

**FIFTH AMENDMENT TO AGREEMENT BETWEEN  
THE CITY OF SAN JOSE  
AND  
OFF THE GRID SERVICES, LLC  
FOR  
GROCERY DISTRIBUTION SERVICES FOR A LIMITED DURATION**

This FIFTH AMENDMENT is made and entered into this 8<sup>th</sup> day of June, 2022, by and between the CITY OF SAN JOSE, a municipal corporation (“City”), and OFF THE GRID SERVICES, LLC, a Delaware limited liability company registered to conduct business in the State of California (“Contractor”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, on November 19, 2020, City and Contractor entered into an agreement entitled “AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE OFF THE GRID SERVICES, LLC FOR GROCERY DELIVERY IN SAN JOSE” (“Agreement”); and

**WHEREAS**, on December 15, 2020, the City Council authorized the City Manager to negotiate and execute an agreement with Off the Grid Services for meal and grocery distribution services to support the City’s pandemic response; and

**WHEREAS**, on January 4, 2021, City and Contractor executed the First Amendment to this agreement to amend the maximum total compensation from \$2,313,360 to \$4,519,360 and to extend the term of service through March 31, 2021; and

**WHEREAS**, on March 29, 2021, City and Contractor executed the Second Amendment to this agreement to amend the maximum total compensation from \$4,519,360 to \$5,471,064; and

**WHEREAS**, on April 29, 2021, City and Contractor executed the Third Amendment to this agreement to amend the maximum total compensation from \$5,471,064 to \$6,541,502 and extend the term agreement through April 30, 2021; and

**WHEREAS**, on August 20, 2021, City retroactively exercised the third, fourth, and fifth Option to Extend through September 30, 2021 and increased the maximum total compensation from \$6,541,502 to \$10,747,635; and

**WHEREAS**, on October 15, 2021, City retroactive exercised a revised fifth Option to Extend to increase the maximum total compensation from \$10,747,635 to \$10,813,421; and

**WHEREAS**, on November 10, 2021, City retroactively exercised the sixth Option to Extend through December 31, 2021 and increase the maximum total compensation from \$10,813,421 to \$12,742,421; and

**WHEREAS**, on December 7, 2021, City Council adopted a resolution authorizing the City Manager to negotiate and execute an amendment to extend the term and increase the total maximum compensation through March 31, 2022; and

**WHEREAS**, on March 15, 2022, City Council adopted Resolution No. 80411 authorizing the City Manager to negotiate and execute an amendment to extend the term and increase the total maximum compensation through June 30, 2022; and

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**WHEREAS**, on March 18, 2022, City and Contractor executed the Fourth Amendment to this agreement to amend the maximum total compensation from \$12,742,421 to \$14,313,659, revise the Scope of Services and extend the term of the Agreement through March 31, 2022;

**WHEREAS**, City and Contractor desire to increase the maximum amount of total compensation and extend the term of the Agreement; and

**WHEREAS**, the Parties agree to ratify the retroactive exercise of options to continue, and to exercise the eighth option to extend the term of this Agreement through June 30, 2022;

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

**SECTION 1.** Section 3, "Term of Agreement," is amended to read as follows:

**3.1 Term**

The term of this Agreement is from October 21, 2020 to June 30, 2022 ("Initial Term"), inclusive, subject to the provisions for termination specified herein and subsection 3.2.

The Contractor provided services before the execution date of this Agreement. The City will accept and approve the services provided before the execution date that comply with the terms of this Agreement. The City will compensate the Contractor for those services in accordance with the terms of this Agreement. However, in no event will the City compensate the Contractor for services performed before October 21, 2020.

**3.2 Options to Extend**

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for one three-month option through March 31, 2021, three (3) one-month option terms through June 30, 2021, two (2) three-month option terms through December 31, 2021, and two (2) three-month option through June 30, 2022 ("Option Terms"). City shall provide Contractor written notice in the form of Exhibit F of its intention to exercise its option prior to the end of the then current term."

**SECTION 2.** Section 4, "Maximum Compensation and Payment Terms," is amended to read as follows:

“The total compensation for this Agreement in U.S. dollars shall not exceed \$15,422,392(“Maximum Compensation”). The terms, rates, and schedule of payment are set forth in the attached Ninth 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 will make payments to Contractor within thirty (30) days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier’s check, or wire transfer drawn on a U.S. financial institution.”

**SECTION 3.** Eighth Exhibit B, “Compensation,” is amended to read as shown in Ninth Revised Exhibit B, which is attached and incorporated into this Fifth Amendment.

**SECTION 4.** All of the terms and conditions of the Agreement not specifically modified by this Fifth Amendment shall remain in full force and effect.


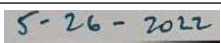
**SECTION 5:** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” 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 Agreement:


**CITY OF SAN JOSE**

**OFF THE GRID, LLC**

By:   
Name: Sarah Zarate  
Title: Director of Office of Administration, Policy, and Intergovernmental Relations  
Date: 06/08/2022

By:   
Name: Matt Cohen  
Title: Chief Executive Officer  
Date: 

**APPROVED AS TO FORM**

By:   
Name: Aaron Yu  
Title: Deputy City Attorney

## NINTH REVISED EXHIBIT B: COMPENSATION

### Section 1 – Compensation Table

Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoice Period	Compensation
1	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	\$15,422,392
2	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	Included in Task No. 1
3	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	Included in Task No. 1 & 2
<b>Maximum Total Compensation:</b>			\$15,422,392

### Section 2 – Schedule of Rates and Charges

Attached to this Exhibit as Ninth Exhibit B-1 is the cost schedule applicable to the Services

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

**Pricing and Fees**

1. City shall pay the prices listed below for Groceries:

<b>Cost Schedule</b>	
<b><u>Pricing October 21, 2020 – June 30, 2022 Including delivery</u></b>	
<b><u>Meals</u></b>	<b><u>Cost per Meal</u></b>
Boxed Groceries	\$54.00

<b>Time Period</b>	<b>Meal Type</b>	<b>Average Boxes per Week</b>	<b>Up to Maximum Compensation</b>
October 21, 2020 – April 30, 2021	Boxed Groceries	4,900	\$6,541,502
May 1, 2021 – September 30, 2021	Boxed Groceries	4,025	\$4,271,919

<b>Time Period</b>	<b>Meal Type</b>	<b>Grocery Boxes</b>	<b>Up to Maximum Compensation</b>
October 1, 2021- December 31, 2021	Boxed Groceries	Up to 35,722	\$1,888,326
January 1, 2022 – June 30, 2022	Boxed Groceries	Up to 50,382	\$2,720,645

2. Pricing is based upon this Scope of Services 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 circumstance.

## EXHIBIT F NOTICE 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 and funds are available for the option term specified above.

<b>CITY OF SAN JOSE</b> a municipal corporation  By _____  Name: _____  Title: _____  Date: _____
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# Memorandum

**TO:** Jon Cicirelli  
Director of Parks, Recreation,  
and Neighborhood Services

**FROM:** Uyen Mai  
Interim Program Manager  
Food and Necessities

**SUBJECT:** Approval of Retroactivity

**DATE:** May 17, 2022

Approved

Date

06/3/2022

On behalf of Jon Cicirelli

**SUBJECT: APPROVAL OF RETROACTIVITY IN THE FOOD AND NECESSITIES AMENDMENTS TO EXTEND THROUGH JUNE 30, 2022**

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Parks, Recreation, and Neighborhood Services (PRNS), Food and Necessities Branch, is seeking authorization for the retroactive provision in the following agreements:

- Fifth Amendment to Off the Grid, LLC Grocery Delivery
- Fifth Amendment to Off the Grid, LLC Meal Delivery

On March 15, 2022, City Council approved the City Manager to negotiate and execute amendments with the above organization to continue providing meal and grocery delivery through June 30, 2022, with an increase in maximum compensation.

The Department understands that retroactive clauses are to be avoided. However, in this instance, Council approval was received right before the start of this agreement, and higher priority items caused a delay in City Attorney approval.

The Department requests an exception be made and the amendments detailed in this memorandum be allowed to proceed with retroactive clauses.

/s/

UYEN MAI  
Interim Program Manager  
Food and Necessities

For questions, please contact Uyen Mai, Interim Program Manager, at [uyen.mai@sanjoseca.gov](mailto:uyen.mai@sanjoseca.gov).







# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/24/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Risk Strategies Company 700 Airport Boulevard, Suite 300 Burlingame, CA 94010	<b>CONTACT NAME:</b> Paula Anderson <b>PHONE (A/C, No, Ext):</b> (650) 762-0404 <b>E-MAIL ADDRESS:</b> panderson@risk-strategies.com	<b>FAX (A/C, No):</b> (650) 762-0490	
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b> Off The Grid Services, LLC 2 Marina Boulevard, Building C Room C370, 360, 362 San Francisco CA 94123	<b>INSURER A :</b> The Hanover Insurance Company		22292
	<b>INSURER B :</b> Allmerica Financial Benefit Insurance Co		41840
	<b>INSURER C :</b> Zenith Insurance Company		13269
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		
<b>INSURER F :</b>			

**COVERAGES**

CERTIFICATE NUMBER: 65182410

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Liquor Liability GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	ZHFA95783507	11/24/2021	11/24/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input checked="" type="checkbox"/>		AWFA95788808	11/24/2021	11/24/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			UHFA96632508	11/24/2021	11/24/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	Z136334903  Excluded Officer: Matthew Cohen	11/24/2021	11/24/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

City of San José, its Officers, Employees, Agents, and Contractors are included as Additional Insured with respects to General Liability per Endorsement 421-2915 attached. General Liability Primary/Non-Contributory wording per attached form 461-0478. Business Automobile Additional Insured including Primary/Non-Contributory wording per attached form 461-0155. Workers Compensation Waiver of Subrogation per attached form WC-04-03-06B.

**CERTIFICATE HOLDER**

City of San José - Finance Department  
 Risk & Insurance Program  
 200 East Santa Clara Street, 14th Floor Tower  
 San José CA 95113-1905

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

RSC Insurance Brokerage

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ACORD 25 (2016/03)

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Please use the unique identifier (Workflow ID) listed below for Contracts and eSignatures requests.

Form149-7-000091

**Risk Management Approval:** Meets Requirements

**Risk Management Comments:** Grocery Distribution Services

The certificate dated November 24, 2021, meets the requirements of the AGREEMENT BETWEEN THE CITY OF SAN JOSE AND OFF THE GRID SERVICES, LLC FOR GROCERY DISTRIBUTION SERVICES (Contract # OC-000024-000).

**Preparer:** Fabiola Saucedo

**Date:** 05/23/2022

**Preparer Phone:** (408) 593-0551

**Contractor/Company Name:** Off the Grid Services, LLC

**Project Name:** Food and Necessities

**Total Contract Amount:** 15422392

**Estimated Start Date:** 10/21/2020

**Estimated Completion Date:** 06/30/2022

**Copy of Service Provider's certificate of insurance:** OTG COI.pdf

**Copy of the contract including insurance specifications provided by Risk Management:** 1918405 (1).docx,OC-000024-000.pdf

**Department Contact:** Saucedo Fabiola(fabiola.saucedo@sanjoseca.gov)

**Department:** Parks/Rec & Neigh Serv P R N S

**Division:** Administrative Services Division

**Phone:** (408) 593-0551



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Stephanie Duran  
 EMAIL: Stephanie.Duran@Sanjoseca.gov


**SCANNED SIGNATURE AUTHORIZATION**

DATE: 5-26-2022 TOTAL PAGES: \_\_\_\_\_  
 (INCLUDING THIS PAGE) \_\_\_\_\_

TO: Matthew Cohen TO: \_\_\_\_\_  
 EMAIL: matt@offthegridsf.com EMAIL: \_\_\_\_\_  
 PHONE: 415 425 8444 PHONE: \_\_\_\_\_

I agree to use electronic signatures

I agree to use electronic signatures

BY: 

BY: \_\_\_\_\_

**DIRECTIONS:**

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT **IN BLUE INK**
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO

**To BE COMPLETED BY CITY STAFF:**

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

# City of San José Contract/Agreement Transmittal Form

## Route Order

## Attached / Completed

## Electronically Signed

TO:  City Attorney  
 City Manager  
 City Clerk **OR** Return to  
Dept. (circle one)

Insurance Certificates / Waivers  Electronically Signed: Yes  
 Business Tax Certificate  Audit Trail Attached (if applicable)  
 Contacted Clerk re: Form 700  Scanned Signature Authorization  
 Supplemental Memorandums (if applicable): Select One

Type of Document: Amendment

Type of Contract: Other

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 000024-010

Contractor: Off the Grid Services, LLC

Address: 2 Marina Blvd, San Francisco, CA 94123

Phone: (415)339-5886

Email: matt@offthegrid.com

Contract Description: Contractor will provide boxed grocery delivery to COVID-impacted individuals and families residing in San Jose.

Term Start Date: 4/1/2022 Term End Date: 6/30/2022 Extension: Yes

Method of Procurement: RFQ RFB, RFP or RFQ No.: 2020.07.10067 Date Conducted: 8/6/2020

Agenda Date (if applicable): 3/15/2022

Agenda Item No.: 2.11

Resolution No.: 80411

Ordinance No.: \_\_\_\_\_

Original Contract Amount: \$14,313,659

Amount of Increase/Decrease: \$1,108,733

Option #: \_\_\_ of \_\_\_ Option Amount: \_\_\_\_\_

NTE/Updated Contract Amount: \$15,422,392

Fund/Appropriation: Fund 402/217W (American Rescue Plan Act)

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: No

Tax Certificate No.: \_\_\_\_\_

Expiration Date: PENDING

Department: PRNS (64)

Department Contact: Fabiola Saucedo X34126

Customer (Finance Only): \_\_\_\_\_

Notes: Please copy PRNSContracts@sanjoseca.gov

DB#647238

Food Distribution Agreement - Retroactive

Department Director Signature: \_\_\_\_\_



On behalf of Jon Cicirelli

6/3/2022

Date

Office of the City Manager Signature: \_\_\_\_\_

Date