend, indemnify and hold the District, its board, its Superintendent or other employee(s) as set forth hereinbelow.

a.. Charter shall defend (with counsel approved by District), save harmless and indemnify District, its board, Superintendent or other employee(s), from all obligations, liabilities, claims, judgments and attorneys' fees and costs and other costs of litigation, including without limitation, all consequential damages, from any cause whatsoever arising from or connected with the District's inclusion of the Project on the Essential List.

3. No supplement, modification, waiver or amendment with respect to this Agreement shall be binding unless executed in writing and signed by the party against whom enforcement of such supplement, modification, waiver or amendment is sought.

4. All agreements, covenants and representations, oral or written, of the Parties concerning the subject matter of this Agreement are contained herein. No other agreements, covenants or representations, oral or written, have been made by any party to any other party concerning the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations and covenants concerning the subject matter of this Agreement are merged herein. This is a fully integrated document.

5. The Parties hereto agree to execute all further and additional documents, and undertake such further acts, as shall be reasonable, convenient, necessary or desirable the approval to carry out the provisions of this Agreement, including, but not limited to obtaining the approval and ratification of this Agreement by the Parties' respective governing boards and the Parties further agree to cooperate with each other to effectuate the intent of this Agreement.

6. The Parties represent and declare that, in executing this Agreement, they relied solely upon their own judgment, belief, knowledge and the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims. The Parties further represent and declare that they have not been influenced by any representations or statements concerning any matters made by any other party or by any person or attorney representing any other party.

7. The Parties acknowledge the opportunity that this Agreement be reviewed by their respective attorney and it has been approved as to form. They further agree that

this Agreement is to be construed and interpreted without regard to the identity of the party drafting this Agreement.

8. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California applicable to such instruments, persons, transactions and subject matter which have legal contexts and relationship solely within the State of California.

9. If any term or provision of this Agreement, or the application thereof, to any persons or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

10. This Agreement may be executed in separate counterparts, each of which shall be considered an original but all of which shall constitute one Agreement.

11. Each of the signatories to this Agreement warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

13. Should any of the Parties reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, including but not limited to instituting any action or proceeding to enforce any provision of this Agreement, the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including but not limited to reasonable attorneys' fees, costs and expenses.

14. Venue for any such action shall be in the appropriate state or federal court located in Alameda County, California.

Dated: 4/14/2020

LIGHTHOUSE COMMUNITY PUBLIC SCHOOLS

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Jenna Stauffer
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By: Jenna Stauffer

Its: CEO

APPROVED AS TO FORM

DocuSigned by:
David A. Soldani
By: David A. Soldani, Esq.
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Counsel for Charter

Dated: April 8, 2020

APPROVED AS TO FORM



By: Andrea Epps, Esq.
Counsel for District

OAKLAND UNIFIED SCHOOL
DISTRICT



By: Jody London

Its: President



By: Kyla Johnson Trammell

Its: Secretary