

VENDED MEALS AGREEMENT

This Agreement (“Agreement”) is entered into by and between East Bay Innovation Academy (“School Food Authority” or “SFA”), and Revolution Foods, Inc. (“Vendor”).

The effective date of this Agreement is August 1, 2019.

This Agreement sets forth the terms and conditions upon which SFA retains Vendor to provide meals for SFA’s nonprofit and a la carte food service program. Furthermore, this Agreement sets forth the terms and conditions upon which SFA will purchase meals from Vendor, and Vendor will provide meals for SFA’s nonprofit food service program. SFA and Vendor agree to abide by the rules and regulations governing the Child Nutrition Programs, in accordance with federal regulations including policy and instructions issued by the United States Department of Agriculture (USDA). The applicable regulations are 7 CFR 210 (National School Lunch Program, NSLP), 7 CFR 220 (School Breakfast Program, SBP), 7 CFR 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk), and 7 CFR 3052 (Audit Requirements).

SFA Account Contact Information		Vendor Account Contact Information	
Contact Person	Bonita Herrera	Contact Person	Nicole Callis
Phone	510-577-9557	Phone	510-912-3488
Email Address	bherrera@eastbayia.org	Email Address	ncallis@revolutionfoods.com
Address	3800 Mountain Blvd. Oakland, CA 94619	Address	2400 Grant Street San Lorenzo, CA 94580

SFA Contract Contact Information		Vendor Contract Contact Information	
Contact Person	Bonita Herrera	Contact Person	Joyce Huang
Phone	510-577-9557	Phone	510-545-4196
Email Address	bherrera@eastbayia.org	Email Address	jhuang@revolutionfoods.com
Address	3800 Mountain Blvd. Oakland, CA 94619	Address	985 Third Street Oakland, CA 94607

The fixed price per meal listed below is agreed upon by both parties as if no USDA Foods are used:

Meal (inclusive of milk)	# of Full Serving Days	Average Minimum # of Meals per Day	Price per Meal
SBP Breakfast, cold unitized	--	--	\$1.88
NSLP Lunch	177	100	\$3.37
Adult Lunch Meal	--	--	\$4.25 + tax

Total estimated contract not to exceed \$65,000.00.

Financial terms of the Agreement are based upon existing conditions of the SFA’s policies, practices and service requirements. Changes may result in an adjustment through a formal contract revision or addendum, as mutually agreed to by the parties in writing. A material change will constitute rebidding.

A. Agreement Period

1. The initial agreement period shall be August 1, 2019 to July 31, 2020. Both parties agree to enter into this Agreement for a one-year period with the option to renew the Agreement for up to four (4) additional one-year periods by mutual agreement of SFA and Vendor. Renewal shall be based on customer satisfaction with products, service, and price.

2. **Annual Escalator.** The SFA and Vendor may negotiate at the end of each one-year contract period for a cost increase not to exceed the annual percentage increase in the Consumer Price Index for all Urban Consumers for Food Away From Home for the region of San Francisco, as published by the U.S. Department of Labor, Bureau of Labor Statistics. Any proposed per-meal price changes must be accompanied by documentation supporting such increase. Changes in the price per meal are mutually agreed upon in writing, to be effective on the first day of the contract renewal period.

B. Vendor Responsibilities

1. Deliver meals to the approved sites listed in Exhibit A.
2. Provide in sufficient quantity for number of meals ordered:
 - Entrées and vegetables will be provided in individually packaged portions
 - Sides including fruits will be provided in bulk
 - White milk, choice of 1% or nonfat
 - Chocolate milk, nonfat, offered one (1) day per week for lunch only
 - Utensils
 - Napkins
 - Serving utensils as needed
 - Paper trays for lunch service
 - Condiments as designed with the meal
3. Maintain, on a daily basis, an accurate count of the number of meals, by meal type, prepared for and delivered to SFA. Meal count documentation must include the number of meals requested by SFA.
4. Allow SFA to increase or decrease the number of meal orders, within reason, when the request is made within two (2) business days of the scheduled delivery time. The order decrease shall not exceed 50% of the original order. Fees may apply as listed in Exhibit B.
5. Provide SFA with a copy of all permits and licenses required by California law for the food service facility in which it prepares meals for the applicable Child Nutrition Programs. Vendor shall ensure that all health and sanitation requirements of the California Retail Food Code are met at all times.
6. Operate in accordance with current Child Nutrition Program regulations. Vendor agrees to comply with all USDA regulations regarding food service vendors including those specified for commercial food service if applicable.
7. Provide access, with or without notice, to all of Vendor's facilities for purposes of inspection and audit.
8. Not subcontract for the total meal, with or without milk, or for the assembly of the meal.

C. SFA Responsibilities

1. Request via Vendor's web portal no later than Tuesday at 5:00 PM of the week prior, an accurate number of meals to be delivered to SFA each day for the following week.
2. Notify Vendor of necessary increases/decreases in the number of meals ordered within two (2) business days of the scheduled delivery time. Errors in meal orders shall be the responsibility of SFA making the error. Fees may apply as listed in Exhibit B.
3. Ensure that an SFA representative is available at each site, at the specified time on each specified day to receive, inspect, and sign for the requested number of meals. This individual will verify the temperature, quality, and quantity of each meal delivered to SFA. SFA assures Vendor that this individual will be trained and knowledgeable in the record keeping and meal requirements of the Child Nutrition Programs, and with local health and safety codes.
4. Provide personnel to serve meals, clean the serving and eating areas, and assemble transport carts each day.
5. Prepare auxiliary items for pick up by Vendor (if applicable) no later than each day.
6. Provide Vendor with information on how to access or a copy of the federal Child Nutrition Program meal pattern requirements, the USDA Food Buying Guide, and all other technical assistance materials

pertaining to the food service requirements. The SFA will, within twenty-four (24) hours of receipt from the California Department of Education (CDE), advise Vendor of any changes in the food service requirements.

7. Retain control of the quality, extent, and general nature of the food service operation, and establish all program and non-program meal and a la carte prices.
8. Be responsible for loss or damage to equipment owned by Vendor while in the possession of SFA.
9. Submit a signed copy of the annual renewal amendment to the CDE prior to approval of SFA online contract for participation in Child Nutrition Programs.

D. Menu

1. Vendor shall provide to SFA a proposed cycle menu for the operational period, at least ten (10) business days prior to the beginning of the period to which the menu applies. Any changes to the menu made after SFA approval must be approved by SFA, and documented on the menu records. Meals must be planned and prepared to meet the USDA meal pattern requirements and nutritional standards.
2. Vendor shall provide breakfast and lunch meals following Offer vs. Serve (OVS). Fruits and vegetables provided during lunch service are intended to be consumed during the specified meal and shall not be used for other programs and activities.
3. Vendor shall provide meal preparation documentation by using yield factors for each food item as listed in the USDA Food Buying Guide, child nutrition label, or manufacturers' product information statement when calculating and recording the quantity of food prepared for each meal.
4. Vendor shall maintain full and accurate records that document: (a.) the menus were provided to SFA during the term of this Agreement, (b.) a listing of all components of each meal, (c.) an itemization of the quantities of each component used to prepare said meal, and (d.) provide SFA with daily production/transport sheets indicating how menu items contribute to meal pattern requirements and supporting documentation for contribution.
5. Vendor accommodates special needs only regarding food allergies resulting from the eight (8) major allergens as defined by the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA): dairy, soy, peanut, tree nut, fish, shellfish, egg, and wheat. Vendor is not capable of modifying texture, providing items outside of those sourced by Vendor (i.e. nutritional supplements), or changing the nutritional profile of individual menu items or foods to meet any of the needs associated with disabilities. These types of accommodation must be addressed by the SFA. As mutually agreed upon, there may be an additional charge for meal accommodations outside the vegetarian and dairy-free meal alternatives. There will be no additional charge to the student for such substitutions.
6. Vendor shall make substitutions in the food components of the meal pattern for students with disabilities when the disability is certified by a signed statement from a licensed physician, and within the major allergens listed in paragraph (4) above. For nondisabled students who are unable to consume regular meals because of medical or other special dietary need, substitutions shall be made on a case-by-case basis when supported by a signed statement from a medical doctor or recognized medical authority, or in the case of a request for a milk substitution, by a medical authority or a parent. There will be no additional charge to the student for such substitutions.
7. SFA shall notify Vendor within five (5) business days of receipt of the next month's proposed cycle menu of any changes, additions, or deletions.

E. Invoice and Payment

1. Vendor shall present to SFA an invoice accompanied by reports which itemizes the previous month's meals delivered to SFA no later than the 10th day of each month.
2. SFA shall pay Vendor by the 30th day of each month the full amount as presented on the monthly itemized invoice or be subject to 1.5% interest for each day that payment is not received.
3. SFA shall pay Vendor for all meals delivered to SFA in accordance with this Agreement.
4. SFA shall notify Vendor within forty-eight (48) hours of receipt of any discrepancy in the invoice.

5. Vendor agrees to forfeit payment for meals which are not ready within two (2) hours of the agreed upon time for meals to be delivered to SFA, are spoiled, or unwholesome at the time of delivery to SFA, or do not otherwise meet the meal requirements contained in this Agreement. However, no deduction will be made unless SFA provides to Vendor in writing of the meal service for which the deduction is to be made, specifying the number of meals for which SFA intends to deduct payment and setting forth the reasons for the deduction. SFA shall provide such notice no later than forty-eight (48) hours after the date the meal was served. SFA shall keep evidence of food items for inspection by Vendor. Credit from Vendor may be withheld without proper evidence.
6. Vendor shall pay SFA the full amount of any meal over claims which are attributable to Vendor's negligence, including those over claims based on reviews or audit findings that occurred during the effective dates of original and renewal of the awarded contract. In cases of nonperformance or noncompliance on the part of Vendor, Vendor shall pay SFA for any excess costs SFA incurs by obtaining meals from another source.
7. Neither CDE nor USDA assumes any liability for payment of the difference between the number of meals prepared, delivered and the number of meals served by SFA that are ineligible for reimbursement.

F. Termination

1. **Mutual Agreement Termination.** With mutual agreement of both parties to this Agreement, upon receipt and acceptance not less than sixty (60) days of written notice, this Agreement may be terminated on an agreed upon date before the end of the agreement period without penalty to either party.
2. **Non-Performance of Agreement and Termination**
 - a. Except as may be otherwise provided by this Agreement, this Agreement may be terminated in whole or in part by either party in the event of failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party.
 - b. The SFA may terminate this Agreement immediately upon written notice to Vendor if Vendor becomes the subject of a proceeding under state or federal law for the relief of debtors or if an assignment is made for the benefit of creditors, or if Vendor loses its license or other ability to provide the required products and services, or if Vendor takes any action that violates any applicable laws.
 - c. Any agreement termination resulting from any cause other than a Force Majeure event or termination for non-appropriations will be deemed valid reason for not considering any future proposal or bid from the defaulting Vendor.
3. **Failure to Make Timely Payment.** In the event that SFA fails to make payments to Vendor under the terms and conditions of this Agreement within the times set forth herein, Vendor may suspend or terminate this Agreement upon ten (10) business days written notice to SFA if payment exceeds net 60 days from time that regular monthly invoice is provided to SFA; unless SFA makes such payments plus any interest due, as set forth in Section E.2, within said ten (10) day notice period. SFA shall be entitled to only one (1) such cure period in a calendar year. For a second failure to make payment on time, Vendor shall have the right to terminate this Agreement immediately.
4. **Final Payments.** Upon any termination of this Agreement, SFA will pay for all meals and unpaid invoices received through the effective date of termination. Vendor shall submit all required invoices and agreed upon relevant reports and information.
5. **Equipment Return.** SFA shall return all equipment owned by Vendor immediately upon stoppage of service.

G. Standard Terms and Conditions

1. **Terms and Conditions.** Vendor shall be fully acquainted with terms and conditions relating to the performance of this Agreement. Failure or omission of Vendor to be familiar with existing conditions shall in no way relieve Vendor of obligation with respect to this agreement.
2. **State and Federally Required Contractual Provisions.** Vendor shall obtain, and shall continue to maintain during the entire term of this Agreement, all permits, approvals or licenses necessary for lawful performance of its obligations under this Agreement. In addition, Vendor shall be responsible to abide by all applicable federal and state laws and policies of CDE and state and local boards of education, as applicable, when providing services under this Agreement.
3. **Not Debarred, Suspended, Proposed for Debarment, Declared Ineligible, or Voluntarily Excluded.** Vendor certifies that neither the company nor any of its principals has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency. Vendor should consult Executive Orders 12549 and 12689. Vendor must sign the Suspension and Debarment Certification.
4. **Lobbying Certification.** Vendor must sign the Lobbying Certification. If applicable, Vendor must also complete and sign the Standard Form-LLL, Disclosure of Lobbying Activities
5. **Independent Price Determination Certification.** Vendor must sign the Independent Price Determination Certificate.
6. **Clean Air Act and Energy Policy and Conservation Act.** Vendor shall comply with Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), as applicable, as well as the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 871 , and any related state energy laws, as applicable. Vendor shall report all violations to SFA and to the relevant federal or state agency as appropriate.
7. **Equal Employment Opportunity.** Vendor shall comply with E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR Part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
8. **Labor and Civil Rights Laws.** Vendor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with Vendor's performance of work under this Agreement, Vendor agrees not to discriminate against any employee(s) or applicant(s) for employment because of sex, age, race, color, religion, creed, sexual orientation, gender identity, national origin, or disability. Vendor shall also comply with applicable Civil Rights laws as amended including but not limited to Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-6, Civil Rights Compliance and Enforcement in School Nutrition Programs.
9. **Buy American**
 - a. Vendor shall comply with the Buy American requirement, which dictates that SFA's participating in the federal school meal programs are required to purchase domestic commodities and products for SFA meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially (at least 51 percent) using agricultural commodities that are produced in the U.S. (7 CFR 210.21(d), 220.16(d)).
 - b. Exceptions to the Buy American provision will be used as a last resort and are only allowable for one of the two exceptions: (1.)The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality, or (2.) Competitive bids reveal the costs of a

U.S. product are significantly higher than the nondomestic product. Vendor must document and inform SFA of exceptions to the Buy American requirement prior to delivery of each and every nondomestic agricultural commodity or product.

- c. The documented exception must include the following: (1.) A description of the nondomestic item, (2.) Alternative domestic commodities or products that Vendor offered and the reason alternatives were not substituted for the nondomestic item, (3.) A synopsis of what third-party analysis was done by Vendor to determine cost and availability, (4.) Documentation by vendor outlining the price of both domestic and nondomestic commodities or products or lack of availability to justify the exception, (5.) The date that Vendor informed SFA of the nondomestic commodity or product, (6.) Date that SFA agreed to accept this food item in advance of delivery, and (7.) Date the commodity or product was received by SFA.

10. Food Laws

- a. Vendor shall operate in accordance with all applicable laws, ordinances, regulations and rules of federal, state, and local authorities, including but not necessarily restricted to a Hazard Analysis and Critical Control Point (HACCP) plan. SFA may inspect Vendor's facilities and vehicles.
- b. SFA shall have state or local health certifications as needed for each of SFA's program sites and shall maintain certification for the duration of the Agreement.

- 11. Food Recall.** Vendor shall comply with all federal, state, and local mandates regarding the identification and recall of foods from the commercial and consumer marketplace. Vendor shall have a process in place to effectively respond to a food recall; the process must include accurate and timely communications to SFA and assurance that unsafe products are identified and removed from SFA sites in an expedient, effective, and efficient manner. Vendor shall maintain all paperwork required for immediate and proper notification of recalls for full and split cases.

- 12. Duty to Protect.** Vendors shall perform a criminal background check on any of Vendor's employees that will be working at SFA's premise(s) with prolonged interaction with children/students.

13. Records

- a. Vendor and SFA shall retain all required records for a period of three (3) years after SFA makes final payment and all other pending matters are closed included any ongoing audits or the end of the fiscal year to which they pertain, whichever is greater. Upon request, Vendor shall make all accounts and records pertaining to the Agreement available to the certified public accountant hired by SFA, CDE representatives, USDA, and the Office of Inspector General (OIG) for audits or administrative reviews at a reasonable time and place. Vendor shall surrender to SFA, upon termination of the Agreement and as applicable, all records pertaining to the operation of the food service, to include all production records, product invoices, claim documentation, financial reports, and procurement documentation. The records shall be in appropriate order, complete, and legible.
- b. SFA shall be responsible for notifying Vendor within three (3) business days of receiving any information from the State Agency of an audit, technical assistance or other action. SFA shall be responsible for forwarding the complete written notification from the governing entity so that Vendor is positioned to best support the requisition request.

14. Confidentiality and Rights in Data

- a. During the term of this Agreement, Vendor may grant to SFA a nonexclusive right to access certain proprietary materials of Vendor. SFA shall not disclose any of Vendor's trade secrets or other confidential information, directly or indirectly, during or after the term of the agreement. SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of Vendor. All trade secrets and other confidential information shall remain the exclusive property of Vendor and shall be returned to Vendor immediately upon termination of the agreement. SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by SFA, SFA specifically agrees that all software

associated with the operation of the service, including without limitation, menu systems, accounting systems, and other software, are owned by or licensed to Vendor and not SFA. Furthermore, SFA's access or use of such software shall not create any right, title interest, or copyright in such software and SFA shall not retain such software beyond the termination of the agreement. In the event of any breach of this provision, Vendor shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available.

- b. Unless otherwise required by law, subpoena or court order, SFA shall not disclose any of Vendor's trade secrets or other confidential information, directly or indirectly, during or after the term of the agreement. Unless otherwise required by law, subpoena or court order, SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of Vendor.
- c. As used in this Agreement, Vendor's "Confidential Information" shall mean any and all technical and non-technical information disclosed or provided to SFA by or on behalf of Vendor in written, oral or electronic form in connection with this Agreement. Confidential Information will include, without limitation trade secrets as defined by law, strategic and product development plans, sales and training methods, financial statements, products and/or services, pricing plans/data, business or commercialization plans, customer lists, project records, market data/reports, employee lists or compensation information, supplier and vendor lists, architectural reports, blueprints, marketing plans, existing and/or contemplated recipes/menus/food development strategies or plans, management and business manuals, forms, policies and procedures, ideas, studies not generally made available to the public.
- d. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure.
- e. Any discovery, invention, software, or programs paid for by SFA shall be the property of SFA.
- f. This provision shall survive termination of this Agreement.

15. **Insurance**

- a. Vendors shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in California. A certificate of insurance of Vendor's insurance coverage indicating these amounts must be submitted at the time of the award. Complete the information below based on Vendor's Certificate of Insurance:
 - 1. Comprehensive General Liability: \$1,000,000 per occurrence, and \$2,000,000 in the aggregate
 - 2. Automobile Liability: \$1,000,000 Combined Single Limit
 - 3. Workers' Compensation and Employer's Liability: per Statute and \$1,000,000
 - 4. Excess Umbrella Liability: \$2,000,000 Each Occurrence
- b. The SFA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella. Vendor must provide a waiver of subrogation in favor of SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.
- c. Vendor's insurance company shall provide notice to SFA of cancellation of insurance policies thirty (30) days before such cancellation is to take effect.

16. **Indemnity and Hold Harmless**

- a. Vendor shall defend, indemnify and hold harmless SFA, its directors, officers, employees, and agents from and against all liabilities, losses, damages, expenses, charges and fees (including reasonable attorney's fees) sustained or incurred by SFA in connection with claims arising out of or attributable to: (i) any breach of this Agreement by Vendor; (ii) any breach of applicable law or regulation by Vendor, or (iii) any negligence or willful misconduct by Vendor or its employees or contractors, as applicable, in the performance of this Agreement.
- b. SFA shall defend, indemnify and hold harmless Vendor, its directors, officers, employees, and agents from and against all liabilities, losses, damages, expenses, charges and fees (including reasonable

attorney's fees) sustained or incurred by Vendor in connection with claims arising out of or attributable to: (i) any breach of this Agreement by SFA; (ii) any breach of applicable law or regulation by SFA, or (iii) any negligence or willful misconduct by SFA or its employees or contractors, as applicable, in the performance of this Agreement.

- c. In the event any such claim for indemnification is made, or action initiated, the Party seeking indemnification hereunder (the "Indemnified Party") shall promptly notify the other Party (the "Indemnifying Party") in writing of such actual or threatened claim to enable the Indemnifying Party to arrange for the defense of such claim, provided, however that failure to give prompt written notice shall not limit the rights to indemnification hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure.
- d. Such indemnification obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligations to indemnify, which would otherwise exist as to any party or person.

17. Force Majeure

- a. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- b. SFA shall be fully responsible for meals delivered by Vendor and subsequently damaged by any of the causes listed in paragraph (a) above.
- c. If any of the above causes an inability for Vendor to deliver meals, SFA shall not be responsible for the cost of un-delivered meals. However, Vendor may suggest an alternative meal solution (e.g. delivery from a local sandwich shop), in which case, SFA shall be fully responsible for payment of the agreed upon alternate meal solution unless otherwise noted.

18. Breach of this Agreement and Remedies. If Vendor fails to comply with any of the terms and conditions of this Agreement, SFA has the option to send Vendor a ten (10) business day notice to cure the defect or breach. During such cure period, the parties may meet and confer to discuss the resolution of the defect or breach. If there is not a satisfactory resolution at the end of the cure period, SFA has the option to immediately cancel all or any part of the order. Such cancellation shall not be deemed a waiver by SFA of any rights or remedies for any breach by Vendor. SFA expressly reserves all rights and remedies provided by statute or common law in the event of such breach. Without limiting the foregoing, SFA may, at its option, require Vendor to repair or replace, at Vendor's expense, any products or goods, which caused the breach. The remedies of SFA is cumulative, and additional to any/or other further remedies provided by law. No waiver of any breach shall constitute a waiver of any other breach.

19. Taxes. The SFA has tax-exempt status.

H. General Assurances

1. Entire Agreement, Modification, and Amendment

- a. This Agreement constitutes the final, complete and exclusive agreement of the Parties with respect to the subject matter in it and supersedes all prior and contemporaneous agreements, communications, negotiations or understandings between the Parties with respect to the matters addressed in it.
- b. This Agreement is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this agreement shall be effective unless agreed to in writing by both parties in an amendment to this agreement that is properly executed and approved in accordance with applicable law.

2. **Waiver.** All waivers must be in writing and signed by the Party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
3. **Notices.** All notices permitted or required under this Agreement will be in writing and will be sent by email or personal delivery or reputable expedited delivery service with signature required. All such notices or reports will be deemed given upon receipt. Such notices shall be addressed to the Party concerned at the addresses set forth on page one of this Agreement.
4. **Assignment.** In the event all or substantially all of Vendor's assets are acquired by another company, Vendor shall notify SFA in writing. Within 30 days, SFA has the right to continue service under the guidance of the acquirer, or terminate the Agreement, effective immediately .
5. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a.) such provision shall be excluded from this Agreement, (b.) the balance of the Agreement shall be interpreted as if such provision were so excluded, and (c.) the balance of the Agreement shall be enforceable in accordance with its terms.
6. **Survival of Certain Terms.** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination or expiration date of the Agreement shall survive such termination or expiration date and shall be enforceable as provided herein.
7. **Choice of Law.** This Agreement shall be construed and governed by the laws of the State of California. Any suit relating to this Agreement shall be instituted in a state or federal court in the State of California, and the Parties irrevocably consent and waive all objections to the jurisdiction of any such court.
8. **Advice of Counsel.** Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement. CDE is not a party to any contractual relationship between SFA and Vendor. CDE is not obligated, liable, or responsible for any action or inaction taken by SFA or Vendor based on this Agreement. CDE's review of the Agreement is limited to assuring compliance with federal and state procurement requirements. CDE does not review or judge the fairness, advisability, efficiency, or fiscal implications of the Agreement.
9. **Section Headings.** The section headings or titles are for convenience only and shall have no substantive effect in the interpretation of the agreement.

SPACE INTENTIONALLY LEFT BLANK

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

Name of SFA Authorized Representative		Title
Michelle Cho		COO/ CFO
Signature of SFA Authorized Representative		Date Signed
⊗ Michelle Cho		8/14/19
Name of Vendor Authorized Representative		Title
JOYCE HUANG		DIRECTOR CONTRACTS
Signature of Vendor Authorized Representative		Date Signed
⊗ Joyce Huang		08/01/2019

Attached Exhibit

A: Sites Where Program Will Operate

B: Schedule of Fees

**EXHIBIT A:
SITES WHERE PROGRAM WILL OPERATE**

Site Name	Site Address
EBIA Middle School	3400 Malcolm Ave. Oakland, CA 94605
EBIA High School	3800 Mountain Blvd. Oakland, CA 94619

**EXHIBIT B:
SCHEDULE OF FEES**

1. Calendar Management

- a. SFA shall provide Vendor with a calendar for the school year no later than thirty (30) days prior to the beginning of service, and by June 1 in renewing years. Failure of SFA to provide Vendor with the calendar will result in a \$50 fee. Failure to provide the calendar prior to the service start date will result in a \$250 fee. At a minimum, the calendar shall provide the following:
 - Field trip days
 - Minimum days
 - Testing days
 - Days in which meal participation is expected to be less than 50% of the norm
 - Days in which meals will not be ordered and the reason
- b. SFA shall block out non-service off-days accordingly for each site no later than thirty (30) days prior to the beginning of service using the systems and tools provided by Vendor' online ordering system. Vendor may block out non-service off-days on behalf of SFA and will charge a \$250 fee.
- c. SFA shall notify Vendor of additional events not captured on the initial calendar in which meal times or normal operations may be affected for the following month. For example, SFA shall notify Vendor by September 1st for events occurring in October. Failure of SFA to notify Vendor of additional events will result in a fee equal to 50% of the meal price times the average minimum number of meals per day as for the applicable meal. If the average minimum number of meals per day is a combined minimum across multiple delivery sites, the number shall be divided evenly across sites for the purpose of this calculation only.

2. New Order Placement after Deadline

- a. New orders placed after the stated deadline of Tuesday 5:00 p.m. will be charged the following:
 - First time orders placed after the deadline will not incur an additional charge.
 - Late order placements occurring the second and third time will incur a \$50 charge.
 - Late order placements occurring on/after the fourth incident will incur a \$100 charge.
- b. Late orders are subject to product availability.

3. Order Increase

- a. Order increases made after the stated deadline of Tuesday 5:00 p.m. will be charged the full applicable meal price listed plus an additional \$50.
- b. Order increases are subject to product availability.

4. Order Cancellation or Decrease

- a. Vendor will partner with SFA to accommodate order decreases that occur after the stated deadline of Tuesday 5:00 p.m. in which meals are not needed within 48 hours. The order decrease shall not exceed 50% of the original order.
- b. Order decreases occurring on/after the fourth incident will incur the full applicable meal price listed plus an additional 10% surcharge.
- c. Order cancellations and decreases that occur after the stated deadline of Tuesday 5:00 p.m., and within 48 hours of when meals are to be delivered:
 - First time order cancellations and decreases will be charged 50% of the applicable meal price listed.
 - Second time order cancellations and decreases will be charged the full applicable meal price listed.

- Order cancellations and decreases occurring on/after the third incident will incur the full applicable meal price listed plus an additional 10% surcharge.
5. **Convenience Fee.** Vendor reserves the right to charge a convenience fee of up to 10% per meal for changes after the stated deadline of Tuesday 5:00 p.m. that affect operations, but do not result in an increase or decrease in the number of meals originally ordered. An example of this may be changing regular lunch meals ordered to fieldtrip lunches.
 6. **Supplies.** Vendor will provide the necessary utensils, napkins, paper supplies and condiments in sufficient quantity for the number of meals ordered. Any depletion of supplies outside the meal program will be charged to SFA at full case value.
 7. **Inclement Weather**
 - a. **Forecasts Calling for Next Day Inclement Weather.** SFA must contact the Vendor' designated contact via telephone or email (in non-urgent cases) to report possible weather interruptions.
 - b. **For All Schools Initiating Weather Closure Process.** Vendor will offer to refund the cost of the meals ordered if cancelled by 10:00 a.m. preceding the day of delivery. Meals cancelled between 10:00 a.m. and 5:00 p.m. preceding the day of delivery will receive a 50% refund.
 - c. **Local Announcement that School(s) will Remain Closed For Consecutive Days.** SFA must contact Vendor each day of closure by 10 AM to determine plans for the following day and to discuss the upcoming menus and delivery schedule for the when classes resume. The same weather related order cancellation and refund policy applies. Menus are subject to change.
 - d. **Communication to School Administrators.** All communication to Vendor regarding cancellation of planned meal services must be made in email/writing to the designated Vendor contact. In the event that the school is open but road conditions are poor, Vendor reserves the right to alter routes and delivery times at its discretion. Vendor and SFA will work closely to ensure coordinated delivery.

Attachment I: Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub- recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization: REVOLUTION FOODS, INC.


Street address: 985 3RD STREET, UNIT C

City, State, Zip: OAKLAND, CA 94607

CERTIFIED BY: (type or print)

PEKHNA SINGH


TITLE: CONTRACTS MANAGER


(Signature)

8/9/2019
(Date)

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ___ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application ___ b. initial award c. post-award	3. Report Type: a. initial filing ___ b. material change For material change only: Year_ quarter ___ Date of last report _____
4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier _____, if Known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if <i>different from No. 10a)</i> (last name, first name, MI):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature:  8/9/2019 Print PEKHNA SINGH BIDS AND CONTRACTS MANAGER 510-545-4196	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, for participants or respondents in primary covered transactions:

- A. The participant or respondent certifies that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.
- B. Where the participant or respondent is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

REVOLUTION FOODS, INC.

Participant or Respondent Company Name

Award Number, Contract Number, or Project Name

PEKHNA SINGH, BIDS AND CONTRACTS MANAGER

Name(s) and Title(s) of Authorized Representatives


Signature(s)

8/9/2019

Date

Certificate of Independent Price Determination

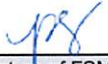
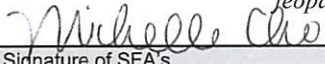
Both the SFA and FSMC shall execute this Certificate of Independent Price Determination.

REVOLUTION FOODS, INC.
Name of FSMC

EAST BAY INNOVATION ACADEMY
Name of SFA

- A. By submission of this offer, the offeror (FSMC) certifies and, in the case of a joint offer, each party thereto certifies as to its own organization that in connection with this procurement:
1. The prices in this offer have been arrived at independently—without consultation, communication, or agreement for the purpose of restricting competition—as to any matter relating to such prices with any other offeror or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to bid proposal opening in the case of an advertised procurement, directly or indirectly to any other offeror or to any competitor; and
 3. No attempt has been made or will be made by the offeror to induce any person or firm to submit, or not to submit, an offer for the purpose of restricting competition.
- B. Each person signing this offer on behalf of the offeror certifies that:
1. He or she is the person in the offeror's organization responsible for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or
 2. He or she is not the person in the offeror's organization responsible for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this vendor and its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows (provide detail):

	CONTRACTS MANAGER	8/9/2019
Signature of FSMC's Authorized Representative	Title	Date
<i>In accepting this offer, the SFA certifies that no representative of the SFA has taken any action that may have jeopardized the independence of the offer referred to above.</i>		
	COO/ CFO	8/14/19
Signature of SFA's Authorized Representative	Title	Date

Note: Accepting a Respondent's offer does not constitute award of the contract.