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# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems and Services Officer  
Irene Reynolds, Executive Director, Nutrition Services

**Meeting Date** June 30, 2021

**Subject** Ratification of Contract with Javi's Cooking for pre-prepared food items

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**Action Requested** Ratification by the Board of Education of Contract between Oakland Unified School District and Javi's Cooking, Oakland, CA, for ready-to-eat food items for inclusion on the District's meal program menu through December 31, 2021 for an amount not to exceed \$96,500.

**Background** The Nutrition Services Department provides meals to children who meet federal eligibility criteria for free and reduced price meals as defined in California Education Code section 49531. The District has an agreement with the California Department of Education Nutrition Services Division to provide meals under the Child Care Food Program.

The Nutrition Services Department has also been providing meal service to additional students, not just those eligible for free and reduced-price meals, during the COVID-19 Pandemic and provides meals under the National School Lunch Program and the Child and Adult Care Food Program.

Javi's Cooking is a locally owned business that has partnered with the District in previous school years to provide ready-to-eat food items such as cheese, steak, and chicken empanadas for inclusion in the District's school meal service. During the pandemic, the food items prepared by Javi's Cooking were made available despite interruptions to the national supply chain and the increasing demand for ready-to-eat meals required as a result of the expansion of the District's meal delivery program.

**Discussion** Ratification by the Board of Education of Contract between Oakland Unified School District and Javi's Cooking for ready-to-eat food items for inclusion on the District's meal program menu through December 31, 2021 for an amount not to exceed \$96,500.

**Fiscal Impact** Funding resource: 5310 in an amount not to exceed \$96,500.

**Attachment(s)**

- Agreement with Javi's Cooking for ready-to-eat food items

## **CONTRACT**

This Agreement is entered into by and between Oakland Unified School District ("OUSD") and Javi's Cooking, (Contractor), a California Corporation (collectively, the "Parties").

### **1. DEFINITIONS**

- a. "District" and "OUSD" each mean the Oakland Unified School District.
- b. "Contractor" or "Vendor" means the entity doing business with the District.
- 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 food products prepared and delivered by Contractor.

### **2. TERM; EFFECTIVE DATE; AMOUNT OF AGREEMENT**

- a. The term of this Agreement shall be for June 7, 2021 through December 31, 2021, unless terminated earlier pursuant to Section 14 (Termination).
- b. Notwithstanding the foregoing, this Agreement shall be effective only upon execution of this Agreement by the duly authorized representatives of the Parties.
- c. The dollar amount of this Agreement shall not exceed \$96,500.

### **3. PAYMENT FOR PRODUCTS AND SERVICES PROVIDED**

- a. The District agrees to pay and the Contractor agrees to accept as full payment for its performance of this Agreement, the cost of \$1.30 per unit delivered.
- 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 25 ("Invoicing").

**4. ESTIMATED USAGE.** Quantities are not guaranteed 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 products /services designated by this Agreement. 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.

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. 51 percent of the final processed end product must consist of agricultural commodities that were grown domestically.

9. 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.

10. 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.

11. 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, loss, shortage, transportation facilities, walkout, or commandeering of materials, products, plants, or facilities by . Satisfactory evidence must be presented to the District demonstrating that the non-performance the government provided that the non-performance is not due to the fault or neglect of the supplier. In such cases, however, satisfactory evidence thereof must be presented.

## 12. 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.

13. **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.

#### 14. **TERMINATION.**

a. In the event of Contractor default pursuant to Section 13 ("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 22 ("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 13 ("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 22 ("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 the event of such termination, the District may award the contract to the next lowest bidder provided that such an award complies with Public Contract Code section 5106.

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.

#### 15. INDEMNIFICATION.

Contractor shall indemnify and hold harmless the District, its Board, officers, employees 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.

16. LIABILITY OF DISTRICT. District's payment obligations under this agreement shall be limited to the payment of the compensation provided under this contract. 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.

17. 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.

18. 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.

19. MODIFICATION OF AGREEMENT.

a. No oral statement of any person whatsoever 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.

20. CHOICE OF LAW/VENUE.

This Contract 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.

21. 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/>).

22. 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: Irene Reynolds

2850 West Street

Oakland, CA 94608

EMAIL ADDRESS [Irene.reynolds@ousd.org](mailto:Irene.reynolds@ousd.org)

**NOTICE TO THE CONTRACTOR:**

CONTRACTOR: Javi's Cooking

CONTACT NAME Javier Sandes

STREET ADDRESS 3446 Market St

CITY, STATE, ZIP Oakland, CA 94608

TELEPHONE/FAX (510) 427-6033

javier@javiscooking.com

EMAIL ADDRESS \_\_\_\_\_

23. 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, audiotope, 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](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](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

24. 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.

25. 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; specifications set forth in the RFP/bid.

26. 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)).

27. 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.

**JAVI'S COOKING**



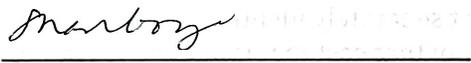
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**OAKLAND UNIFIED SCHOOL DISTRICT**



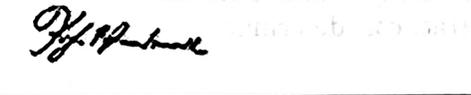
**Preston Thomas, Chief Systems & Services Officer**

**RATIFICATION BY OUSD BOARD OF EDUCATION**



**Shanthi Gonzales**

**President, Board of Education**



**Kyla Johnson-Trammell**

**Superintendent and Secretary, Board of Education**

**Approved as to Form:**



**Andrea Epps, Deputy General Counsel**