

**Board Office Use: Legislative File Info.**

File ID Number	13-2813
Introduction Date	12-11-13
Enactment Number	13-2567
Enactment Date	12/12/13 <i>JB</i>



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools, Thriving Students

# Memo

To Board of Education  
 From Gary Yee, Ph.D., Interim Superintendent  
 Vernon-Hal, Deputy Superintendent, Business & Operations *VEH*  
 Jennifer Le Barre, Director of Nutrition Services

Board Meeting Date

**Subject** Request for Approval of Agreement with Revolution Foods for Supper Service

**Action Requested** Approval by the Board of Education of Agreement with Revolution Foods for Supper Service

**Background** Oakland Unified School District Nutrition Services began a Supper Program during the 2013-14 school year. Through this program, Nutrition Services is able to provide free nutritious to students participating in After School Programs. It is the intention that this program will expand throughout the District. Due to existing central facilities being at maximum capacity, the programs have been opened at on site cooking kitchens with few exceptions.

**Discussion** In order to continue expansion of the Supper Program, Nutrition Services needed to secure a vendor that could make and deliver the suppers. Revolution Foods is able to provide service. Revolution Foods will make meals to meet Child & Adult Care Food Program standards and make daily deliveries. After School Program personnel will distribute meals and complete necessary paperwork. Meals will be paid for using reimbursement from Child & Adult Care Food Program.

**Recommendation** Approval by the Board of Education of the Agreement with Revolution Foods for Supper Service

**Fiscal Impact** \$80,000

**Attachments** Revolution Foods Agreement

## Agreement Between Revolution Foods, Inc. and Oakland Unified School District

<b>Food Service Management Company:</b> Revolution Foods, Inc. 8383 Capwell Dr. Oakland, CA 94621	
<b>Receiving Sponsor:</b> Oakland Unified School District 1000 Broadway. Oakland, CA 94607	
<b>Agreement Number:</b>	<b>Vendor Number:</b>

This agreement made this November 1, 2013 between the Food Service Management Company, Revolution Foods, Inc., hereinafter referred to as Revolution Foods and the receiving sponsor, Oakland Unified School District, hereinafter referred to as OUSD, is created for the purpose of providing:

- Modified Supper meals

**It is hereby agreed that:**

- A. Agreement Period:** This agreement will begin on DATE and will end June 30, 2014.
- B. Meal Ordering:** The number of entrées/meals prepared by Revolution Foods will be determined by the quantity ordered by OUSD. OUSD will notify Revolution Foods of the quantity needed for each week no later than 5:00 p.m. of each Tuesday. Refer to Section F – Meal Price.
- C. Meal Components for Supper meals:** To create a reimbursable meal under the Child and Adult Care Food Program,
1. Revolution Foods will provide supper entrée meals with accompanying vegetables and sides. Vegetable portions will be equivalent to ¼ cup.
  2. OUSD will provide fruit and milk components. Fruit portions will be equivalent to ½ cup and milk will be equivalent to 8 fluid ounces. OUSD may also provide an additional vegetable offering in place of fruit – the additional vegetable must not be the same as what is already being provided by Revolution Foods.
- D. Delivery and Service of Meals**
1. Revolution Foods will transport entrées/meals from the preparation site to the school sites as agreed upon. The delivery time to OUSD will be agreed upon by both parties.
  2. Revolution Foods will provide all of the equipment necessary to transport the entrées to OUSD. OUSD shall make available for pickup any and all property owned by Revolution Foods.

**E. Recordkeeping for Supper meals**

1. Revolution Foods will provide the following:
  - Monthly compliance reporting documents to show food-based contributions for complete meals by design
  - Daily menu production records
  - Document requisition support in the event of an audit by the State Department of Education, or local governing entity for reimbursable Child Nutrition Programs, including Coordinated Review Effort circumstances. OUSD shall be responsible for notifying Revolution Foods within three (3) business days of receiving notice of an audit. OUSD shall be responsible for forwarding the written notification from the governing entity so that Revolution Foods is positioned to best support the requisition request and tailor the support to exactly what is required
2. OUSD shall maintain all responsibility for its own complete records as required by the Child and Adult Care Food Program.

- F. Meal Price:** Revolution Foods will charge OUSD the following:

Item	# of Serving Days	Average Minimum # of Meals per Delivery	Price per Meal
Supper Meals	110	1,200 (9 delivery sites)	\$2.15
		2,400 (18 delivery sites)	\$2.10

- G. Payment Terms:** OUSD shall submit payment to Revolution Foods in such form as required by Revolution Foods within thirty (30) days of receipt of Revolution Foods invoice. Revolution Foods reserves the right to charge up to a one and half percent interest rate (compounded monthly) on any balance left unpaid on an

invoice. For avoidance of doubt, failure to pay an invoice is considered a material breach of this agreement.

- H. **Confidentiality and Rights In Data:** During the term of this agreement, Revolution Foods may grant to OUSD a nonexclusive right to access certain proprietary materials of Revolution Foods, including signage, food service surveys and studies, allergen and carbohydrate reports, management guidelines and procedures, operating manuals, software (both owned by and licensed by Revolution Foods), and similar compilations regularly used in Revolution Foods' business operations (trade secrets). OUSD shall not disclose any of Revolution Foods' trade secrets or other confidential information, directly or indirectly, during or after the term of the agreement unless required by law, subpoena or court order.

Confidential Information shall not include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure. This provision shall survive termination of this agreement.

- I. **Indemnity:** Revolution Foods agrees to defend, indemnify and hold harmless OUSD and its directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of Revolution Foods in the performance of this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

OUSD agrees to defend, indemnify and hold harmless Revolution Foods and its directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of OUSD in the performance of this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

- J. **Limitation of Liability:** Excluding OUSD's obligations in Indemnity above, in the event either party incurs any expenses, damages or other liabilities in connection with the performance or non-performance of any term or

provision hereof or otherwise incurs indemnification obligations under this section, such party's liability to the other party shall not exceed the payments actually paid to Revolution Foods over the previous twelve months. In no event will either party be liable for any special, incidental, consequential or indirect damages or damages for lost profits arising in any way out of this Agreement, however caused and on any theory of liability. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the failure of essential purpose of any remedies available to either party.

- K. **Insurance:** OUSD will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate. If requested, OUSD will provide Revolution Foods with proof evidencing insurance in the amount, and specifying that the coverage will not be canceled or modified without thirty (30) days prior written notice to Revolution Foods.

Revolution Foods will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for any liability resulting from incidents of improper product preparation, contamination or transport and will provide OUSD with a certificate, upon request, evidencing insurance in the amount, naming OUSD as an additional insured and specifying that the coverage will not be canceled or modified without thirty (30) days prior written notice to OUSD.

L. **Termination**

1. Either party may terminate this agreement for cause:
  - a. Upon fifteen (15) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or
  - b. Immediately if either party becomes insolvent or becomes the subject of any other proceeding, receivership, liquidation or assignment for the benefit of creditors.
2. Either party may terminate this agreement at any time by giving sixty (60) days written notification to the other party, setting forth the reason and the effective date of termination. Upon such

termination, OUSD and Revolution Foods shall make settlement of all amounts due hereunder as follows.

3. The following shall occur upon termination, whether by cause or convenience:
  - a. Revolution Foods shall be paid according to the invoice issued to OUSD for all entrées and services provided through the effective termination date of service within fifteen (15) days of the effective date of termination.
  - b. OUSD will return all equipment owned by Revolution Foods immediately upon stoppage of service.

**M. Force Majeure:** Neither Revolution Foods nor OUSD shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure”. As used in this agreement, “force majeure” means acts of God; acts of the public enemy; acts of a governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes, freight embargoes, or illegality.

**N. Severability:** To the extent that this agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the agreement, the terms of this agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

**O. Survival of Certain Terms:** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond

the termination or expiration date of the agreement shall survive such termination or expiration date and shall be enforceable as provided herein.

**P. Modification and Amendment:** This agreement is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this agreement shall be effective unless agreed to in writing by both parties in an amendment to this agreement that is properly executed and approved in accordance with applicable law.

**Q. Cooperation of the Parties:** Revolution Foods and OUSD agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this agreement. In connection herewith, the parties shall meet to resolve problems associated with this agreement. Neither party will unreasonably withhold its approval of any act or request of the other to which the party’s approval is necessary or desirable. Any material changes to contract requests will require a formal contract revision or addendum and prices will be adjusted accordingly.

**R. Assignment:** In the event all or substantially all of Revolution Foods’ assets are acquired by another company, Revolution Foods shall notify OUSD in writing. Within 30 days, OUSD has the right to continue service under the guidance of the acquirer, or terminate the agreement, effective immediately.

**S. Choice of Law:** This agreement shall be construed under the laws of the State of California.

**T. Section Headings:** The section headings or titles are for convenience only and shall have no substantive effect in the interpretation of the agreement.

Attached

Exhibit A: Addendum to Agreement between Oakland Unified School District and Revolution Foods, Inc.

## ADDENDUM

### Agreement between the Oakland Unified School District and Revolutionary Foods, Inc

Paragraphs K, L, and M in the Agreement are deleted in their entirety and the following provisions are substituted and/or added to the agreement:

#### **K. Indemnification:**

REVOLUTION FOODS agrees to hold harmless, indemnify, and defend OUSD and its Board of Education, State Trustee, employees, and agents from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. REVOLUTION FOODS also agrees to hold harmless, indemnify, and defend OUSD and its elective board, State Trustee, employees, and agents from any and all claims or losses incurred by supplier of Revolution Foods, or Revolution Food's subcontractors furnishing work, services, or materials to REVOLUTION FOODS in connection with the performance of this Agreement. This provision survives termination of this Agreement.

OUSD agrees to hold harmless, indemnify, and defend REVOLUTION FOODS and its officers, employees, and agents from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation caused by the negligence of OUSD, its Board of Education, State Trustee, employees, and agents in connection with District's performance of its obligations under this Agreement. OUSD also agrees to hold harmless, indemnify, and defend REVOLUTION FOODS and its board, officers, employees, and agents from any and all claims or losses incurred by any supplier of Revolution Foods or Revolution Foods' subcontractors furnishing work, services, or materials to OUSD caused by OUSD's negligence in performing its obligations under this Agreement. This provision survives termination of this Agreement.

**L. Limitation of Liability:** Excluding OUSD's obligations in indemnity and confidentiality, in the event either party incurs any expenses, damages or other liabilities in connection with the performance or non-performance of any term or provision hereof or otherwise incurs indemnification obligations under this section, such party's liability to the other party shall not exceed the insurance coverage as provided in Section M of this Agreement. Both parties agree that this Section L does not apply to claims or losses accruing or resulting from injury, damage, or death to any third party.

Paragraph M in the Agreement is deleted in its entirety and the following is substituted:

#### **M. Insurance:**

1. Commercial General Liability Insurance: the following insurance is required:

- i. If REVOLUTION FOODS employs any person to perform work in connection with this Agreement, REVOLUTION FOODS shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

REVOLUTION FOODS is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

REVOLUTION FOODS does not employ anyone in the manner subject to the workers' compensation laws of California.

ii. REVOLUTION FOODS shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. Evidence of insurance must be attached. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

OUSD, a public entity, is permissibly self insured under the laws of California. Upon request, evidence of self-insurance shall be provided to Revolution Foods by OUSD Risk Management Department.

#### **AA. Conduct of REVOLUTION FOODS**

- a. Child Abuse and Neglect Reporting Act.** REVOLUTION FOODS will comply with the Child Abuse and Neglect Reporting Act guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code § 11164 – 11174.
- b. Tuberculosis Screening.** Current documentation of negative TB Test (PPD) on file for each REVOLUTION FOODS employee or agent working with students.
- c. Fingerprinting of Agents.** Current California Department of Justice (CDOJ) fingerprint clearance and FBI fingerprint clearance for each REVOLUTION FOODS employee or agent working with students. REVOLUTION FOODS shall not permit its employees or agents to come into contact with students until CDOJ and FBI clearance is ascertained, and REVOLUTION FOODS shall certify in writing to OUSD that none of its employees or agents who may come into contact with pupils have been convicted of a violent or a serious felony. REVOLUTION FOODS shall further certify that it or its subcontracting agencies have received and reviewed fingerprint results for each of its agents, and REVOLUTION FOODS or its subcontracting agencies shall request and review subsequent arrest records for all agents who may come into contact with OUSD pupils in providing services to the District under this Agreement.

#### **BB. Non-Discrimination**

Consistent with the policy of OUSD in connection with all work performed under this AGREEMENT, REVOLUTION FOODS shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. REVOLUTION FOODS agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, REVOLUTION FOODS agrees to require like compliance by all of its subcontractors.

**CC. Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property.

#### **DD. Entire Agreement; Integrated Agreement.**

All understandings, agreements, covenants, and representations express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Amendment. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

#### **EE. Excluded Parties**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

**OAKLAND UNIFIED SCHOOL DISTRICT**

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Jennifer Labara, Executive Director, Nutrition Services

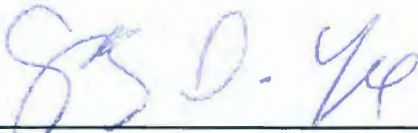


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David Kakishiba  
President, Board of Education

12/12/13

File ID Number: 13-2813  
Introduction Date: 12/11/13  
Enactment Number: 13-2507  
Enactment Date: 12/11/13  
By: AS



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Dr. Gary Yee  
Superintendent and Secretary, Board of Education

12/12/13

**REVOLUTION FOODS**

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Revolution Foods Signature  
Patrick Donovan  
Vice President

Approved as to Form

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Jacqueline P. Minor  
General Counsel



Agreement Between Revolution Foods, Inc. and SCHOOLNAME

Food Service Management Company: Revolution Foods, Inc.  
Choose an item.

Receiving Sponsor: SCHOOLNAME  
ADDRESS

Agreement Number: Vendor Number:

This agreement made this DATE between the Food Service Management Company, Revolution Foods, Inc., hereinafter referred to as Revolution Foods and the receiving sponsor, SCHOOLNAME, hereinafter referred to as SCHOOLNAME, is created for the purpose of providing:

- Lunch entrées
- Supper meals

It is hereby agreed that:

A. **Agreement Period:** This agreement will begin on DATE and will end June 30, 2014.

B. **Meal Ordering:** The number of entrées/meals prepared by Revolution Foods will be determined by the quantity ordered by SCHOOLNAME. SCHOOLNAME will notify Revolution Foods of the quantity needed for each week no later than 5:00 p.m. of each Tuesday. Refer to Section F – Meal Price.

C. **Meal Components for Lunch entrées:** To create a reimbursable meal under the National School Lunch Program,

1. Revolution Foods will provide lunch entrées to be featured on the center of the plate.
2. SCHOOLNAME will provide all additional components such as fruit, vegetables, milk and accompanying sides.

D. **Meal Components for Supper meals:** To create a reimbursable meal under the Child and Adult Care Food Program,

1. Revolution Foods will provide supper entrée meals with accompanying vegetables and sides. Vegetable portions will be equivalent to ¼ cup.
2. SCHOOLNAME will provide fruit and milk components. Fruit portions will be equivalent to ½ cup and milk will be equivalent to 8 fluid ounces. SCHOOLNAME may also provide an additional vegetable offering in place of fruit – the additional

vegetable must not be the same as what is already being provided by Revolution Foods.

E. **Delivery and Service of Meals**

1. Revolution Foods will transport entrées/meals from the preparation site to the school site. The delivery time to SCHOOLNAME will be agreed upon by both parties. See attached Exhibit A: Day Ahead and Dark Drop Delivery.
2. Revolution Foods will provide all of the equipment necessary to transport the entrées to SCHOOLNAME. SCHOOLNAME shall make available for pickup any and all property owned by Revolution Foods.
3. The delivery address will be: ADDRESS

F. **Recordkeeping for Lunch entrées**

1. Revolution Foods will provide the following:
  - Validated meal credit
  - Nutritional analysis for entrées provided
  - Product formulation statement upon request for audit purposes
2. SCHOOLNAME shall maintain all responsibility for meal pattern planning and compliance as required by the National School Lunch Program.

G. **Recordkeeping for Supper meals**

1. Revolution Foods will provide the following:
  - Monthly compliance reporting documents to show food-based contributions for complete meals by design
  - Daily menu production records
  - Document requisition support in the event of an audit by the State Department of Education, or local governing entity for reimbursable Child Nutrition Programs, including Coordinated Review Effort circumstances. SCHOOLNAME shall be responsible for notifying Revolution Foods within three (3) business days of receiving notice of an audit. SCHOOLNAME shall be responsible for forwarding the written





notification from the governing entity so that Revolution Foods is positioned to best support the requisition request and tailor the support to exactly what is required

- 2. SCHOOLNAME shall maintain all responsibility for its own complete records as required by the Child and Adult Care Food Program.

H. **Meal Price:** Revolution Foods will charge SCHOOLNAME the following:

Item	# of Serving Days	Average Minimum # of Meals per Delivery	Price per Meal
Entrée Item: Cheese Ravioli			
Entrée Item: Chicken Pasta Alfredo			
Entrée Item: Chicken Taco Trio			
Entrée Item: Hamburger			
Entrée Item: Hot Dog			
Supper Meals			

I. **Payment Terms:** SCHOOLNAME shall submit payment to Revolution Foods in such form as required by Revolution Foods within thirty (30) days of receipt of Revolution Foods invoice. Revolution Foods reserves the right to charge up to a one and half percent interest rate (compounded monthly) on any balance left unpaid on an invoice. For avoidance of doubt, failure to pay an invoice is considered a material breach of this agreement.

J. **Confidentiality and Rights In Data:** During the term of this agreement, Revolution Foods may grant to SCHOOLNAME a nonexclusive right to access certain proprietary materials of Revolution Foods, including signage, food service surveys and studies, allergen and carbohydrate reports, management guidelines and

procedures, operating manuals, software (both owned by and licensed by Revolution Foods), and similar compilations regularly used in Revolution Foods' business operations (trade secrets). SCHOOLNAME shall not disclose any of Revolution Foods' trade secrets or other confidential information, directly or indirectly, during or after the term of the agreement unless required by law, subpoena or court order.

Confidential Information shall not include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure. This provision shall survive termination of this agreement.

K. **Indemnity:** Revolution Foods agrees to defend, indemnify and hold harmless SCHOOLNAME and its directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of Revolution Foods in the performance of this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

SCHOOLNAME agrees to defend, indemnify and hold harmless Revolution Foods and its directors, officers and employees for claims for death, bodily injury and damage to tangible property caused by the sole negligence or a wrongful act of SCHOOLNAME in the performance of this Agreement, and to pay all claims, damages, judgments, legal costs, adjuster fees and attorney fees related thereto.

L. **Limitation of Liability:** Excluding SCHOOLNAME's obligations in Indemnity above, in the event either party incurs any expenses, damages or other liabilities in connection with the performance or non-performance of any term or provision hereof or otherwise incurs indemnification obligations under this section, such party's liability to the other party shall not exceed the payments actually paid to Revolution Foods over the previous twelve months. In no event will either party be liable for any special, incidental, consequential or indirect damages or damages for lost profits arising in any way out of this Agreement, however caused and on any theory of liability. The foregoing limitation of liability and



exclusion of certain damages shall apply regardless of the failure of essential purpose of any remedies available to either party.

- M. **Insurance:** SCHOOLNAME will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate. If requested, SCHOOLNAME will provide Revolution Foods with proof evidencing insurance in the amount, and specifying that the coverage will not be canceled or modified without thirty (30) days prior written notice to Revolution Foods.

Revolution Foods will keep and maintain commercial general liability insurance in an amount no less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for any liability resulting from incidents of improper product preparation, contamination or transport and will provide SCHOOLNAME with a certificate, upon request, evidencing insurance in the amount, naming SCHOOLNAME as an additional insured and specifying that the coverage will not be canceled or modified without thirty (30) days prior written notice to SCHOOLNAME.

N. **Termination**

1. Either party may terminate this agreement for cause:
  - a. Upon fifteen (15) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or
  - b. Immediately if either party becomes insolvent or becomes the subject of any other proceeding, receivership, liquidation or assignment for the benefit of creditors.
2. Either party may terminate this agreement at any time by giving sixty (60) days written notification to the other party, setting forth the reason and the effective date of termination. Upon such termination, SCHOOLNAME and Revolution Foods shall make settlement of all amounts due hereunder as follows.
3. The following shall occur upon termination, whether by cause or convenience:

- a. Revolution Foods shall be paid according to the invoice issued to SCHOOLNAME for all entrées and services provided through the effective termination date of service within fifteen (15) days of the effective date of termination.
- b. SCHOOLNAME will return all equipment owned by Revolution Foods immediately upon stoppage of service.

- O. **Force Majeure:** Neither Revolution Foods nor SCHOOLNAME shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this agreement, "force majeure" means acts of God; acts of the public enemy; acts of a governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes, freight embargoes, or illegality.
- P. **Severability:** To the extent that this agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the agreement, the terms of this agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- Q. **Survival of Certain Terms:** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination or expiration date of the agreement shall survive such termination or expiration date and shall be enforceable as provided herein.
- R. **Modification and Amendment:** This agreement is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this agreement shall be effective unless agreed to in writing by both parties in an amendment to this agreement that is properly executed and approved in accordance with applicable law.



S. **Cooperation of the Parties:** Revolution Foods and SCHOOLNAME agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this agreement. In connection herewith, the parties shall meet to resolve problems associated with this agreement. Neither party will unreasonably withhold its approval of any act or request of the other to which the party's approval is necessary or desirable. Any material changes to contract requests will require a formal contract revision or addendum and prices will be adjusted accordingly.

company, Revolution Foods shall notify SCHOOLNAME in writing. Within 30 days, SCHOOLNAME has the right to continue service under the guidance of the acquirer, or terminate the agreement, effective immediately.

U. **Choice of Law:** This agreement shall be construed under the laws of the State of California.

V. **Section Headings:** The section headings or titles are for convenience only and shall have no substantive effect in the interpretation of the agreement.

T. **Assignment:** In the event all or substantially all of Revolution Foods' assets are acquired by another

The parties hereto are fully authorized and have executed this agreement:

Name and Title of Revolution Foods Official	Telephone Number
Signature of Revolution Foods Official	Date
Name and Title of SCHOOLNAME Official	Telephone Number
Signature of SCHOOLNAME Official	Date

Attached Exhibit A: Day Ahead and Dark Drop Delivery

OAKLAND UNIFIED SCHOOL DISTRICT  
APPROVED BY THE BOARD OF SUPERVISORS  
BY: *[Signature]*  
DATE: \_\_\_\_\_

*Approved with  
Addendum deleting  
K, L, M subject to  
terms of addendum*



**EXHIBIT A:  
DAY AHEAD AND DARK DROP DELIVERY**

Revolution Foods' Responsibilities	Partner Responsibilities
<p><b>Access</b></p> <ul style="list-style-type: none"> <li>• Perform background checks on all drivers and sign requested security agreements to ensure security.</li> <li>• Conduct at least one "practice" delivery in order to gain familiarity with your school and your delivery needs.</li> <li>• Revolution Foods will maintain a key log and have the school administrator to sign confirming key designation to Revolution Foods.</li> <li>• Revolution Foods shall ensure doors are closed properly and securely.</li> </ul>	<p><b>Access</b></p> <ul style="list-style-type: none"> <li>• Provide Revolution Foods with two keys to the building and access instructions. (Example: "My driver will go to the second door in the back of the building and enter code 2345.")</li> <li>• Ensure doors are closed properly and securely to prevent pilferage.</li> </ul>
<p><b>Paperwork</b></p> <ul style="list-style-type: none"> <li>• Place your packing slip and production records in a designated area.</li> <li>• Retrieve all signed paperwork; file for use in necessary audits.</li> </ul>	<p><b>Paperwork</b></p> <ul style="list-style-type: none"> <li>• Assign a designated area for paperwork to be left.</li> <li>• Sign the forms either upon delivery OR upon arrival the following morning.</li> <li>• Place signed forms in the designated area for pick up.</li> </ul>
<p><b>Storage</b></p> <ul style="list-style-type: none"> <li>• Place all refrigerated components in the cooling unit (behind older product if there is any).</li> <li>• Product that does not need to be refrigerated will be placed on a designated counter or shelf space, along with the utensils needed to serve the product.</li> </ul>	<p><b>Storage</b></p> <ul style="list-style-type: none"> <li>• Provide an exclusive, designated and labeled space for the driver to place the product. Other (non-Revolution Foods) products should not be kept in this space.</li> <li>• Discard any leftovers from the previous day and confirm there is sufficient room for each delivery.</li> <li>• Restrict access to prevent pilferage.</li> </ul>
	<p><b>Confirm Delivery</b></p> <ul style="list-style-type: none"> <li>• Check the delivery as the first task each day. Notify Revolution Foods of any issues a minimum of three hours prior to lunch service so each can be resolved.</li> </ul>
<p><b>Leftovers</b></p> <ul style="list-style-type: none"> <li>• Collect all used supplies (e.g. pans, trays, etc.) and used serving utensils daily from the designated cooling unit; return all components to Revolution Foods to be washed and sanitized.</li> </ul>	<p><b>Leftovers</b></p> <ul style="list-style-type: none"> <li>• Place all used supplies and used serving utensils in a clear liner in the designated cooling unit (e.g. milk cooler or refrigerator) at the end of each service day.</li> </ul>

**ADDENDUM**  
**Agreement between the Oakland Unified School District and Revolutionary Foods, Inc**

Paragraphs K, L, and M in the Agreement are deleted in their entirety and the following provisions are substituted and/or added to the agreement:

**K. Indemnification:**

REVOLUTION FOODS agrees to hold harmless, indemnify, and defend OUSD and its Board of Education, State Trustee, employees, and agents from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. REVOLUTION FOODS also agrees to hold harmless, indemnify, and defend OUSD and its elective board, State Trustee, employees, and agents from any and all claims or losses incurred by supplier of Revolution Foods, or Revolution Food's subcontractors furnishing work, services, or materials to REVOLUTION FOODS in connection with the performance of this Agreement. This provision survives termination of this Agreement.

OUSD agrees to hold harmless, indemnify, and defend REVOLUTION FOODS and its officers, employees, and agents from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation caused by the negligence of OUSD, its Board of Education, State Trustee, employees, and agents in connection with District's performance of its obligations under this Agreement. OUSD also agrees to hold harmless, indemnify, and defend REVOLUTION FOODS and its board, officers, employees, and agents from any and all claims or losses incurred by any supplier of Revolution Foods or Revolution Foods' subcontractors furnishing work, services, or materials to OUSD caused by OUSD's negligence in performing its obligations under this Agreement. This provision survives termination of this Agreement.

**L. Limitation of Liability:** Excluding OUSD's obligations in indemnity and confidentiality, in the event either party incurs any expenses, damages or other liabilities in connection with the performance or non-performance of any term or provision hereof or otherwise incurs indemnification obligations under this section, such party's liability to the other party shall not exceed the insurance coverage as provided in Section M of this Agreement. Both parties agree that this Section L does not apply to claims or losses accruing or resulting from injury, damage, or death to any third party.

Paragraph M in the Agreement is deleted in its entirety and the following is substituted:

**M. Insurance:**

1. Commercial General Liability Insurance: the following insurance is required:

- i. If REVOLUTION FOODS employs any person to perform work in connection with this Agreement, REVOLUTION FOODS shall procure and maintain at all times during the performance of such

work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

Check one of the boxes below:

REVOLUTION FOODS is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

REVOLUTION FOODS does not employ anyone in the manner subject to the workers' compensation laws of California.

ii. REVOLUTION FOODS shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. Evidence of insurance must be attached. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

OUSD, a public entity, is permissibly self insured under the laws of California. Upon request, evidence of self-insurance shall be provided to Revolution Foods by OUSD Risk Management Department.

#### **AA. Conduct of REVOLUTION FOODS**

**a. Child Abuse and Neglect Reporting Act.** REVOLUTION FOODS will comply with the Child Abuse and Neglect Reporting Act guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code § 11164 – 11174.

**b. Tuberculosis Screening.** Current documentation of negative TB Test (PPD) on file for each REVOLUTION FOODS employee or agent working with students.

**c. Fingerprinting of Agents.** Current California Department of Justice (CDOJ) fingerprint clearance and FBI fingerprint clearance for each REVOLUTION FOODS employee or agent working with students. REVOLUTION FOODS shall not permit its employees or agents to come into contact with students until CDOJ and FBI clearance is ascertained, and REVOLUTION FOODS shall certify in writing to OUSD that none of its employees or agents who may come into contact with pupils have been convicted of a violent or a serious felony. REVOLUTION FOODS shall further certify that it or its subcontracting agencies have received and reviewed fingerprint results for each of its agents, and REVOLUTION FOODS or its subcontracting agencies shall request and review subsequent arrest records for all agents who may

come into contact with OUSD pupils in providing services to the District under this Agreement.

**BB. Non-Discrimination**

Consistent with the policy of OUSD in connection with all work performed under this AGREEMENT, REVOLUTION FOODS shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. REVOLUTION FOODS agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, REVOLUTION FOODS agrees to require like compliance by all of its subcontractors.

**CC. Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property.

**DD. Entire Agreement; Integrated Agreement.**

All understandings, agreements, covenants, and representations express or implied, oral or written between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Amendment. This is an integrated agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by each party.

**EE. Excluded Parties**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

**OAKLAND UNIFIED SCHOOL DISTRICT**

\_\_\_\_\_  
Jennifer LeBarre, Executive Director, Nutrition Services

\_\_\_\_\_  
David Kakishiba  
President, Board of Education

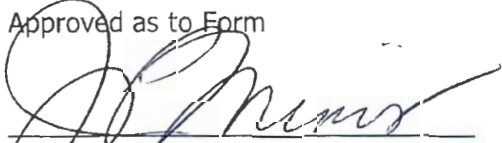
\_\_\_\_\_  
Dr. Gary Yee  
Superintendent and Secretary, Board of Education

**REVOLUTION FOODS**

\_\_\_\_\_  
Revolution Foods Signature

\_\_\_\_\_  
Print Name, Title

Approved as to Form

  
\_\_\_\_\_  
Jacqueline P. Minor  
General Counsel





**LETTER OF INTENT**

This Letter of Intent is between Revolution Foods, Inc. and the Oakland Unified School District.

Revolution Foods, Inc.  
8393 Capwell Drive  
Oakland, CA 94621  
510-596-9024

Oakland Unified School District (OUSD)  
1000 Broadway  
Oakland, CA 94607  
510-434-7790

This Letter of Intent is to demonstrate the scope of work and the pricing agreement between Revolution Foods and the Oakland Unified School District effective November 4, 2013 through June 30, 2014. This Letter of Intent will be replaced by the formal contract pending ratification by the OUSD School Board.


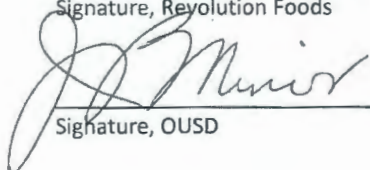
- Revolution Foods will provide supper entrée meals with accompanying vegetables and sides. Vegetable portions will be equivalent to ¼ cup.
- OUSD will provide fruit and milk components. Fruit portions will be equivalent to ½ cup and milk will be equivalent to 8 fluid ounces. OUSD may also provide an additional vegetable offering in place of fruit – the additional vegetable must not be the same as what is already being provided by Revolution Foods.

Item	# of Serving Days	Average Minimum # of Meals per Delivery	Price per Meal
Supper Meals	110	1,200 (9 delivery sites)	\$2.15
		2,400 (18 delivery sites)	\$2.10

OUSD shall submit payment to Revolution Foods in such form as required by Revolution Foods within thirty (30) days of receipt of Revolution Foods invoice. Revolution Foods reserves the right to charge up to a one and half percent interest rate (compounded monthly) on any balance left unpaid on an invoice. For avoidance of doubt, failure to pay an invoice is considered a material breach of this agreement.

Either party may terminate this agreement at any time by giving sixty (60) days written notification to the other party, setting forth the reason and the effective date of termination.

The parties hereto are fully authorized and have executed this Letter of Intent:

	Rich Sikoral, VP Support Services	11/22/2013
Signature, Revolution Foods	Print Name/Title	Date
	General Counsel	11/22/2013
Signature, OUSD	Print Name/Title	Date