



PRICE AGREEMENT NO. 14452

AMENDMENT NO. 1

ALBUQUERQUE PUBLIC SCHOOLS – PROCUREMENT DIVISION  
PO BOX 25704  
ALBUQUERQUE, NM 87125  
PHONE (505) 881-8415  
FAX (505) 830-1161

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Tasty Brands  
6800 Jericho Turnpike Suite 101 West  
Syosset, NY 11791

SHIP TO

APS Food & Nutrition Services  
800 Louisiana Blvd. NE  
Albuquerque, NM 87108

ATTENTION  
OF

Juan Saiz (505) 345-5661  
Melissa Sanchez (505) 345-5661

DATE	VENDOR NO.
9/21/2016	38270

MGS

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico Criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

PLEASE SHOW CONTRACT NUMBER ON ALL INVOICES, SHIPPING PAPERS, PACKAGES, CORRESPONDENCE, ETC. INVOICE IN DUPLICATE.

### ITEMS, TERMS & CONDITIONS

## PRICE AGREEMENT

July 1, 2016 - June 30, 2017  
(Annual contract with no renewals)

### Amendment 1

Commodity Processed Foods for Food & Nutrition Services

Per terms and conditions of Bid No. 16-018MS-SL

Pricing attached

**Reason for Amendment:** Add Items# 00801WG Cheese Lasagna Roll-Up 110/4.30oz @ \$46.19/cs, #00834WG Mini Cheese Ravioli 221/2.17oz @ \$56.65/cs, #55102 Turkey Sausage, Cheese & Gravy Breakfast Toast 120/2.78oz @ \$46.82 (see attached)

*APS reserves the right to add products within each category as they are introduced into the market with prior approval from APS Procurement Division and APS Food & Nutrition Services*

Price Agreement (PA) issued as a result of this bid has no dollar value associated with it and there are no guarantees that APS will require services and/or goods under this PA. The PA is an agreement on terms and conditions and pricing for possible future purchases based on the needs of APS during the contract period.

**CONTACT:** David Horowitz  
**PHONE:** (516) 938-4588 / **FAX:** (516) 935-1825  
**EMAIL:** [dhorowitz@tastybrandsk12.com](mailto:dhorowitz@tastybrandsk12.com)

NOTE: THIS IS NOT AN ORDER BUT NOTIFICATION THAT THE BOARD OF EDUCATION HAS ENTERED INTO AN AGREEMENT TO RECEIVE THE ABOVE SERVICES AND/OR PRODUCTS AS REQUESTED.

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

*[Handwritten signature]*  
Melissa G. Sanchez  
District Buyer  
9/23/16

# ALBUQUERQUE PUBLIC SCHOOLS (APS) GENERAL TERMS AND CONDITIONS

**1. INSPECTION.** The materials, supplies or services furnished shall be exactly as specified in this order, free from defects in Seller's design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by APS at all times and places. If, prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, APS may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such defects within a time deemed reasonable by APS, APS may terminate the order in whole or in part. Seller shall bear all risks as to rejected materials, supplies and services and, in addition to any other costs for which Seller may become liable to APS under other provisions of this order, shall reimburse APS for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to, and do not limit, APS's rights provided in this Paragraph.

**2. WARRANTIES.** Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UGC warranties, express or implied are incorporated herein.

**3. ASSIGNMENT.** Neither the order nor any interest therein, nor claim thereunder shall be assigned or transferred by the Seller except as authorized in writing by APS. No assignment or transfer shall relieve the Seller from its obligations and liabilities.

**4. CHANGES.** APS may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of APS. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Seller from proceeding with performance of the order as changed hereunder.

**5. LABOR DISPUTES.** Seller shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this order.

**6. TERMINATION AND DELAYS.** APS may by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. APS shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by APS with respect to the undelivered or unaccepted portion of this order; provided compensation hereunder shall in no event exceed the total order price. Such amount will be limited to the Sellers actual cost and shall not include anticipated profits. APS may by written notice terminate this order for Sellers default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the items or services or to perform the services within the time specified or any written extension thereof. In such event, APS may purchase or otherwise secure items or services and, except as otherwise provided herein, Seller shall be liable to APS for any excess costs occasioned APS thereby, including incidental and consequential damages.

If, after notice of termination for default, APS determines that the Seller was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of APS, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of APS, unless it shall be determined that the items or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.

If APS determines that Seller has been delayed in the work due to causes beyond the control and without the fault and negligence of the Seller, APS may extend the time for completion of the work called for by this order, when promptly applied for in writing by the Seller; and if such delay is due to failure of APS, not caused or contributed by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Paragraph. Sole remedy of Seller in event of delay by failure of APS to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of delay. No allowance will be made for anticipated profits.

The rights and remedies of APS provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. As used in this Paragraph, the word "Seller" includes Seller and its suppliers at any tier.

**7. AFFIRMATIVE ACTION.** Seller shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Seller agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy effectively to all persons concerned within Seller's company, with outside recruiting services and the minority community at large; to provide APS on request a breakdown of its labor force by ethnic group, sex, and job category; and to discuss with APS its policies and practices relating to its affirmative action program.

**8. INDEMNIFICATION AND INSURANCE.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performances of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of APS. Seller shall indemnify and hold harmless APS, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action.

Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order on premises occupied by or under the control of APS.

**9. PATENT AND COPYRIGHT INDEMNITY.** Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting therefrom.

**10. DISCOUNTS.** APS will take advantage of prompt payment discounts whenever possible; however these will not be used as a means to determine the low responsive and responsible bidder. Any discount period will not begin until the materials, supplies or services have been received and accepted and a correct invoice submitted for payment, if testing is required, discount period will not begin until such tests are satisfactorily completed.

**11. CONTINGENCY FEES.** Seller warrants that no person or selling agency has been employed or retained to solicit or secure this order upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona-fide employees or bona-fide established commercial or selling agencies maintained or utilized by Seller for the purpose of securing business. For violation or breach of this warranty, APS shall have the right to annul this order without liability or, at its discretion, to deduct from this order, price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**12. PENALTIES.** The New Mexico Procurement Code (NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

**13. TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to APS at the F.O.B. point specified subject to the right of APS to reject upon inspection. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from APS's Purchasing Department. Order is subject to termination for failure to make timely delivery.

**14. TAX STATUS.** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of tax on the purchase of tangible personal property. This certificate will be issued upon request. It is not valid for the purchase of services including construction, or materials that become part of a construction project or for the lease of property. Seller is responsible for payment of all applicable taxes, which will be added to invoice as a separate item at the current rate.

**15. APPLICABLE LAWS.** If this order is a subcontract under a U.S. Government Prime Contract, applicable clauses of the Federal Acquisition Regulations are incorporated herein by reference. Any provision required to be included in a contract of this type by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation also shall be deemed to be incorporated herein. Any contract or litigation resulting from acceptance of this purchase order will be construed according to the laws of the State of New Mexico unless otherwise stated.



70073	Turkey Ham & Cheese Crossant Sandwich (MM)	Turkey Ham & Cheese Crossant Sandwich (MM)	Tasty Brands	110242	70073	2.783	120	2.52 oz	18.90 lbs	1 MMVA, 1 oz eq gr	\$1.9862	\$72.02	\$0.800	\$77.55	106	Minimum Shipping Requirements: 5,000 lbs
70019	Tiny & 2 Che Wedge Sandwich Turkey Ham & Cheese Crossant	Tiny & 2 Che Wedge Sandwich Turkey Ham & Cheese Crossant Sandwich	Tasty Brands	110242	70019	3.92	72	4.40 oz	19.80 lbs	2 MMVA, 2 oz eq gr	\$1.9862	\$57.82	\$0.803	\$55.61	106	Minimum Shipping Requirements: 5,000 lbs
70076	Mozz Fused Tosted Topped Breadstick (1.1)	Mozz Fused Tosted Topped Breadstick (1.1)	Tasty Brands	110242	70076	3.339	72	4.80 oz	20.70 lbs	2 MMVA, 2 oz eq gr	\$1.9862	\$63.04	\$0.876	\$69.67	106	Minimum Shipping Requirements: 5,000 lbs
62001	Mozz Fused Tosted Topped Breadstick (1.1)	Mozz Fused Tosted Topped Breadstick (1.1)	Tasty Brands	110242	62001	7.2	144	2.00 oz	18.00 lbs	1 MMVA, 1 oz eq gr	\$1.9862	\$36.33	\$0.252	\$50.63	78	Minimum Shipping Requirements: 5,000 lbs
25301	Mozz Chicken & Cheese Quesadilla	Mozz Chicken & Cheese Quesadilla	Tasty Brands	110242	25301	11.288	214	2.25 oz	30.09 lbs	1 MMVA, 1 oz eq gr	\$1.9862	\$57.31	\$0.258	\$90.11	96	Minimum Shipping Requirements: 5,000 lbs
25302	Mozz Chicken & Cheese Quesadilla	Mozz Chicken & Cheese Quesadilla	Tasty Brands	110242	25302	4.93	214	2.25 oz	30.09 lbs	1 MMVA, 1 oz eq gr	\$1.9862	\$72.74	\$0.340	\$82.53	96	Minimum Shipping Requirements: 5,000 lbs
70028	Breaded Chicken & Cheese w/ BBQ Sauce NY	Breaded Chicken & Cheese w/ BBQ Sauce NY	Tasty Brands	110242	70028	5.879	108	4.22 oz	26.49 lbs	2 MMVA & 1.25 oz eq gr	\$1.9862	\$81.69	\$0.756	\$93.37	78	Minimum Shipping Requirements: 5,000 lbs
70022	Turkey Club Combo Sandwich NY (Mezzanella, Turkey Breast)	Turkey Club Combo Sandwich NY (Mezzanella, Turkey Breast)	Tasty Brands	110242	70022	6.188	99	4.22 oz	26.61 lbs	2 MMVA & 2 WG Bnd	\$1.9862	\$81.47	\$0.823	\$93.76	106	Minimum Shipping Requirements: 5,000 lbs
21250	Breaded Chicken, Cheese & Cream Cheese Bt (MM)	Breaded Chicken, Cheese & Cream Cheese Bt (MM)	Tasty Brands	NA	21250	78	2.50	13.13	11.88	2 MMVA	\$	29.17	\$	0.38	N/A	Minimum Shipping Requirements: 5,000 lbs
21250	Breaded Chicken, Cheese & Cream Cheese Bt (Cinnamon Swirl) (MM)	Breaded Chicken, Cheese & Cream Cheese Bt (Cinnamon Swirl) (MM)	Tasty Brands	NA	21250	78	2.50	13.13	11.88	2 MMVA	\$	29.17	\$	0.38	N/A	Minimum Shipping Requirements: 5,000 lbs
21270	Breaded Chicken, Cheese & Cream Cheese Bt (Mezzanella, Turkey Breast) (MM)	Breaded Chicken, Cheese & Cream Cheese Bt (Mezzanella, Turkey Breast) (MM)	Tasty Brands	NA	21270	78	2.50	13.13	11.88	2 MMVA	\$	29.17	\$	0.38	N/A	Minimum Shipping Requirements: 5,000 lbs
21280	Breaded Chicken, Cheese & Cream Cheese Bt (Mezzanella, Turkey Breast) (MM)	Breaded Chicken, Cheese & Cream Cheese Bt (Mezzanella, Turkey Breast) (MM)	Tasty Brands	NA	21280	78	2.50	13.13	11.88	2 MMVA	\$	29.17	\$	0.38	N/A	Minimum Shipping Requirements: 5,000 lbs