NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

Annual Report

July 1, 2010 - June 30, 2011

NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

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July 1, 2010 – June 30, 2011

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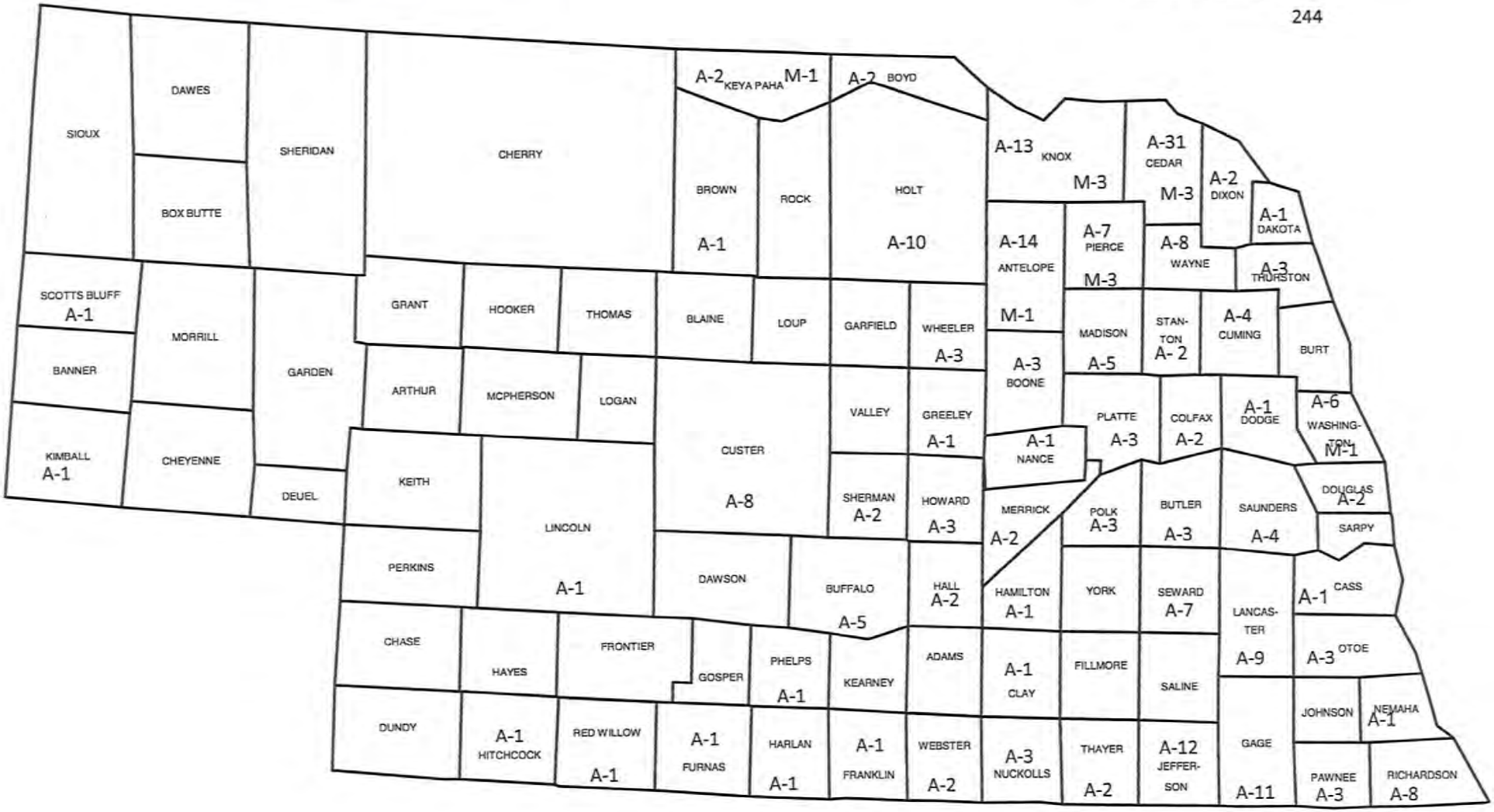
NEBRASKA MILK PURCHASERS
May 2011

Company	Grade A	Manufacturing	Total
Associated Milk Producers PO Box 430 Freeman, SD 57029	58	13	71
Countryside Dairy 56670 – 880 Road Hartington, NE 68739	1	0	1
Dairy Farmers of America PO Box 901546 Kansas City, MO 64190-1546	146	0	146
Dean Foods PO Box 1210 LeMars, IA 51031-1210	20	0	20
Farmstead First 17015 NW 70th St. Raymond, NE 68428	2	0	2
Land O'Lakes Inc. PO Box 168 Volga, SD 57071	1	0	1
Wells Dairy Inc. #1 Blue Bunny Drive LeMars, IA 50131	2	0	2
TOTALS:	**230**	**13**	**243**

Note: Numbers do not include three goat producers and one sheep producer.

Nebraska Department of Agriculture
Bureau of Dairies and Foods
Dairy Producers by County (5/11)

Grade A	231
Manufacturing	13
	244



Numbers include 2 goat producers in Lancaster County and 1 sheep producer in Kimball County and 1 goat producer in Scotts Bluff County.

NDIDB Board Members July 2010 – June 2011

NDID Board — Member

Deans

Mike Amen
Amen Dairy, LLC
54681 Half Mile Rd
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Work : (402) 675 - 1250
Home:
Cell:
Fax:

End Term: November 2012

NDID Board — Member

Chair DFA

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End Term: November 2011

NDID Board — Member

Vice Chair DFA

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End Term: November 2011

NDID Board — Ex-officio

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Home:
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End Term:

NDID Board — Member

LOL

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Fax:

End Term: November 2012

NDID Board — Member

DFA

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End Term: November 2011

NDID Board — Member

AMPI

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End Term: November 2012

NDID Board — Member

Secretary/Treasurer DFA

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End Term: November 2013

NDID Board — Member

AMPI

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End Term: November 2013

NDID Board — Member

Wells

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Home:
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End Term: November 2013

NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

Financial Reports

Nebraska Dairy Industry Development Board
July 1, 2010 - June 30, 2011 (YTD)

Beginning Cash Balance:	$ 89,216	
Revenue:		
Dairy Checkoff	$ 1,161,216	
Penalty	203	
Other Revenue	84,932	*
Interest	3,483	
Total Revenue	**$ 1,249,835**	
Total Available Cash	**$ 1,339,050**	
Expenditures:		
Fee Collection Contract	4,957	
Annual Audit	2,944	
DAS Assessments	435	
Board Expense	1,797	
Midwest Dairy Association	575,716	
ADA of Nebraska	577,181	
Total Expenditures	**$ 1,163,030**	
Adjustment to fund balance	98,422	
Ending Cash Balance	**$ 274,442**	

* Includes unspent funds returned from ADA/DC of Nebraska:

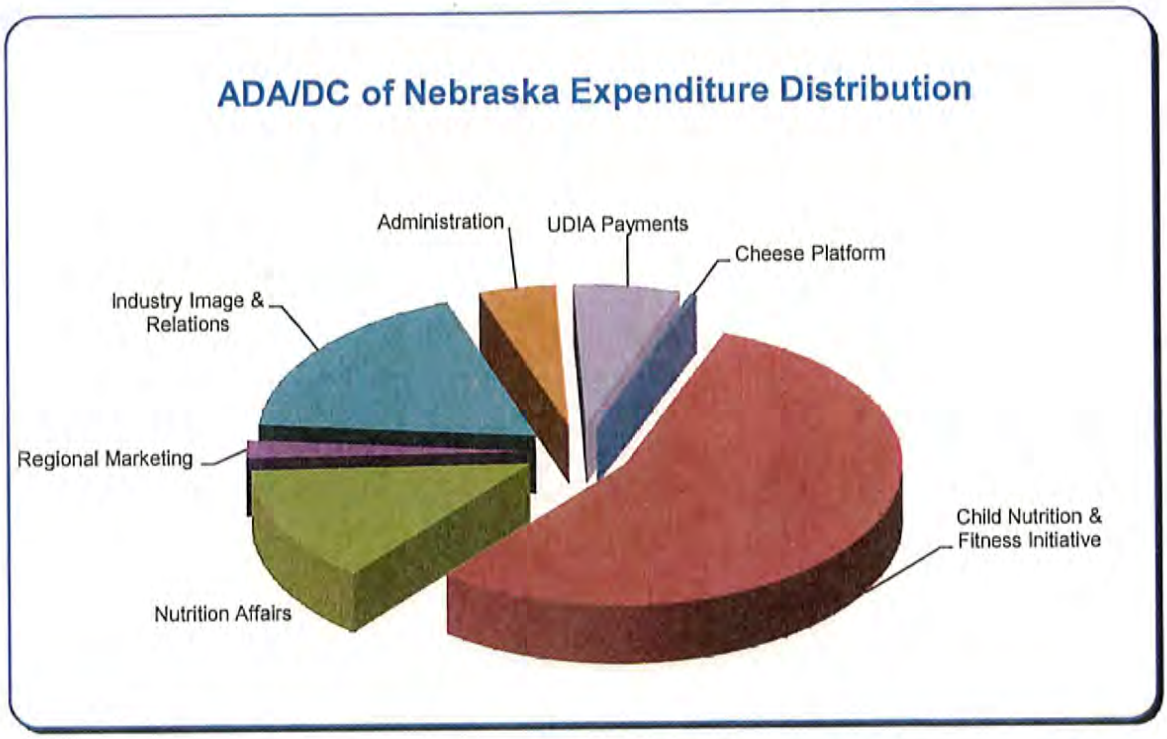
For period 7/1/09 - 6/30/10	$ 72,978
For period 7/1/10 - 12/31/10	11,904
	$ 84,882

Funds are intended for research, as noted by the following board motion, passed on 6/2/11:

To approve payment of ADA/DC unspent funds of $84,882 to Midwest Dairy Association in January 2012 for approved dairy research projects at the University Nebraska - Lincoln. Payment is contingent on approval of projects by the Midwest Dairy Foods Research Center. A roll call vote was taken and the motion carried unanimously.

ADA/DC of Nebraska
July 1, 2010 - December 31, 2010

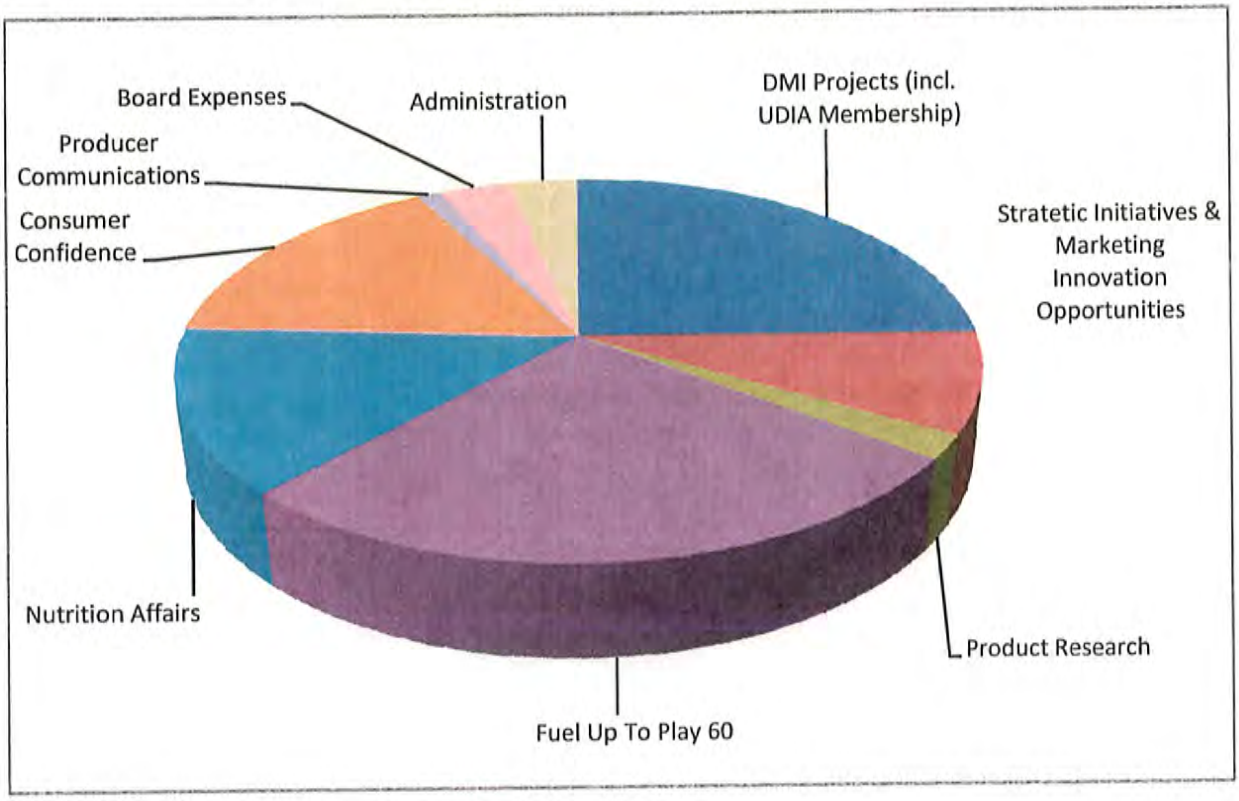
REVENUE:	
NDIDB	$ 577,181
EXPENDITURES:	
Cheese Platform	2,122
Child Nutrition & Fitness Initiative	311,226
Nutrition Affairs	76,375
Regional Marketing	11,330
Industry Image & Relations	103,975
Administration	25,000
UDIA Payments	35,250
Total Expenditures	**565,277**
Balance	**$ 11,904** *



* In accordance with the 2010 Agreement between NDIDB and ADA/DC of Nebraska, these funds were returned to NDIDB.

Midwest Dairy Association
Nebraska Division
January 1 - June 30, 2011

REVENUE:		
NDIDB	$	575,716
EXPENDITURES: Unaudited		
Catalyst For Growth:		
DMI Projects (incl. UDIA Membership)		145,548
Stratetic Initiatives & Marketing Innovation Opportunities		49,173
Product Research		11,557
Health & Wellness:		
Fuel Up To Play 60		155,579
Nutrition Affairs		80,895
Consumer Confidence		93,828
Producer Communications		6,771
Board Expenses		19,699
Administration		19,002
Total Expenditures	**$**	**582,052**
Balance	**$**	**(6,336)**



NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

Dairy Promotion Programs

NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

Dairy Promotion Organizations

Nebraska dairy farmers pay checkoff of fifteen cents per hundredweight of milk they produce. The checkoff is collected by the first purchaser of each producer's milk. Five cents is sent to the National Dairy Board which provides funds for the national Unified Marketing Plan (UMP) developed by Dairy Management, Inc. The other ten cents is paid to the Nebraska Dairy Industry Development Board (NDIDB). The NDIDB funds USDA qualified organizations for dairy promotion activities. The NDIDB is itself a USDA qualified organization.

During the period July 1, 2010 through Dec. 31, 2010, NDIDB funded American Dairy Association/Dairy Council of Nebraska (ADA/DC). And during the period Jan. 1, 2011 through June 30, 2011, NDIDB funded Midwest Dairy Association (Midwest). Under contract, both organizations implemented programs intended to contribute to the betterment of Nebraska's dairy farmers and the state's dairy industry, including 1) the local components of the UMP, 2) the national UMP funding commitment, and 3) other promotion programs in Nebraska consistent with the interests of Nebraska dairy producers.

Programs funded during the period are further described in the 2010 – 2011 Program Summary.

Nebraska Dairy Promotion Highlights

July 1, 2010 – June 30, 2011

ADA/DC of Nebraska Becomes Division of Midwest Dairy Association

Late in 2010, the board of the American Dairy Association/Dairy Council of Nebraska voted to become part of Midwest Dairy Association as of Jan. 1, 2011. During all of 2010, Midwest Dairy had provided Nebraska dairy producers with management and administrative services, along with program leadership for the three staff members employed by ADA/DC. The boards of both ADA/DC and Midwest Dairy Association took final votes on the new arrangement in December.

The merger created **the Nebraska Division of Midwest Dairy**, with 10 producer board members who elected two from their ranks to the Midwest Dairy Corporate Board.

The arrangement allows Nebraska dairy producers to share the cost of resources with farmers from neighboring states, reducing administrative overhead, maintaining three dedicated program staff in Nebraska and benefitting from the expertise of more than 30 Midwest Dairy staff experts for increased program impact. It also helps Nebraska with its commitment to the national unified dairy promotion plan. In 2010, Nebraska was obligated to spend $350,000 on national program development before beginning to implement programs locally. The new structure allows this obligation to be met by the larger organization.

Fuel Up to Play 60 Advances in Nebraska

Fuel Up to Play 60, the dairy checkoff's partnership with the National Football League to fight childhood obesity, has made significant strides. Key accomplishments included:

- **More than 1,000 Nebraska schools have signed up for the program, and $57,700 has been awarded** to assist them in their efforts to improve nutrition and physical activity. The awards were part of the Fuel Up to Play 60 funding rounds that took place throughout the 2010-11 school year.
- A student from Omaha was one of the winners in **a national Fuel Up to Play 60 Healthy Recipe challenge**. A recipe from Alexander Robertson from Underwood Hills Focus School was selected to appear in a kid-friendly cookbook.

- Hannah McCoy, Prague, Neb., and Jordan Turnwall from Valparaiso, Neb., were two of seven passionate **student leaders** from Midwest Dairy territory selected as state-level Student Ambassadors and attended the inaugural Fuel Up to Play 60 Student Ambassador

Leadership Summit, held in Washington, D.C. The students collaborated on in-school solutions to the childhood obesity epidemic.

- Two former Huskers that are now in the NFL visited two schools to motivate the children and encourage them to continue with Fuel Up to Play 60 and drink more milk. **Zack Bowman, #35, of the Chicago Bears,** told the children of Underwood Hills Focus School in Omaha that his focus is to eat healthy foods such as low-fat/fat-free dairy products every day and work out for three to four hours per day so he can be in top shape. **Larry Asante, #22, of the Tampa Bay Buccaneers,** visited Goodrich at Dawes Middle School in Lincoln, where the children gave an extra cheer for Nebraska dairy farmers. He encouraged kids to drink their milk and was also challenged by a student to a push-up contest and lost by one, doing 91 pushups. Beveridge Magnet Middle School in Omaha earned the title of most active Fuel Up to Play 60 school in the state for 2010-11.
- A Fuel Up to Play 60 summit in May involved **13 schools from Nebraska, Iowa and South Dakota.** The event in Omaha included a keynote address given by Nebraska dairy producer Dan Rice. Participants heard from University of Nebraska-Lincoln dietitians, and former Husker and St. Louis Rams kicker Josh Brown, and planned next year's Fuel Up to Play 60 activities.

- August 29, 2010, was Fuel Up to Play 60 Day at the **Nebraska State Fair**, featuring a space in the Kids Zone to promote nutrition and fitness. Former Husker and Heisman Trophy winner Eric Crouch was on site to talk to kids and parents about the importance of making healthy choices and participating in daily physical activity.
- **Midwest Dairy Council** reached out to "Teach a Kid to Fish," a physician-directed 501(c)(3) nonprofit organization with a mission, in partnership with community members, **to prevent and reduce obesity** by empowering Lincoln children and families to eat healthy and be active. Fuel Up to Play 60 was highlighted in the Teach a Kid to Fish February/March newsletter, which reached key stakeholders, community leaders and working group members.

Health Professional Outreach Provides Dairy Angle

Meetings of health professional organizations in Nebraska featured key information about dairy's nutrition profile and, in many cases, the Fuel Up to Play 60 program. Among the highlights were the following:

- Beth Bruck-Upton, one of the registered dietitians serving Nebraska, was among the panelists at an **Omaha District Dietetic Association educational meeting** outlining childhood obesity in Nebraska. The presentation featured three students who are active with their Fuel Up to Play 60 student team, discussing the impact Fuel Up to Play 60 has had on their school.
- Two separate events promoting dairy took place at the Nebraska State Dietetic Association annual meeting in May. JoAnne Slavin, PhD, University of Minnesota, spoke about the new **Dietary Guidelines for Americans,** emphasizing dairy's place in a healthy diet. Joining with the Nebraska Beef Council, Midwest Dairy co-sponsored communications training for dietitians to

provide them with key messaging on nutrient-rich foods, including low-fat dairy, which they can use with patients, clients, media, social media and other audiences.

- At the **Nebraska School Nutrition Association Conference,** Midwest Dairy participated in a roundtable session to promote a Nebraska School Breakfast Challenge. Midwest Dairy and partnering organizations challenged all Nebraska schools to increase breakfast participation at school by at least 35 percent. This increase will positively impact dairy sales with increases in milk, yogurt and cheese offered at breakfast. Later in the day, Nebraska producer David Crook from Humboldt, along with two school program advisors and two student ambassadors, joined Midwest Dairy Council Nebraska staff in a general session highlighting Fuel Up to Play 60 to 250 attendees. In addition, two breakout sessions were held to answer questions and guide interested attendees in joining and implementing Fuel Up to Play 60 in their schools.
- Midwest Dairy worked with Creighton University's Dental School to promote the health benefits of dairy foods for strong bones and teeth at the Kids Explore event in Omaha. The event **reached nearly 10,000 families in the Omaha community**.
- The **Nebraska Academy of Family Physicians** learned about Fuel Up to Play 60 at its annual meeting March 31- April 1. Beth Bruck-Upton discussed the importance of physicians using patient visits to reinforce the healthy behaviors learned at school.

Dairy Farm Tours Provide Background for Partners

University of Nebraska Extension **dietitians and nutrition professors** joined dairy promotion staff for a farm tour at Prairieland Dairy in Firth in August of 2010. The tour provided a hands-on experience for the group, to help them answer clients' questions about dairy farm practices. Antibiotics, hormones, organics and sustainability practices were all discussed. Extension dietitian Audra Losey wrote about the experience on her blog, detailing her impression of the hard work that goes into that gallon jug at the grocery store. Extension dietitian Cindy Brison completed a radio interview with KTIC regarding her experience and shared similar information.

In June, as part of the **Nebraska School Nutrition Association Conference**, Midwest Dairy hosted a tour of Doug Temme's farm. About 40 people who influence school lunch participated and gave wonderful feedback on the evaluations.

Trainings and Webinar Help Equip Dietitians

University of Nebraska Medical Center dietetic interns, UNL dietetic interns and **Hy-Vee dietitians all participated in a media training** presented by checkoff's nutrition affairs staff. The media training provided the participants with dairy key messages to use when talking about dairy foods to patients, clients or the media.

A one-day interactive presentation skills training for key health professionals in the Midwest including eight from Nebraska was also provided during 2010-11 The training gave them knowledge, skills and tools for delivering a clear message on **the health benefits of dairy foods**.

In addition, Nebraska dietitians participated in a one-hour message training webinar for health professionals across the Midwest. Registered dietitians on the checkoff staff and Dr. Leo Timms from Iowa State University presented. More than 245 health professionals attended. The webinar provided science-based information on the important role of dairy focusing on child nutrition and flavored milk, lactose intolerance, milk and alternative beverages, and on-farm practices including hormones, antibiotics and sustainability.

June Dairy Month Events Draw 5,000 People

Midwest Dairy Association assisted **Prairieland Dairy** with an annual June Dairy Month event that drew 4,500 people in 2011. The event regularly draws people from several states, who look forward to the opportunity for a farm visit, and consuming Prairieland's own ice cream and milk products. The event featured children's activities and a playland, along with guided tours of the milking parlor, animal housing and composting operation.

Classic Dairy at Jansen also helped educate consumers at its first Ice Cream Sundaes on Sunday event, with about 500 people attending. Participants were given tours of the facility by members of the Engelman family, and consumed gallons of ice cream.

Midwest Dairy Assists with Ag in the Classroom

More than 1,200 grade school children were able to learn more about dairy by virtue of Midwest Dairy participation in Ag in the Classroom events. Materials such as the **"Farm to Food to You"** poster and teacher's guide were utilized with students. The same kit is available to Nebraska producers through Midwest Dairy's Producer Service Center.

Social Media Efforts Result in Blogger Visit to Nebraska Farm

A Midwest Dairy effort to engage 'Mommy Bloggers" in a dialogue with dairy farm moms resulted in a visit by a blogger to **Wolfden Dairy farm** in Nebraska for June Dairy Month. "Seeryus Mama" highlighted her dairy farm experience and her new understanding of the "farm to fridge" process in her blog, which has 1,145 followers. She wrote, "I've never considered the whole of how we get milk, cheese, etc. As it turns out, it's a pretty complex procedure." Steve Wolfe and his daughter, Olivia, provided a tour of the milking parlor and other facilities, along with information about producing wholesome milk. When the tour concluded, she left with a greater appreciation for dairy producers.

Scholarships Awarded to Dairy Students

Seven Nebraska students were named **2011 scholarship winners** in the Nebraska Division of Midwest Dairy. The winners were: Megan Rice of Firth --$1,500; Maxwell Henn of Norfolk -- $1,000; Jacob Pulfer of Wayne-- $500; Melanie Schneider of Lincoln -- $500; Luke Zeisler of Butte -- $500; Chandre Mosel of Leigh -- $500; and Amber Kester of Clearwater -- $500.

NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

Rules and Regulations

Revised
October, 2004

DAIRY INDUSTRY DEVELOPMENT ACT

Administration: This Act is administered by the Nebraska Dairy Industry Development Act Board. The Department of Agriculture is involved with some of these sections.

Adoption: This act was last revised during the 2004 session of the Nebraska Legislature.

Rules: No administrative rules have been promulgated under this act.

Index

Section	Subject
2-3948	Act, how cited.
2-3949	Terms, defined.
2-3950	Legislative findings.
2-3951	Nebraska Dairy Industry Development Board; created; members; qualifications.
2-3951.01	Board members; appointment; terms; officers; expenses.
2-3951.02	Board members; nomination and appointment.
2-3951.03	Board members; vacancies.
2-3951.04	Board members; nominations; notification; procedure.
2-3955	Board; meetings; minutes.
2-3956	Board; administration; limitation on expenses.
2-3957	Board; powers and duties.
2-3958	Mandatory assessment; board; duties.
2-3959	Assessment; payment; procedures.
2-3960	Nebraska Dairy Industry Development Fund; created; use; investment.
2-3961	Use of funds; limitations.
2-3962	Board; report; contents.
2-3963	Violations; penalties; unpaid assessment; late payment fee.

2-3948. Act, how cited. Sections 2-3948 to 2-3963 shall be known and may be cited as the Dairy Industry Development Act.

2-3949. Terms, defined. For purposes of the Dairy Industry Development Act:

(1) Board shall mean the Nebraska Dairy Industry Development Board;

(2) Commercial use shall mean sale for retail consumption or sale for resale, for manufacture for resale, or for processing for resale;

(3) First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk;

(4) Milk shall mean any class of cow's milk produced in the State of Nebraska;

(5) Milk production unit shall mean any producer licensed by the Department of Agriculture;

(6) Producer shall mean any person engaged in the production of milk for commercial use;

(7) Producer-processor shall mean a producer who processes and markets the producer's own milk; and

(8) Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153, as amended. Such program shall: (a) Conduct activities as defined in 7 C.F.R. 1150.114, 1150.115, and 1150.116 intended to increase consumption of milk and dairy products generally; (b) except for programs operated under the laws of the United States or any state, have been active and ongoing before November 29, 1983; (c) be financed primarily by producers, either individually or through cooperative associations; (d) not use any private brand or trade name in advertising and promotion of dairy products unless the National Dairy Promotion and Research Board established pursuant to 7 C.F.R. 1150.131 and the United States Secretary of Agriculture concur that such requirement should not apply; (e) certify to the United States Secretary of Agriculture that any request from a producer for a refund under the program will be honored by forwarding that portion of such refund equal to the amount of credit that otherwise would be applicable to the program pursuant to 7 C.F.R. 1150.152(c) to either the National Dairy Promotion and Research Board or a qualified program designated by the producer; and (f) not use program funds for the purpose of influencing governmental policy or action.

2-3950. Legislative findings. The Legislature declares it to be in the public interest that producers in Nebraska be permitted and encouraged to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of milk in a balanced diet. It is the purpose of the Dairy Industry Development Act to provide the authorization and to prescribe the necessary procedures by which the dairy industry in Nebraska may finance programs to achieve the purposes expressed in this section. The Nebraska Dairy Industry Development Board shall be the agency of the State of Nebraska for such purpose.

2-3951. Nebraska Dairy Industry Development Board; created; members; qualifications. The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska.

2-3951.01. Board members; appointment; terms; officers; expenses. (1) Members of the board shall, as nearly as possible, be representative of the nominees submitted by all first purchasers of milk and combinations of first purchasers and individual producer-processors in the state as provided in section 2-3951.02 and, to the extent practicable, result in equitable representation of the various interests of milk producers both in terms of the manner in which milk is marketed and geographic distribution of milk production units in the state. By the appointment of additional members or by reducing members by not filling a vacancy caused by a member's term expiring, the Governor shall maintain the membership of the board to approximate one member for each forty milk production units or major portion thereof.

(2) The terms of the members of the board shall be three years, except that the terms of the initial and additional members of the board shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of

milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee and a designee of the Nebraska Dairy Industry Association or its successor may participate in the activities of the board as ex officio members.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

(5) Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

2-3951.02. Board members; nomination and appointment. New members of the board shall be nominated and appointed as follows: (1) Each first purchaser of milk which purchases milk from at least twenty-one milk producers may submit to the Governor the names of up to two nominees for each forty milk production units, or major portion thereof, from which the first purchaser purchases milk. The Governor shall appoint one member for each forty production units, or major portion thereof, from nominees submitted pursuant to this subdivision; and

(2) All other first purchasers of milk and individual producer-processors who are not included among milk production units claimed by a first purchaser of milk entitled to submit nominees under subdivision (1) of this section shall be combined as a group for the purpose of submitting nominees, and each first purchaser and individual producer-processor of the group may nominate up to two nominees. The Governor shall appoint two nominees from nominees submitted pursuant to this subdivision.

2-3951.03. Board members; vacancies. (1) A vacancy on the board exists in the event of the death, incapacity, removal, or resignation of any member; when a member ceases to be a resident of Nebraska; when a member ceases to be a producer in Nebraska; or when the member's term expires. Members whose terms have expired shall continue to serve until their successors are appointed and qualified, except that if such a vacancy will not be filled, as determined by the Governor under section 2_3951.01, the member shall not serve after the expiration of his or her term.

(2) For purposes of filling vacancies on the board, the Governor shall appoint one member from up to two nominees submitted by the first purchasers of milk or group represented by the vacating member. In the event of a vacancy, the board shall certify to the first purchasers of milk or group

represented by the vacating member that such a vacancy exists and shall request nominations to fill the vacancy for the remainder of the unexpired term or for a new term, as the case may be.

2-3951.04. Board members; nominations; notification; procedure. (1) When nominations for board members are required, written notification shall be given to each producer represented or to be represented by such member. The first purchaser or purchasers of milk shall notify each producer from whom the first purchaser buys milk that each producer may submit written nominations. If the group represented is a combination of first purchasers of milk and individual producer-processors, the individual producer-processors shall receive notification from the Department of Agriculture.

(2) Nominations shall be in writing and shall contain an acknowledgment and consent by the producer being nominated. The nomination shall be returned by the producer to the first purchaser of milk or to the department from whom the producer received notification within fifteen days after the receipt of the notification. For nominations to replace a member whose term is to expire or for a new member, the producers shall receive notification between August 1 and August 15 preceding the expiration of the term of the member or the beginning of the term of a new member. For all other vacancies, the producers shall receive notification within thirty days after the member vacates his or her position on the board.

(3) The first purchasers of milk and the department shall submit nominations to the Governor by September 30, in the case of term expiration or new member, or forty-five days after the member vacates his or her position for all other vacancies. The Governor shall make the appointments within thirty days after receipt of the nominations.

(4) All nominees shall meet the qualifications provided in section 2-3951.

(5) The Governor may choose the members of the board from the nominees submitted or may reject all nominees. If the Governor rejects all nominees, names of nominees shall again be provided to the Governor as provided in this section until the vacancies are filled.

2-3955. Board; meetings; minutes. (1) The board shall meet at least once every six months at a time and place fixed by the board. Special meetings may be called by the chairperson and shall be called by the chairperson upon request of at least twenty-five percent of the members of the board. Written notice of the time and place of all meetings shall be mailed in advance

to each member of the board. A majority of members of the board shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the board shall be necessary for the adoption of rules and regulations.

(2) The board shall at each regular meeting review all expenditures made since its last regular meeting.

(3) The board shall keep minutes of its meetings and other books and records which shall clearly reflect all of the acts and transactions of the board. Such records shall be open to examination during normal business hours.

2-3956. Board; administration; limitation on expenses. The board may contract for the necessary office space, furniture, stationery, printing, and personnel services useful or necessary for the administration of the Dairy Industry Development Act. The total administrative costs and expenses of the board shall not exceed five percent of the annual assessments collected in accordance with section 2-3958.

2-3957. Board; powers and duties. The board shall:

(1) Arrange or contract for administrative and audit services which are necessary for the proper operation of the Dairy Industry Development Act;

(2) Procure and evaluate data and information necessary for the appropriate distribution of funds collected;

(3) Direct the distribution of funds collected;

(4) Prepare and approve a yearly budget;

(5) Adopt and promulgate rules and regulations to carry out the act;

(6) Establish a means by which all producers are informed annually on board members, policy, expenditures, and programs for the preceding year;

(7) Authorize the expenditure of funds to conduct activities provided for by the act;

(8) Bond such persons as necessary to ensure adequate protection of funds;

(9) Make refunds to other qualified programs in other states and disburse as directed by producers pursuant to subdivision (8)(e) of section 2-3949;

(10) Require that all books and records which clearly reflect all the transactions of its funded qualified programs be made available for audit by the board;

(11) Initiate appropriate enforcement of the act and the rules, regulations, and orders promulgated under the act;

(12) Accept remittances or credits and apply for and accept advances, grants, contributions, and any other forms of assistance from the federal government, the state, or any public

or private source for administering the act and execute contracts or agreements in connection therewith;

(13) When necessary, appoint committees and advisory committees, the membership of which reflects the different funding regions of the United States and of the State of Nebraska in which milk is produced and delegate to such committees the authority reasonably necessary to administer the act under the direction of the board and within the policies determined by the board; and

(14) Exercise all incidental powers useful or necessary to carry out the act.

2-3958. Mandatory assessment; board; duties. (1) There shall be paid to the board a mandatory assessment of ten cents per hundredweight on all milk produced in the State of Nebraska for commercial use.

(2) The board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

(3) For purposes of the act, when milk is sold to an out-of-state purchaser, the sale shall be deemed to have occurred in Nebraska if the milk was otherwise produced within Nebraska immediately prior to such sale and such sale is the first purchase of the milk for commercial use.

(4) For purposes of the act, when milk is produced out-of-state but sold to a first purchaser of milk in Nebraska, the assessment provided for in this section may be assessed and retained in Nebraska only if the producer consents.

2-3959. Assessment; payment; procedures. The assessment prescribed in section 2-3958 shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk except as provided in this section. The first purchaser of milk shall remit the assessment to the board when the first purchaser of milk issues the milk payroll to producers. When milk is sold by producers to nonresident first purchasers of milk, the nonresident first purchaser of milk shall remit the assessments to the board. Producer-processors shall remit the assessments to the board. All assessments shall be remitted to the board not later than the last day of the month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time that the assessment is remitted. The board shall make proper refunds to producers pursuant to subdivision (8)(e) of section 2-3949 at least quarterly. The board shall promulgate

rules and regulations concerning the payment, remittance, refunding, and reporting of assessments. All money collected by the board shall be remitted to the State Treasurer for credit to the Nebraska Dairy Industry Development Fund.

2-3960. Nebraska Dairy Industry Development Fund; created; use; investment. The Nebraska Dairy Industry Development Fund is hereby created. Money in the fund shall be used for the administration of the Dairy Industry Development Act, including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-3961. Use of funds; limitations. The board shall not set up programs or agencies of its own but shall fund active, ongoing, qualified programs as stated in section 114 of the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, and the regulations promulgated pursuant thereto. Funds may be used by qualified programs to jointly sponsor projects with any private or public organization to meet the objectives of the Dairy Industry Development Act.

2-3962. Board; report; contents. The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 2-3958 for the preceding fiscal year, and the report shall include:

(1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;

(2) A brief description of all contracts requiring the expenditure of funds by the board;

(3) The action taken by the board on all of such contracts;

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the board; and

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

Such report shall be available to the public upon request.

2-3963. Violations; penalties; unpaid assessment; late payment fee. (1) Any person violating any of the provisions of the

Dairy Industry Development Act shall be guilty of Class III misdemeanor.

(2) Any unpaid assessment shall be increased one and one-half percent each month beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid.

(3) For purposes of this section, any assessment that was determined at a date later than prescribed by section 2-3959 because of the failure to submit a report to the board when due shall be considered to have been payable on the date it would have been due if the report had been timely filed. The timeliness of a payment to the board shall be based on the applicable postmarked date or the date actually received by the board, whichever is earlier. Any assessments and late payment fees may be recovered by action commenced by the board.

(4) The remedies provided in this section shall be in addition to and not exclusive of other remedies that may be available by law or in equity.

2-3964. Sections; when operative. Sections 2-3948 to 2-3954 and this section shall become operative on July 15, 1992. Sections 2-3955 to 2-3963 shall become operative on the date as of which the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, is repealed or on the date as of which the Advertising and Promotion Program and Agency, as provided in accordance with 7 C.F.R. 1065.110, as amended, is repealed, rescinded, or otherwise terminated.

ACTBG.doc

Contracts

NEBRASKA DEPARTMENT OF AGRICULTURE
FEE COLLECTION PROGRAM

ENFORCEMENT PROCEDURES

FOR COLLECTION OF FEES AS PROVIDED FOR
IN THE DAIRY INDUSTRY DEVELOPMENT ACT (SECTION 2-3948)

Requirement:

There shall be paid, to the Nebraska Dairy Industry Development Board, a mandatory assessment of ten cents (10¢) per hundredweight (cwt) on all milk produced in the state of Nebraska for commercial use. The assessment shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk. Producer/processors shall remit the assessments to the Board. The first purchaser shall maintain the necessary record of fees collected for each purchase of milk produced in the state of Nebraska. All assessments shall be remitted to the Board no later than the last day of month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time the assessment is remitted.

Any request from a producer for a refund under the Program will be honored by forwarding that portion of such refund equal to the amount of credit, that otherwise would be applicable to the Program, to either the National Diary Promotion and Research Board or a qualified program designated by the producer.

Definitions:

1. First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk.

2. Board shall mean the Nebraska Dairy Industry Development Board.

3. Commercial use shall mean sale for retail consumption or sale for resale, for manufacturing for resale, or for processing for resale.

4. Milk shall mean any class of cow's milk produced in the state of Nebraska.

5. Milk production units shall mean any producer licensed by the Department of Agriculture.

6. Producer shall mean any person engaged in the production of milk for commercial use.

7. Producer/processor shall mean a producer who processes and markets the producer's own milk.

8. Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153.

Confidentiality:

The independent collection agency shall maintain all fee collection records in strict confidence in accordance with State statutes. Only agency total data will be released to the Board or the public upon request. The independent collection agency will release data related to the first purchaser only after written permission is received by the independent collection agency from the Board.

Procedure for Determining First Purchaser:

When a party or board member gives a name of an individual or firm to the Nebraska Dairy Industry Development Board which they believe is a first purchaser of milk and not assessing the checkoff, the Fee Collection Program will take the following action:

1. A letter is written to the individual or firm in question advising that the mailing list is being updated and asking whether or not they are a first purchaser.

2. If they respond they are a first purchaser of milk, they will be set up on the mailing list to receive fee forms. A packet of fee forms, envelopes, and the statute will be sent to them to finish out the fiscal year. (They receive a year's supply of forms and envelopes the beginning of every calendar year.)

3. If they respond they are not a first purchaser of milk, the Fee Collection Program will inform the Dairy Industry Development Board of the response.

4. Board action will determine enforcement action and enforcement steps desired to garner compliance. This may include a request for a special audit or request the State Attorney General Office to initiate legal proceedings in accordance with the law.

Procedure for Collecting the Assessment from First Purchasers:

1. Fee forms will be mailed for the calendar year (one form each month having the name and address, month and year of production, and due date filled in) at the beginning of the year to those first purchasers on the mailing list.

2. Non-respondents will be mailed delinquent second notice letters with penalty due the first week following the month they were due.

- If the form is received late (according to the postmark), the firm will receive a letter for payment on the penalty.

- If, after the due date, we haven't received the fee form, a letter notifying the firm of being delinquent and having the penalty due will be sent.

- Penalty assessed shall be 1½% each month, beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to the act, shall be increased at the same rate on the corresponding day of each succeeding month until paid.

3. If no response, a third notice notification will be sent (for the appropriate situation in #2) the first week following the month in which the second notice was sent with the penalty added into the letter for each month delinquent. The letter will be jointly signed by the Chairman of the Board and Fee Collection Program.

4. If, after two weeks, there is no response after the third notice, a call will be made to the firm and a delinquent list will be sent to the Board. Legal enforcement of the Nebraska Dairy Industry Development Board statutory requirements will be the Board's responsibility.

5. Board action will determine enforcement action and enforcement steps desired to garner compliance. This may include a request for a special audit, or utilizing the State Attorney General's Office to initiate legal proceedings in accordance with the law.

Auditing Procedures:

Audit Authority:

Neb. Rev. Stat. §2-3958(2) R.R.S., 1997, states:

The Board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

Audit Scope:

Neb. Rev. Stat. §2-3958(1) R.R.S., 1997, states:
There shall be paid to the Board a mandatory assessment of ten cents (.10) per hundredweight on all milk produced in the State of Nebraska for commercial use.

The auditor will verify reports submitted to the Dairy Industry Development Board by examining records that may include, but are not limited to, the general ledger and its accounts, purchases journals or registers, check registers, producer accounts, and/or any other record or records which pertain to the assessment or compliance with the Act. A primary contact person will be noted for use in follow up for making future contact, and will be presented with the results of the audit. The standard audit form presented will serve as a notice of refund due in the case an overpayment, or as an invoice in the case of an underpayment. Payments are to be sent to the customary fee collection agency and not collected by the auditor. The audit results, less any proprietary information, will also be presented to the Board at its next regularly scheduled meeting.

The auditor conducts compliance reviews of first purchasers on a random sample basis. The audit covers a one-year review of the monthly forms that are received. Special audits may also be conducted at the specific request of the Board.

An internal review will be done on a quarterly basis to verify accuracy of the Dairy Industry Development Board fee form data. This review will include a comparison to data received from the National Dairy Promotion and Research Board. Total pounds of milk purchased from pooled and non-pooled sources are compared and a reconciliation is done. In addition, the Nebraska Department of Agriculture will verify Grade A milk purchased by an individual entity to data received by the Department of Agriculture Dairy Regulatory Division under the Nebraska Pasteurized Milk Law. A report of all findings will be discussed at each Nebraska Dairy Industry Development Board meeting. The Milk Market Administrator, not the Department of Agriculture, will be able to verify manufactured milk purchases made. These would be incorporated into first purchaser on-site audits conducted under agreement by the Department of Agriculture and the Board.

The Nebraska Diary Industry Development Board contracts for fee collection, audit, and fiscal services with the Nebraska Department of Agriculture. The Memorandum of Agreement, entered into annually, details services performed by the Department of Agriculture for the Dairy Industry Development Board and the amount and method of reimbursing costs incurred.

7/8/11
Date

For Greg Ibach, Director
Department of Agriculture

6-2-11
Date

Chairman
Nebraska Dairy Industry Development Board

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AGREEMENT

between

NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

and

NEBRASKA DEPARTMENT OF AGRICULTURE

18-01-176

This Agreement is entered into this 1st day of July, 2011, by and between the Nebraska Department of Agriculture hereinafter referred to as the "Department," and the Nebraska Dairy Industry Development Board, hereinafter referred to as the "Board," and shall continue in effect until June 30, 2012, unless sooner terminated or modified by mutual agreement of the parties hereto, in writing.

A. The parties wish to mutually acknowledge the following:

1. The Board is responsible for the administration of the Dairy Industry Development Act (§2-3948, et seq.), the provisions of which are hereby declared to be a part of this Agreement.

2. The Department is responsible for the administration of the Nebraska Agricultural Products Marketing Act (§2-3801 et seq.), and the Management Services Expense Revolving Fund (§§81-201.03 and 81-201.04), the provisions of which are declared to be a part of this Agreement.

3. The Board desires the Department to assist the Board in performing fee collection, budget, accounting, and auditing services, and the Department is desirous of providing such assistance.

4. Each party specifically agrees that the funds expended pursuant to this Agreement shall be spent only on the work specified and for no other purposes, and that any amendments to the Agreement shall be in writing and executed by each party to be valid.

B. The Department agrees to assist the Board by providing the following services on a cost reimbursement basis, but such services shall not exceed seven thousand five hundred ninety-six dollars no cents ($7,596.00) in value.

1. Fee Collection Services:

   (a) Distribution of monthly fee forms.
   (b) Processing and return of forms.
   (c) Follow-up on delinquent accounts in accordance with enforcement procedures.
   (d) Process refunds as requests are made.
   (e) Update enforcement procedures as needed for Board approval.
   (f) Maintain an updated mailing list of first purchasers.
   (g) Maintain records in accordance with State records retention schedule.

2. Fiscal Services:

   (a) Prepare and electronically submit board-approved budget.
   (b) Perform accounting functions to enable the Board to operate as a State agency.
   (c) Monitor fund investment.
   (d) Deposit revenue into Nebraska Dairy Industry Development Cash Fund.
   (e) Prepare revenue and expenditure documents.
   (f) Review expenditures for compliance with State guidelines.
   (g) Prepare a monthly summary of revenue and expenditure fiscal report.
   (h) Maintain records in accordance with State record retention schedule.

3. Auditing Services:

   (a) Conduct field auditing of first purchaser accounts as authorized by Board action.
   (b) Internal auditing of revenue and expenditures for compliance.

   Audit Authority:

   Neb. Rev. Stat. §2-3958(2) R.R.S., 1997, states:

   The Board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

Audit Scope:

Neb. Rev. Stat. §2-3958(1) R.R.S., 1997, states:

> There shall be paid to the Board a mandatory assessment of ten cents (.10) per hundredweight on all milk produced in the State of Nebraska for commercial use.

The auditors will verify reports submitted to the Dairy Industry Development Board by examining records that may include, but are not limited to, the general ledger and its accounts, purchases journals or registers, check registers, producer accounts, and/or any other record or records which pertain to the assessment or compliance with the Act. A primary contact person will be noted for use in follow up for making future contact, and will be presented with the results of the audit. The standard audit form presented will serve as a notice of refund due in the case an overpayment, or as an invoice in the case of an underpayment. Payments are to be sent to the customary fee collection agency and not collected by the auditor. The audit results, less any proprietary information, will also be presented to the Board at its next regularly scheduled meeting.

4. To provide the above services, the Department shall employ the necessary personnel and incur the necessary operating and travel expenditures. Each month a State Budget Status report shall be provided to the Board detailing the total budget, monthly expenditures, and fiscal year-to-date expenditures incurred under this Agreement, along with an Interagency Billing Transaction Document billing for the prior month's services performed.

If services in excess of $7,596.00 are requested by the Board, through Board action, this Agreement may be amended accordingly.

C. The Board agrees to the Department performing duties outlined in this Agreement in accordance with the three areas outlined in section B. Furthermore, the Board requests that the Department keep all producer and first purchaser fee collection data and audit information confidential to the extent possible under the State of Nebraska Public Records Laws, Neb. Rev. Stat. §§84-712 to 84-712.09. Due to a limited number of first purchasers and/or processors, it is the Board's desire that records and information generated pursuant to this Agreement not create a proprietary advantage for a first purchaser of milk. The Department shall report total dollars deposited and/or refunded to the Board and the Board's

administrative office, but not disclose to Board members, the administrator, or others individual milk first purchaser data. It is agreed the Department shall not be liable nor responsible for an agency or employee of the State of Nebraska not part of, or employed by, the Nebraska Department of Agriculture or for any other individual not employed by the Department relative to the confidentiality of this paragraph. Any dispute relative to this shall be the responsibility of the Board to seek legal guidance from the State Attorney General.

D. The Board agrees to compensate the Department for the services provided hereunder, as follows:

Direct charges shall be made to the Board, monthly, for services performed, but the total Department charges shall not exceed $7,596.00, provided sufficient funds and appropriation is available. A one-month advance payment shall be made by the Board to the Department upon receipt of an Intrastate Transaction Document from the Department. Upon termination of the Department as the independent contractor, any unearned credit from the advance payment will be refunded to the Board.

E. The Department and the Board agree to:

1. Not discriminate against recipients of services on the basis of race, color, religion, national origin, sex, qualified disability or age; and

2. Not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex, or otherwise qualified disability status.

3. Have in force during the agreement period and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:

   (a) A statement notifying employees that the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited in the contractor's workplace;

   (b) The actions that will be taken against employees for violating the policy;

   (c) A requirement that each employee receive a copy of the policy.

F. Each party to this Agreement assumes liability for the acts, or omissions of such acts, by their respective employees or Board members arising out of, or relating to, contents of this Agreement and agrees to indemnify the

other party for any claims or liability arising out of, or relating to, such acts or omissions. The obligation to indemnify shall survive the expiration or termination of this Agreement. Such indemnification and assumption of liability found in this section is limited to the extent provided for by law.

G. This Agreement shall be for the period from July 1, 2011, to June 30, 2012, unless sooner terminated by a sixty (60) day advance written notice of either party.

H. All provisions to this Agreement are subject to the Americans with Disabilities Act.

DEPARTMENT OF AGRICULTURE

5/17/11
Date

For Greg Ibach, Director

NEBRASKA DAIRY INDUSTRY
DEVELOPMENT BOARD

Date

James Eschliman, Chairman

FAPDL.doc

AGREEMENT
between
THE NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD
and
AMERICAN DAIRY ASSOCIATION OF NEBRASKA, INC.
DBA: ADA/DC OF NEBRASKA

This Agreement is made and entered into this 1st day of July, 2010, by and between ADA/DC of Nebraska, herein called "ADA/DC," and the Nebraska Dairy Industry Development Board, herein called "Board."

WHEREAS, the Legislature of the State of Nebraska has enacted the Dairy Industry Development Act, which, by this reference, is hereby incorporated into this Agreement;

WHEREAS, the purpose of the Act is to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of dairy products in a balanced and healthful diet;

WHEREAS, §2-3950 of the Act designates the Nebraska Dairy Industry Development Board as the agency of the State of Nebraska responsible for carrying out the purposes of the Act;

WHEREAS, §2-3961 of the Act authorizes the Board to jointly sponsor projects with any private or public organization that is a qualified program (any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. ll50.153 as amended) to meet the objectives of the Act;

WHEREAS, the purposes of the Act will be effectively and meaningfully carried out if the Board cooperates with ADA/DC in carrying out said purposes; and

WHEREAS, both parties hereto desire to enter into this Agreement in order to carry out the purposes of the Act.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto that:

1. The term of the Agreement shall be from July 1, 2010, through June 30, 2011.

2. The relationship of the Board and ADA/DC under this Agreement shall be that of principal and independent contractor. It is understood by both the Board and ADA/DC that ADA/DC is not an employee or agent of the

Board and it is understood that the Board assumes no responsibility beyond those specifically stated in this Agreement.

3. ADA/DC shall provide the following services:

   a. Perform administrative services for the Board that will include and are not limited to

      - Coordinate meeting notices, records, and agenda with the Nebraska Department of Agriculture.
      - Provide minutes, information reports and follow-up reports as requested by the board.
      - Advance Board-approved expenses to the State for payment.
      - Obtain stationery and letterhead for the Board.
      - Maintain and update the roster of the Board.
      - Correspond with first purchasers to comply with nominations and appointments to the Board and the operative dates.
      - Follow-up with the Governor's office on appointments to the Board.
      - Remind first purchasers if a vacancy exists on the Board.
      - Work with the Nebraska State Attorney General's office as related to contracts.
      - Obtain certified audits and proof of bonding from qualified programs contracted to the NDID Board and forward to the Department of Agriculture to review for compliance.
      - Develop and publish an annual report on or before October 1 of each year, setting forth the income received from the assessments collected in accordance with §2-3958, for the following fiscal year and the report shall include:

        (1) The expenditure of funds by the Board during the year for the administration of the Dairy Industry Development Act;

        (2) A brief description of all contracts requiring the expenditure of funds by the Board;

        (3) The action taken by the Board on all such contracts;

        (4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the Board; and A brief description of the rules, regulations, and orders adopted and promulgated by the Board.

(6) Such report shall be available to the public upon request.

b. ADA/DC agrees to perform these Administrative Services free of charge as long as it remains the only qualified program funded by the Board. Should any qualified program other than ADA/DC receive checkoff funding from the Board, in consideration of good faith performance hereunder by ADA/DC, the Board agrees to reimburse ADA/DC monthly for administrative cost incurred based on total revenue posted to the State of Nebraska Information System (NIS) general ledger as of the fifth working day of each calendar month. The amount paid will be one percent (1.0%) of revenue collected. The Board agrees to make payment provided sufficient funds, as budgeted under §2-3960, are generated and legislative appropriation is made. In no case, shall payment exceed one percent (1.0%) received during this contract period.

4. ADA/DC shall provide the Board a summary evaluation report within 30 days after the end of the contract period, including a summarization of revenue received and a general categorization by type of expenditure, expenditures made.

5. In addition to the administrative services provided under #3 above, ADA/DC shall provide the following services:

- School based nutrition education programs;
- Child nutrition programs such as the Child Nutrition and Fitness Initiative, school food service promotions and school milk quality programs;
- Children's marketing outside of school such as at Henry Doorly Zoo;
- Health professional programs, resources and communications;
- Consumer media program;
- Nutrition and safety issues management program;
- Dairy industry relations program;
- Milk, cheese and ingredient innovation programs;
- MilkPEP local extension of fluid milk promotions at the retail level. Monitor national food service accounts;
- Public relations; children's promotions; and promotions at the Henry Doorly Zoo and exhibits;
- Retail extensions, and public relations;

- Communications and Dairy Industry Relations including activities for 4-H, State Fair, and monitoring the UNL Dairy Processing Endowment Fund; and
- Administration necessary to conduct the above programs.

6. In consideration of good faith performance hereunder by ADA/DC, the Board agrees to make monthly contractual payments in an amount equal to the unexpended fund balance as reflected on the NIS on the fifth working day each calendar month after Board, administrative, fee collection, accounting, and auditing expenses are calculated. This dollar amount shall be based upon the State's official NIS accounting system. The Board agrees to make payment provided sufficient funds, as budgeted under §2-3960, are generated and legislative appropriation is made.

7. ADA/DC shall provide a final report of activities undertaken, and have included materials produced under this Agreement at the 30-day conclusion of this Agreement.

8. ADA/DC shall prepare an annual statement of financial affairs of ADA/DC, for the Board's fiscal year, and a copy thereof shall be forthwith submitted to the Board.

9. ADA/DC shall:

   a. Not discriminate against recipients of services on the basis of race, color, religion, national origin, sex, disability or age; and

   b. Not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or any other qualified disability. It is further understood that, if ADA/DC is in violation of this clause, it shall be barred forthwith from receiving further funds unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.

   c. Have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:

      (1) A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in ADA/DC's workplace;

      (2) The actions that will be taken against employees for violating the policy; and

(3) The requirement that each employee receive a copy of the policy.

10. ADA/DC shall indemnify and hold harmless the Board from any and all claims and liabilities, including costs and legal fees, that may arise out of or on account of any failure on the part of ADA/DC to perform such duties for the Department as herein specified. This obligation shall survive the expiration or termination of this Agreement.

11. The obligation to indemnify shall survive the expiration or termination of this Agreement. Such indemnification and assumption of liability found in this section is limited to the extent provided for by law.

12. The provisions of this Agreement may be amended by mutual agreement to the parties hereto in writing, at any time.

13. This Agreement may be terminated by either party hereto at any time by ninety (90) day advance written notice to the other party.

14. This Agreement is not assignable without the express written approval of the Board.

15. ADA/DC agrees that the books of account, files, and other records of ADA/DC which are applicable to this Agreement shall, at all times, be available for inspection, review, and audit by the Board or its contract representatives to determine the proper application and use of all funds paid to or for the account or benefit of the Board.

16. Furthermore, ADA/DC agrees to maintain all books, documents, papers, or any other records involving transactions related to this Agreement for a period of five (5) years. If any litigation or audit is begun or a claim is instituted involving the Agreement, ADA/DC shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved, and the Board has agreed that such records do not need to be retained.

17. Any funds paid to ADA/DC under this Agreement, and not fully utilized pursuant to the terms of this Agreement during the Agreement period shall be returned to the Board, unless otherwise agreed in writing by the parties. Furthermore, if ADA/DC fails to perform as outlined herein, ADA/DC may be required to repay funds received not utilized under this Agreement.

18. The funds expended pursuant to this Agreement shall be spent only on ADA/DC's performance pursuant to this Agreement and for no other purpose.

19. ADA/DC shall procure a policy or policies of insurance from an insurance company licensed to write such insurance in the state which policy or policies of insurance shall guarantee payment of compensation to injured workers according to the Nebraska Workers Compensation Act if an employee of ADA/DC is subject to the Nebraska Workers Compensation Act.

20. All provisions of this Agreement are subject to the Americans with Disabilities Act.

21. ADA/DC is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

IN WITNESS WHEREOF, The parties hereto do execute this Agreement.

AMERICAN DAIRY ASSOCIATION OF NEBRASKA, INC.
DBA: ADA/DC OF NEBRASKA
Federal ID Number, 47-0090809

6 - 21 - 10
Date

Dwaine Junck
Dwaine Junck, Chairman

NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

6 - 3 - 10
Date

James Eschliman
James Eschliman, Chairman

NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

8205 F Street - Omaha, Nebraska 68127-1779

Toll Free: (800) 642-3895

February 24, 2011

Dwaine Junck
ADA/DC of Nebraska
56625 860th Road
Carroll, NE 68723

RE: Termination of 2010 – 2011 Agreement

Dear Dwaine:

The agreement between Nebraska Dairy Industry Development Board (NDIDB) and American Dairy Association of Nebraska, Inc. (ADA of NE) entered into on July 1, 2010 provides under Section 12 that the provisions of the agreement may be amended by mutual agreement in writing at any time. NDIDB approved the following transactions during its meeting on Dec. 9, 2010:

1. To approve an agreement with Midwest Dairy Association for administrative and program services effective Jan. 1, 2011.
2. To terminate the July 1, 2010 agreement with ADA of NE for administrative and program services as of Dec. 31, 2010.

In accordance with Section 12 of the agreement, please sign below to acknowledge the termination of the July 1, 2010 agreement as of December 31, 2010. Thank you.

Sincerely,

Jim Eschliman

Jim Eschliman
Chairman

I hereby acknowledge that the July 1, 2010 agreement between NDIDB and ADA of NE is terminated as of Dec. 31, 2010.

Dwaine Junck

Dwaine Junck, Chairman
American Dairy Association of Nebraska, Inc.

AGREEMENT

Between

THE NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

And

MIDWEST DAIRY ASSOCIATION

This Agreement is made and entered into this 1st day of January, 2011, by and between Midwest Dairy Association, herein called "Midwest," and the Nebraska Dairy Industry Development Board, herein called "Board."

WHEREAS, the Legislature of the State of Nebraska has enacted the Dairy Industry Development Act, which, by this reference, is hereby incorporated into this Agreement;

WHEREAS, the purpose of the Act is to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of dairy products in a balanced and healthful diet;

WHEREAS, §2-3950 of the Act designates the Nebraska Dairy Industry Development Board as the agency of the State of Nebraska responsible for carrying out the purposes of the Act;

WHEREAS, §2-3961 of the Act authorizes the Board to jointly sponsor projects with any private or public organization that is a qualified program (any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. ll50.153 as amended) to meet the objectives of the Act;

WHEREAS, the purposes of the Act will be effectively and meaningfully carried out if the Board cooperates with Midwest in carrying out said purposes; and

WHEREAS, both parties hereto desire to enter into this Agreement in order to carry out the purposes of the Act.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto that:

1. The term of the Agreement shall be from January 1, 2011, through June 30, 2011.

2. The relationship of the Board and Midwest under this Agreement shall be that of principal and independent contractor. It is understood by both the Board and Midwest that Midwest is not an employee or agent of the Board and it is understood that the Board assumes no responsibility beyond those specifically stated in this Agreement.

3. Midwest shall provide the following services:

   a. Perform administrative services for the Board that will include and are not limited to:

      - Coordinate meeting notices, records, and agenda with the Nebraska Department of Agriculture.
      - Provide minutes, information reports, and follow-up reports as requested by the board.
      - Advance Board-approved expenses to the State for payment.
      - Obtain stationery and letterhead for the Board.
      - Maintain and update the roster of the Board.
      - Correspond with first purchasers to comply with nominations and appointments to the Board and the operative dates.
      - Follow-up with the Governor's office on appointments to the Board.
      - Remind first purchasers if a vacancy exists on the Board.
      - Work with the Nebraska State Attorney General's office as related to contracts.
      - Obtain certified audits and proof of bonding from qualified programs contracted to the NDID Board and forward to the Department of Agriculture to review for compliance.
      - Develop and publish an annual report on or before October 1 of each year, setting forth the income received from the assessments collected in accordance with §2-3958, for the preceding fiscal year and the report shall include:

        (1) The expenditure of funds by the Board during the year for the administration of the Dairy Industry Development Act;

        (2) A brief description of all contracts requiring the expenditure of funds by the Board;

        (3) The action taken by the Board on all such contracts;

        (4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the Board; and a brief description of the rules, regulations, and orders adopted and promulgated by the Board.

(6) Such report shall be available to the public upon request.

b. Midwest agrees to perform these Administrative Services free of charge, as long as it remains the only qualified program funded by the Board. Should any qualified program other than Midwest receive checkoff funding from the Board, in consideration of good faith performance hereunder by Midwest, the Board agrees to reimburse Midwest monthly for administrative cost incurred based on total revenue posted to the State of Nebraska Information System (NIS) general ledger as of the fifth working day of each calendar month. The amount paid will be one percent (1.0%) of revenue collected. The Board agrees to make payment provided sufficient funds, as budgeted under §2-3960, are generated and legislative appropriation is made. In no case, shall payment exceed one percent (1.0%) received during this contract period.

4. Midwest shall provide the Board a summary evaluation report within 30 days after the end of the contract period, including a summarization of revenue received and a general categorization by type of expenditure, expenditures made.

5. In addition to the administrative services provided under #3 above, Midwest shall provide the following services:

- Implementation of the Nebraska components of Dairy Management, Inc.'s national Unified Marketing Plan programs, including:
- Nutrition Affairs:
  - Thought Leader Education
  - Nutrition Guidance
  - Nutrition Communications
- Producer Relations and Communications:
  - Producer Communications
  - Board Relations
  - Co-op Relations
  - Issues Management
  - Crisis Preparedness
  - Dairy Farmer Image
- Strategic Initiatives:
  - Lactose Intolerance
  - Fresh School Pizza

- Fuel Up to Play 60:
    - Program Delivery
    - School Incentives and Rewards

- Administration necessary to conduct the above programs

6. In consideration of good faith performance hereunder by Midwest, the Board agrees to make monthly contractual payments in an amount equal to the unexpended fund balance as reflected on the NIS on the fifth working day each calendar month after Board, administrative, fee collection, accounting, and auditing expenses are calculated. This dollar amount shall be based upon the State's official NIS accounting system. The Board agrees to make payment provided sufficient funds, as budgeted under §2-3960, are generated and legislative appropriation is made.

7. Midwest shall provide a final report of activities undertaken, and have included materials produced under this Agreement at the 30-day conclusion of this Agreement.

8. Midwest shall prepare an annual statement of financial affairs of Midwest, for the Board's fiscal year, and a copy thereof shall be forthwith submitted to the Board.

9. Midwest shall:

    a. Not discriminate against recipients of services on the basis of race, color, religion, national origin, sex, disability or age; and

    b. Not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or any other qualified disability. It is further understood that, if Midwest is in violation of this clause, it shall be barred forthwith from receiving further funds unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.

    c. Have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:

        (1) A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in Midwest's workplace;

        (2) The actions that will be taken against employees for violating the policy; and

(3) The requirement that each employee receive a copy of the policy.

10. Midwest shall indemnify and hold harmless the Board from any and all claims and liabilities, including costs and legal fees that may arise out of or on account of any failure on the part of Midwest to perform such duties for the Board as herein specified. This obligation shall survive the expiration or termination of this Agreement.

11. The obligation to indemnify shall survive the expiration or termination of this Agreement. Such indemnification and assumption of liability found in this section is limited to the extent provided for by law.

12. The provisions of this Agreement may be amended by mutual agreement to the parties hereto in writing, at any time.

13. This Agreement may be terminated by either party hereto at any time by ninety (90) day advance written notice to the other party.

14. This Agreement is not assignable without the express written approval of the Board.

15. Midwest agrees that the books of account, files, and other records of Midwest which are applicable to this Agreement shall, at all times, be available for inspection, review, and audit by the Board or its contract representatives to determine the proper application and use of all funds paid to or for the account or benefit of the Board.

16. Furthermore, Midwest agrees to maintain all books, documents, papers, or any other records involving transactions related to this Agreement for a period of five (5) years. If any litigation or audit is begun or a claim is instituted involving the Agreement, Midwest shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved, and the Board has agreed that such records do not need to be retained.

17. Any funds paid to Midwest under this Agreement, and not fully utilized pursuant to the terms of this Agreement during the Agreement period shall be returned to the Board, unless otherwise agreed in writing by the parties. Furthermore, if Midwest fails to perform as outlined herein, Midwest may be required to repay funds received not utilized under this Agreement.

18. The funds expended pursuant to this Agreement shall be spent only on Midwest's performance pursuant to this Agreement and for no other purpose.

19. Midwest shall procure a policy or policies of insurance from an insurance company licensed to write such insurance in the state which policy or policies of insurance shall guarantee payment of compensation to injured workers according to the Nebraska Workers Compensation Act if an employee of Midwest is subject to the Nebraska Workers Compensation Act.

20. All provisions of this Agreement are subject to the Americans with Disabilities Act.

21. Midwest is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

IN WITNESS WHEREOF, The parties hereto do execute this Agreement.

MIDWEST DAIRY ASSOCIATION
Federal ID Number, 41-0433125

12/15/10
Date

Jerry Messer, Chairman

NEBRASKA DAIRY INDUSTRY
DEVELOPMENT BOARD

12-09-10
Date

James Eschliman, Chairman

NDID Midwest Contract redlined 1-1-11.doc