

**CONTINUATION AND THIRD AMENDMENT  
TO AGREEMENT BETWEEN  
THE CITY OF SAN JOSE AND REVOLUTION FOODS, INC.  
TO PROVIDE FOOD FOR LIMITED DURATION WITHIN SAN JOSE**

This CONTINUATION AND THIRD AMENDMENT is made and entered into this 9th day of July, 2021, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (“City”), and REVOLUTION FOODS, INC., a Delaware corporation authorized to do business in California (“Contractor”).

**RECITALS**

**WHEREAS**, on December 28, 2020, City and Contractor entered into an agreement entitled “AGREEMENT BETWEEN THE CITY OF SAN JOSE AND REVOLUTION FOODS, INC. TO PROVIDE FOOD FOR LIMITED DURATION WITHIN SAN JOSE” (“Agreement”); and

**WHEREAS**, on February 8, 2021, City and Contractor entered into a First Amendment to the Agreement to increase the maximum amount of total compensation and revise the scope of services; and

**WHEREAS**, on March 16, 2021, City exercised the first option to extend the term of the Agreement through June 30, 2021; and

**WHEREAS**, on April 16, 2021, City entered into a Second Amendment to the Agreement to revise the scope of services and compensation schedule; and

**WHEREAS**, City and Contractor desire to further amend the Agreement to revise the scope of services, decrease the maximum compensation, revise the Notice of Exercise of Option to Extend Agreement, and to exercise the second option to extend the term of the Agreement through September 30, 2021;

**NOW, THEREFORE**, the Parties agree to further amend the Agreement as follows:

**SECTION 1.** Section 3, “Maximum Total Compensation and Payment Terms,” is amended to read as follows:

“The total compensation for this Agreement shall not exceed \$1,366,552.70 for the Initial Term. Any increase in maximum compensation will require an Amendment to this Agreement. The City will pay the Contractor up to the maximum total compensation in accordance with Third Revised Exhibit B.

Contractor shall issue itemized electronic invoices by the tenth (10th) calendar day of each month for Services provided during the previous month. City shall submit payment in such form as reasonably requested by Contractor within thirty (30) days of receipt of Contractor’s invoice.

No payment shall be made for meals that are spoiled or unwholesome at the

time of delivery, do not meet specifications, or do not otherwise meet the requirements of the Agreement. However, no deduction will be made unless City provides to Contractor in writing of the mean service for which the deduction is to be made, specifying the number of meals for which City intends to deduct payment and setting forth the reasons for the deduction.

City shall promptly submit a claim requesting credit for meals affected by delivery or fulfillment errors, provided that City provides detailed written notice of delivery fulfillment errors no later than twenty-four (24) hours after the delivery. City shall preserve evidence of meals for inspection by Contractor. City's failure to preserve evidence and/or give written notice of any delivery or fulfillment error within the stated timeframe shall constitute an unqualified waiver of all errors or claims for that period."

**SECTION 2.** Second Revised Exhibit A, "Scope of Services," is amended to read as shown in Third Revised Exhibit A, which is attached and incorporated into this Continuation and Third Amendment.

**SECTION 3.** Second Revised Exhibit B, "Compensation," is amended to read as shown in Third Revised Exhibit B, which is attached and incorporated into this Continuation and Third Amendment.

**SECTION 4.** Exhibit G, "Notice of Exercise of Option to Extend Agreement," is amended to read as shown in Revised Exhibit G, which is attached and incorporated into this Continuation and Third Amendment.

**SECTION 5.** All of the terms and conditions of the original Agreement not specifically modified by this Continuation and Third Amendment shall remain in full force and effect.

**SECTION 6.** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.

The Parties whose signatures are affixed below are fully authorized to have executed this Continuation and Third Amendment:

**CITY OF SAN JOSE**

By:   
Sarah Zarate (7/9/2021)  
Email: sarah.zarate@sanjoseca.gov

Name: Sarah Zarate

**CONTRACTOR**

By:   
krichmond@revolutionfoods.com (7/8/2021)  
Email: krichmond@revolutionfoods.com

Name: Kristin Groos-Richmond

NVF:RLT:CLS  
06/18/2021

Title: \_\_\_\_\_  
Director of Office of  
Administration, Policy, and  
Intergovernmental Relations

Date: \_\_\_\_\_

Title: \_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_



**Approved as to Form:**

Attorney  
Rosa Tsongtaatarii  
Senr Deputy City Atty III U  
rosa.tsongtaatarii@sanjoseca.gov  
*Rosa Tsongtaatarii*  
Rosa Tsongtaatarii (7/8/2021)  
**Email:** rosa.tsongtaatarii@sanjoseca.gov

## THIRD REVISED EXHIBIT A SCOPE OF SERVICES

The Contractor will provide Services in accordance with this **Exhibit** to the City’s satisfaction.

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**General Description of Project:** Contractor will prepare, store, and deliver ready-to-eat meals for youth and adults experiencing food insecurity due to the impacts of the COVID-19 pandemic. Contractor will provide packaged shelf-stable meals or pantry boxes, as specified below (“Meals”) in compliance with applicable United States Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) meal pattern guidelines.

### City of San José Youth Programs

Contractor will prepare and store shelf-stable meals for the City of San José’s youth programs for holidays and times as determined by the City.

### Emergency Shelf-Stable Stockpile Reserve

Contractor will prepare, store, and deliver shelf-stable meals and/or pantry boxes for days and times as determined by the City.

### Thanksgiving Meals

Contractor will prepare and deliver meals to vulnerable populations as described by the Great Plates Delivered Program on or around the 2020 Thanksgiving holiday, as determined by the City.

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**The services outlined below are effective from December 28, 2020 to June 30, 2021:**

### **Task No. 1: Shelf-Stable Packaged Meal Kits for City Youth Programs**

**A. Deliverable:** Multi-day meal kits to be delivered in select quantities to sites determined by the City. Each kit may be inclusive of:

- Breakfast w/o milk
- Lunch w/o milk

**B. Services:** Contractor will prepare “Packaged Meal Kits” and box the meals for distribution at select Service Locations as determined by the City. Pricing associated with the preparation of the Packaged Meal Kits is included in Exhibit B-1 “Pricing and Fees”. City shall provide Contractor with at least 72-hour notice with Packaged Meal Kit quantity, Service Location name, Service Location address, expected delivery date, and expected delivery window in writing and delivered to:

- James Lee, jlee@revolutionfoods.com

Failure to provide information timely may cause delivery or fulfillment errors for which Contractor shall not be liable. Contractor shall provide 1:1 ratio of standard recyclable utensils and napkins to the number of meals ordered.

**C. Completion Time:** The Contractor must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 72 hours from City order.

**Task No. 2: Meals for Great Plates Delivered Program**

**A. Deliverable:** 1,230 Shelf-Stable Adult Meal Kits

**B. Services:** Contractor provide Shelf-Stable Meals to individuals at the Service Location(s) designated by City. City shall provide Contractor with at least 72-hour notice with Meal quantity, Service Location name, Service Location address, expected delivery date, and expected delivery window in writing and delivered to:

- James Lee, jlee@revolutionfoods.com

Contractor understands and agrees that services under this Agreement will be at the locations in Exhibit A-1 “Service Locations”. Locations may be changed as the City identifies a need and is mutually agreed upon by City and Contractor.

**C. Completion Time:** The Contractor must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 72 hours from City order.

**Task No. 3: Emergency Shelf-Stable Stockpile Reserve**

**A. Deliverable:** Preparation and storage of shelf-stable meals for uses as determined by the City.

**B. Services:** Contractor will prepare and provide storage of 104,605 shelf-stable meals for distribution as determined by the City. Contractor will be responsible for maintaining proper temperature and food safety controls throughout the production and storage of the meals.

Pricing for storage services are outlined in Third Revised Exhibit B-1 “Pricing and Fees.” These prices will be applied under circumstances as described in the Cost Description.

**C. Completion Time:** The Contractor must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:

- On or before the following date: \_\_\_\_\_.
- On or before 72 hours from City order.

**Task No. 4: Meals to School Sites as Determined by City**

**A. Deliverable:** Pre-Packaged Meal Kits, Shelf-Stable Pantry Boxes, Frozen Meals

**B. Services:** Contractor will provide meal kits to individuals at the Service Location(s) designated by City. City shall provide Contractor with at least 72-hour notice with Meal quantity, Service Location name, Service Location address, expected delivery date, and expected delivery window in writing and delivered to:

- James Lee, jlee@revolutionfoods.com

Contractor understands and agrees that services under this Agreement will be at the locations in Third Revised Exhibit A-1 "Service Locations". Locations may be changed as the City identifies a need and is mutually agreed upon by City and Contractor. Driver(s) and refrigerated truck(s) to remain on site throughout distribution and excess to be transported to Hunger at Home following the end of the distribution.

**C. Completion Time:** The Contractor must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:

On or before the following date: \_\_\_\_\_.

On or before 72 hours from City order.

#### Task No. 5: Delivery

**A. Deliverable:** Delivery of Meals.

**B. Services:** Contractor will transport Meals from Contractor's culinary center or storage location to the Service Location(s) Monday - Sunday upon seventy-two (72) hours reasonable request. Contractor shall maintain the proper temperature of the meal components until City accepts delivery. Thereafter, City will be responsible for maintaining proper temperature and food safety controls until the meals are distributed to the participants or discarded.

Contractor understands and agrees that services under this Agreement will be at the locations in Third Revised Exhibit A-1 "Service Locations". Locations may be changed as the City identifies a need and is mutually agreed upon by City and Contractor.

Pricing for additional delivery services are outlined in Exhibit B-1 "Pricing and Fees." These prices will be applied under circumstances as described in the Cost Description.

**C. Completion Time:** The Contractor must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:

On or before the following date: \_\_\_\_\_.

On or before 72 hours from City order.

**The services outlined below are effective from July 1, 2021 to September 30, 2021:**

#### Task No. 6: Storage of Emergency Shelf-Stable Stockpile Reserve

**A. Deliverable:** Storage of shelf-stable meals for uses as determined by the City.

**B. Services:** Contractor will prepare and provide storage of shelf-stable meals for distribution as determined by the City. Contractor will be responsible for maintaining proper temperature and food safety controls throughout the production and storage of the meals.

Pricing for storage services are outlined in Exhibit B-1 "Pricing and Fees." These prices will be applied under circumstances as described in the Cost Description.

**C. Completion Time:** The Contractor must complete the services and deliverable for this task in accordance with whichever one of the following times is marked:

On or before the following date: \_\_\_\_\_.

On or before 72 hours from City order.

**THIRD REVISED EXHIBIT A-1  
SERVICE LOCATIONS**

Service locations are listed below. Additional locations may be added or removed upon mutual agreement of City and Contractor.

<b>Location</b>	<b>Program</b>	<b>Address</b>	<b>Begin/End Date</b>
Berryessa Community Center	City Youth Program	3050 Berryessa Road, San José, CA 95132	11/18/2020 - 06/30/2021
Seven Trees Community Center	City Youth Program	3590 Cas Drive, San José, CA 95111	11/18/2020 - 06/30/2021
Faultline Brewing Company	Great Plates Delivered	1235 Oakmead Parkway, Sunnyvale, CA 95085	11/18/2020 - 06/30/2021
The Basin	Great Plates Delivered	14572 Big Basin Way, Saratoga, CA 95070	11/23/2020 - 11/24/2020
Tony Caters	Great Plates Delivered	5202 N. 1st Street, San José, CA 95002	11/23/2020 - 11/24/2020
Milpitas Unified	Milpitas Unified Meals	1331 E. Calaveras Blvd, Milpitas, CA 95035	12/18/2020 – 6/30/2021
County Office of Education	County Office of Education Meals	1290 Ridder Park Drive, San José, CA	12/21/2020- 6/30/2021
Rouleau	Head Start Meals	1875 Monrovia Drive, San José, CA	12/21/2020 – 6/30/2021
Educare	Head Start Meals	1399 Santee Drive, San José, CA	12/21/2020 – 6/30/2021
Gateway	Head Start Meals	7151 Hanna Street, Gilroy, CA	12/21/2020 – 6/30/2021
Andrew Hill	East Side Union High School	3200 Senter Road, San José, CA	12/18/2020 – 6/30/2021
Mt. Pleasant	East Side Union High School	1750 S. White Road, San José, CA	12/18/2020 – 6/30/2021



Silver Creek	East Side Union High School	3434 Silver Creek Road, San José, CA	12/18/2020 – 6/30/2021
William C. Overfelt	East Side Union High School	1835 Cunningham Avenue, San José, CA	12/18/2020 – 6/30/2021
Yerba Buena	East Side Union High School	1855 Lucretia Avenue, San José, CA	12/18/2020 – 6/30/2021
Independence	East Side Union High School	617 N. Jackson Avenue, San José, CA	12/18/2020 – 6/30/2021
James Lick	East Side Union High School	57 N. White Road, San José, CA	12/18/2020 – 6/30/2021
Oak Grove	East Side Union High School	285 Blossom Hill Road, San José, CA	12/18/2020 – 6/30/2021
Evergreen School District	Evergreen School District	3188 Quimby Road, San José, CA	2/15/2021 – 6/30/2021
Almaden Community Center	Senior Nutrition Program	6445 Camden Ave, San José, CA	7/1/2021 - 9/30/2021
Berryessa Community Center	Senior Nutrition Program	3050 Berryessa Rd, San José, CA	7/1/2021 - 9/30/2021
Mayfair Community Center	Senior Nutrition Program	2039 Kammerer Ave, San José, CA	7/1/2021 - 9/30/2021
Seven Trees Community Center	Senior Nutrition Program	3590 Cas Dr, San José, CA	7/1/2021 - 9/30/2021
Willow Glen Community Center	Senior Nutrition Program	2175 Lincoln Ave, San José, CA	7/1/2021 - 9/30/2021

**THIRD REVISED EXHIBIT B  
COMPENSATION**

<b>Task Nos.</b>	<b>Invoice Period</b>		<b>Compensation</b>
1	<input type="checkbox"/> Completion of Task(s)	<input checked="" type="checkbox"/> Completion of Services	\$208,037.70
2	<input type="checkbox"/> Completion of Task(s)	<input checked="" type="checkbox"/> Completion of Services	\$23,370
3	<input type="checkbox"/> Completion of Task(s)	<input checked="" type="checkbox"/> Completion of Services	\$500,000
4	<input type="checkbox"/> Completion of Task(s)	<input checked="" type="checkbox"/> Completion of Services	\$623,895
5	<input type="checkbox"/> Completion of Task(s)	<input checked="" type="checkbox"/> Completion of Services	Included in Task 1-4
6	Completion of Task(s)	Completion of Services	\$11,250
<b>Maximum Compensation</b>			<b>\$1,366,552.70</b>

**Schedule of Rates and Charges:**

Attached to this Exhibit as **Third Revised Exhibit B-1** is the cost schedule applicable to the Services.

**THIRD REVISED EXHIBIT B-1  
PRICING AND FEES**

**Pricing and Fees**

1. City shall pay the prices listed below for Meal and Meal distribution at all contracted Service Location(s).

<b>Meals</b>	<b>Cost per Meal</b>
Student Breakfast w/ milk	\$1.95
Student Breakfast w/o milk	\$1.78
Student or Adult Lunch w/ milk	\$5.30
Student or Adult Lunch w/o milk	\$4.75
Student or Adult Supper w/ milk	\$5.05
Student or Adult Supper w/o milk	\$4.75
Adult Breakfast w/ milk	\$5.05
Adult Breakfast w/o milk	\$4.75
Shelf Stable Breakfast	\$3.95
Shelf Stable Lunch	\$4.75
Shelf Stable Supper	\$4.75
Shelf Stable Pantry Boxes	\$24.00
Fresh Milk	\$.30
Shelf Stable Milk	\$.55
Juice	\$.40
<b>Packaged Meal Kits</b>	<b>Cost per Kit</b>
Boxing Fee	\$0.40 (cost applied per meal)
<b>Storage</b>	<b>Cost Description</b>
Volume	\$25.00 per pallet per month
Freezing Fee	\$.40 (cost applied per meal)
<b>Delivery</b>	<b>Cost Description</b>
Volume	\$60.00 per site per delivery of fewer than 200 meals per site

Delivery	\$60.00 per site per Saturday and Sunday delivery
Refrigerated Truck and Driver to Wait on Site	\$60.00 per hour per truck/driver

2. Pricing is based upon this Scope of Service and, as applicable, federal laws and regulations governing certain commodities. Should this Scope of Service be modified or amended per the Agreement or if such federal laws and regulations materially change, Contractor will adjust pricing to compensate for such changed circumstances.
3. **New Order Placements and Order Increases after Deadline.** City acknowledges and accepts that all orders placed after the stated deadline are subject to product availability. Contractor may decline to provide meals or suggest an alternative meal if the requested meal is not available without penalty. City shall still be obligated to pay for alternative meals delivered to City, including such meals that, due to circumstances beyond the Contractor's control, may not be fully reimbursable.

**Order Cancellation or Decrease.** Subject to the Force Majeure provision, City shall pay the full applicable meal price for any order cancellations or decreases made later than seventy-two (72) hours prior to delivery.

**REVISED EXHIBIT G  
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE:</b>	

Pursuant to Section \_\_\_\_\_ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions, and \_\_\_\_\_ Revised Exhibit B attached:

<b>OPTION NO.</b>	
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**OPTION TERM**

<b>Begin date:</b>	
<b>End date:</b>	

<b>MAXIMUM COMPENSATION for Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the maximum compensation set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that the funds are available as of the date of this signature.

<b>CITY OF SAN JOSE</b> , a municipal corporation By: _____ Name: _____ Title: _____
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NVF:RLT:CLS  
06/18/2021

Date: