

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	21-1779
Introduction Date	6/30/2021
Enactment Number	21-1203
Enactment Date	6/30/2021 os



# Board Cover Memorandum

**To** Board of Education

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

**Meeting Date** June 30, 2021

**Subject** Ratification by the Board of Education of 2020-21 Agreement between Oakland Unified School District and International Paper; Approval of Resolution No. 2021-0170 - Determining and Declaring that OUSD Can Enter into Agreement with International Paper without Competitive Bidding

**Ask of the Board** Ratification by the Board of Education of 2020-21 Agreement between Oakland Unified School District and International Paper for the latter to provide corrugated containers for the District's Home Food Delivery Program; Approval by the Board of Education of Resolution No. 2021-0170 - Determining and Declaring that OUSD Can Enter into Agreement with International Paper without Competitive Bidding.

**Background & Discussion** One of the most successful aspects of the District's food program has been its home delivery program. International Paper has been contracted to provide corrugated containers for that program.

The Superintendent signed the contract pursuant to Resolution No. 1920-0262 - Providing Authorization to the Superintendent in Light of the Covid-19 Pandemic. The Agreement was not the result of competitive bidding. See attached Resolution No. 2021-0170 - Determining and Declaring that OUSD Can Enter into Agreement with International Paper without Competitive Bidding.

**Fiscal Impact** \$450,000 from the General Fund, Fund 13, and/or ESSER funds.

**Attachment(s)**

- Resolution No. 2021-0170 - Determining and Declaring that OUSD Can Enter into Agreement with International Paper without Competitive Bidding
- 2020-21 Agreement between Oakland Unified School District and International Paper

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

**Resolution No. 2021-0170**

**Determining and Declaring that OUSD Can Enter into Agreement with International Paper  
without Competitive Bidding**

**WHEREAS**, one of the most successful aspects of the District’s food program has been its home delivery program;

**WHEREAS**, the District’s food program has had to adjust multiple times during the course of the pandemic – from changes in need to changes in funding to changes in the ability of students to access food;

**WHEREAS**, these changes often emerged without warning and required an immediately adjustment or response;

**WHEREAS**, one of those changes were the need to move to delivering food and away from providing food exclusively through pick up at school sites;

**WHEREAS**, the move to delivering food enabled thousands of OUSD students to continue to access food;

**WHEREAS**, the Superintendent has authority to sign contracts related to the COVID-19 pandemic unto \$500,000 pursuant to Resolution No. 1920-0262 - Providing Authorization to the Superintendent in Light of the Covid-19 Pandemic;

**WHEREAS**, competitive bidding is not required 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, 635-6); and

**WHEREAS**, *Graydon* also held that bidding is not required “where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form, competitive bidding is not applicable” (*id.* at 636).

**NOW, THEREFORE, BE IT RESOLVED**, the Board of Education (“Board”) hereby determines and declares the Superintendent was within her authority to sign the 2020-21 Agreement with International Paper; and

**BE IT FURTHER RESOLVED**, in light of the nature of the need to ensure that students timely receive food as well as the undesirability and the impracticability of bidding given reality of providing food during the COVID-19 pandemic (among other reasons), the Board determines and declares that the District could enter into the 2020-21 Agreement with International Paper without the need for competitive bidding.

**PASSED AND ADOPTED** on June 30, 2021, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: Non

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Mike Hutchinson, Gary Yee, VanCedric Williams, Aimee Eng, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Shanthi Gonzales

NOES: None

ABSTAINED: None

RECUSED: None


ABSENT: Jessica Ramos (Student Director), Samantha Pal (Student Director)


**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 June 30, 2021.

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**OAKLAND UNIFIED SCHOOL DISTRICT**

  
 \_\_\_\_\_  
 Shanthi Gonzales  
 President, Board of Education

  
 \_\_\_\_\_  
 Kyla Johnston-Trammell  
 Superintendent and Secretary, Board of Education

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

## 2020-2021 AGREEMENT

This Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”): **International Paper**

The PARTIES hereby agree as follows:

1. **Term.**
  - a. This Agreement shall start on the below date (“Start Date”):  
**November 1, 2020**
  - b. The work shall be completed no later than the below date (“End Date”):  
**June 30, 2021**
2. **Supplies.** VENDOR shall will supply OUSD corrugated containers for COVID-Home Delivery Food.
3. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Supplies provided to OUSD by VENDOR.
4. **Confidentiality and Data Privacy.**
  - a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of providing the Supplies, provided such information is (i) marked or identified as “confidential” or “privileged,” or (ii) reasonably understood to be confidential or privileged.
  - b. VENDOR understands that student data is confidential. If VENDOR will access or receive student data in connection with this Agreement, it agrees to do so only after executing the [California Student Data Privacy Agreement](#) (“CSDPA”), which shall be incorporated by reference into this Agreement upon execution. All confidentiality requirements, including in the CSDPA, extend beyond the termination of this Agreement.
5. **Compensation.** OUSD agrees to pay VENDOR for satisfactorily providing Supplies in

accordance with this Paragraph and Paragraph 6 (Invoicing).

- a. The compensation under this Agreement shall not exceed: **\$450,000**. This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by VENDOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs.
- b. The rate under this Agreement shall not exceed: ~~\$765/ton.~~ **> \$ 825/TON** *Current KRW*
- c. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described herein.
- d. Compensation for any Supplies provided prior to the Start Date or after the End Date shall be at OUSD's sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand payment for the provision of such supplies.

*KRW* → **CARTON PRICE CHANGES, WOULD BE TIED TO CONTAINER BOARD PRICE MAXIMUM NATIONALLY.**

6. **Invoicing.** Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.

- a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include detail as required by OUSD. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
- b. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory under receipt by VENDOR of such notice.
- c. All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.

7. **Termination.**

- a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to VENDOR. OUSD shall compensate VENDOR for Supplies satisfactorily provide through the date of termination. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.
- b. Due to COVID-19. Notwithstanding Paragraph 12 (Coronavirus/ COVID-19) or any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to provide the Supplies, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD

Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.

8. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

OUSD		VENDOR	
Name:	Joshua R. Daniels	Name:	
Site/Dept:	Office of General Counsel	Title:	
Address:	1000 Broadway, Suite 300	Address:	
City, ST Zip:	Oakland, CA 94607	City, ST Zip:	
Phone:	510-879-8535	Phone:	
Email:	ousdlegal@ousd.org	Email:	

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

9. **Certificates/Permits/Licenses/Registration.** VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the provision of Supplies pursuant to this Agreement.

10. **Insurance.**

- a. **Commercial General Liability Insurance.** VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against VENDOR. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

- b. Workers' Compensation Insurance. VENDOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

**11. Incident/Accident/Mandated Reporting.**

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 8 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident that might negatively impact OUSD or an OUSD student, staff member, or contractor. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

**12. Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, VENDOR declares that it is able to meet its obligations and provide the Supplies required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- b. Consistent with the requirements of Paragraph 11 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 8 (Legal Notices), within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR, who has been or might be on OUSD property or in physical proximity to an OUSD student, staff member, or contractor, tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
- c. VENDOR agrees to immediately adhere to and follow any OUSD directives regarding health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing.
- d. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

13. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
14. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
15. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
16. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.
17. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
18. **Conflict of Interest.**
  - a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
  - b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the Supplies provided under this Agreement, and in the event of change in either private interest or Supplies under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
  - c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any information



subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.

- 19. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR 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/>).
- 20. Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 5 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD 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 or revenue, arising out of, or in connection with, this Agreement for the Supplies provided in connection with this Agreement.
- 21. Indemnification.**

  - a.** To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("OUSD Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR's performance of this Agreement. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this Agreement. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that VENDOR proposes to defend OUSD Indemnified Parties.
  - b.** To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("VENDOR Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend VENDOR Indemnified Parties at OUSD's own expense, including attorneys' fees and costs.
- 22. Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business

operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to Supplies provided under by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents.

23. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
24. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
25. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
26. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
27. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
28. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
29. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified and "hours" refers to hours regardless of whether it is a work day, weekend, or holiday.

- 30. Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
- 31. W-9 Form.** If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.
- 32. Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
- 33. Signature Authority.**
- a.** Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
  - b.** Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
- 34. Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLACK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

VENDOR

Name: Karen White Signature: KAREN "RENEE" WHITE  
Position: ACCOUNT mgr. Date: 6.24.21

OUSD

Name: Shanthi Gonzales Signature: [Signature]  
Position: President, BOE Date: 7/1/2021

- Board President
- Superintendent
- Chief/Deputy Chief

Name: Kyla Johnson-Trammell Signature: [Signature]  
Position: Secretary, Board of Education Date: 7/1/2021