

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

This SIXTH AMENDMENT is made and entered into this 18th day of October, 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,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 exercised the seventh option to extend the term of the Agreement through March 31, 2022;

**WHEREAS**, on March 15, 2022, 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 June 30, 2022; and

**WHEREAS**, on June 8, 2022, City and Contractor executed the Fifth Amendment to this agreement to amend the maximum total compensation, from \$14,313,659 to \$15,422,392, ratify the retroactive exercise of options to continue, and to exercise the eighth option to extend the term of the Agreement through June 30, 2022; and

**WHEREAS**, on June 21, 2022, City Council approved and adopted Resolution 80587 authorizing the Director of Parks, Recreation and Neighborhood Services' to apply for, accept, negotiate and execute 2022-2023 agreements and amendments consistent with the Adopted Budget amounts for City programs or services including the Food and Necessities Distribution Program.

**WHEREAS**, City and Contractor desire to amend the scope of services, increase the maximum amount of total compensation up to \$15,621,117, 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 ninth option to extend the term of the Agreement through September 30, 2022; and

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

**SECTION 1.** Section 2, "Scope of Services", is amended to read as follows:

"Contractor shall perform the Services as specified in detail in Revised Exhibit A."

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

**SECTION 3.** 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 April 30, 2021 (“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 three (3) three-month option through September 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 4.** 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 \$15,621,117 (“Maximum Compensation”). The terms, rates, and schedule of payment are set forth in the attached Tenth 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 5.** Ninth Exhibit B, “Compensation,” is amended to read as shown in Tenth Revised Exhibit B, which is attached and incorporated into this Sixth Amendment.

**SECTION 6.** Exhibit C, “Federal Funding Provisions” is amended to read as shown in Revised Exhibit C, which is attached and incorporated into this Sixth Amendment.


**SECTION 7.** Exhibit G, “Record and Retention” is amended to read as shown in Revised Exhibit G, which is attached and incorporated into this Sixth Amendment.

**SECTION 8.** All of the terms and conditions of the Agreement not specifically modified by this Sixth Amendment shall remain in full force and effect.

**SECTION 9.** 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**

By:  On behalf of Jon Cicirelli  
Name: Jon Cicirelli  
Title: Director of Parks, Recreation and Neighborhood Services  
Date: 10/18/2022

**OFF THE GRID, LLC**

By:   
Matthew Cohen (Oct 17, 2022 11:12 PDT)  
Name: Matt Cohen  
Title: Chief Executive Officer  
Date: Oct 17, 2022

**APPROVED AS TO FORM**

By:   
Name: Johnny Phan  
Title: Chief Deputy City Attorney

## REVISED EXHIBIT A: SCOPE OF SERVICES

The Contractor shall provide services and deliverables as set forth in this **Exhibit A**. The Contractor shall provide all services and deliverables required by this **Exhibit A** to the City's satisfaction.

**General Description of Project:** Contractor will provide boxed groceries which include a balance of nutritious foods such as fresh fruits, vegetables, lean protein, and whole grains. The target population are individuals meeting eligibility requirements as outlined under "Target Population" who also live within the City of San José. Contractor will initially deliver up to 1237 grocery boxes to up to 1237 participants per week from July 1, 2022 until July 22, 2022. Beginning July 25, 2022, and ending September 30, 2022, Contractor will deliver up to 331 grocery boxes to up to 331 participants per week. Contractor will also conduct outreach efforts to inform participants of other sustainable food programs for which they may be eligible once their Agreement term ends.

### Target Population

Contractor will serve San José residents who are facing food insecurity impacted by the COVID-19 pandemic

- High-risk individuals people over 65 or with certain underlying health conditions, as defined by the Center for Disease Control and Prevention ("CDC");
  - Low -or- moderate income households or communities
  - Households disproportionately impacted by unemployment
  - Households that experienced increased food or housing insecurity
  - Households residing in Qualified Census Tracts
- 

### Task No. 3: Participant Intake and Eligibility Screening

**A. Services:** Contractor shall be responsible for the intake and eligibility screening of participants and will reasonably ensure there is no duplication of benefits from other state or federally funded programs. Contractor will also ensure that each participant meets the definition of at least one of the Target Populations listed above.

**B. 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: September 30, 2022  
On or before \_\_\_\_ Business Days from \_\_\_\_\_.

### Task No. 4: Grocery Delivery

- A. **Deliverables:** Delivery of grocery boxes to Target Population as determined above; up to 1237 participants per week and up to 1237 grocery boxes per week.
- C. **Services:** Contractor shall provide groceries at a frequency of one delivery per week to eligible individuals within the City of San José. Contractor will be responsible for transporting groceries from Contractor’s designated operations center to individual homes while maintaining the proper food safety controls until the accepted delivery of groceries. Contractor will attempt to deliver groceries two times during the delivery route. After the second attempt, Contractor will leave groceries as directed in delivery instructions or in a safe spot and will communicate with the participant where the groceries were left.
- D. **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: September 30, 2022  
 On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 5: Transition of Participants to Hunger at Home**

- A. **Services:** Contractor shall provide participant names and contact information for up to six hundred (600) grocery program participants to Hunger at Home.
- B. **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: June 22, 2022  
 On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 6: Outreach Activities to Food Assistance Programs**

- A. **Deliverables:** Provision of information regarding other grocery delivery and distribution services as participants are transitioned out of Contractor’s program.
- B. **Services:** Contractor shall provide outreach activities to its participants to provide information for enrollment in longer-term food assistance programs, such as CalFresh. This deliverable may include, but is not limited to:
  - Distribution of food assistance program information (brochures, websites, direct mail) to inform potentially eligible households about program eligibility.
  - Informational materials to participants transitioning out of the program regarding other meal delivery and distribution services for which they may be eligible.
- 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: September 30, 2022  
 On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 7: Final Narrative Program Report**

- A. **Deliverables:** Submission of final narrative report to the City of San José

- B. Services:** Contractor shall provide a final report to the City that details any contextual information for trends seen in program outputs. This document will explain any outlier data points, sudden changes in workflow or outputs, as well as any specific notes on status quo. A report template will be provided to the Contractor by the City.
- 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: October 14, 2022  
On or before \_\_\_\_\_ Business Days from
-

**TENTH REVISED EXHIBIT B: COMPENSATION**

**Section 1 – Compensation Table**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Task Nos.</b>	<b>Basis of Compensation</b>	<b>Invoice Period</b>	<b>Compensation</b>
1	Fixed Fee	Monthly	\$15,621,117
2	Fixed Fee	Monthly	Included in Task No. 1
3	Fixed Fee	Monthly	Included in Task No. 1
4	Fixed Fee	Monthly	Included in Task No. 1
5	Fixed Fee	Monthly	Included in Task No. 1
6	Fixed Fee	Monthly	Included in Task No. 1
7	Fixed Fee	Monthly	Included in Task No. 1
<b>Maximum Total Compensation:</b>			<b>\$15,621,117</b>

**Section 2 – Schedule of Rates and Charges**

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



**TENTH 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><u>Pricing July 1, 2022 – September 30, 2022 Including delivery</u></b>	
<b><u>Meals</u></b>	<b><u>Cost per Meal</u></b>
Boxed Groceries	\$53.00

<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
July 1, 2022 – September 30, 2022	Boxed Groceries	Up to 7,021	\$198,725

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.

## **REVISED EXHIBIT C: FEDERAL FUNDING PROVISIONS**

In addition to all the other terms and conditions of this Agreement, Contractor agrees to comply with the following federal funding provisions in performing the Agreement. If any of these federal funding provisions conflict with any other provisions of this Agreement, the federal funding provisions will take precedence unless the other provision is more restrictive, in which case the other provision will control.

### **A. Federal Equal Employment Opportunity (41 C.F.R. Section 60-1.4(b))**

In addition to the other nondiscrimination provisions in this Agreement, Contractor will comply with the following:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit

access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**B. Copeland "Anti-Kickback"**

1. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
2. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

3. **Breach.** A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

**C. Contractor Work Hours and Safety Standards Act.**

If the amount of this Agreement exceeds \$100,000, Contractor will comply with the following in addition to any other labor requirements in the Agreement:

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**D. Federal Clean Air Act Requirements**

If the amount of this Agreement exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA).

**E. Federal Water Pollution Act Requirements**

If the amount of this Agreement exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*).
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA).

**F. Energy Efficiency/Conservation (44 C.F.R. § 13.36(i)(13))**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**G. Suspension and Debarment**

Contractor will comply with the following provision:

1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.
5. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor certifies that it is not listed as debarred, suspended, or otherwise excluded by agencies on the governmentwide exclusions in the System for Award Management ([www.sam.gov](http://www.sam.gov)).

*Matthew Cohen*

Matthew Cohen (Oct 17, 2022 11:12 PDT)

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Signature of Contractor's Authorized Official

**Matthew Cohen**

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Name and Title of Contractor's Authorized Official

Oct 17, 2022

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Date

**H. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended))**

A Contractor who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the City.

**I. Use of Recovered/Recycled Materials**

In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
2. Meeting Agreement performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

#### **J. Subcontracting**

In addition to all other subcontracting provisions, Contractor shall comply with the following:

1. **Subcontractor Compliance:** The Contractor shall place in any subcontractor agreement the requirement that the subcontractor and all lower tier subcontractors comply with all the terms and conditions of this Agreement, including the Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) requirements.
2. **Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms:** If the Contractor is authorized by this Agreement to use subcontractors, the Contractor warrants that it took the following affirmative steps, and that it has retained documentation of these steps:
  - Made reasonable efforts to identify (including using outside entities that specialize in this area) and place qualified small, minority, and women-owned business on subcontractor solicitation list(s) for this Agreement;
  - Made reasonable efforts to solicit the businesses on the list as subcontractors for this Agreement;
  - Divided the scope of work to be subcontracted, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small, minority, and women-owned business; and
  - Made reasonable efforts to establish delivery schedules for subcontracted work, where requirements permit and it is otherwise



appropriate, which encourage qualified small, minority, and women-owned business to respond subcontractor solicitations; and

If at any time during the term of the Agreement the Contractor seeks and obtains authorization to use subcontractors to complete any of the scope of work, the Contractor shall take the affirmative steps listed above when selecting the subcontractor and will maintain documentation of all such efforts.

**K. Notice of FEMA Reporting Requirements and Regulations (applicable to FEMA)**

In addition to all other reporting requirements in the Agreement, Contractor agrees to comply with the following:

1. **General.** The City is using Public Assistance grant funding awarded by FEMA to the State of California to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under (major disaster or emergency) declaration, FEMA requires the State of California to provide various financial and performance reporting.
  - a. It is important that the Contractor is aware of these reporting requirements, as the City may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of California which, in turn, will enable the State of California to satisfy reporting requirements to FEMA.
  - b. Failure of State of California to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of federal financial assistance awarded to fund this Agreement.
2. **Applicable Regulations and Policy.** The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:
  - a. 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
  - b. 44 C.F.R. § 13.41 (Financial Reporting)
  - c. 44 C.F.R § 13.50(b) (Reports)

- d. 44 C.F.R. § 206.204(f) (Progress Reports)
- e. FEMA Standard Operating Procedure No. 9570.14, *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (Dec. 2013, as may be amended)
- f. FEMA-State Agreement

3. **Financial Reporting.** The State of California is required to submit the following financial reports to FEMA:

- a. **Initial Report.** An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project.
- b. **Quarterly Reports.** Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- c. **Final Report.** A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.

4. **Performance Reporting.** The State of California is required to submit the following financial reports to FEMA:

- a. **Initial Report.** An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project.
- b. **Quarterly Reports.** Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- c. **Final Report.** A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

L. **Access to Records (44 C.F.R. § 13.36(i)(10))**

In addition to all other provisions regarding records in this Agreement, Contractor agrees to comply with the following:

- 1. The Contractor agrees to provide the City, the State of California, the US Treasury Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents,

papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the US Treasury Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
4. In compliance with the Disaster Recovery Act of 2018, the Contractor acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the US Treasury Administrator or the Comptroller General of the United States.

**M. Retention of Records (44 C.F.R. § 13.36(i)(11))**

In addition to all other records retention requirements in this Agreement, Contractor agrees to comply with the following:

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than 5 years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, State of California, the US Treasury Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**N. US Treasury Seal, Logo, and Flags**

The Contractor shall not use the Department of Treasury (Treasury) seal(s), logos, crests, or reproductions of flags or likeness of Treasury agency officials without specific Treasury pre-approval.

**O. No Obligation by Federal Government**

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Agreement.

**P. Compliance with Law**

This is an acknowledgement that Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) financial assistance will be used to fund all or a portion of the Agreement. The Contractor will comply with all applicable local, state, and federal law, regulations, executive orders, Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) policies, procedures, and directives.

**Q. Termination and Remedies**

1. **For Convenience:** The City may terminate this Agreement at any time and for any reason by giving the Contractor written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 business days' after the date of the written notice.
2. **For Cause:** The City may terminate this Agreement immediately upon written notice for any material breach by the Contractor. If the City terminates the Agreement for cause and obtains the same services from another contractor at a greater cost, the Contractor is responsible for such excess cost in addition to any other remedies available to the City.
3. **Delivery of Work:** If the City terminates the Agreement – whether for convenience or for cause – the City has the option of requiring the Contractor to provide to the City any finished or unfinished work product prepared by the Contractor up to the date of Contractor's receipt of the written notice of termination.
4. **Compensation:** The City will pay the Contractor the reasonable value of services satisfactorily rendered by the Contractor to the City up to the date of Contractor's receipt of the written notice of termination. For services to be "satisfactorily rendered," the City must determine that the Contractor provided them in accordance with the terms and conditions of this Agreement. The City will determine the reasonable value of satisfactorily rendered services based on the compensation agreed to by the Parties attached to this Agreement.
5. **Receipt of Notice:** For purposes of this provision, the Contractor's receipt of the written notice of termination will be determined based on the method of providing notice. The notice is effective: if e-mailed when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement); when personally delivered if personal service; and 3 calendar days after deposit in the United States mail, whichever occurs first.

**R. Fraud and False or Fraudulent or Related Acts**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

## **REVISED EXHIBIT G: RECORDS AND DOCUMENTATION**

For purposes of the City's administrative functions, it is necessary to fully document the expenses incurred under the terms of this Agreement for the provision of disaster related survivor's services. The cost accounting and record keeping requirements also include requirements of the state and Federal governments for disaster assistance.

### **1 Record Keeping**

Records must be created and maintained for each separate service site, i.e., a separate file for each shelter operated, or a separate set of records for each separate mass feeding site, etc. At a minimum, the forms contained in this Exhibit H are required each day. Depending on the nature of the goods and/or services provided, additional records must be created and maintained. Failure to properly document costs may result in reduced reimbursements. City staff can assist the Contractor with explanations and samples of proper documentation. No HIPPA covered records should be maintained in the files.

### **2 Record Management**

The City must have a record management system and all records related to disaster related goods and/or services furnished by the Contractor must be transferred to the City on a weekly basis. All records must clearly identify the site where goods and/or services were provided and the date provided. Nothing in this Agreement shall preempt the existing record keeping protocols of the Contractor. However, if the Contractor's records do not meet state emergency management, FEMA, or ARPA record keeping requirements, then additional records must be created and maintained for the City's use in its disaster accounting and cost recovery processes.

### **3 Record Retention**

Federal record retention requirements are spelled out in Title 2 of the Code of Federal Regulations, §200.333. Records for Federal disaster assistance must be retained for not less than five (5) years after the closure of the final project under the Public Assistance program. In some cases, this may require the maintenance of records for a decade or longer. Some state's records retention requirements may exceed Federal requirements.

### **4 Tracking Data**

Contractor shall maintain data on meal distribution at Service locations(s). Such data may include, but is not limited to, description of service provided, number of meals served, meal cost, supporting documentation, and all other records relating to performance under this Agreements. Such information shall be provided to the City upon request.

#### **4.1 Labor Costs (for Meal Providers, Meal Distributors, Meal Delivery)**

Contractors must keep records to cover costs of labor associated with services, Contractors should maintain both a summary of actual costs for completed work, for each staff person, as well as documentation to verify the information in the summary. Examples of needed information include but are not limited to:

- Name;
- Job title and function;
- Type of employee (i.e., full-time exempt, full-time non-exempt, part-time, temporary, etc.);
- Days and hours worked;
- Pay rates and fringe benefit rate; and
- Description of work performed with representative sample of daily logs/activity reports, if available
- Timesheets
- Fringe benefit calculations
- Pay policy

#### **4.2 Population Served (for Data Intake Providers who collect recipient eligibility data)**

The Contractor must maintain records that verify that the population served matches the population in the agreement. Examples of records of transactions for individuals receiving meals (the “Target Population” of the agreement) include but is not limited to:

- Name or Unique Identifier
- Birth Date
- Address, including zip code (City of San José or Non-City of San José resident)
- Number of meals and dates meals provided
- Documentation of Delivery Receipt as follows:
  - Meal couriers provide status updates to dispatch team at each stage of delivery
    - Meal pickup
    - Meal Delivery
    - Delivery Feedback
    - Route Completion
- Participant target population description, as defined in the agreement (CRF, FEMA, or ARPA).

**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**

Begin date:	
End date:	

MAXIMUM COMPENSATION for Option Term:	\$	
---------------------------------------	----	--

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.

**CITY OF SAN JOSE**  
a municipal corporation

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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





# 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>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	
	<b>INSURER B :</b> Allmerica Financial Benefit Insurance Co	
	<b>INSURER C :</b> Zenith Insurance Company	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
<b>INSURER F :</b>		<b>NAIC #</b> 22292 41840 13269

**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 <input type="checkbox"/>	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****CANCELLATION**

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

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.

Form149-7-000557

**Risk Management Approval:** Meets Requirements

**Risk Management Comments:** The certificate dated 11/24/21 meets the requirements of the agreement between the City and Off The Grid Services LLC.

Original Agreement incl. Insurance Requirments:

<https://records.sanjoseca.gov/Contracts/OC-000024-000.pdf>

**Preparer:** Michael Frelier

**Date:** 09/30/2022

**Preparer Phone:** (831) 207-0539

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

**Project Name:** Grocery Delivery Program

**Total Contract Amount:** 15621117

**Estimated Start Date:** 07/01/2022

**Estimated Completion Date:** 09/30/2022

**Copy of Service Provider's certificate of insurance:** Off The Grid Services LLC COI.pdf

**Copy of the contract including insurance specifications provided by Risk Management:** OTG Sixth Amendment Draft - Groceries.docx

**Lookup a Request for Contract Insurance Specifications (Form 148-22):** Form-148-22 -000523

**Department Contact:** Frelier Michael(Michael.Frelier@sanjoseca.gov)

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

**Division:** ADS

**Phone:** (831) 207-0539



# Memorandum

**TO: JON CICIRELLI**  
Director of Parks, Recreation  
And Neighborhood Services

**FROM: UYEN MAI**  
Interim Program Manager  
Food and Necessities  
Distribution Team

**SUBJECT: Approval of Retroactivity**

**DATE: October 5, 2022**

Approved

On behalf of Jon Cicirelli

Date

10/18/2022

**SUBJECT: APPROVAL OF RETROACTIVITY IN THE OFF THE GRID, LLC GROCERY AND MEAL DELIVERY AGREEMENTS' SIXTH AMENDMENTS**

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 Department of Parks, Recreation, and Neighborhood Services (PRNS), Food Distribution Branch, is seeking authorization for the retroactive provision in the following amendments to agreements with Off the Grid, LLC:

- Off the Grid, LLC Meal Distribution Services, Sixth Amendment
- Off the Grid, LLC Grocery Distribution Services, Sixth Amendment

The justification for the requests detailed below that are to include a retroactivity provision is that the agreements were competitively procured and either:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.

- Starting services protected or advanced the following significant City interest:  
If this option is selected, explain the City interest and how the services protected/advanced that City interest.

On October 21, 2020, the City entered into two agreements with Off the Grid, LLC for meal and grocery distribution services that would target communities being highly impacted by the COVID-19 pandemic. The distribution and data collection services provided by Off the Grid, LLC have heavily contributed to the continued success of the City's larger food distribution program. The term of the original agreement has been amended and extended multiple times since its original execution date, and the Food and Necessities Distribution Team has determined that an additional amendment to extend the contract until September 30, 2022 is needed.

The Department understands that retroactive clauses are to be avoided. However, the agency and City staff needed more time to plan for a gradual reduction in service, conduct contract negotiations, and review draft agreements. In addition, the Department continues to participate in the regional food network planning coordinated by the County of Santa Clara, and with the previous amendments ending June 30, 2022, it was critical that services start July 1, 2022 to ensure a continuity of food service to many communities in need.

The Department requests an exception be made and the agreement detailed in this memorandum be allowed to proceed with retroactive clauses. The Department acknowledges the process was out of City contract compliance and will monitor future agreements to prevent this oversight in the future.

/s/  
UYEN MAI  
Interim Program Manager

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