

Palos Verdes Peninsula Unified School District

BRANDED FOOD VENDOR AGREEMENT

THIS AGREEMENT ("Agreement") is made and executed on the 1st day of January 2018 ("Effective Date") by and between YUMMY OMG PIZZA INC, a Franchisee, (the "Vendor"), whose address is 4226 Pacific Coast Highway, Torrance, CA 90505 and the PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT (the "District") located at 375 Via Almar, Palos Verdes Estates, CA 90274 with reference to the following .

Whereas, the District is required to comply with the provisions set forth in *California Education Code* Section 35182.5 in order to contract with Vendor for the exclusive or nonexclusive sale of food and beverages on the District's premises;

Whereas, Vendor acknowledges that changes in State or federal law or in State Agency guidelines may occur during the term of this Agreement which further restrict the sale of food and beverages on the District's premises and/or affect the Vendor's profitability;

Whereas, despite potential future financial consequences resulting from changes in the law, Vendor desires to deliver and serve its food items to individual consumers on the District's premises, on the terms and conditions herein described.

NOW, THEREFORE, for a valuable consideration, the parties agree as follows:

1. Vendor, on the terms and conditions herein set forth, agrees to provide food products ("Food Products") all as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, as part of District's breakfast and lunch service to individual consumers. The Food Products shall be delivered to the District at the times and locations set forth in Exhibit B, attached hereto and incorporated herein by this reference. The District agrees to purchase the Food Products, at the prices set forth in Exhibit A, attached hereto and incorporated herein by this reference.
2. The term of this Agreement shall commence on the Effective Date and run for five (5) years unless otherwise terminated according to the terms of this Agreement.
3. The District reserves the right, in its sole and absolute discretion, to refuse any late deliveries of Food Products and the District shall have no liability to the Vendor for any Food Products which the Vendor attempts to deliver that are not delivered on a timely basis, as herein provided.
4. The Vendor agrees to provide to the District on a daily basis an invoice for Food Products purchased by and delivered to the District on said day and to acquire the signature on each such invoice from a designated District Food Services representative (said food services representative, as

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designated by the District from time-to-time in writing, is referred to herein as the "Representative".) The invoice shall be in three (3) parts, two (2) of which will be delivered to the Representative, subsequent to the Representative's review of the Food Products received. The failure of the Vendor to obtain the referenced signature from the Representative on a particular invoice may, in the sole discretion of the District, excuse the District from any obligation to pay the amount billed in such invoice.

5. By the 10th calendar day of each month during the term of this Agreement, the Vendor shall provide the District a summary invoice for all Food Products purchased by District, and for which the District has previously signed daily invoices, during the preceding calendar month. The Vendor agrees that items, quantities, unit prices, and other details requested by the District, must be shown on the referenced summary invoice. The Vendor further agrees that all invoices will be numbered and that any credits due to the District for the previous month will be shown on the referenced summary invoice. The Vendor understands and agrees that no sales tax of any California jurisdiction or any federal excise tax will be charged to the District in light of its exemption from such levies. The District agrees to pay all such monthly summary invoices (less any credits to which it may be entitled) within fifteen (15) calendar days of receipt of each monthly invoice; provided, should the payment date fall on an official holiday observed by the State of California or on a weekend, the payment shall be due on the next business day after such holiday or weekend.
6. Food Products shall be prepared on Vendor's premises under such controlled temperatures and conditions as are required by state and local statutes and regulations. Assembled Food Products shall be stored in properly refrigerated or heated conditions (as may be appropriate to the Food Product) and as meet sanitation requirements imposed by law. The District shall have the right to inspect Vendor's premises without prior notice, it being agreed that the Vendor's full compliance with all legal requirements is of the essence of this Agreement and that the Vendor's failure to abide by such legal requirements shall result in the termination of this Agreement. Moreover, the Vendor agrees to immediately inform the District in writing of the results of any inspection of its premises and food preparation locations by governmental inspectors or others which resulted in other than an "A" (or comparable) rating and of any claim by any party that food products of any nature provided by the Vendor resulted in sickness, death or other injury to the claiming party.
7. The Vendor agrees to present Food Products purchased by the District in an appealing and appropriate manner. Vendor shall be responsible for quality control with respect to the Food Product and/or method of service to assure consistent quality of Food Products served to individual

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consumers. In connection therewith, the Vendor shall comply with the regulations established in Section 113700 *et seq.* of the *California Health and Safety Code*. Hot food must be 140° degrees or more upon delivery. Cold food must be delivered at 41° degrees or less upon delivery. The District shall have the right to reject any or all Food Products furnished to the District, which in its opinion does not meet standards of quality and/or proper temperature.

8. The Vendor agrees to ensure that all food and beverage products provided to the District pursuant to this Agreement are free of peanuts, nuts, and/or any nut products.
9. Sales of Food Products on District premises may be done by employees of the Vendor. All such persons shall be trained by the Vendor to meet the District's and the Vendor's standards, but the Vendor shall be fully responsible for such training. All such Vendor personnel shall wear uniforms provided by Vendor. Although such personnel will be supervised by Vendor, the Vendor's supervisory personnel shall respond to the requests of the Representative to correct any observable deficiency in the performance of the Vendor's personnel.
10. The District shall provide a parking spot for the Vendor to deliver Food Products at a location as close as possible to the point of sale and, at the beginning of the term hereof, to provide a delivery map to the Vendor to the drop off location specified by the District. Such location may be changed at any time, at the sole discretion of the District. The District further agrees to inform any school security departments of planned deliveries by the Vendor and to provide parking passes or security clearances necessary for the Vendor's personnel to gain entry to the school grounds and to the drop off location.
11. The Vendor shall package the Food Products in the same types of containers as are used by the Vendor at its retail outlet located at VENDOR ADDRESS. The District reserves the right to refuse delivery of the Food Products without retail packaging. Moreover, the District shall have the right, in its sole discretion, to regulate or prohibit the distribution on District property of any advertising, coupons or any other documents produced or supplied by the Vendor for itself, or any other entity.
12. Food handler's permits for the Vendor's employees shall be obtained and maintained by the Vendor in accordance with Section 113700 *et seq.* of the *California Health and Safety Code*. The Vendor shall have the responsibility to ensure that its employees observe sanitary food handling practices. Moreover, each Vendor employee must be fingerprinted and

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said prints cleared and approved by the District before said employee may work on the District's premises.

13. Indemnification. To the fullest extent permitted by law, Vendor agrees to indemnify, and hold District entirely harmless from all liability arising out of:
 - a. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to Vendor's employees or Vendor's subcontractor's employees arising out of Vendor's work under this Agreement;
 - b. Liability for (1) any loss, bodily injury to, or death of persons; (2) injury to, loss, vandalism, damage or theft of property, sustained by the Vendor or District or any person, firm or corporation, arising out of, or in any way connected with the services provided by Vendor under this Agreement.

The Vendor, at Vendor's own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

14. Right to Audit. Vendor acknowledges the District's right to conduct an appropriate audit of the books and records maintained by Vendor, in connection with the goods and services provided to the District under this Agreement. The District shall have the right, upon ten (10) days prior written notice, to inspect all of Vendor's account sheets pertaining to the District.
15. Insurance. Prior to its performing any undertakings hereunder, the Vendor shall obtain and deliver a copy thereof to the District, and shall maintain during the term hereof, product liability insurance, including extended coverage, in the amount of One Million Dollars (\$1,000,000) per occurrence and general liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence, with extended coverage, and shall require all subcontractors, if any, whether primary or secondary, to the same. All such insurance coverage shall name the District as an additional insured and shall provide that the same may not be cancelled or reduced with less than thirty (30) days prior notice to all insured. The Vendor shall also carry such Workers Compensation insurance as may be required by law for its operations.

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16. Independent Contractor Status. Vendor, in the performance of this Agreement, shall be and act as an independent contractor. Vendor understands and agrees that Vendor and all of Vendor's employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Vendor assumes the full responsibility for the acts and/or omissions of Vendor's employees or agents as they relate to the services to be provided under this Agreement. Vendor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective Vendor's employees.

17. Notice. Any notice a party is required or desires to give hereunder shall be in writing and hand delivered, mailed First Class via the United States Postal Service, postage prepaid with return receipt requested, or delivered by overnight private express carrier to the address of the party in question set forth below:

To District: Keith Butler
Associate Superintendent, Business Services
Palos Verdes Peninsula Unified School District
375 Via Almar
Palos Verdes Estates, CA 90274

To Vendor: Yummy OMG Pizza INC
Tarek Aly and Waleed Mansour, Franchisees
7852 Daisy Circle
Huntington Beach, CA 92648

18. Termination.

a. This Agreement may be terminated without cause by either party upon no less than thirty (30) days prior written notice.

b. Additionally, the District may terminate this Agreement for any breach of this Agreement's material terms by Vendor. The District shall provide Vendor with written notice of the breach and provide a fifteen (15) day opportunity for Vendor to cure such breach. If Vendor fails to cure the breach within the fifteen (15) day period, the District may immediately terminate the Agreement upon written notice to Vendor and then may, at

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its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, and (ii) recover damages for the breach of the Agreement.

19. This Agreement embodies the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations and preliminary agreements between parties. No amendment or modification of this Agreement may be made except in writing signed by the parties hereto.
20. Neither party hereto may assign its benefits or obligations hereunder without the prior written consent of the other being obtained, which consent will not be unreasonably withheld.
21. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons, firm or firms, corporation or corporations may require.
22. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made to be performed wholly within the State of California.
23. If during the term of this Agreement any portion of this Agreement, or any aspect of the services provided by Vendor, including, without limitation, nutritional contents of food or beverages provided by Vendor, are found to be in conflict with federal, state, or local laws, including District's Governing Board policies, the parties will first mutually agree to amend this Agreement to conform with such laws. If the Agreement cannot be modified to conform with such laws, it will be terminated according to the terms of this Agreement.
24. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy pertaining to this Agreement, the parties shall bear their own attorneys' fees and court costs.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the 17th day of January, 2018.

VENDOR NAME:

YUMMY OMG PIZZA INC

PALOS VERDES PENINSULA
UNIFIED SCHOOL DISTRICT:

By: _____

Waleed Mansour
Type or print name

Title: _____
Franchisee

Address: _____
7852 Daisy Circle

Huntington Beach, CA 92648
City, State, Zip

BY: _____

Keith Butler
Type or print name

Title: _____
Assoc. Superintendent, Bus Svcs

Address: _____
375 Via Almar

Palos Verdes Estates, CA 90274-1119
City, State, Zip

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Food Product Description Purchase Price

Exhibit A

Item Description	Size	Price
Cheese Pizza	16"	\$7.75
Pepperoni Pizza	16"	\$8.00