

# AGREEMENT

between the

**NEBRASKA DAIRY INDUSTRY DEVELOPMENT BOARD**

and the

**NEBRASKA DEPARTMENT OF AGRICULTURE**

**#18-01-176**

This Agreement is entered into by and between the Nebraska Dairy Industry Development Board, (hereafter “Board,”) and the Nebraska Department of Agriculture, (hereafter “Department”).

**PURPOSE:** The purpose of this Agreement is that 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.

**AUTHORITY:** This Agreement is being entered into pursuant to the Dairy Industry Development Act, Neb. Rev. Stat. §§ 2-3948 to 2-3963 (hereafter “Act”) and Neb. Rev. Stat. §§ 81-201.03 and 81-201.04 authorizing the Department to provide management services.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**A. DESCRIPTION OF WORK**

1. The Department agrees to assist the Board from **July 1, 2024, to June 30, 2025**, by providing the following services on a cost reimbursement basis, but such services shall not exceed nine thousand dollars and no cents (\$9,000.00) in value.

a. Fee Collection Services:

- (1) Distribution of monthly fee forms
- (2) Processing and return of forms
- (3) Follow-up on delinquent accounts in accordance with the agreed-upon enforcement procedures, attached as Attachment A and incorporated herein by this reference.
- (4) Process refunds as requests are made.

- (5) Update enforcement procedures as needed for Board approval.
    - (6) Maintain an updated mailing list of first purchasers.
    - (7) Maintain records in accordance with State record retention schedule.
  - b. Fiscal Services:
    - (1) Prepare and electronically submit Board approved budget.
    - (2) Perform accounting functions to enable the Board to operate as a State agency.
    - (3) Monitor fund investment.
    - (4) Deposit revenue into Nebraska Dairy Industry Development Cash Fund.
    - (5) Prepare revenue and expenditure documents.
    - (6) Review expenditures for compliance with State guidelines.
    - (7) Prepare a monthly summary of revenue and expenditure fiscal report.
    - (8) Maintain records in accordance with State record retention schedule and LB 429 of 2013 related to State contracts.
  - c. Auditing Services:
    - (1) Conduct field auditing of first purchaser accounts as authorized by Board action as set out in Attachment A.
    - (2) Internal auditing of revenue and expenditures for compliance.
  - d. Miscellaneous Services:
    - (1) Keep a Statewide inventory.
  - e. To provide the above services, the Department shall employ the necessary personnel and incur the necessary operating and travel expenditures. Each month a fiscal report shall be provided to the Board detailing the total budget, monthly expenditures, and fiscal year-to-date expenditures incurred, along with an Interagency Billing Transactions Document billing for the prior month's services performed.
2. The Department and the Board agree, that the Department will 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 Department 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.

**B. ALLOWABLE COSTS and PAYMENTS**

1. The Board shall provide a sum not to exceed nine thousand dollars and no cents (\$9,000.00) under this Agreement on a cost-reimbursement basis. If services in excess of \$9,000.00 are requested by the Board, this Agreement shall be amended in writing, if both parties agree to such amendment;
2. The Department shall bill the Board monthly. Final billing shall be received no later than July 15, 2025;
3. Payment for services under this Agreement is contingent upon the receipt of sufficient funding pursuant to the Act;
4. The Department agrees that funds provided under this Agreement shall be used only for the project and purpose enumerated herein; and
5. Any funds paid to the Department under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period shall be returned to the Board.

**C. AGREEMENT PERIOD:**

The term of this Agreement is from **July 1, 2024, to June 30, 2025**, unless sooner terminated or completed as provided for in Section D, except that the provisions for the final billing and the final payment shall remain in effect beyond the term of the Agreement.

#### D. AGREEMENT PROVISIONS

1. Termination: This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Board shall pay the Department for the cost of services provided up to the date of termination.
2. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.
3. Relationship of Parties: It is understood by both the Department and the Board that neither is an employee of the other party and that neither party assumes any responsibility beyond those specifically stated in this Agreement.
4. Assignable: This Agreement is not assignable without the express written approval of the Board.
5. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department or Board regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
6. Indemnification: To the extent allowable by Nebraska State Law, the Board and the Department, agree each party is responsible for its own costs, and shall indemnify the other party for such costs, arising from any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of its own employees, subcontractors, consultants, representatives, and agents. The obligation to indemnify shall survive the expiration or termination of this Agreement.
7. Authority to Enter Agreement: The Board and the Department warrant that the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind itself accordingly.

8. Severability: If any term or condition of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.
9. Penalty for Breach: In the event that either party fails to perform as specified under this Agreement, the party failing to perform shall pay any additional costs resulting from the failure to perform.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. Records Available: The books of account, files, and other records which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the other party and its representatives to determine the proper application and use of all funds used pursuant to the Agreement. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins or as long as is required by Nebraska law. If any litigation or audit is begun, or a claim is instituted involving the Agreement, records shall be retained beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved.
2. Auditing Standard: The Board, under the Office of Management and Budget's Uniform Guidance, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include the Department providing recent audit reports to evaluate prior audit experiences and audit findings; Board review of subrecipient control environment; and the Department providing copies of invoices detailing how the funds were expended.

#### F. COMPLIANCE PROVISIONS

1. Nondiscrimination:
  - a. The Department and the Board, and any and all subcontractors, agree to comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating

against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. Both parties guarantee compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement.

2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: The Department and the Board, and any and all subcontractors agree to guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act.
4. Drug Free: The Department and the Board, and any and all subcontractors agree to 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 workplace;
  - b. The specific actions that will be taken against employees for violating the policy; and
  - c. A requirement that each employee receive a copy of the policy.
5. Immigration Verification:
  - a. The Department and any and all subcontractors shall 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 electronics 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 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 newly hired employees.

- b. If the Department uses a subcontractor who is an individual or sole proprietorship, the Department agrees to require the subcontractor to complete the United States Citizenship Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the subcontractor indicates on such attestation from that he or she is a qualified alien, the subcontractor shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the subcontractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

IN WITNESS WHEREOF, the parties execute this Agreement.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kent Pulfer, Chairman  
Nebraska Dairy Industry Development Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sherry Vinton, Director  
Department of Agriculture

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 Dairy 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:

Fee collection records shall be kept in the strictest confidence allowed by Nebraska law. To the extent allowable by law, only agency total data will be released.

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 a monthly notification. A copy of the Statute will be mailed out to them.
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. Monthly Notification will be sent physically or electronically to those first purchasers on the mailing list.
2. Non-respondents will be sent a delinquent second notice notification with penalty due the first week following the month they were due.
  - If the form is received late (according to the postmark or email date), 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 1 ½% 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 notification for each month delinquent. The notification 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. The auditor will conduct one audit per fiscal year with no first purchaser being selected two years in a row.

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 semiannual 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 Dairy 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.