



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES CONTRACT

### FIRST AMENDMENT

#### THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT

("Amendment") is effective as of \_\_\_\_\_ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **KIDANGO, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

#### WITNESSETH THAT

**WHEREAS**, the City and Contractor entered into a Professional Services Contract dated June 29, 2022 ("Contract") for the purpose of retaining the services of Contractor to provide daily meal service for children at the Emeryville Childhood Development Center ("**Center**"); and

WHEREAS, due to a significant increase in the cost of food for daily meal service as a result of a significant increase in the rate of inflation since the Contract was executed, the Contractor requested that the City agree to decrease the food service Contractor will provide to only lunch at a higher cost than originally agreed to; and

WHEREAS, City staff contacted the other proposer who submitted a bid for this Contract and that proposer was not able to provide these services at a lower cost; and

WHEREAS, the City and Contractor desire to enter into a First Amendment to the Contract on November 1, 2022, for the purpose of reducing the services provided by the Contractor as set forth in Exhibit A-1.

**WHEREAS**, the City and Contractor desire to amend the Contract; and

**WHEREAS**, the public interest will be served by this Amendment.

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

#### 1. AMENDMENT

The Parties agree to amend the Contract as checked below:

##### 1.1 Exhibit A

- ☐ Exhibit A of the Contract is hereby amended in its entirety and replaced with **Exhibit A-***Revision Number*;

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

**City of Emeryville** | Professional Services Contract Amendment  
REV 06/2020

**OR**

- ☒ Exhibit A of the Contract is hereby amended to include the provisions of **Exhibit A-1**, attached hereto and incorporated herein by this reference.

**1.2 Termination Date**

- ☐ The Parties desire to extend the termination date. Section 1.3 of the Contract is hereby amended to extend the termination date to **NEW END DATE**.

**1.3 Total Compensation Amount**

- ☐ The Parties desire to increase the Total Compensation Amount as set forth in Section 3.2 of the Contract by **FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00)**. The total amount paid under the Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00)**.

**2. CONTINUING EFFECT OF CONTRACT**

Except as amended by this Amendment, all other provisions of the Contract remain in full force and effect and shall govern the actions of the Parties under this Amendment. From and after the date of this Amendment, whenever the term "Contract" appears in the Contract, it shall mean the Contract as amended by this Amendment.

**3. ADEQUATE CONSIDERATION**

The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

**4. SEVERABILITY**

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**5. WAIVER**

The City's failure to enforce any provision of this Amendment or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

**SIGNATURES ON FOLLOWING PAGE**

6. SIGNATURE PAGE TO PROFESSESIONAL SERVICES CONTRACT  
FIRST AMENDMENT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract,  
which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:  
*John Kennedy*  
C7303F02312D475...  
City Attorney

Dated: CITY OF EMERYVILLE

\_\_\_\_\_  
City Manager

Dated: KIDANGO, INC.  
DocuSigned by:  
*Noah Delos Santos* (Signature)  
C7303F02312D475...  
Noah Delos Santos, Director of Nutrition

Attach: W-9 Form	Attach: Business License Certificate	Attach: Insurance Certificate and Endorsements

## **EXHIBIT A-1: REVISED SERVICES 2022-2023**

### **Background:**

Due to the rising food costs and inflation, Kidango has requested a price increase from \$6.32 per day for breakfast, snack, and lunch service to \$9.20 per day.

Following discussions with the City, Kidango will reduce its services under the Contract to lunch only, including milk, for the cost of \$5.22 per day.

### **Contractor Responsibilities:**

#### Key Personnel:

Noah Delos Santos, Director of Nutrition

#### Meal Service:

1. Contractor will provide daily meal service to children at the Emeryville Childhood Development Center (“**Center**”), Monday through Friday, excluding City holidays. Daily meal service will consist of lunch. Menus will be designed for preschool children aged 1 year to 5 years old. Each meal will include fresh fruit and/or fresh vegetables. Each meal will include low fat or nonfat white milk.
2. Contractor will provide meals for children with special dietary needs as requested by City. All such meals shall otherwise meet the meal pattern and nutritional requirements for non-special dietary needs meals.
3. Contractor will provide sack lunches for field trips as requested by City. All meals for field trips shall meet the meal pattern and nutritional requirements for meals served at the Center.
4. Contractor will deliver meals to the Center at times specified by City. Contractor will be responsible for proper storage and care of meals until delivery to the Center. Contractor shall ensure that all health and sanitation requirements of the California Retail Food Code (Health and Safety Code section 113700 et. seq.) are met at all times.

#### Food Standards:

Contractor will provide food which emphasizes fresh and all-natural ingredients, and will not provide overly processed, fried, or microwaved product meals. Ingredients will be organic and locally produced whenever possible. All milk must be free of BST growth hormone. Meats shall be free of nitrates and nitrites.

Contractor will not provide food: high in fructose corn syrup, or added sugar; with artificial trans fats; or with artificial colors, flavors or sweeteners.

Menus:

No later than one week prior to the end of each month, Contractor will provide to City a proposed menu for the following month for all meals describing meals to be served for the that month. The menu will be subject to approval by City.

Records:

Meals will comply with all nutritional requirements of the state Child and Adult Care Food Program (“CACFP”). Contractor will maintain all necessary records on the nutritional components and quantities of the meals served at Center and make said records available for inspection by State and Federal authorities upon request. Contractor will maintain said records for a period of three (3) years.

Upon execution of this Agreement, Contractor will provide City with a copy of current health certifications for the food service facility in which it prepares meals for use in the CACFP.

**City Responsibilities:**

Food Storage Facilities:

City will provide refrigerated food storage equipment. Contractor will provide hot food storage equipment. City will provide maintenance of the premises, equipment and facilities where meals will be served.

Ordering and Service of Meals:

City will conduct weekly ordering of the number of meals needed for each day of the following week.

City will provide for service of meals to children.

**Meal Pricing:**

Pricing for meals and services provided in this Agreement shall be as follows:

Meal Type	Pricing (per day / per child)
Lunch	\$5.22

The yearly contract amount is based on:

247 days of operation x \$5.22 per day x 56 participants = \$72,203.04 for a total not to exceed \$80,000 per fiscal year.