

AGREEMENT

Between

THE NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD

And

MIDWEST DAIRY ASSOCIATION

This Agreement is made and entered into this 1st day of July, 2016, 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 (Neb. Rev. Stat. §2-3948 et seq.), 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 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. 1150.153 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 that:

1. The term of the Agreement shall be from July 1, 2016, through June 30, 2017.
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 Administrative Services 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 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.
4. In consideration of good faith performance of the Administrative Services described in Paragraph 3 by Midwest, the Board agrees to:
- 1) Reimburse Midwest monthly an administrative fee in association with the redirection of checkoff dollars by a producer to a qualified program other than Midwest. This administrative fee shall be one percent (1.0%) of the revenue collected from producers who choose this redirection option. Payment of the administrative fee by the Board shall be made provided that sufficient funds, as budgeted under Neb. Rev. Stat. § 2-3960, are generated and legislative appropriation is made.
 - 2) The administrative fee shall be used to fund the Administrative Services provided by Midwest as described in Paragraph 3 of this Agreement.
 - 3) The amount of the administrative fee will be included in the monthly contractual payment of the unexpended fund balance as described in Paragraph 7 of this Agreement.
5. Midwest shall provide the Board a summary evaluation report within thirty (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.
6. In addition to the Administrative Services provided under Paragraph 3 above, Midwest shall provide the following services:
- Implementation of the Nebraska components of Dairy Management, Inc.'s national Unified Marketing Plan programs, including:
- National Dairy Council (Nutrition Affairs):
 - Dairy's Role in the Diet
 - Child Health
 - Hunger
 - Farm to Fork and Fork to Farm
 - Culinary Applications
 - Training
 - Integrated Communications:
 - Consumer Communications and Support
 - General Communications Support
 - Farmer Relations
 - Leadership Development and Training
 - Industry Image and Relations

- Strategic Initiatives
 - Fuel Up to Play 60 (FUTP60):
 - Program Delivery
 - School Dairy Optimization, Funds for FUTP60 and Rewards
 - Dairy Product Research
 - Coordination of research through National Research Plan/Midwest Dairy Foods Research Center/University of Nebraska
 - Administration necessary to conduct the above programs
7. In consideration of good faith performance of the services described in Paragraph 6 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.
 8. 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.
 9. 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.
 10. 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.
11. 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.
12. 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.
13. The provisions of this Agreement may be amended by mutual agreement to the parties hereto in writing, at any time.
14. This Agreement may be terminated by either party hereto at any time by ninety (90) day advance written notice to the other party.
15. This Agreement is not assignable without the express written approval of the Board.
16. 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.
17. 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.
18. 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,

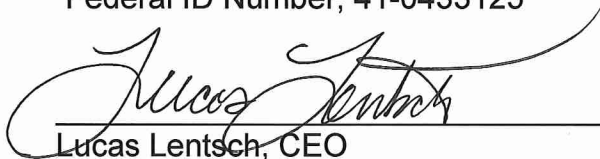
Midwest may be required to repay funds received not utilized under this Agreement.

19. The funds expended pursuant to this Agreement shall be spent only on Midwest's performance pursuant to this Agreement and for no other purpose.
20. 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.
21. All provisions of this Agreement are subject to the Americans with Disabilities Act.
22. 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

5-16-2016
Date


Lucas Lentsch, CEO

NEBRASKA DAIRY INDUSTRY
DEVELOPMENT BOARD

6-8-16
Date


James Eschliman, Chairman