

Board Office Use: Legislative File Info.	
File ID Number	15-1478
Introduction Date	8/12/15
Enactment Number	15-1290
Enactment Date	8/12/15 OA



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools. Thriving Students.

Memo

To Board of Education

From Jacqueline P. Minor, General Counsel

Board Meeting Date August 12, 2015

Subject

Action Requested **Approval Of Release, Waiver and Assumption of Liability Authorizing Tree Planting by Education for Change**

Background/Discussion Education for Change ("EFC") in collaboration with the Sierra Club, requested authorization from the District to plant trees at school sites occupied by EFC charter schools. The District is granting authorization to plant the trees subject to EFC's agreement to assume all liability for damage or destruction to the Sites, or other property, caused by the tree planting activities and to ensure that prior to any digging or excavations on the Sites, EFC shall ensure that no utilities or other District facilities or underground infrastructures, wiring or conduits are disturbed or disrupted.

Recommendation **Approval Of Release, Waiver and Assumption of Liability Authorizing Tree Planting by Education for Change**

Fiscal Impact n/a

Attachments • Agreement



JACQUELINE P. MINOR – GENERAL COUNSEL

July 15, 2015

Hae-Sin Thomas
Chief Executive Officer
Education For Change Public Schools

Re: Planting Trees at District Sites

Dear Hae-Sin:

The Oakland Unified School District's ("District") is aware Education for Change Public Schools (EFC), in conjunction with the Sierra Club, has planted and continues to plant trees ("Tree Planting Activities") at various District school sites ("Sites") at which EFC has entered into facilities use agreements with the District for its charter school operations. While the District appreciates the efforts of EFC and the Sierra Club to make improvements to the Sites and the environment, the District has concerns regarding the potential for liability to the District that may result from the Tree Planting Activities and related insurance requirements.

Despite these concerns, and in the spirit of cooperation, the District will allow EFC to continue its efforts to beautify the Sites for the betterment of the community. As a precondition of and in consideration of the District's agreement, EFC shall acknowledge and agree to the following:

1. EFC shall execute the attached form of Release, Waiver and Assumption of Risks ("Release"); and
2. EFC shall comply with the provisions of its Facilities Use Agreement relating to, but not limited to, insurance coverages and improvements for purposes of the Tree Planting Activities; and
3. EFC comply with any City, State, or local code, covenant, ordinance, or regulation applicable to the Tree Planting Activities; and
4. EFC shall avoid damage to the Sites when performing any activity or task related to the Tree Planting Activities; and
5. EFC shall indemnify and hold harmless the District from any damage or claims of any type caused by EFC or any other person, entity or third party EFC has allowed on the Sites for any purpose related to or arising out of the Tree Planting Activities; and
6. EFC shall either reimburse the District for any damage or destruction to the Sites, or other property, occurring by reason of or related to the Tree Planting Activities or any related activity or task, or to replace or restore the Sites to its/their preexisting condition; and
7. EFC shall ensure that prior to any digging or excavations on the Sites, EFC shall ensure that no utilities or other District facilities or underground infrastructures, wiring or conduits are disturbed or disrupted.

Please evidence EFC's agreement to the foregoing by signing and returning the enclosed Release. The District appreciates EFC's cooperation with this matter. Please contact the undersigned with any additional questions you have regarding this matter.

Very truly yours

A handwritten signature in cursive script, reading "Jacqueline P. Minor", written over a horizontal line.

RELEASE, WAIVER AND ASSUMPTION OF LIABILITY

This Release, Waiver and Assumption of Liability ("Release") executed on this 15 day of July 2015, by Education for Change Public Schools, a California non-profit public benefit corporation ("EFC").

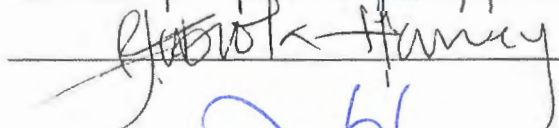
In connection with the matters set forth in the Oakland Unified School District's letter to EFC dated July 15, 2015, EFC executes this Release under the following terms:

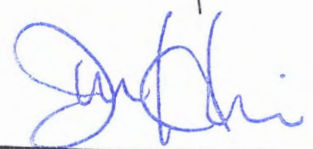
1. Release and Waiver. To the furthest extent permitted by California law, EFC shall defend, indemnify, and hold harmless the District, their agents, representatives, officers, consultants, employees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of the activities relating to or connected with EFC planting, or directing or authorizing other persons or entities to plant, trees or other landscape materials (collectively "Trees"), including the transport of Trees and related equipment and materials, digging or excavating any ground on any school site used by EFC or its charter schools ("Activities"), unless the claims are caused wholly by the negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that EFC proposes to defend the District.
2. Assumption of Risk. EFC hereby expressly and specifically assumes the risk of injury or harm in the Activities and releases the District from all liability for injury, illness, death, or property damage resulting from the Activities.
3. Interpretation of Release. In the event that any clause or provision of this Release shall be held to be invalid by any court of competent jurisdiction, the invalidity of the clause or provision shall not otherwise affect the remaining provisions of this Release which shall continue to be enforceable.

IN WITNESS WHEREOF, EFC has executed this Release as of the date written above.

Name: Fabiola Harvey

Title: Chief Operating Officer

Signature: 


James Harris
President, Board of Education


Antwan Wilson
Secretary, Board of Education