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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 ~~YES~~
Jennifer Le Barre, Director of Nutrition Services

Board Meeting Date September 27, 2012

Subject End User Lease Agreement and Warranty - Georgia Pacific - Dixie Consumer Products LLC ("Dixie") - Nutrition Services

Action Requested Approval by the Board of Education of End User Lease Agreement and Warranty between Oakland Unified School District and Georgia Pacific - Dixie Consumer Products LLC ("Dixie") for supplying dispensers for the cafeterias, effective September 4, 2012 through September 4, 2017.

Background Oakland Unified School District Nutrition Services is working to decrease the amount of waste created by meal program. Efforts include food sorting and composting. Another aspect is eliminating/reducing waste caused by trays, eating utensils, etc. OUSD Nutrition Services has identified the spork kit as one of the biggest waste producers. This is due to the straw and plastic covering involved for each spork kit. Additionally, studies have shown that students consume more milk without a straw.

Discussion Nutrition Services has identified a new product and program that will allow Nutrition Services to eliminate approximately 80% of spork usage by the end of 2012-13 school year. Through the agreement with Georgia Pacific, Nutrition Services will receive free fork, spoon, and napkin dispensers for all cafeterias. Nutrition Services must agree to use only Georgia Pacific products in the dispensers.

Recommendation Approval by the Board of Education of End User Lease Agreement and Warranty between Oakland Unified School District and Georgia Pacific - Dixie Consumer Products LLC ("Dixie") for supplying dispensers for the cafeterias, effective September 4, 2012 through September 4, 2017.

Fiscal Impact None

Attachments End User Lease Agreement and Warranty



**SMARTSTOCK® BRAND DISPENSER
END USER LEASE AGREEMENT AND WARRANTY ("LEASE")**

1. Lease. Dixie Consumer Products LLC ("Dixie") leases to undersigned ("End User") certain SmartStock® dispensers ("Dispensers"). All Dispensers remain Dixie Consumer Products LLC ("Dixie") property. End User will pay an initial fee (as agreed by Dixie and End User) to Dixie through a distributor for each Dispenser. Lease begins when Dixie delivers a Dispenser to End User and continues for 5 years, unless terminated as provided herein, and will extend automatically annually thereafter without further charge. End User is responsible for any taxes or fees resulting from leasing Dispensers.

2. Restrictions. End User will only use SmartStock® branded refills ("Products") in Dispensers. Use or permitting the use of unauthorized product(s) in a Dispenser is prohibited. End User will only purchase Products from distributors that Dixie authorizes to sell Products. Dispensers will not become fixtures when installed and End User will not encumber Dispensers. End User will not (a) in any way alter any Dispenser packaging or labeling; (b) remove or in any way tamper with Dixie's trademarks on the Dispensers; or (c) affix any other trademark(s), logo(s) or other mark(s) on any Dispensers. Dixie owns all Dispenser intellectual property rights.

3. Warranty and Repair. Each Dispenser will be free from defects in workmanship and materials under normal use with Products for 5 years after Dispenser is installed. End User will promptly report to Dixie via 1-866-HELLOGP: location of the allegedly defective Dispenser, nature of defect, and date of installation. Dixie disclaims all other warranties with respect to Dispensers, express or implied, including but not limited to any implied warranties of merchantability or fitness for a particular purpose. If Dixie determines in good faith that defects in workmanship or material exist in any Dispenser, Dixie will, in its sole discretion, either repair defects, provide replacement parts or replace Dispenser. Neither the initial lease term nor this warranty will renew when Dixie replaces a Dispenser; both continue from the date initial Dispenser was delivered. Except for this warranty, End User is responsible for all other Dispenser maintenance and repair. Dixie will not be liable for losses, costs or expenses resulting from (a) End User's or any other third party's improper installation, improper use or abuse of Dispensers, or (b) use of non-authorized products. Dixie will not be liable to End User for indirect, consequential or incidental damages with respect to this limited warranty and remedy; or for any other damages or remedies beyond those provided in this Lease.

4. Termination; Removal of Dispensers. Either party may terminate this Lease without cause by giving at least thirty (30) days written notice to the other party. Either party may immediately terminate this Lease, upon written notice to the other party if such other party: (a) breaches any provision of this Lease and fails to cure such breach within 10 days of receiving written notice of the breach; (b) ceases to carry on, sells or otherwise transfers substantially all of its business or assets; or (c) makes an assignment for the benefit of creditors. Within 30 days after this Lease terminates (or specific Dispenser leases are terminated), End User will, at its option, either (a) remove all Dispensers and deliver those Dispensers to a place or places designated by Dixie in the continental United States, or (b) provide Dixie a list of the Dispensers and locations where they are installed so that Dixie may remove them and pick them up. If Dixie terminates the Lease without cause, then Dixie will pay the reasonable cost of removing and shipping the Dispensers; otherwise, End User is responsible for all such costs. If End User fails to return the Dispensers to Dixie (or provide information about their location, as the case may be),

then Dixie or its designees may (on reasonable notice, during normal business hours, and at End User's expense) enter the premises where the Dispensers are located and take the Dispensers into its possession without incurring liability to End User. End User will not be entitled to refund of any fees as a result of termination or recovery of Dispensers.

5. General Provisions. Any notices to either party with regard to this Lease or the Dispensers will be sent to the address listed below the party's signature line. End User may assign its rights and obligations under this Lease without Dixie's prior written consent to a subsequent purchaser of the facility in which the Dispensers are installed if the assignee is provided notice of the terms of this Lease and agrees to be bound by its terms. This Lease will inure to the benefit of and be binding upon respective successors and authorized assigns of the parties hereto. No modification of or amendment to this Lease will be binding unless set forth in writing and executed by both parties. **This Lease constitutes the entire agreement between the parties with respect to the subject matter and cancels and supersedes any prior understanding or agreement between the parties.** End User is not a Dixie agent or a Dixie employee and will at all times be an independent contractor. This Lease will be governed by Georgia law. If any provision of this Lease is deemed unenforceable, invalid or illegal by a court of competent jurisdiction, then the validity of the remaining provisions will not be affected and the rights and obligations of Dixie and End User will be construed and enforced as if the Lease did not contain the particular provision deemed invalid or illegal. Dixie makes no representation or certification regarding country of origin, country of manufacture, domestic content, or means of shipping. End User will only place the Dispensers in its locations within the United States. Alterations to above text will invalidate Dixie signature.

DISPENSER SKU	QUANTITY
SSFDPDSP	106
SSSPDSP	104
END USER'S PREFERRED AUTHORIZED PRODUCT DISTRIBUTOR Sysco-San Francisco #103842	
END USER COMPANY NAME Oakland Unified School District	
BY (Authorized Signature) <i>Jennifer LeBarre</i>	
PRINT NAME Jennifer LeBarre	
TITLE President, Board of Education	
ADDRESS 900 High Street	
CITY / STATE / ZIP Oakland/CA/94601	
Dixie Consumer Products LLC; 133 Peachtree Street, NE; Atlanta, Georgia 30303; Attn: GP Professional Marketing Dept.	
SIGNATURE: John R. Strom V.P. & General Manager, Cutlery Category <i>John R. Strom</i>	
EFFECTIVE DATE:	

TO ACTIVATE: EMAIL Register@gpacms.com

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel 415-763-2947

APPROVED FOR FORM & SUBSTANCE
By: *J. Minix*
Attorney at Law

OUSD or the District verify the Contractor does not appear on the Excluded Parties List at www.epls.gov/epl/seat