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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 *VEH*
Jennifer Le Barre, Director of Nutrition Services

Board Meeting Date 6-13-12

Subject Request for Approval of Agreement Between Oakland Unified School District and Revolution Foods to Provide Vending Machine Service

Action Requested Approval by the Board of Education of Agreement Between Oakland Unified School District and Revolution Foods to Provide Vending Machine Service effective May 4, 2012 through May 4, 2014, then automatically renewed for additional periods of one year thereafter upon the same terms as set out herein.

Background Oakland Unified School District, Nutrition Services has been working on improving the nutritional content of the food served and sold to students. One way students are served is through vending machines. Nutrition Services is unable to properly meet this need due to the focus on the meal program. Revolution Foods, an Oakland based company, is able to provide this services.

Discussion Through this agreement, Revolution Foods will start a pilot program at two (2) sites, Havenscourt Campus (serving ROOTS & Coliseum College Prep) and Fremont High School. Machines will be installed and maintained by Revolution Foods. Revolution Foods will stock machines with healthy snacks that meet Oakland Unified School District's Wellness Policy as well as State law. Revolution Foods will be responsible for all cash collection and will pay OUSD Nutrition Services 10% of gross receipts. The District's obligations are to pay for utilities, any issues with the machines, and to not prohibit use of the machines unless required by law.

Recommendation Approval by the Board of Education of Agreement Between Oakland Unified School District and Revolution Foods to Provide Vending Machine Service effective May 4, 2012 through May 4, 2014, then automatically renewed for additional periods of one year thereafter upon the same terms as set out herein.

Fiscal Impact None



AGREEMENT TO PROVIDE VENDING MACHINE SERVICE

Between Revolution Foods, Inc. and Oakland Unified School District

This agreement, executed in duplicate, entered into on May 4, 2012 (the "Effective Date") by and between the vending machine service provider, Revolution Foods, Inc., hereinafter referred to as Revolution Foods and the receiver, Oakland Unified School District, hereinafter referred to as OUSD.

In consideration of the mutual promises set out herein between Oakland Unified School District of 1025 Second Avenue Oakland, CA 94606-2212, its successors and assigns, hereafter called "OUSD" and Revolution Foods, Inc., its successors and assigns, hereafter called "Revolution Foods," it is agreed that OUSD grants Revolution Foods the exclusive right to operate a general vending machine service at

- 1) Havenscourt Campus: 1390 66th Avenue Oakland, CA 94621
- 2) Fremont High School 4610 Foothill Boulevard Oakland, CA 94601

(hereafter called "Premises"). Revolution Foods shall, without cost to the OUSD, install two vending machines and shall use commercially reasonable efforts to keep the machines supplied so as to adequately provide, under normal conditions, OUSD's employees and students with sufficient amounts of food, beverages and other products of good quality, prepared and dispensed in compliance with all local, State, and Federal nutrition, health and sanitation standards. Revolution Foods shall provide through its vending machines such merchandise as it determines is reasonably priced, nutritionally sound, and offered in reasonably sized portions. In selecting food, beverages, and other products, Revolution Foods shall confer with OUSD and incorporate feedback from student taste tests and OUSD Nutrition Services.

A. Utilities, Equipment and Furniture

OUSD shall, at its own expense, provide Revolution Foods all necessary utility outlets in the areas where equipment is to be located and shall also furnish without cost to Revolution Foods all necessary lights and electric current and will permit interruption in such services only in cases of Force Majeure (as defined below). OUSD agrees to notify Revolution Foods immediately of any interruption or proposed interruption of such services. For purposes of this section, "immediate" shall mean 1 hour after the interruption or as soon as possible if the event is not planned and 2 days prior to the interruption if the event is planned by OUSD.

Revolution Foods or its agents shall install the vending machines and other equipment listed in Appendix A attached hereto. Revolution Foods shall have the right at any reasonable time to remove or replace, as Revolution Foods deems necessary, the vending machines and other equipment installed under this agreement. Revolution Foods shall have the right at any reasonable time to add, as Revolution Foods deems necessary with agreement by OUSD, to the vending machines and other equipment installed under this agreement. Revolution Foods shall notify OUSD of such change at least 7 business days prior to the change. Vending machines and other equipment installed by Revolution Foods under this agreement and their contents are and shall remain at all times the property of Revolution Foods.

OUSD hereby agrees that it shall not locate any other vending machine or similar equipment on the Premises without the prior written consent of Revolution Foods.

B. Ownership of Intellectual Property

The vending machine and all equipment as well as all contents thereof including, but not limited to, all products, text and images ("Content") are owned and copyrighted by Revolution Foods or other third parties with all rights reserved unless otherwise noted. Any Content that is a trademark, logo, or service mark is also a registered or unregistered trademark of Revolution Foods or other third party. Use of any Content by the OUSD, except as provided in this agreement, without the written permission of the Content owner is strictly prohibited.

OUSD hereby agrees not to redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Content.



Further, OUSD agrees that trade names, trademarks and service marks of Revolution Foods include without limitation, 'Revolution Foods,' 'Fight Junk Food' and any associated logos. All trademarks and service marks on the vending machine or its products not owned by Revolution Foods are the property of their respective owners. The trade names, trademarks and service marks owned by Revolution Foods, whether registered or unregistered, may not be used in connection with any product or service that is not owned or approved in writing by Revolution Foods, in any manner that is likely to cause confusion. Nothing contained on the vending machine should be construed as granting, by implication, estoppel or otherwise, any license or right to use any of trade names, trademarks or service marks of Revolution Foods without the express prior written consent of Revolution Foods.

C. Compensation, Accounting, Licenses, Cost Changes

Revolution Foods agrees to pay OUSD the following sums subject to other provisions of this agreement:

10 % of gross receipts

The term "gross receipts" shall not include any applicable sales or use taxes.

Revolution Foods will report within thirty (30) days after the last day of each calendar quarter, and will submit within 30 days after the close of each quarter to OUSD a report of gross receipts through the machines together with a check for the sum due OUSD under this agreement. In the case that the sum due is less than \$50.00, Revolution Foods will forward the amount due to OUSD until the next calendar quarter that the sum due equals at least \$50.00 and pay the total sum due at that time. Revolution Foods shall maintain an accurate record of all merchandise, inventories, and receipts in connection with performance under this agreement. OUSD is authorized to inspect such records at all reasonable times during business hours with prior consent of Revolution Foods.

Revolution Foods agrees to obtain and display, if required, all applicable Federal, State and local licenses. It is understood that compensation paid to OUSD under this agreement is based on Federal, State and local taxes and license fees and on the cost of merchandise sold through the machines existing at the date of this agreement. In the event of an increase in taxes, license fees or the cost of merchandise sold through the vending machine under this agreement, which are not reflected in an increase in the retail selling price, then the compensation to OUSD provided for in this agreement shall be reduced to reflect such increases.

D. Ongoing Obligations of Parties

a. Maintenance and Sanitation

Revolution Foods shall use commercially reasonable efforts to operate and maintain all vending machines and other equipment in a clean, sanitary condition in accordance with recognized standards for such machines and in accordance with all applicable laws and regulations. OUSD will use commercially reasonable efforts to keep the areas in which the vending machines are located and all related service areas in a clean and sanitary condition and shall promptly dispose of all refuse that results from the operation of the vending service and will replace expendable items as needed.

b. Protection of Vending Machine and Equipment

OUSD shall be prohibited from using the vending machine to post or transmit any infringing, threatening, false, misleading, abusive, harassing, libelous, defamatory, vulgar, obscene, scandalous, inflammatory, pornographic, or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law.

OUSD together with its employees, students, contractors and agents shall be prohibited from interfering with or disrupting the operation of the vending machine or any related equipment.

Unless otherwise required by law, OUSD together with its employees, students, contractors and agents shall be prohibited from restricting or inhibiting any other person from using the vending machine (including, without limitation, by hacking or defacing any portion of the vending machine).



E. Hours of Operation

The machine will operate for a minimum of 8 hours between 7am and 5pm. Should OUSD manually turn off machines or request machines to be turned off for more than 2 hours between 7am and 5pm, Revolution Foods reserves the right to re-negotiate compensation stated in Section C.

F. Personnel

Revolution Foods' personnel will at all times be dressed in clean, neat uniforms and will observe all regulations in effect on Premises of which Revolution Foods has prior written notice. Revolution Foods will not employ at the Premises any employee not acceptable to OUSD. If any employee or agent of Revolution Foods is not acceptable, OUSD shall provide written notice to Revolution Foods and Revolution Foods shall be required to secure a replacement in 30 days or less. OUSD agrees to furnish Revolution Foods' personnel with any identification passes required for entrance to and exit from the Premises. OUSD shall not impose any regulations on Revolution Foods' personnel not imposed on OUSD's personnel.

G. Indemnity

Subject to the second paragraph below, Revolution Foods will indemnify and hold OUSD and its students and employees harmless for any loss, damage, injury or liability arising as a result of the conduct by Revolution Foods' employees, contractors or agents pursuant to this agreement, which conduct is either (i) in breach of the terms of this agreement or (ii) is held to be negligent.

H. Insurance

- a. Revolution Foods will procure and maintain the following insurance:
 - i. Workmen's Compensation as prescribed by the laws of the State of California.
 - ii. Commercial general liability insurance in an amount of no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for any liability resulting from incidents of improper product preparation, contamination or transport.
- b. OUSD is permissibly self-insured, evidence of which will be provided by OUSD's Risk Management Department.

OUSD shall promptly notify Revolution Foods in writing of any claims against either OUSD or Revolution Foods, and in the event of a suit being filed, shall promptly forward to Revolution Foods all papers in connection therewith. OUSD shall not incur any expense or make any settlement of any such claims or suit without Revolution Foods' prior written consent.

I. Alterations

OUSD agrees to notify Revolution Foods of any alteration that will affect any of the areas where services are performed under this agreement before such alterations are made. Revolution Foods agrees to make no alterations in the premises unless authorized in writing by OUSD. OUSD agrees to cooperate in making any alternations that may become necessary as determined by Revolution Foods for proper performance of the service under this agreement.

J. Term, Renewal, Business Interruption; Cancellation and Breach

This agreement shall become effective on the Effective Date and remain in force for a period of two years and for any additional period due to business interruption. Unless canceled by written notice [by either party] at least 60 days prior to the termination date, this agreement is deemed to be automatically renewed for additional periods of one year thereafter upon the same terms as set out herein.

If, because of riots, war, public emergency or calamity, fire, earthquake or other Acts of God, government restrictions, labor disturbances, or strikes ("Force Majeure"), operations at Premises are interrupted or stopped, performance of this agreement, with the exception of money due, shall be suspended and excused for so long as such interruption or stoppage



continues. This agreement shall be extended for a period of time equal to the time of the interruption or stoppage.

Either party to this agreement may terminate this agreement by giving 30 days notice in writing to the other party of its intention to cancel this agreement.

This agreement may also be terminated by Revolution Foods by reason of unprofitability giving 15 days written notice to OUSD.

In the event any provisions of this agreement are violated by either party, the other party shall serve written notice upon the breaching party setting forth the violation and demanding compliance with the agreement. Unless within thirty (30) days after serving such notice, such violations cease and corrections are made, the aggrieved party may terminate this agreement immediately by written notice to the offending party.

K. Termination

Upon termination of this agreement, Revolution Foods shall vacate the Premises and shall use commercially reasonable efforts to return the Premises together with all furniture owned by OUSD in substantially the same condition as when originally made available to Revolution Foods, normal wear and tear, fire and other casualty loss excepted. If Revolution Foods fails to remove its property and effects within a reasonable time after termination, OUSD shall have the right to remove and store Revolution Foods' property and effects at the expense of Revolution Foods.

L. Underperforming Machines

Should sales at any given vending machine amount to less than \$750 per month, OUSD shall permit Vendor to move the machine to a more equitable location/site or remove entirely from Location if a new location/site cannot be determined.

M. Damages

It is understood and agreed that Revolution Foods has incurred, in anticipation of sales to be made over the term of this agreement, expenses in purchasing and installing machines and other equipment, hiring or rescheduling employees, purchasing inventory and other expenses. It is understood and agreed that these expenses form part of the consideration for this agreement. In the event this agreement is canceled, or terminated by breach by the OUSD during the first two years of the agreement, Revolution Foods shall be entitled, as a measure of the expenses incurred and earnings lost as agreed by the parties hereto for such period in addition to any recovery of damages pursuant to the indemnity by OUSD pursuant to "Indemnity" above, to recover 1) the transportation and labor cost associated with moving the machine, which will be no greater than \$500.

N. Miscellaneous

This agreement does not, and shall not be construed to create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between Revolution Foods and OUSD. If any provision of this agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this agreement and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under this agreement without our express prior written consent. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default.

Notices to OUSD required herein shall be addressed to Jennifer LeBarre, Nutrition Services Director, Oakland Unified School District 900 High St. Oakland, CA 94601.

Notices to Revolution Foods required herein shall be addressed to Jen Paragallo, Business Innovation Director, Revolution Foods, 8393 Capwell Drive Suite 200, Oakland CA 94621.

O. Assignment:



Revolution Foods has the right to assign this agreement to an acquirer of all or substantially all of the assets of Revolution Foods.

P. Choice of Law

This agreement shall be construed under the laws of the State of California.

Q. Section Headings

The section headings or titles are for convenience only and shall have no substantive effect in the interpretation of the contract.

This agreement is entered into by Revolution Foods on the expressed representation that OUSD owns the business at the Premises and has the authority to enter into this agreement.

This agreement constitutes the entire agreement between the parties and all previous communications between the parties with respect to this agreement are canceled and superseded.

Name and Title of Revolution Foods Official	Telephone Number
Jen Paragallo, Business Innovation Director	510-596-9024 x 218
Signature of Revolution Foods Official	Date
	5/4/2012
Name and Title of Oakland Unified School District Official	Telephone Number
 Judy London, President, Board of Education	
 Edgar Rakestraw, Jr., Secretary Board of Education	Date

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel,
APPROVED FOR FORM & SUBSTANCE
By:
Attorney at Law

LEGISLATIVE FILE
File ID Number 12-1449
Introduction Date 6-13-12
Enactment Number 12-1595 **BD**
Enactment Date 6-13-12



Appendix A:



Crane Merchant Six (Model 981)

Dimensions: 72"H x 32" D x 46" W

Weight: 610 lbs

Electrical: 115 V, 60Hz, 12A (dedicated)



ADDENDUM

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

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

G. Indemnification:

REVOLUTION FOODS agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees 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, officers, agents, and employees from any and all claims or losses incurred by any supplier, Revolution Foods, or 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, agents, and employees 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. OUSD also agrees to hold harmless, indemnify, and defend REVOLUTION FOODS and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, Revolution Foods, or subcontractors furnishing work, services, or materials to OUSD in connection with the performance of this Agreement. This provision survives termination of this Agreement.

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

H. Insurance:

1. Commercial General Liability Insurance: Unless specifically waived by OUSD, 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.

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

This agreement shall be construed under the laws of the State of California.



OAKLAND UNIFIED SCHOOL DISTRICT

President, Board of Education

Secretary, Board of Education

REVOLUTION FOODS

Jen Paragallo
Revolution Foods Signature

Jen Paragallo, Business Innovation Director
Print Name, Title

Approved as to Form

J.P. Minor
Jacqueline P. Minor
General Counsel