**SIOUX CITY COMMUNITY SCHOOL DISTRICT**
**CONTRACT FOR PRODUCT**

**WHEREAS,** the School Board of the Sioux City Community School District ("SCCSD"), as the contracting agent has requested bids for dairy product ("Product");

**WHEREAS,** Dean Dairy ("Contractor") has submitted a bid, dated March 20, 2017 to provide the Product sought by SCCSD;

**WHEREAS,** Contractor is duly qualified to provide the Product sought by SCCSD; and,

**WHEREAS,** SCCSD desires to engage Contractor to provide such goods and services for SCCSD and Contractor desires to provide such services for the SCCSD.

**NOW, THEREFORE,** in consideration of the mutual covenants and benefits hereinafter set forth, the parties herein covenant and agree as follows:

1. **BID RESPONSE INCORPORATED HEREIN.** The terms and specifications of the terms of that bid submitted by Contractor are herein incorporated by reference as if fully set forth herein (a copy of which is attached as "Exhibit A" hereto). In the event of a conflict between the terms of this Contract and any exhibit, the terms of this Contract shall control, unless otherwise agreed in writing as an amendment pursuant to the terms for such as provided herein.

2. **TERM.** The Term of this Contract shall be from July 1, 2020 through June 30, 2021. Annual extensions of this agreement may be made to this agreement through June 30, 2023

3. **CONTRACTOR'S GOODS AND SERVICES.** Contractor agrees to provide the following Product escalator pricing bid category. If documentation of the Product is attached, said documentation is labeled as Exhibit A to this Contract and is incorporated herewith by this reference.

4. **COMPENSATION.** SCCSD shall pay Contractor the prices set forth in "Exhibit A" for the dairy category supplied pursuant to this Contract, with pricing including all charges of packing and transportation. The prices shall adjust monthly based on the Fluid Milk Escalator/De-escalator Clause, the May 2018 sample being attached as "Exhibit A." Payment to be made net 14 upon receipt and verification of invoice. If documentation of the payment terms are attached, said documentation is labeled as Exhibit A (Bid) to this Contract and is incorporated herewith by this reference.

5. **QUALITY.**

   a. Contractor represents and warrants the Product will: 1) be suitable for SCCSD's use and in strict accordance with the original RFP; 2) be of merchantable quality and will equal or surpass the quality available for such similar products in the commercial industry; 3) be of good materials and free from defects.

   b. From time to time, SCCSD may request a revision to the specifications contained with the RFP. Contractor shall consider such request and notify SCCSD of its decision whether to make such revision within thirty (30) days after SCCSD communicates such revision or change. If Contractor elects to make such change, it shall provide SCCSD with the increased pricing for such revised Product if applicable. If Contractor is unable to provide Product in accordance with the requested revised specifications established by SCCSD at the time needed by SCCSD, and a price acceptable to both parties, SCCSD shall have the right to purchase Product elsewhere.

6. **TIMELINESS/SERVICE LEVEL.** From time to time as specified by SCCSD, SCCSD will give Contractor detailed instructions for the delivery of Product (with release schedules, delivery orders, purchase orders or equivalent notices as described in the RFP). This Contract will apply to any purchases so made.

   a. **LEAD TIME.** Contractor agrees to provide Product under this Agreement no later than the time specified in the release or purchase order so long as it receives at least **7**calendar days' notice from SCCSD. Lead time will begin to run on the date a release or purchase order is issued by SCCSD.

   b. **TIMELINESS.** Contractor shall deliver all original orders of product at the monthly average of 98% or above on the scheduled delivery day with the remaining 2% delivered within 24 hours of the scheduled delivery day unless SCCSD agrees the Product will be reordered. A penalty will be reflected in the SCCSD payment for each individual School account whose order/delivery does not meet the required 98% fill rate. The penalty will be at the rate of ½% of the total value of the SCCSD's invoice for that delivery. If Contractor fails to meet guidelines for delivery, Contractor will be considered in default of this Agreement and SCCSD may terminate this Agreement pursuant to Paragraph 11.

c. **DELIVERY DATE.** Contractor shall expend commercially reasonable efforts to conform to the mutually agreed upon delivery date(s) for the Products ordered pursuant to this Agreement. Delivered Products must arrive on the specified delivery date. In the event Contractor fails to perform by the delivery date, SCCSD will give Contractor written notice of delinquency allowing Contractor a reasonable time to cure. Substitutions must be pre-approved and should be labeled clearly as such on each invoice.

7. **COMPLIANCE WITH LAWS AND POLICIES.** Contractor agrees to comply with all current SCCSD policies that have been provided to Contractor prior to the effective date hereof and all applicable local, state and federal laws, including laws pertaining to the confidentiality of student record and public records requests. Contractor agrees SCCSD has the right to unilaterally and immediately cancel this Contract upon refusal by Contractor to allow SCCSD access to all invoices made or received by the Contractor in conjunction with the Contract, unless the records are exempt by law. Should cancellation be necessary under this clause, SCCSD is required only to provide written notice to the Contractor, effective upon *mailing of the notice by regular and certified mail.*

8. **INDEPENDENT CONTRACTOR STATUS.** Contractor is, for all purposes arising under this Contract, an independent Contractor. Contractor and its officers, agents or employees shall not, under any circumstances, hold themselves out to anyone as being officers, agents or employees of SCCSD. No officer, agent or employee of the Contractor or SCCSD shall be deemed an officer, agent or employee of the other party. Neither Contractor or SCCSD, nor any officer, agent or employee thereof, shall be entitled to any benefits to which employees of the other party are entitled, including, but not limited to, overtime, retirement benefits, workers compensation benefits, injury leave, or other leave benefits.

9. **BACKGROUND CHECKS/FINGERPRINTING.** Contractor agrees to bear any and all reasonable costs associated with acquiring any required background screenings.

10. **TERMINATION.**

a. **WITHOUT CAUSE.** This Contract may be terminated for any reason by either party upon thirty (30) days written notice to the other party at the addresses set forth below. If said Contract should be terminated as provided in this paragraph of the Contract, the SCCSD will be relieved of all obligations under said Contract and the SCCSD will only be required to

pay that amount of the Contract actually performed to the date of termination with no payment due for unperformed work or lost profits.

b. **TERMINATION FOR BREACH.** Either party may terminate this Contract upon breach by the other party of any material provisions of this Contract, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party.

c. **IMMEDIATE TERMINATION BY SCCSD.** SCCSD may terminate this Contract immediately upon written notice to Contractor (such termination to be effective upon Contractor's receipt of such notice) upon the occurrence of any of the following events:

   i. The denial, suspension, revocation, termination, restricting, relinquishment or lapse of any license or certification required to be held by the Contractor, or of any company/individual staff's professional license or certification;

   ii. Conduct by Contractor or any of Contractor's officers, agents or employees which affects the quality of product or services provided to the SCCSD or the performance of duties required hereunder and which would, in the SCCSD's sole judgment, be prejudicial to the best interests and welfare of the SCCSD and/or its students;

   iii. Breach by the Contractor or any of Contractor's officers, agents or employees of the confidentiality provisions of this Contract;

   iv. Breach by the Contractor of paragraph 6(B) of this contract.

   v. Failure by the Contractor to maintain the insurance required by the terms of this Contract.

   vi. Notwithstanding any other provisions of the Contract, if funds anticipated for the continued fulfillment of this Contract are at any time not forthcoming or insufficient, either through the failure of the State or District to appropriate funds or through discontinuance of material alteration of the program for which funds were provided, the SCCSD shall have the right to terminate this Contract without

penalty by giving not less than thirty (30) days written notice documenting the lack of funds.

11. **ASSIGNMENT.** Neither Contractor nor SCCSD may assign or transfer any interest in this Contract without the prior written consent of both parties. Should an assignment occur upon mutual written consent, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

12. **INDEMNIFY AND HOLD HARMLESS.** Selected Contractor shall indemnify, defend and hold harmless SCCSD, its directors, officers, employees, and agents from and against all liability, damages, losses and expenses (including reasonable attorneys' fees and costs) which arise out of Contractor's negligence, breach or other failed performance of the Contract, or violation of any law or right of a third party, or that of selected Contractor's employees, subcontractors, or agents. Selected Contractor will comply with all laws relating to intellectual property of its Products, will not infringe on any third party's intellectual property rights with respect to the Products, and will indemnify, defend and hold harmless each SCCSD and its directors, officers, employees, and agents from and against any claims for infringement of any copyrights, patents, or other infringements of intellectual property rights related to its activities under this Contract.

    a. Contractor agrees to notify SCCSD by certified mail return receipt request, or by overnight courier immediately upon knowledge of any claim, suit, action or proceedings.

13. **REPRESENTATIONS & WARRANTIES.** Contractor represents and warrants to SCCSD, upon execution and throughout the term of this Contract that:

    a. Contractor is not bound by any contract or arrangement which would preclude it from entering into, or from fully performing the services required under the Contract;

    b. None of the Contractor's agents, employees or officers has ever had his or her professional license or certification denied, suspended, revoked, terminated and/or voluntarily relinquished under threat of disciplinary action, or restricted in any way;
    c. Contractor and Contractor's agents, employees and officers have, and shall maintain throughout the term of this Contract, all appropriate federal

and state licenses and certification which are required in order for Contractor to perform the functions, assigned to him or her in connection with the provisions of the Contract.

14. **CONFIDENTIALITY.** Contractor and SCCSD each recognizes and acknowledges that by virtue of entering into this Contract and providing or receiving the Products hereunder, Contractor, SCCSD, and each of their agents, employees and officers may have access to certain confidential information, including pricing, customer lists, and supplier lists. Contractor and SCCSD each agrees that neither it nor any of its agents, employees or officers will at any time, either during or subsequent to the term of this Contract, disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by the other party in writing, any confidential information, and each party and its agents, employees and officers shall comply with all Federal and State laws and regulations and all SCCSD policies provided to Contractor regarding the confidentiality of such information.

15. **INSURANCE.** Contractor shall maintain all necessary and proper insurance for the duration of the Contract, including Comprehensive General Liability Insurance and Property Damage Insurance, Workers Compensation Insurance, Employer's Liability Insurance, and Automobile Liability Insurance. Contractor shall have a policy endorsement covering personal property of others. Should any required insurance be cancelled before the expiration date, the issuing company will mail 30-days email notice to SCCSD. Contractor shall provide a statement of certificates of insurance from issuing company or their authorized agent with the formal proposal. Contractor shall meet the statutory requirements of the State of Iowa for Worker's Compensation Coverage and Employer's Liability Insurance.

    a. **PROPERTY DAMAGE LIABILITY.** Contractor shall maintain insurance covering all owned, non-owned, and hired vehicles. The policy limits of such insurance shall not be less than $1,000,000 combined single limit each person/each occurrence.
    b. **COMPREHENSIVE GENERAL LIABILITY.** Contractor shall maintain Comprehensive General Liability insurance that shall protect Contractor from claims of bodily injury or property damage which arise from performance under this Contract. This insurance shall include coverage for Contractual liability. The policy limits of such insurance shall not be less than $1,000,000 combined single limit each occurrence/annual aggregate.

16. **BILLING.** Bills for fees or compensation under this Contract shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

17. **RECORDS RETENTION.** Contractor agrees to comply with all State and Federal regulations governing contracts with public entities, including but not limited to cooperation with public records requests as provided by law.

18. **AMENDMENT.** This Contract may be amended only with the mutual consent of the parties. All amendments must be in writing and must be approved by SCCSD.

19. **SEVERABILITY.** The parties recognize and agree that should any clause(s) herein be held invalid by a Court of competent jurisdiction, the remaining clauses shall not be affected and shall remain of full force and effect.

20. **COUNTERPARTS.** This Contract may be executed in one or more counterparts, all of which together shall constitute only one Contract.

21. **WAIVER.** A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure to perform. Any waiver of insurance requirements as provide by this Contract and/or the policies of the SCCSD does not relieve the Contractor of the indemnification provisions contained within this Contract.

22. **CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Contract.

23. **ENTIRE CONTRACT.** The parties hereto agree that this is the final Contract between the parties and supersedes any and all prior Contracts and/or assurances, be it oral or in writing.

24. **NO CONSEQUENTIAL DAMAGES**. Notwithstanding any other provision in this Contract, in no event will either party be liable to the other party for any indirect, special, incidental or consequential damages whatsoever (including, without limitation, lost profits), arising out of or relating to this Contract or either party's performance hereunder.

25. **NOTICES.** All notices required by this Contract, unless otherwise provided herein, by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by Federal Express or Express Mail, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

Sioux City Community School District
Attn: Troy Thomas
627 4th Street
Sioux City, IA 51101

CONTRACTOR:

Dean Dairy
1345 12th Street SW
LeMars IA. 51031

**IN WITNESS WHEREOF,** the parties have executed this Contract on this ___ day of _____ , 2020.

| **SCCSD** | **CONTRACTOR** |
|---|---|
| By:_____ | By:_____ |
| Its:_____ | Its:_____ |

**“Exhibit A”**

**[Attach Bid Response and Escalator/De-escalator Notice]**