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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education
From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff

Board Meeting Date

Subject No Cost Memorandum of Understanding
Contractor: CLIF BAR & COMPANY
Services for: DONATION OF GOODS

Action Requested and Recommendation

Approval by the Board of Education of a No Cost Memorandum of Understanding (MOU) with Clif Bar & Company (Donor) for donation of their products for distribution to OUSD (Recipient) for students and families through the established shelter in place and summer OUSD 24 food distribution sites beginning June 1, 2020.

Background

(Why do we need these services? Why have you selected this vendor?)

A major part of OUSD's response to the COVID-19 pandemic and resulting shelter in place has been food security. In addition to providing OUSD prepared student meals, OUSD has entered partnerships to provide addition emergency food, produce and some basic need products. This No Cost MOU represents the partnership between Clif Bar & Company and OUSD to bring healthy food products to our students and families.

Fiscal Impact No fiscal impact

Attachments

- No Cost Memorandum of Understanding

Donation Agreement

THIS DONATION AGREEMENT (this "Agreement"), dated ~~May 1~~^{JUNE}, 2020 is entered into by and between CLIF BAR & COMPANY, a California corporation ("Donor"), and Oakland Unified School District, a California public school district ("Recipient," and together with Donor, the "Parties," and each, a "Party").

WHEREAS, Donor has title to the goods listed in Exhibit A (the "Goods"); and

WHEREAS, Donor desires to donate the Goods to Recipient, and Recipient desires to accept the Goods, under the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Parties agree as follows:

1. Charitable Donation. The donations made under the terms of this Agreement shall for all purposes be treated as charitable donations and it is the intent of the Parties that donations be made and used in compliance with all applicable federal and state laws governing donations made to government instrumentalities. Recipient represents and warrants to Donor that it is a tax-exempt entity pursuant to Section 170(c)(1) or other applicable sections of the Internal Revenue Code. The Parties acknowledge that they may be required by law to report information about the donations provided under this Agreement and will do so to comply with legal obligations.

2. Goods. Donor agrees to donate the Goods to Recipient. Donor grants Recipient irrevocable ownership, rights, title, and interest in the Goods upon the terms and conditions set forth in this Agreement and without monetary payment to the Donor. The Goods will be transferred to Recipient free and clear of any liens, claims, or encumbrances. Recipient shall determine the disposition of the Goods subject to Section 2.1.

2.1 Conditions of Use. Recipient shall use the Goods in furtherance of its charitable work. Recipient shall not use the Goods for the benefit of any owner, shareholder, officer, director, or employee of the Recipient. Recipient agrees that (a) the Goods shall be used at all times in compliance with all applicable laws, and (b) Recipient shall store and distribute in accordance with the Product Storage and Distribution Requirements attached hereto as Exhibit B.

3. Resale of Goods; Export.

3.1 Resale of Goods. Recipient shall not sell, transfer, barter, or trade the Goods to consumers. Recipient shall be responsible for compliance with all laws and regulations applicable to the resale of the Goods.

4. Delivery of Goods; Transfer of Title and Risk of Loss; Presence on Site.

4.1 Collection of any Goods by Recipient from Donor's facilities shall be done in accordance with instructions supplied to Recipient by Donor.

4.2 Transfer of Title and Risk of Loss. Title and risk of loss transfer to Recipient upon delivery of the Goods by Donor to Recipient's premises.

4.3 Presence on Site. If, in connection with this Agreement, any Recipient employee or volunteer is on a site owned or operated by Donor, the Recipient employee or volunteer will comply with any shelter-in-place (or similar) orders issued by the District, by the Donor, or by local, state, and federal authorities, including any and all social distancing and protective equipment requirements.

If, in connection with this Agreement, any Donor employee or volunteer is on a site owned or operated by Recipient, the Donor employee or volunteer will comply with any shelter-in-place (or similar) orders issued by the District or by local, state, and federal authorities, including any and all social distancing and protective equipment requirements.

4.4 Notification of Positive Status. In the event that Recipient discovers that a Recipient employee or volunteer who was present on a Donor site in connection with this Agreement has been diagnosed with COVID-19, the Donor and Recipient shall share equally the cost of deep cleaning the facility. The Donor shall be responsible for notifying those who may have been exposed to the diagnosed individual, although nothing prohibits the Recipient from noticing individuals as well.

In the event that Donor discovers that a Donor employee or volunteer who was present on a Recipient site in connection with this Agreement has been diagnosed with COVID-19, the Donor and Recipient shall share equally the cost of deep cleaning the facility. The Recipient shall be responsible for notifying those who may have been exposed to the diagnosed individual, although nothing prohibits the Donor from noticing individuals as well.

5. Proprietary Material

5.1 Proprietary Material. The Goods may contain the intellectual property of Donor or third parties ("**Proprietary Material**"). Nothing herein will be construed as the transfer of Proprietary Material to Recipient. Recipient shall not remove any copyright notices or other legends from any such Proprietary Material or any accompanying documentation. Except as may arise by operation of law, the donation of the Goods does not convey to Recipient either expressly, by implication, or by way of estoppel, any intellectual property rights of Donor, including but not limited to any rights under any patent, trademark, copyright, or trade secret. Neither the donation of the Goods nor any provision of this Agreement will be construed to grant Recipient, either expressly, by implication, or by way of estoppel, any license under any patent or other intellectual property rights of Donor covering or relating to any other product or invention or any combination of the Goods with any other product.

6. Warranty Disclaimer. **THE GOODS ARE DONATED "AS IS" WITH ALL FAULTS. DONOR MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, INCLUDING ANY WARRANTY OF CONDITION, QUALITY, OR SUITABILITY, WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

7. Waiver and Release. Recipient itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns hereby expressly releases, waives, and forever discharges Donor and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, successors, and permitted assigns of and from any and all claims, actions, causes of action, suits, losses, expenses, liabilities, obligations, damages, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, or equity arising out of or in connection with this Agreement or the Goods whether arising out of the negligence of Donor or Recipient or otherwise, except for any claims relating to rights and obligations preserved by, created by, or otherwise arising out of this Agreement and any liabilities that cannot be released or waived under federal, state, or local law.

Donor itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns hereby expressly releases, waives, and forever discharges Recipient and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, successors, and permitted assigns of and from any and all claims, actions, causes of action, suits, losses, expenses, liabilities, obligations, damages, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, or equity arising out of or in connection with presence of Donor's employees at Recipient's site, except for any liabilities that cannot be released or waived under federal, state, or local law.

8. Indemnification. Recipient shall indemnify and defend Donor and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Donor Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Donor Parties, arising out of or related to any third-party claim alleging:

- (a) breach or non-fulfillment of any provision of this Agreement by Recipient or Recipient's employees;
- (b) any negligent or more culpable act or omission of Recipient or its personnel (including any reckless or willful misconduct) in connection with the Goods;
- (c) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Recipient or its personnel (including any reckless or willful misconduct); or
- (d) any failure by Recipient or its personnel to comply with any applicable federal, state, or local laws, regulations, or codes.

Donor shall indemnify and defend Recipient and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Recipient Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Recipient Parties, arising out of or related to any third-party claim alleging:

- (a) breach or non-fulfillment of any provision of this Agreement by Donor or Donor's employees;
- (b) any negligent or more culpable act or omission of Donor or its personnel (including any reckless or willful misconduct) in connection with the Goods;
- (c) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Donor or its personnel (including any reckless or willful misconduct); or
- (d) any failure by Donor or its personnel to comply with any applicable federal, state, or local laws, regulations, or codes.

9. Limitation of Liability. **IN NO EVENT SHALL DONOR BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR**

DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, OR IN CONNECTION WITH THE GOODS, THE DONATION OF THE GOODS, OR ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT DONOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10. Insurance

Donor shall maintain in full force and effect throughout the duration of this Agreement a suitable policy or policies of public liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or connected with use under this Agreement. Such Insurance shall be in amounts not less than \$1,000,000 for injury to or death of one person; and \$1,000,000 for property damage.

Donor shall ensure any employee vehicle brought onto District facilities is insured by such employee as required by California law applicable to such employee's personal automobile.

Donor shall maintain, in full force and effect throughout the term of this Agreement, Workers' Compensation insurance in accordance with the laws of California, and employers' liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence.

11. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12. Amendment and Modification. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

13. Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

15. Entire Agreement. This Agreement, together with its Exhibits, contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral understandings, agreements, representations, and warranties with respect to such subject matter.

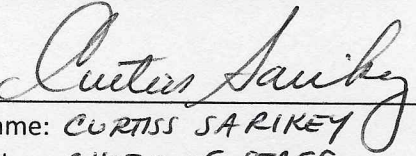
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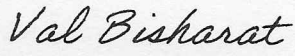
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

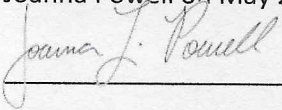
OAKLAND UNIFIED SCHOOL DISTRICT

CLIF BAR & COMPANY

By 
Name: CURTIS SARIKEY
Title: CHIEF OF STAFF

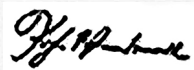
By 
Name: Val Bisharat
Title: Sr. Manager, Community Programs

Approved as to form by OUSD Staff Attorney
Joanna Powell on May 29, 2020





Jody London, President, BOE



Kyla Johnson-Trammell, Secretary, BOE

EXHIBIT A
DONATED GOODS

- One-hundred thousand (100,000) units of Donor's products, such as energy bars and nutrition foods, and kids' energy foods and snacks.
- Approximately 400 prepared meals per week on Thursdays, for a total of 9 weeks (from June 4, 2020 through July 30, 2020), to be served to Recipient's front-line workers.

EXHIBIT B

Product Storage & Distribution Requirements

If Recipient is receiving, storing and/or handling Donor product ("Product"), upon receipt of the Product from Donor, Recipient shall adhere to the following requirements:

- 1) All Product and packaging shall be stored, at minimum, 6 inches off the floor;
- 2) Adequate storage space shall be maintained in order to allow for inspection of the area and ensure cleanliness;
- 3) Sources of water or moisture (such as leaks or sewage back up), excessive dust or debris or product spillage shall be cleaned immediately and Product evaluated for possible contamination;
- 4) Product shall be distributed by Recipient on a First Expired, First Out (FEFO) basis;
- 5) A system shall be in place to prevent unauthorized access to Product storage area;
- 6) The storage area shall be structurally sound to prevent pest entry and Product contamination;
- 7) In the event that the storage area has multiple tenants whose areas or goods might be a source of potential contamination, Recipient's individual storage area shall be capable of protecting the Product;
- 8) Product shall be stored in a cool and dry location where temperatures will not exceed seventy-five degrees Fahrenheit;
- 9) Effective pest exclusion practices shall be in place for all Product storage facilities, such as keeping exterior doors closed when not in use, doors with automatic closures, screens, and the removal of clutter and debris;
- 10) The storage area shall be regularly inspected for infestation, at minimum, prior to the removal of Product for distribution;
- 11) If an infestation does occur, Recipient shall contact Donor to receive guidance from Donor's Food Safety team;
- 12) Chemicals shall not be stored in the Product storage area, examples include: gasoline, propane, battery chargers, cleaning chemicals, and pesticides;
- 13) Recipient shall maintain safe food transportation practices including, cleanliness, temperature control, and the avoidance of chemicals or other contaminants; and
- 14) Recipient shall comply with federal regulations which mandate public food storage facilities to be registered with the FDA.

Product Distribution Requirements

Recipient shall distribute the Products in a quality-controlled manner and according to the distribution standards set forth below:

- 1) Maintain the Product on-site according to the temperature conditions set forth on Product boxes.

- 2) Recipient will be responsible for providing any third-party conducting distribution on behalf of Donor with all the appropriate product related information (i.e., nutritional information, allergen statements, etc.).
- 3) Product inventory managed proactively by Recipient.
- 4) Do not provide Product to a child under the age of 14 without the consent of the child's parent or guardian.
- 5) Do not provide inaccurate information about the Product, if questions arise in which an answer is not readily available direct customers to Donor's website at www.clifbar.com