

**RESOLUTION NO. 20-73****Resolution Of The City Council Of The City Of Emeryville Authoring The City Manager To Enter Into A Professional Services Agreement With Uptons Inc. Dba: School Foodies In An Amount Not To Exceed \$115,000 Per Fiscal Year 2020-21 And 2021-22 To Provide Food Service At The Emeryville Child Development Center**

**WHEREAS**, the City of Emeryville provides childcare services through the Emeryville Child Development Center ("Center"), located at 1220 53<sup>rd</sup> Street, Emeryville, California; and

**WHEREAS**, the City desires to provide a meal program for the children enrolled at the Emeryville Child Development Center; and

**WHEREAS**, the Center is required to provide meals to all of the participants of the center through the State Contract; and

**WHEREAS**, the City receives approximately \$23,000 to provide a healthy meal program that meets the compliance requirements of the Child and Adult Care Food Program (CACFP); and

**WHEREAS**, on March 19, 2020 the City Council approved the request to issue an RFP for a third party food provider Resolution 16-23; and

**WHEREAS**, School Foodies was the lowest proposal received; now, therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville hereby authorizes the City Manager to enter into a professional services agreement, in the form attached hereto as Exhibit A, with Uptons Inc. dba: School Foodies in an amount not to exceed \$115,000 per Fiscal Year 2020-21 and 2021-22 to provide food service at the Emeryville Child Development Center.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 7, 2020.

AYES:	<u>5</u>	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____

ATTEST:

DocuSigned by:

*Sheri Hartz*

FB7B5D8EAB6A48F  
CITY CLERK

DocuSigned by:

*[Signature]*

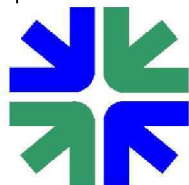
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MAYOR

APPROVED AS TO FORM:

*Michael Quinn*

CITY ATTORNEY



# City of Emeryville

CALIFORNIA

## PROFESSIONAL SERVICES CONTRACT

**THIS PROFESSIONAL SERVICES CONTRACT** ("Contract") is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and Upton, Inc., DBA School Foodies ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

### WITNESSETH THAT

**WHEREAS**, the City desires to engage Contractor for ECDC Meal Program; and

**WHEREAS**, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

**WHEREAS**, the City has determined that the Contractor is qualified by training and experience to render such services; and

**WHEREAS**, the Contractor desires to provide such services; and,

**WHEREAS**, the public interest will be served by this Contract; and

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

### 1. SCOPE OF SERVICES AND TERMINATION DATE

#### 1.1 Project Description

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

#### 1.2 Services

The services to be completed under this Contract ("Services") are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

#### 1.3 Schedule and Completion Date

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **JUNE 30, 2022**. The Parties may, by mutual, written consent, extend the term of this Contract.

#### FOR CITY USE ONLY

Contract No.		CIP No.	
Resolution No.		Project No.	

## **2. WORK CHANGES**

### **2.1 *City Rights to Change***

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

### **2.2 *Additional Work Changes***

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

### **2.3 *City Manager Execution***

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

## **3. COMPENSATION AND METHOD OF PAYMENT**

### **3.1 *Compensation for Services Performed***

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

### **3.2 *Total Compensation Amount***

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **TWO HUNDRED THIRTY THOUSAND DOLLARS AND NO CENTS (\$230,000)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

## **4. COVENANTS OF CONTRACTOR**

### **4.1 *Assignment of Contract***

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

### **4.2 *Responsibility of Contractor and Indemnification of City***

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

### **4.3 *Independent Contractor***

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of

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employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

#### **4.4 Insurance**

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

#### **4.5 Records, Reports and Audits**

##### **4.5.1 Records**

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

##### **4.5.2 Reports and Information**

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

##### **4.5.3 Audits and Inspections**

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

#### **4.6 Conflicts of Interest**

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

#### **4.7 Confidentiality**

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

#### **4.8 Discrimination Prohibited**

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

#### **4.9 Licenses, Certifications and Permits**

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

#### **4.10 Key Personnel**

All of the individuals listed in Exhibit A are necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

#### **4.11 Authority to Contract**

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

#### **4.12 Ownership of Work**

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

#### **4.13 City Labor Requirements**

##### **4.13.1 Compliance**

At the Effective Date, compliance with the City's living wage ordinance is ☒ **required** / ☐ **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in <https://www.codepublishing.com/CA/Emeryville/#/>, unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.

##### **4.13.2 Applicability**

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to <https://www.codepublishing.com/CA/Emeryville/>. Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

##### **4.13.3 Non-Compliance**

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and

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compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

#### **4.13.4 Living Wage**

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.84 PER HOUR** (which is <http://www.ci.emeryville.ca.us/1208/> to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

#### **4.13.5 Minimum Wage and Paid Sick Leave**

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance> <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance>, as set forth in <https://www.codepublishing.com/CA/Emeryville/#/>, to the extent it is applicable.

### **4.14 *California Labor Requirements***

#### **4.14.1 Prevailing Wage Requirements**

Contractor is aware of the requirements of <https://www.dir.ca.gov/cslr/> Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.



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#### 4.14.2 Registration

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

#### 4.14.3 Labor Compliance Oversight

This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

#### 4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the <https://>, Contractor will be required to secure the payment of workers’ compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

“I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

#### 4.14.5 Event of Default

Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

### 5. **TERMINATION**

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.

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- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

**6. NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

**7. ENTIRE AGREEMENT**

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

**8. SUCCESSORS AND ASSIGNS**

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

**9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE**

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any

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other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

## **10. SEVERABILITY**

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

## **11. BUSINESS TAX CERTIFICATE**

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

## **12. NOTICES**

### ***12.1 Communications Relating to Daily Activities***

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Quera Owens** for the City and **Wendy Wilson** for the Contractor:

<b>CITY</b>	<b>CONTRACTOR</b>
Quera Owens Phone No: 510-596-4367 E-Mail : qowens@emeryville.org	Wendy Wilson, Manager Phone No: 510-556-8900 E-Mail : wendy@schoolfoodies.com

## **12.2 Official Notices**

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

<b>CITY</b>	<b>CONTRACTOR</b>
<p>Pedro Jimenez, Community Services Director 4727 San Pablo Ave Emeryville, California 94608 Phone No: 510-450-7813 E-Mail : pjimenez@emeryville.org</p> <p><i>with a copy to:</i> Quera Owens, ECDC Manager 1220 53<sup>rd</sup> Street Emeryville, California 94608 Phone No: 510-596-4367 E-Mail : qowens@emeryville.org</p>	<p>Owner 2363 Tripaldi Way Hayward, Ca 94545 Phone No: 510-556-8900 E-Mail : dennis@schoolfoodies.com</p>

## **13. COUNTERPARTS**

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

## **14. NO THIRD-PARTY BENEFICIARIES**

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

## **15. NON-EXCLUSIVITY**

City reserves right to employ other contractors in connection with the Services covered under this Contract.

## **16. ASSIGNMENT OR TRANSFER**

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

## **17. WAIVER**

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

## **18. OTHER REQUIREMENTS, INCLUDING FEDERAL OR STATE REQUIREMENTS, IF APPLICABLE**

If any of the boxes are checked below, this Contract is subject to the requirements as set forth in **Exhibit C**:

- ☐ Compliance with terms and conditions set forth in **Exhibit C** is required for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C ("Other Requirements")** when attached hereto and incorporated by reference. With respect to any conflict between such Other Requirements, and the terms of this Contract and/or provisions of state law, **Exhibit C** shall control.
- ☐ FEMA financial assistance will be used to fund all or a portion of this contract. If FEMA financial assistance will be used to fund any portion of this Contract, the Contractor shall comply with all federal requirements including, but not limited to, the following: 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and Federal Contract Provisions attached hereto as **Exhibit C** and incorporated herein by reference. Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the contract, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions. With respect to any conflict between such federal requirements and the terms of this contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

*SIGNATURES ON FOLLOWING PAGE*

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**19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT**

**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:  
Andrea Visweswara  
City Attorney

Dated:

**CITY OF EMERYVILLE**

\_\_\_\_\_, 2020

\_\_\_\_\_  
Christine S. Daniel, City Manager

Dated:

Upton, Inc., DBA School Foodies, Dennis King

6/23/2020, 2020

DocuSigned by:  
(Signature)  
Dennis King, Owner

## **EXHIBIT A: SERVICES 2020-2021**

### **Contractor Responsibilities:**

#### Key Personnel:

Dennis King, Owner

#### 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 consists of breakfast, lunch, and morning snack. Menus will be designed for preschool children aged 8 months 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 and snacks for children with special dietary needs as requested by City. All such meals and snacks shall otherwise meet the meal pattern and nutritional requirements for non-special dietary needs meals and snacks.
3. Contractor will provide sack lunches and/or snacks for field trips as requested by City. All meals for field trips shall meet the meal pattern and nutritional requirements for meals and snacks 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 and snacks needed for each day of the following week.

City will provide for service of meals to children.

**Meal Pricing:**

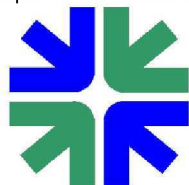
Pricing for meals and services provided in this Agreement shall be as follows:

<b>Meal Type</b>	<b>Pricing (per day / per child)</b>
Breakfast/PM Snack	\$2.75 (no sales tax)
Lunch	\$2.75 (taxable)

The yearly contract amount is based on:

246 days of operation x \$5.50 per day x 80 FTE participants =\$108,240 plus estimated sale tax of \$5,007 = \$113,247 for a total not to exceed \$115,000 per fiscal year.





# City of Emeryville

CALIFORNIA

## EXHIBIT B

### Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to Upton, Inc., DBA School Foodies.

#### 1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

##### 1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- ☒ **General Liability**  
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- ☒ **Automobile Liability**  
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- ☐ **Professional Liability / Errors and Omissions**  
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- ☒ **Workers' Compensation and Employer's Liability**  
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- ☐ **Pollution Liability Insurance**  
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

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## 1.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

### General Liability

- ☒ **All Contract Types**  
\$1,000,000.00 per occurrence and \$2,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

**OR**

- ☐ **Construction Specific**  
\$2,000,000.00 per occurrence and \$4,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

- ☒ **Automobile Liability**  
\$2,000,000.00 per accident for bodily injury and property damage.

- ☐ **Professional Liability / Errors and Omissions**  
\$2,000,000.00 per claim and aggregate.

- ☒ **Workers' Compensation and Employer's Liability**  
Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000.00 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

- ☐ **Pollution Liability Insurance**  
\$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

## 2. INSURANCE ENDORSEMENTS

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

- ☒ **General Liability**  
(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with

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respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

☒ **Automobile Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

☐ **Professional Liability Coverage**

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

☒ **Workers' Compensation and Employer's Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

☐ **Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon

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land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

**ALL COVERAGES**

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

**3. SEPARATION OF INSURED; NO SPECIAL LIMITATIONS**

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

**4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**5. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

**6. VERIFICATION OF COVERAGE**

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The

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certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

## **7. SUBCONTRACTORS**

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

## **8. REPORTING OF CLAIMS**

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.