


# REQUEST FOR BOARD ACTION

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To: ESD Board of Education  
From: ESD Finance Director, Ron Patera   
Date: June 2, 2020  
Business Date: June 8, 2020  
Subject: Food Service MOU

## RECOMMENDATION:

Approve Memorandum of Understanding with Legacy as presented.

## BACKGROUND AND FINDINGS:

This upcoming school year will mark the sixth year the school district will be providing lunches for Legacy Academy since they decided to return to the district for these services. To ensure that each entity understands their areas of responsibility within the relationship, the District and the Charter entered into a Memorandum of Understanding (MOU) for the previous five years. The Charter and the District both wish to continue the relationship by memorializing it with the same document, except with changes in the dates of the agreement.

## RECOMMENDED MOTION:

I move to approve the Memorandum of Understanding between the Elizabeth School District and Legacy Academy, which allows the district to become Legacy's School Food Authority, and authorize the BOE President and the Food Service Director to sign the agreement.

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## Memorandum of Understanding for Food Service Between Legacy Academy and Elizabeth School District

This Agreement between Elizabeth School District (School Food Authority), hereinafter referred to as *ESD* and Legacy Academy, authorizes *ESD* to provide food service as follows effective as of 07/01/2020 through 06/30/2021. (Note: This contract is for one year only, and coincides with the school's fiscal year) in accordance with the following conditions:

### I. Meal Requirements and Meal Services

- A. *ESD* will provide the following: \_\_\_ breakfast   X   lunch \_\_\_ snack \_\_\_ a la carte
- B. Meals will be picked up by *ESD* food service staff using the Legacy Academy utility van
- C. All meals provided by *ESD* shall comply with all meal pattern requirements of the appropriate National School Lunch Program/School Breakfast Program (NSLP/SBP), according to the 2010 Healthy Hunger Free kids Act
- D. *ESD* will prepare meals, which accommodate the special dietary needs of children as identified. These meals will be negotiated on an as-needed basis.

### II. Responsibilities

- A. *ESD* will retain responsibility for the oversight and management of the NSLP/SBP and the school food service operation, including processing *ESD*'s free and reduced price meal applications and submitting claims for reimbursement to the Colorado Department of Education (CDE).
- B. *ESD* is responsible for any reimbursement over-claims resulting from improperly categorized applications and/or meal counting errors.
- C. *ESD* will be responsible for providing the employee(s) of Legacy Academy the service of lunch at Legacy Academy.
- D. *ESD* will provide Cashier/POS Service.
- E. Clean up of the kitchen before and after the meal service will be the responsibility of *ESD*.
- F. Monitoring the students and clean up of the cafeteria during/after the meal service will be the responsibility of Legacy Academy.
- G. *ESD* will develop the menus for each meal. Menus will be developed for each month during the school year and Legacy Academy must be notified of any menu changes that are made after the distribution of each month's menu.
- H. *ESD* must not engage subcontractors to perform any services on-site at Legacy Academy facilities without the prior written approval from Legacy Academy.

### III. USDA Donated Foods/Commodities:

*ESD* will make processed commodities available for use for the food service provided to Legacy Academy.

**\*\*Note:** If commodities are made available to *ESD* then the following language applies to this agreement.

- A. All USDA Donated Foods will accrue to the benefit of *ESD* nonprofit school food service program and will be utilized within;
- B. *ESD* is prohibited from entering into any subcontracts for further processing of USDA Donated Foods on behalf of Legacy Academy ;
- C. USDA Donated Foods are prohibited from use for any special functions conducted outside the nonprofit school food service program;
- D. *ESD* may order commodities in order to maximize the benefits to the nonprofit school food service program;
- E. *ESD* will ensure the proper utilization, storage practices and inventory controls necessary to maintain USDA Donated Foods for maximum benefit to the nonprofit school food service program;
- F. *ESD* will be given full value for USDA Donated Foods received.
- G. *ESD* accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Donated Foods;
- H. *ESD* will maintain accurate and complete records with respect to receipt, use/disposition, storage and inventory of USDA Donated Foods;
- I. *ESD* retains the right to assert claims against other persons to whom USDA Donated Foods are delivered for care, handling or distribution and to take action to obtain restitution in connection with claims for improper distribution, use, loss of, or damage to USDA Donated Foods.

#### IV. Ordering and Delivery of Meals

- A. The lunch meal service will be delivered by ESD to the site(s) by 10:45AM for daily lunch service
- B. Legacy Academy shall notify ESD by 8:45AM each day of the total number of meals needed for the same day. Legacy Academy shall provide ESD with a calendar of the days when meals are required.
- C. ESD is responsible for cleaning transport containers after the meal service.
- D. ESD will pick-up and return food containers.
- E. ESD is responsible for providing the agreed-upon meal service(s) each day Legacy Academy is in session and or has requested meals for.
- F. A designee of ESD must sign the delivery tickets.
- G. Any changes or substitutions to approved menus must be communicated to Legacy Academy, by ESD.

#### V. Health and Sanitation

- A. ESD and Legacy Academy agree that State and local health and sanitation requirements will be met at all times.
- B. A HACCP Food Safety Plan must be implemented.
- C. All food will be properly stored, prepared, packaged, and transported at appropriate temperatures and free of contamination, in accordance with State and local health and sanitation requirements.
- D. ESD shall have state or local health certification for any facility outside the school in which it proposes to prepare meals and ESD shall maintain this health certification for the duration of the contract. [210.16 (c)(2)]
- E. Food items identified as perishable according to State and/or local health and sanitation requirements and which are left over from ESD meal service must be destroyed.

#### VI. Equipment and Utensils

- A. Legacy Academy shall furnish and be responsible for repairs and maintenance for the following equipment: (Note: List as appropriate to arrangement; e.g., freezers, refrigerators, cooking appliances).  
refrigerator, freezer, ice machine, sinks, warmers
- B. ESD shall furnish and be responsible for the following utensils: (list as appropriate to arrangement).  
serving utensils, pans/trays as appropriate for transportation and/or serving of meals

#### VII. Recordkeeping

- A. ESD agrees to maintain all records applicable to their responsibilities in this agreement for a period of five years from the end of this agreement period or longer as needed until all audit findings, claims, or litigation issues have been resolved. These records include but are not limited to meal counts, menus, food purchases, meal production records, recipes, nutrient information, and use of USDA Donated Foods, if applicable.
- B. ESD prepares and submits the monthly claim for reimbursement. ESD will keep all lunch reimbursement monies from CDE. ESD prepares and maintains participant applications and eligibility records, attendance reports and meal counts in accordance with program requirements. ESD manages student lunch accounts through a POS system. All monies collected for lunch accounts are ESD Food Service funds, and responsibility; including deposits, student refunds, and daily account reconciliation.
- C. ESD maintains menus and production records for meals prepared, nutrient information, documentation on processed products (Child Nutrition labels or product formulary), inventory of all USDA Donated Foods, and recipes.
- D. ESD agree that the books and records pertaining to the ESD food service program under the NSLP/SBP will be made available upon request to representatives of the CDE Office of School Nutrition - USDA, and the United States General Accounting Office at any reasonable time and place or other governmental agencies.

#### VIII. Fees/Charges for Meals

ESD will charge for meals provided according to the following schedule:

<u>Lunches:</u>	
Elementary Student	\$3.50 Per meal
Middle School Student	\$3.50 Per meal
Adult Lunch (All schools)	\$4.00 Per meal
Salad Bar Only	\$3.50 (students); \$4.00 (adults)
Second Entree	\$2.00
<u>Milk:</u>	
With Lunch Purchase	<i>Included in prices above</i>
Chocolate or White	\$0.50

#### IX. Non-performance or Cancellation Rights

- A. Either party may cancel this Agreement with thirty days written notice.
- B. This Agreement may be canceled immediately if ESD or Legacy Academy determines that the meal preparation facilities do not meet the health and sanitation requirements of the State and/or local health department.
- C. In the event of a breach of the agreement, the non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have thirty (30) days within which to cure the default. If the default is not cured within that time, the non-breaching party shall have the right to then terminate this Agreement by giving the breaching party thirty (30) days written notice of its intention to terminate.
- D. This Agreement shall terminate in the event sufficient funds shall not be appropriated or made available for funding the operations of ESD Food Services.

#### X. Additional Terms:

- A. ESD shall provide the School with a copy of ESD's comprehensive liability insurance certificate, including the product liability insurance certificate demonstrating that the Vendor is adequately insured against injury to ESD's employees and to any participants in the meal service provided through this agreement who may incur loss or injury as a result of the acts of ESD or ESD's employees.
- B. This agreement shall comply with the mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan, issued in compliance with the Energy Policy and Conservation Act.
- C. ESD shall comply with all applicable standards, orders or regulations issued pursuant to:
  - a. The Clean Air Act of 1970, as amended (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation (40 CFR Part 15) for agreements in excess of the amount of \$100,000.
  - b. Executive Order 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
  - c. Sections 103 and 107 of the Agreement, Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- D. Any silence, absence, or omission from the Contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials and workmanship of a quality that would normally be specified by ESD are to be used.
- E. ESD is the responsible authority without recourse to USDA or CDE for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims or other matters of a contractual nature.

**XI. Elizabeth School District & Legacy Academy Responsibilities**

<b>Elizabeth School District Responsibilities</b>	<b>Legacy Academy Responsibilities</b>
Kitchen and serving line set up and clean up (daily)	Lunch room set up and clean up including staff and/or volunteers to monitor students, trash, spills, table wipe down during lunch service (daily)
Transport food from and serving supplies -- pick up and return	Supply delivery vehicle for food transport (approximately 10:00AM -- 1:30PM)
POS System -- assign lunch numbers to Legacy students, monitor lunch accounts, point of sale, purchase PIN, pad, update and maintain software	Provide existing lunchroom computer and network access for POS System.
ESD Tech -- provide time card login to Legacy's food service computer	Report lunch count to ESD food service (student and adult meals) daily by 8:45AM
Provide lunches on all days that Legacy Academy is in session (all student contact days)	Provide school calendar which shows student contact days and non-contact days, and provide daily lunch schedule

**XII. Renewal Option**

- A. Both parties have the option to renew this agreement, provided there is no significant change in scope of services, value of the agreement or purpose from this current agreement.

**XIII. Agreement** \* IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date signed below.

**By: Legacy Academy**

**By: Elizabeth School District**

\_\_\_\_\_  
Legacy Academy Representative (print)

\_\_\_\_\_  
Elizabeth School District Representative (print)

\_\_\_\_\_  
Title (print)

\_\_\_\_\_  
Title (print)

\_\_\_\_\_  
Signature Authorized Representative / Date

\_\_\_\_\_  
Signature Authorized Representative / Date

\_\_\_\_\_  
Legacy Academy Board Representative (print)

\_\_\_\_\_  
Elizabeth School District Representative (print)

\_\_\_\_\_  
Title (print)

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Title (print)

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Signature Authorized Representative / Date

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Signature Authorized Representative / Date