

State of Washington
Contracts & Procurement Division
Department of Enterprise Services
P.O. Box 41411
Olympia, WA 98504-1411

Cart and Can, LLC
449 East Fircrest Street
Othello, WA 99344

**FIRST AMENDMENT
TO
CONTRACT NO. 02016
FRESH DAIRY**

This First Amendment (“Amendment”) to Contract No. 02016 is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“State”) and Dairy Cart and Can, LLC, a Washington Limited Liability Company (“Contractor”) and is dated as of August 1, 2022.

RECITALS

- A. State and Contractor (collectively the “Parties”) entered into that certain Contract No. 02016 for Cart and Can, LLC dated effective as of July 1, 2017 (“Contract”).
- B. The amendment set forth herein is within the scope of the Contract.
- C. The Parties now desire to amend the Contract as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract, as previously amended, as follows:

1. **PRICE ADJUSTMENT.** Prices are hereby amended to reflect a 13.8% price increase as of the effective date.
2. **ADDED LANGUAGE—CERTIFICATIONS.** Language to insert into Section 4--**CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Creating new sections 4.9-- **BUY AMERICAN REQUIREMENT** and 4.10-- **FEDERAL LOBBYING— BYRD ANTI-LOBBYING AMENDMENT.**
 - a. **4.9 BUY AMERICAN REQUIREMENT.** Contractor represents and warrants, as certified in **Exhibit D—Contractor Certifications**, that, Contractor shall offer dairy products that satisfy the federal ‘Buy American’ requirement. Accordingly, Contractor shall provide aforementioned dairy products for purchase and certify that such dairy products are either unprocessed foods that originate in the United States or are processed in the United States and contain over 50% of its agricultural food component, by weight or volume, from the United States in accordance with section 12(n) of the National School Lunch Act and the implementing regulations. See 42 USC § 1760(n); and 7 CFR § 210.21(d).
 - b. **4.10 FEDERAL LOBBYING— BYRD ANTI-LOBBYING AMENDMENT.** Contractor represents and warrants, as certified in **Exhibit D—Contractor Certifications**, that Contractor complies

with the federal Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.].

3. CONTRACTOR CERTIFICATIONS. **Exhibit D—Contractor Certifications** (attached) to be incorporated into Contract.
4. NO CHANGE OTHER THAN AMENDMENT. Except as amended herein, the Contract is unaffected and remains in full force and effect.
5. INTEGRATED AGREEMENT; MODIFICATION. This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
6. AUTHORITY. Each party to this Amendment, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
7. ELECTRONIC SIGNATURES. A signed copy of this Amendment or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
8. COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Amendment at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Amendment.

EXECUTED AND EFFECTIVE as of the day and date first above written.

**CART AND CAN LLC,
A WASHINGTON LLC**

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

By: *Kevin Gilbert*
Kevin Gilbert (Jul 20, 2022 16:10 PDT)
Name: Kevin Gilbert
Title: Secretary
Date: 7/20/22

By: *Nick Ioanna*
Name: Nicholas Ioanna
Title: Procurement Supervisor
Date: 7/26/2022

EXHIBIT D: CONTRACTOR CERTIFICATIONS

PART I: BUY AMERICAN REQUIREMENT

The William F. Goodling Child Nutrition Reauthorization Act of 1998 requires school food authorities to purchase domestically grown and processed foods, to the maximum extent practicable (see 7 CFR §210.21(d)). To be considered a domestic commodity or product, unprocessed foods must originate in the United States and processed foods must contain more than 50% of its agricultural food component, by weight or volume, from the United States in accordance with section 12(n) of the National School Lunch Act and the implementing regulations. See 42 USC § 1760(n); and 7 CFR § 210.21(d).

Contractor certifies that items sold through this Contract comply with the above terms.

Signed: Kevin Gilbert
Kevin Gilbert (Jul 20, 2022 16:10 PDT)

Name: Kevin Gilbert

Title: Secretary

Phone Number: 5093496050

PART II: BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

In accordance with federal regulations, Contractor certifies to the best of its knowledge and belief, consistent with the federal Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [codified at 2 U.S.C. § 1601, et seq.], that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

In accordance with federal regulations, Contractor must submit certification 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, an 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 this amendment. Each must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

By signature below, our firm certifies that it is in full compliance of the Byrd Anti-Lobbying Amendment and further certifies that they do not contract with other firms or individuals who are in violation of this Amendment.

Signed: *Kevin Gilbert*
Kevin Gilbert (Jul 20, 2022 16:10 PDT)

Printed Name: Kevin Gilbert

Title: Secretary

Firm: Cart & Can, LLC

State of Washington Contracts & Procurement Division Department of Enterprise Services P.O. Box 41411 Olympia, WA 98504-1411	CONTRACT AMENDMENT	
	Contract No.:	02016
Cart and Can, LLC 449 East Fircrest Street Othello, WA 99344	Amendment No.:	2
	Effective Date:	October 1, 2024

**SECOND AMENDMENT
TO
CONTRACT NO. 02016
FRESH DAIRY**

This Second Amendment (“Amendment”) to Contract No. 02016 is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and Cart and Can, LLC, a Washington Limited Liability Company (“Contractor”) and is dated as of October 1, 2024.

RECITALS

- A. Enterprise Services and Contractor (collectively the “Parties”) entered into that certain Contract No. 02016 dated effective as of July 1, 2017 (“Contract”).
- B. The Parties previously amended the Contract as follows:
 - (1) By instrument titled First Amendment to Contract (dated August 1, 2022) to reflect a 13.8% price adjustment, add new subsection 4.9 Buy American Requirement, and add new subsection 4.10 Federal Lobbying-Byrd Anti-Lobbying Amendment.
- C. The Parties now desire to amend the Contract to include a ‘pay equality provision’ as required by the Washington State Legislature. See [LAWS OF 2023, ch. 475](#), § 919(4).
- D. The Parties further desire to amend the Contract to include a ‘nondiscrimination provision’ as required by the Washington State Legislature. See [LAWS OF 2023, ch. 468](#) [codified at [RCW 39.26.245\(3\)](#) and [RCW 49.60.530](#)].
- E. The amendment set forth herein is within the scope of the Contract.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree to amend the Contract, as previously amended, as follows:

- 1. **PAY EQUALITY.** The following provision is added to the end of section 14 (General Provisions) as a new subsection:

14.24 WASHINGTON STATE PAY EQUALITY FOR 'SIMILARLY EMPLOYED' INDIVIDUALS. Contractor represents and warrants that, among Contractor's employees, 'similarly employed' individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for Contractor's workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but is not limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Contract and/or any agreement entered into pursuant to this Contract.

2. NONDISCRIMINATION. The following provision is added to the end of section 14 (General Provisions) as a new subsection:

14.25 NONDISCRIMINATION.

- (a) Nondiscrimination Requirement. During the term of this Contract, beginning as of the effective date of this Amendment, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- (b) Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- (c) Default. Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor,

including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

(d) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.

3. NO CHANGE OTHER THAN AMENDMENT. Except as amended herein, the Contract is unaffected and remains in full force and effect.
4. INTEGRATED AGREEMENT; MODIFICATION. This Amendment constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. In the event of any conflict between this Amendment and the Contract or any earlier amendment, this Amendment shall control and govern. This Amendment may not be modified except in writing signed by the Parties.
5. AUTHORITY. Each party to this Amendment, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Amendment and that its execution, delivery, and performance of this Amendment has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
6. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Amendment or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Amendment or such other ancillary agreement for all purposes.
7. COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Amendment at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Amendment.

EXECUTED AND EFFECTIVE as of the day and date first above written.

**CART AND CAN, LLC,
A WASHINGTON LIMITED LIABILITY COMPANY**

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

By: *Kevin Gilbert*
Kevin Gilbert (Sep 18, 2024 08:21 PDT)

By: *Nick Ioanna*

Name: Kevin Gilbert

Name: Nicholas Ioanna

Title: Secretary

Title: Procurement Supervisor

Date: 09/18/2024

Date: 09/18/2024