

Board Office Use: Legislative File Info.	
File ID Number	21-1996
Introduction Date	8/25/21
Enactment Number	21-1362
Enactment Date	8/25/2021 CJH



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer

Meeting Date August 25, 2021

Subject Approval of Resolution 2122-0073 Authorizing Use of Graydon Exception to Public Bidding; Approval by the Board of Education of Contract with Revolution Foods, Inc. for Preparation and Delivery of Supper Meals.

Ask of the Board Approval of by the Board of Education of Resolution 2122-0073 authorizing use of Graydon Exception to Public Bidding; Approval and approval of contract with Revolution Foods, Inc., Oakland, CA, for preparation, packaging, and delivery of supper meals as required for the Child and Adult Care Food Program from August 26, 2021 through December 31, 2021 for an amount not to exceed \$245,000.

Background The Nutrition Services Department provides meals under the Child and Adult Care Food Program which includes the provision of supper/dinner to eligible participants. The District has an agreement with the California Department of Education Nutrition Services Division to provide meals under the CACFP; however due to staffing shortages (forty vacancies) and increased demand, Nutrition Services must engage a contractor to provide the supper meal service.

Revolution Foods, Inc. has provided meal preparation and delivery to other Bay Area school districts. The preparation and delivery of the Child and Adult Care Food Program supper meals are necessary for the successful operation of the District's meal service program. In the absence of a contract with Revolution Foods, Inc., the District will be unable to provide supper meal service to eligible participants.

Discussion Approval by the Board of Education of Resolution 2122-0073 Authorizing Use of Graydon Exception to Public Bidding and approval by the Board of Education of the Nutrition Services Contract with Revolution Foods, Inc. for preparation, packaging, and delivery of supper as required for the District's meal program from August 26, 2021 through December 31, 2021 for an amount not to exceed \$245,000.

Fiscal Impact Funding resource: 5310 in an amount not to exceed \$245,000.

Attachment(s)

- Resolution 2122-0073 Authorizing Use of Graydon Exception
- Nutrition Services Food Contract with Revolution Foods, Inc.

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**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT**

RESOLUTION NO. 2122-0073

**AUTHORIZING USE OF GRAYDON EXCEPTION TO PUBLIC BIDDING FOR NUTRITION SERVICES
FOOD CONTRACT WITH REVOLUTION FOODS, INC., AND APPROVING NUTRITION SERVICES
FOOD CONTRACT WITH REVOLUTION FOODS, INC.**

WHEREAS, the Child and Adult Care Food Program (“CACFP”) is a federal program that provides reimbursements to the Oakland Unified School District (“OUSD”) for nutritious meals and snacks to eligible children and adults; and

WHEREAS, OUSD has an agreement with the California Department of Education Nutrition Services Division to provide meals, including supper, under the CACFP; and

WHEREAS, OUSD must comply with the CACFP Administrative Manual in operation of the CACFP; and

WHEREAS, the Nutrition Services Department has forty (40) vacancies and these staffing shortages impact its ability to prepare and deliver supper under CACFP; and

WHEREAS, the COVID-19 Pandemic has impacted the food supply chain by significantly impacting both food supply and food demand; and

WHEREAS, in order to timely provide the supper component of the CACFP meal program in light of staffing shortages and interruptions to the supply chain, Nutrition Services must contract out for the timely preparation and delivery of supper under CACFP; and

WHEREAS, In order to ensure that the District is able to provide supper as part of its CACFP meal program, the District must contract with an established food preparation and delivery service;

WHEREAS, the contemplated contract is in an amount not to exceed \$245,000;

WHEREAS, under the Public Contracts Code section 20111, a contract in this amount would ordinarily require competitive bidding although the Federal purchase threshold applicable to CACFP provides for a purchase threshold of \$250,000 prior to requiring formal procurement processes (2 C.F.R §200.88);

WHEREAS, one exception to the State competitive bidding requirement is where “the nature of the subject of the contract is such that [bidding] would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible.” (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.);

WHEREAS, under the exception, a contract need not be bid where bidding would not serve its intended purpose – namely, to protect taxpayers from possible waste and dissipation of public funds –because it

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would “substantially impair[]” the public entity’s ability to operate, and/or would impose unnecessary additional costs (Ibid.);

WHEREAS, Revolution Foods has been successfully providing consistent meal services to other school districts during the COVID-19 Pandemic and Revolution Foods has experience preparing and delivering suppers for a CACFP meal program;

WHEREAS, Revolution Foods has provided consistent meal service that satisfies CACFP requirements despite interruptions in the food supply chain at prices reasonably comparable to other similar providers;

WHEREAS, delays associated with competitive bidding would result in the District not being able to provide supper as part of the CACFP program, which is a critical component of the District’s meal program;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board finds and declares that going out to bid for the preparation and delivery of supper meals compliant with the CACFP regulations would not produce any advantage, would result in wasted taxpayer funds, and would substantially impair the District’s ability to provide critical components of the District’s meal program in August because it would result in delays in procurement, preparation, and delivery of supper to individuals eligible to receive meals under CACFP.
2. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law, allowing the District to contract with Revolution Foods.
3. The Nutrition Services Food Contract with Revolution Foods, Inc., for the period of August 25, 2021 through December 31, 2021 in an amount not to exceed \$245,000 is hereby approved.

Passed and adopted on August 25, 2021 by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

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AYES: Gary Yee, Clifford Thompson, Vice President "Sam" Davis, President Shanthi Gonzales

NOES: VanCedric Williams, Mike Hutchinson

ABSTAINED: None

RECUSED: None

ABSENT: Student Director Samantha Pal, Student Director Natalie Gallegos Chavez, Aimee Eng

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on August 25, 2021.

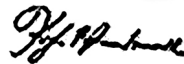
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By:	

OAKLAND UNIFIED SCHOOL DISTRICT



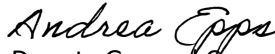
8/26/2021

Shanthi Gonzales
President, Board of Education



8/26/2021

Dr. Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to Form

Deputy General Counsel

NUTRITION SERVICES FOOD CONTRACT

This Agreement is entered into by and between Oakland Unified School District ("OUSD") and Revolution Foods, Inc., (Contractor), (collectively, the "Parties").

Recitals

WHEREAS, it is not within the capacity of the District to prepare specified meals and deliver them all under the Child and Adult Care Food Program ("CACFP") for enrolled participants;

WHEREAS, the District is authorized to contract with and employ any persons for the furnishing of special and professional nutrition services and advice if those persons are specially trained and experienced and competent to perform the services required;

WHEREAS, the District is in need of such nutrition services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by the District;

WHEREAS, the Contractor is willing to provide such services to the District on a cost reimbursement basis;

WHEREAS, the Contractor agrees to perform the nutrition services described in this Agreement in accordance with the standards of its profession, to the District's satisfaction and in accordance with this Agreement.

NOW THEREFORE, for good and valuable consideration,

1. DEFINITIONS

- a. "District" and "OUSD" each mean the Oakland Unified School District.
- b. "Contractor" or "Vendor" means Revolution Food Inc.
- c. "Purchaser" means a representative of the District's Nutrition Services Department.
- d. "Parties" means the District and Contractor together, and "Party" means either the District or the Contractor in the singular and depending upon the context in which the term is used.
- e. "Contract" "Agreement" and "Purchase Agreement" shall each mean this Agreement entered into between the District and the Contractor.
- f. "Unit" means complete supper meals, inclusive of milk, prepared and delivered, by Contractor.

2. TERM; EFFECTIVE DATE; AMOUNT OF AGREEMENT

- a. The term of this Agreement shall be for August 26, 2021 through December 31, 2021, unless terminated earlier pursuant to Section 15 (Termination).
- b. Notwithstanding the foregoing, this Agreement shall be effective only upon execution of this Agreement by the duly authorized representatives of the Parties. The District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Governing Board.
- c. The dollar amount of this Agreement shall not exceed Two Hundred Forty Five Thousand Dollars (\$245,000). This Agreement is subject to the budget and fiscal policies, regulations, and practices of the District, and approval and appropriation of funds for this Agreement. The District's obligation hereunder shall not, without District's written approval, at any time exceed the amount herein stated.

3. PAYMENT FOR PRODUCTS AND SERVICES PROVIDED

- a. The District agrees to pay the per unit meal price of \$2.85 per supper. Prices must be firm.
- b. Payment to the Contractor by the District shall be net sixty (60) days pursuant to this Agreement, and after receipt of properly documented invoices. Invoices submitted by Contractor must be in an invoicing form acceptable to the District pursuant to Section 33 ("Invoicing").

4. ESTIMATED USAGE. Quantities are not guaranteed by the District. Any estimated quantities are approximate only. Provision of the products hereunder shall be required as ordered and at the times required herein during the term of this Agreement. The District does not guarantee a minimum of orders nor shall the District be required to limit its orders (except that the District shall not exceed the funds appropriated, unless approved by the District). Contractor shall allow unlimited orders within the term of the Agreement at the price listed in Section 3.a. District reserves the right to make purchases of products from other than Contractor when District determines that such products are immediately needed.

The District estimates that Contractor will provide approximately 5,000 prepared suppers per school day as specified by the District 2021-2022 school year calendar. Contractor will deliver approximately 1,500 meals per school day directly to participant addresses. Delivery addresses will be provided by the District to the Contractor. Contractor will deliver a total of approximately 2,500 meals per school day to District facilities. Deliveries shall be made to the District facilities listed in Exhibit A in quantities per site as identified by the District. The District reserves the right to purchase more or less of the units specified. The District does not guarantee minimum compensation to be paid to Contractor.

5. PRODUCT SUBSTITUTION. Contractor may not supply substitutions, brand changes, or reformulations of products without the written authorization by the District. If during the course of this Agreement there is a manufacturer's brand change or reformulation of the product, the vendor shall not automatically substitute the product. The vendor shall submit a Child Nutrition Label and/or product specification sheet, Product Formulation Statement, Nutrition Facts, Ingredient

Lists, and/or other pertinent product information as deemed by the District for approval prior to further shipment. The District shall be the sole judge of whether the product(s) are acceptable.

6. QUANTITY AND QUALITY OF MATERIALS AND SERVICES. Contractor shall furnish and deliver the units and services designated by this Agreement. Contractor shall assure that each meal/unit provided under this Agreement meets the minimum requirements as to the nutritional content as specified by the Child and Adult Care Food Program consistent with Title 7 of the Code of Federal Regulations, Section 226.20. All materials, supplies or services furnished under the Agreement shall be in accordance with the District specifications, the District sample, or the sample furnished by the Contractor and accepted by the District. Materials or supplies which, in the opinion of the District, are not in accordance and conformity with the District's specifications shall be rejected and removed from the District's premises at Contractor's expense. All items of equipment and individual components, where applicable standards have been established shall be listed by the Underwriter Laboratories, Inc., (UL) label.

Contractor shall provide to the District, for approval, a proposed supper menu for each month during the term of this Agreement. Any changes to the menu made after District approval must be agreed upon by the District and documented on the menu records.

7. PAYMENT DOES NOT IMPLY ACCEPTANCE OF PRODUCTS. No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory products/food/units, if the unsatisfactory character of such products/food/units was not detected at the time of payment. Service, products, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

8. BUY AMERICAN. Contractor agrees to comply with California Public Contract Code section 3410 and Title 7, Code of Federal Regulations 210.21(d) and a preference to U.S. Grown processed foods, produce, etc. shall be provided when economically feasible.

9. DISALLOWANCE. If Contractor claims or receives payment from the District for a service that is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to the District upon the District's request. At its option, the District may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement.

10. FOOD SAFETY. Contractor shall comply with all Federal, State, and local mandates regarding food safety and Contractor is expected to have adequate controls in place to ensure the safety of the food provided. Contractor shall provide the District with a copy of current health certifications for the food service facility in which it prepares meals for delivery under this Agreement.

11. TAXES. The District is exempt from Federal excise tax except on articles for resale. Contractor will enter State and local sales or use tax, and excise tax if applicable on invoices, but neither should be included in any invoice presented for payment. Payment of any taxes, including California Sales and Use Taxes, levied upon this Contract, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor and at no additional cost to the District.

12. FORCE MAJEURE CLAUSE. The Contractor will be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by an act of God,

fire, strike, or commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence thereof is presented, provided that the non-performance is not due to the fault or neglect of the Contractor.

13. INSURANCE.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, prior to award, Contractor shall procure and maintain during the full term of this Agreement, at the Contractor's expense, insurance acceptable to the District and as follows:

i. Comprehensive General Liability Insurance for Combined Single Limit for Bodily Injury and/or Property Damage of not less than \$1,000,000 (one million dollars) per occurrence and \$5,000,000 aggregate.

ii. Automobile Liability Insurance with limits not less than \$250,000 per person and \$500,000 per occurrence for bodily injury liability and \$100,000 for property damage liability is required on each vehicle owned, non-owned, or hired to be used in conjunction with the awarded contract.

iii. Workers' Compensation Insurance, with Employer's Liability in such amounts as required by law.

b. Commercial General Liability and Business Automobile Liability policies must provide the following:

- i. Name as Additional Insured "The Oakland Unified School District, its Board, officers and employees.
- ii. That such policies are primary insurance to any other insurance available the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.

c. All policies shall provide thirty (30) days advance written notice to the District of cancellation, nonrenewal or reduction in coverage to the following office:

Oakland Unified School District
Attn: Risk Management
1000 Broadway, Suite 440
Oakland, CA 94607

d. If any policies are written on a claims-made form, Contractor agrees to maintain such coverage continuously throughout the term of this Agreement and, without lapse, for the period of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must provide the District with the certificates of insurance, an endorsement showing the additional insured policy, all with insurers satisfactory to the District, evidencing all coverage set forth above, and shall furnish complete copies of policies promptly upon the District's request. Contractor also understands and agrees that the District may withhold payment for products/services performed for any violations of the insurance provisions of this Agreement.

h. Approval of the insurance by the District shall not relieve or decrease the liability of Contractor hereunder.

14. **CONTRACTOR DEFAULT; REMEDIES.** If the Contractor fails to fulfill its obligations under this Contract, such failure shall constitute an event of default. On or after any event of default, District shall have the right to exercise its legal and equitable remedies, including without limitation, the right to: (a) seek specific performance of all or any part of this Contract, (a) terminate this Contract at no cost to District in accordance with Section 14 ("Termination") herein; or (c) exercise any other legal or equitable remedy. In addition, District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any event of default. Contractor shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Contractor under this Contract or any other contract between District and Contractor all damages, losses, costs or expenses incurred by District as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract between District and Contractor. Any such offset by District will not constitute a waiver of any other remedies the District may have against Contractor for financial injury or otherwise. All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

15. **TERMINATION.**

a. In the event of Contractor default pursuant to Section 14 ("Contractor Default; Remedies") of this Contract, wherein Contractor fails to perform any of its obligations under this Contract, in addition to any other remedies available to the District, the District through the Purchaser may terminate this Agreement, and all of the Contractor's rights hereunder ended. Termination shall be effective thirty (30) days after Contractor's receipt of written notice of termination from the District delivered pursuant to Section 24 ("Notice to the Parties"). No new work will be undertaken, and no new deliveries will be made, as of the effective date of termination. In the event of termination for cause, the Contractor shall be paid for those services performed under this Contract to the satisfaction of the District up to the effective date of the termination. However, pursuant to Section 14 ("Contractor Default; Remedies") herein, District may offset from any such amounts due

Contractor any costs to District arising from Contractor's default and may otherwise demand payment from Contractor of such costs.

b. The District may terminate this Contract prior to expiration of the term without cause and without penalty, in whole or in part for District's convenience and without cause at any time by giving Contractor thirty (30) days written notice of such termination. The notice shall specify the date on which termination shall become effective. In no case shall the termination become effective in fewer than thirty (30) days from the date that the notice is deemed received pursuant to Section 24 ("Notice to the Parties"). The District reserves the right to immediately terminate the awarded contract if the circumstances are detrimental to the health and welfare of the students and/or school personnel, the quality of services are seriously affected, or the vender ceases operations.

In event of termination for convenience, Contractor will be paid for those services performed, or deliveries made, pursuant to this Contract and to satisfaction of District up to the specified date of termination. In no event will District be liable for costs incurred by Contractor after the specified date termination. Such non recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, or any other costs which is not reasonable or authorized under this Section.

c. With mutual agreement of both Parties, this Contract may be terminated by giving not less than thirty (30) days written notice of such termination.

16. INDEMNIFICATION.

Contractor shall indemnify and hold harmless the District, its Board, officers, employees, agents from every claim or demand which may be made by reason of:

- a. Any injury to person or property sustained by the supplier or by a person, firm, or corporation employed directly or indirectly by him, in connection with his performance under the order.
- b. Any injury to person or property sustained by any person, firm, or corporation caused by any act of neglect, default, or omission of the supplied or of any person, firm or corporation employed directly or indirectly employed by him in connection with his performance under the purchase order.
- c. Any liability that may arise from the furnishing of the use of any copyrighted or uncopyrighted composition, secret process, or patented, or unpatented invention in connection with his performance under the order.
- d. Failure to comply with the criminal background check requirements of Education Code section 45125.1 and/or disclosure of confidential information which might be obtained by the Contractor or Contractor's agents in the performance of this Agreement.

17. LIABILITY OF DISTRICT. District's payment obligations under this Agreement shall be limited to the payment of the compensation provided under this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages,

including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

18. INDEPENDENT CONTRACTOR. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required by District under this Contract. Contractor or any agent or employee of Contractor shall not have employee status with the District, nor be entitled to participate in any plans, arrangements, or distributions by District pertaining to or in connection with any retirement, health, or other benefits that District may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including but not limited to, FICA, income tax withholdings, unemployment compensation, insurance and other similar responsibilities related to Contractor's performing services and work, or any agents or employee of Contractor providing same. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or any agent or employee of Contractor. Any terms in this Contract referring to direction from District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount of compensation specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.

19. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES. Pursuant to Government Code section 12650 et. seq., any person, including a Contractor, or subcontractor who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for civil penalty up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if the person:

- a. knowingly presents or causes to be presented to an officer or employee of the District, a false claim for payment or approval;
- b. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District;
- c. conspires to defraud the District by getting a false claim allowed or paid by the District;
- d. has possession, custody, or control of public property or money used or to be used by the District and knowingly delivers or causes to be delivered less property than the amount for which the person received a certificate or receipt;
- e. is authorized to make or deliver a document certifying receipt of property used or to be used by the District and knowingly makes or delivers a receipt that falsely represents

the property used or to be used by the District and falsely represents the property used or to be used;

f. knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

g. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or

h. is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

20. ENTIRE CONTRACT; SEVERABILITY. All of the agreements between the Parties are included in the Agreement and Contractor's attached proposal. No warranties, expressed or implied, representations, promises or statements have been made by either Party except as expressly provided. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of the other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

21. MODIFICATION OF AGREEMENT.

a. No oral statement of any person whosoever shall in any manner or degree modify, alter, or otherwise affect the terms of this Agreement.

b. The District reserves the right to modify the awarded contract by mutual agreement so long as such modification would not result in a material change to the solicitation an awarded contract. Such modifications will be evidenced by the issuance of a written authorized amendment by the District.

22. CHOICE OF LAW/VENUE. This Agreement shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

23. SUSPENSION AND DEBARMENT CERTIFICATION. Through its execution of this Agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals 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/>). Contractor shall submit with the Agreement a completed Suspension and Debarment Certification.

24. NOTICE TO THE PARTIES. District and Contractor understand and agree that notice to the Parties shall be as follows:

a. Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in

person, by sending it via first class mail or certified mail with a return receipt requested, or via nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefore, with postage prepaid, addressed as in Subsection D of this Section, below.

b. Notices herein shall be deemed to have been received two (2) business days after the date when they shall have been mailed if sent by first class mail, certified mail or overnight courier, or upon the date personal delivery is made.

c. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

d. Notice to the Parties shall be addressed as follows (or such alternative address as may be provided in writing):

NOTICE TO THE DISTRICT:

Nutrition Services Department

Attn: Carmelita Reyes

2850 West Street

Oakland, CA 94608

EMAIL ADDRESS: carmelita.reyes@ousd.org

NOTICE TO THE CONTRACTOR:

Revolution Foods

James Lee

985 3rd Street

Oakland, CA 94607

(415) 420-6271

EMAIL ADDRESS: jlee@revolutionfoods.com

25. NON-DISCRIMINATION. The District is committed to providing equal opportunity for all individuals. Contractor understands and agrees that in providing services to the District, it is Contractor's obligation to comply with District Board Policy 0410 – Nondiscrimination in District Programs and Activities.

26. CIVIL RIGHTS ASSURANCES. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from

discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form.

To request a copy of the complaint form, call (866) 632-9992.
Submit your completed form or letter to USDA by:

(1) Mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

(2) Fax: (202) 690-7442; or

(3) Email: program.intake@usda.gov.

This institution is an equal opportunity provider.

27. CLEAN AIR ACT. 42 U.S.C. 7401-7671q and the Federal Water Pollution Control Act 33 U.S.C. 1251-1387, as amended – Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulation issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended 33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

28. BYRD ANTI-LOBBYING AMENDMENT. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee or any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

29. DRUG-FREE WORKPLACE. Contractor acknowledges that pursuant to the Drug-Free Workplace Act the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Any violation of this prohibition by the Contractor, its employees, agents, or assigns shall be deemed a material breach of contract.

30. FERPA. Contractor understands and agrees that, in connection with this Agreement, the Contractor may have access to proprietary and/or confidential information which may be owned or controlled by the District, the disclosure of which to third parties may be damaging to the District, its employees or students. Contractor understands and agrees that the disclosure of such information may violate State and/or federal law and may subject the Contractor to civil liability. Contractor agrees that all information disclosed by the District to the Contractor shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall comply with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code 49073. Contractor is prohibited from accessing or using confidential student information under this Agreement unless it first obtains prior written parental consent, or an exception to federal and state privacy laws otherwise permits access to confidential student information applies. Even if access is permitted, Contractor will not use confidential student data for any purpose other than providing services to the District pursuant to this Agreement. Contractor shall not re-disclose confidential student information to any third party without the prior written consent of the District and any such re-disclosure shall be consistent with State and federal law.

31. TESTING AND SCREENING.

- a. Tuberculosis Screening. Contractor is required to screen employees who will be working at District sites for more than six hours. Contractor agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, Contractor's agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she/they is/are free of infectious tuberculosis. If the results of the examination are positive, Contractor shall obtain an x-ray of the lungs. Contractor, at its discretion, may choose to submit the agent to the examination instead of the risk assessment. Contractor shall maintain on file documents confirming that Contractor's employees/agents received a TB test or TB assessment that complies with the requirements of Education Code section 49406. These documents shall be available to the District upon request or audit.
- b. Fingerprinting/Criminal Background Investigation. If Contractor or any of its employees, agents, or volunteers will have more than limited contact with District students, Contractor is required to fingerprint and conduct a criminal background investigation in accordance with Education Code section 45125.1. Contractor must conduct criminal background checks through the California Department of Justice (CDOJ), including both CDOJ and Federal Bureau of Investigation background checks and must obtain subsequent arrest notification for all Contractor employees, agents, and volunteers who will have more than limited contact with District pupils pursuant to this Agreement. It is the Contractor's sole responsibility to comply with CDOJ fingerprint, criminal background investigation requirements, subsequent arrest notification requirements, and maintain compliance throughout the duration of this Agreement.

Through its execution of this Agreement, Contractor certifies its compliance with these provisions as follows:

Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor's

employees, subcontractors, agents, and subcontractors' employees or agents ("Workers") regardless of whether those Workers are paid or unpaid, concurrently employed by District, or acting as independent contractors of Contractor, who may have contact with District pupils in the course of providing Services pursuant to this Agreement, and the California Department of Justice has determined that none of those Workers has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor has also received and reviewed fingerprint results for each Worker and Contractor has requested and reviewed subsequent arrest records for all Workers who may come into contact with District pupils in providing services to District under this Agreement.

Notwithstanding this certification, Contractor agrees to immediately remove or cause the removal of any employee, representative, agent, or person under Contractor's control person from District property upon receiving notice from District of such desire. District is not required to provide Contractor with a basis or explanation for the removal request.

32. DELIVERIES TO DISTRICT. Food items should be clearly labeled. The Contractor shall be responsible for delivery to all locations designated by the District (F.O.B. Destination). The number and location of delivery sites is subject to change. The District will provide Contractor with a schedule of deliveries. The Contractor shall furnish all labor, materials, costs incurred and equipment necessary for the delivery of items specified herein to the District's facilities on a scheduled basis. All work shall be performed in a thorough and workman-like manner under the administration of, and to the approval of the District. Two copies of an itemized delivery form will be left with the site representative. Shortages, damaged and unacceptable items will be noted on the delivery slip. Items not accepted must not be billed to the District. The District reserves the right to reject any product. The Contractor shall notify SNS at least 72 hours prior to the regular delivery of any unfilled order to allow sufficient time to order a substitute item. Emergency next day deliveries may occasionally be required.

33. INVOICES. Invoices shall be provided upon delivery of materials or services performed. Quantities, item descriptions, unit prices, date and delivery site name must be on all invoices. Payment terms shall be net sixty (60) days. The person receiving the material must sign the invoice. The District shall make payment for materials, supplies, or services furnished under the Agreement within a reasonable and proper time after acceptance thereof and approval of invoices by the authorized District representative.

The invoices shall contain the following; purchase order number, site location, date, item number, SNS item number, description, commodity designation, quantity, price and extended totals. Failure to provide the above information may result in delay of payment.

Invoices shall be matched to SNS purchase order by item, quantities and case price. For any invoice that does not match, SNS will correct the invoice based on the receiving documents at time of delivery.

Contractor shall issue credits for products that do not meet the District's standards such as: Product shortage upon delivery; product quality; food safety and/or sanitation.

34. ASSIGNMENT. It is understood and agreed that the services to be performed by the Contractor under this Agreement, the duties and obligations hereunder shall not be assigned or delegated by the Contractor without the prior consent of the District.

35. SUBCONTRACTING. Contractor shall not subcontract the entirety of or a majority of, the services to be provided under this Agreement. Contractor is permitted to enter into subcontracts in the performance of a minor portion of this Agreement with the prior written consent of the District. If Contractor will subcontract a minor portion of this Agreement, Contractor shall comply with the provisions of this Agreement and ensure that its subcontractor shall comply with all applicable requirements of this Agreement. Contractor is prohibited from subcontracting this Agreement or any portion of this Agreement with the prior written consent of the District. Contractor remains responsible for the fulfillment of all obligations and requirements under this Agreement.

36. WAIVER. District or Contractor's waiver of any term, condition, covenant or waiver of a breach of any term, condition, or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

37. NON-WAIVER OF RIGHTS. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, not shall it in any way effect the right of the party to enforce such provisions thereafter.

38. ALLOWABLE COSTS. The costs incurred by Student Nutrition Services for the benefit of school children are deemed allowable within the National School Lunch Program. Allowable cost will be paid from the nonprofit school food service account to the Contractor net of all discounts, rebates and other applicable credits accruing to or received by the Contractor or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority. (7 CFR 210.21(f)(i)). The Contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or that the Contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. (7 CFR 210.21(f)(A)(B)).

39. DOCUMENTATION. Any and all documents, books, records, invoices, and/or quotations of District's purchases shall be made available, upon demand, in an easily accessible manner for a period of at least five (5) years from the end of the contract term (including renewals) to which they pertain and after all other pending matters are closed, for audit, examination, excerpts and transcriptions by the District, State, and Federal representatives and auditors in accordance with Federal regulations. Contractor must ensure that any such records held by a subcontractor are likewise subject to these provisions.

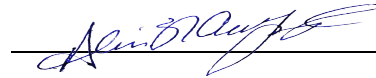
The District may require written documentation of those items, which are covered by the Child Nutrition Program. Additional information may be required, and must be provided, upon request by the District, regarding the National Labeling and Education Act (NLEA) of 1990.

40. DISPUTE RESOLUTION. Prior to any action to resort to any legal remedy, District and Contractor agree to exercise reasonable efforts and to negotiate in good faith to resolve to the satisfaction of the Parties any dispute that may arise concerning the performance by either Party of its obligations under this Agreement.

REVOLUTION FOODS, INC.

Alvin Crawford
Chief Revenue Officer

Printed Name and Title



Signature

08/19/2021

Date

OAKLAND UNIFIED SCHOOL DISTRICT



Preston Thomas
Chief Systems and Services Officer

8/20/2021

Date

APPROVAL BY OUSD BOARD OF EDUCATION



8/26/2021

Shanthi Gonzales
President, Board of Education



8/26/2021

Dr. Kyla Johnson-Trammell
Superintendent and Secretary,
Board of Education

Approved as to Form:



Andrea Epps, Deputy General Counsel

August 20, 2021

Date

EXHIBIT A

	SCHOOL SITE	DELIVERY ADDRESS
1	Stonehurst Campus (Korematsu/Esperanza)	10315 E Street, Oakland, CA 94603
2	Elmhurst United Middle School	1800 98 th Avenue, Oakland, CA 94603
3	New Highland Academy Campus	8521 A Street, Oakland, CA 94621
4	Woodland Campus (Acorn Woodland/Encompass Academy)	1025 81 st Avenue, Oakland, CA 94621
5	Havenscourt Campus (Coliseum College Prep Academy)	1390 66 th Avenue, Oakland, CA 94621
6	Greenleaf Elementary School	6328 East 17 th Street, Oakland, CA 94621
7	Calvin Simmons Campus (Life Academy/United for Success Academy)	2101 35 th Avenue, Oakland, CA 94601
8	Cesar Chavez Campus (Think College Now/United for Success Academy)	2825 International Blvd., Oakland, CA 94601
9	Roosevelt Middle School	1926 19 th Street, Oakland, CA 94606
10	Manzanita Campus	2409 East 27 th Street, Oakland, CA 94601
11	Central Kitchen	2850 West Street, Oakland, CA 94608