

Board Office Use: Legislative File Info.	
File ID Number	12-1450
Introduction Date	6-13-12
Enactment Number	12-1596
Enactment Date	6-13-12 <i>BS</i>



OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Tony Smith, Ph.D., Superintendent
 Vernon Hal, Deputy Superintendent, Business & Operations *NEA*
 Jennifer Le Barre, Director of Nutrition Services

Board Meeting Date 6-13-12

Subject Request for Approval of Program Agreement between Oakland Unified School District Nutrition Services and Jamba Juice.

Action Requested Approval by the Board of Education of Program Agreement between Oakland Unified School District and Jamba Juice effective May 31, 2012 and will automatically renew for successive one year periods, unless elected to terminate per the provisions in the "Termination" section of the agreement.

Background Oakland Unified School District Nutrition Services is working to improve the nutritional content and variety of items sold to students through the a la carte program. Jamba Juice offers a smoothie program that will allow OUSD to make and sell smoothies during meal times.

Discussion Oakland Unified School District Nutrition Services has been implementing several changes in an effort to improve the nutritional quality and content of the meals served to our students. Nutrition Services will purchase product from Jamba Juice and Jamba Juice will provide the smoothie machines. The program will be piloted at Oakland Tech and then expand based on its success.

Recommendation Approval by the Board of Education of Program Agreement between Oakland Unified School District and Jamba Juice effective May 31, 2012 and will automatically renew for successive one year periods, unless elected to terminate per the provisions in the "Termination" section of the agreement.

Fiscal Impact Nutrition Services will purchase \$10,000 in product per school year.

JAMBAGO FOUNTAIN PROGRAM AGREEMENT

This Agreement is entered into between **Jamba Juice Company**, (“Company”, “we”, “us” or “our”), and **Oakland Unified School District** (“Licensee,” “you” or “your”).

In consideration of our granting you a limited, non-exclusive license to sell pre-blended smoothies associated with the Jamba Juice® trademarks (the “Products” and “Marks,” respectively), you hereby agree as follows:

1. **Sites.** We grant you the right to prepare and sell Products in accordance with this Agreement solely at the sites listed in Exhibit A (“Sites”), and to use the Marks solely in connection with the offer and sale of the Products at the Sites. Subject to our prior written approval, you may add or delete Sites by signing amendments to Exhibit A, which will become a part of this Agreement. We reserve all other rights, including the right to offer and sell the Products anywhere through other distribution channels.

2. **Term.** Subject to your right to terminate this Agreement per Section 9 below, your license for a Site will be for one (1) year, beginning on the initial date the Site is opened (“Term”). The Term for each Site will automatically renew for successive one (1) year periods, unless you elect to earlier terminate per the provisions of Section 9.

3. **Equipment and Supplies.** All Product equipment, ingredients and supplies (“Licensed Goods”) must be purchased from our approved suppliers (“Approved Vendors”) in accordance with their purchase terms. You will prepare each Site for delivery and installation of the Licensed Goods per their and our specifications and instructions. The purchase price for certain Licensed Goods may include a mark-up paid by the Approved Vendor to us, in lieu of a royalty otherwise payable by you. We may discontinue the sale of any Licensed Goods at any time if we determine their continued sale is unfeasible, unprofitable, or otherwise undesirable. Neither we nor any Approved Vendor will be liable to you for unavailability or delayed receipt of Licensed Goods. You agree to promptly pay for all items purchased. On the expiration or termination of this Agreement, Approved Vendors will not be obliged to fill any orders then pending, or thereafter placed by you.

4. **Operations, Repairs and Servicing.** You must comply with the standards, specifications and procedures that we and the Approved Vendors establish in our respective manuals and materials regarding the storage, handling, operating, repairing and servicing of the Licensed Goods. Following installation, you may not move the Product

equipment without our prior written consent, and you agree to maintain same in a “like new” level of appearance and repair.

5. **Insurance.** You assume and bear all risk of loss, damage and destruction of and to all Licensed Goods. If any Product equipment is destroyed or significantly damaged, we may either (i) terminate your right to operate such equipment, or (ii) require you to replace or repair same. During the Term, you must obtain and maintain, at your expense from reputable carriers, insurance coverage in the types and amounts that are customary (including, without limitation, “all risk” physical damage insurance covering the Product equipment in an amount equal to its replacement cost), but in no event less than that required by applicable law and the terms of any lease or other third party agreement pursuant to which you occupy a Site. At our request, you agree to provide us with proof of insurance. Your obligation to maintain insurance will not be limited in any way by reason of any insurance which we may maintain, nor shall your performance of that obligation relieve you of liability under the indemnity requirements of this Agreement.

6. **Operating Standards.** You must comply with our standards and procedures, including those for storing, preparing, serving, offering and selling the Products, which we may periodically supplement and modify (“Standards”), and must satisfy any related training requirements. In addition, you must; (a) operate the Product equipment using only the ingredients and supplies that we approve, and sell only the Products we authorize; (b) promptly notify us in writing regarding any Product that might pose a health or safety risk or might not be in full compliance with applicable food quality or safety laws or our Standards; (c) ensure that each Site has continuous access to adequate electric and other utilities and store all ingredients according to the Standards; (d) clean all Product equipment according to the minimum schedule prescribed by the Approved Vendor and more often as needed or as we may require, and take any other maintenance actions that may be required; (e) require all employees who prepare or sell Products to comply with the procedures specified by the Approved Vendor and

the Standards; and (f) address all customer satisfaction issues at your expense.

7. **Marketing and Use of Marks.** You are not authorized to use the Marks except as expressly provided in this Agreement. If you wish to conduct any advertising, marketing or promotional activities for the Products, all advertising, marketing or promotional plans and materials must be approved by us in writing before use.

8. **Inspections.** We and our representative have the right to enter the Sites and inspect the Units (including any storage area) to determine whether the business is being conducted in accordance with this Agreement and the Standards.

9. **Termination.** You may terminate this Agreement with respect to one or more Sites upon thirty (30) days prior written notice to us, and Exhibit A will be amended accordingly. In addition, this Agreement, and your right to operate at any Site, will terminate, effective immediately upon delivery of written notice, if you: (i) fail to adequately store, maintain and/or operate the Licensed Goods; (ii) make any

unauthorized use of the Marks; or (iii) operate at any Site in any manner that creates a public health or safety risk.

10. **Indemnification.** Each party hereto will defend and indemnify the other, together with their affiliates, and their respective owners, subsidiaries, officers, directors, employees, attorneys and designees, from and against any and all costs and expenses, including attorneys' fees, court costs, losses, liabilities, damages, claims and demands of every kind or nature on account of any actual loss, injury or damage to any person or entity or to any property, arising out of or in connection with the breaching party's breach of this Agreement, except to the extent caused by the non-breaching party's intentional misfeasance, gross negligence or material breach of its obligations under this Agreement.

11. **Miscellaneous.** Nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, joint employer or servant of the other for any purpose. This Agreement shall be binding upon you and our successors and assigns.

JAMBA JUICE COMPANY

By: [Signature]
Title: Joy Special Manager
Date: 5-18-12

OAKLAND UNIFIED SCHOOL DISTRICT

By: [Signature]
Title: Director
Date: 5/29/12

[Signature] 6/14/12
Jody London
President, Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT

Orlando J. ... Counsel

APPROVED FOR FORM & SUBSTANCE

By: [Signature]
Attorney at Law

[Signature] 6/14/12
Edgar Rakestraw, Jr., Secretary
Board of Education

LEGISLATIVE FILE

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Exhibit A

Site and Unit Information

Site Description	Number of Units at the Site	Initial Date Site Added
Oakland Technical High School 4351 Broadway Oakland, CA 94611 (#5092)	1	4/3/12

Licensee acknowledges and agrees that this Exhibit A is true and correct as of the following date:

Oakland Unified School District

By: _____

Its: _____

Date: _____

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
ATTORNEYS AT LAW & SUBSTANCE
ATTORNEY AT LAW
