

## **CONTRACT FOR PURCHASE OF DAIRY PRODUCTS**

This Contract for Purchase of Dairy Products ("Contract") is entered into as of \_\_\_\_\_, by and between the William S. Hart Union High School District ("District"), a California public school district, and \_\_\_\_\_ ("Contractor"), a \_\_\_\_\_ . The District and the Contractor may be referred to herein individually as "Party" and collectively as the "Parties."

In consideration of their respective rights and obligations pursuant to this Contract, the District and the Contractor agree as follows:

**Section 1. Project.** This Contract applies to the following: the sale and delivery of dairy products in accordance with District bid package WSH14-09A ("Project").

**Section 2. Component Parts of the Contract.** This Contract is only one of several documents that sets forth the complete understanding and agreement of the District and the Contractor with respect to the Project. The Contract is composed of all of the below-listed Contract Documents, as may be amended in accordance with their provisions, and each such document is hereby incorporated as an operative and effective part of the Contract. The Contract Documents shall be deemed and construed to be complementary and an integrated whole. Any requirement or provision set forth in one Contract Document, but not in one or more of the other Contract Documents, shall be interpreted as if set forth in or applicable to all Contract Documents. The Contract Documents include, but are not limited to, all of the following:

- (i) Project Description
- (ii) Notice Inviting Bids;
- (iii) Instructions/Information For Bidders;
- (iv) Required Bid Forms as completed by Contractor
  - a.) Contractor's Bid
  - b.) Bid Bond
  - c.) Bidder References and Responsibility Information
  - d.) Non-Collusion Affidavit to be Executed by Bidder and Submitted with Bid
  - e.) Prime Contractor's Certificate Regarding Workers' Compensation
  - f.) Site Visit Certification
  - g.) Suspension and Debarment Certification – U.S. Department of Agriculture
  - h.) Disclosure of Lobbying Activities
  - i.) Certification Regarding Lobbying
  - j.) Bid Label
- (v) Contract for Purchase of Dairy Products;
- (vi) Addenda Nos. \_\_\_\_\_ ;
- (vii) Certification of Employee Background
- (viii) Performance Bond;
- (ix) Payment Bond;

**Section 3. Contract Time.** This Contract shall be effective from September 4, 2014 through September 3, 2015. This Contract may also be extended by mutual, written agreement for two additional one-year periods pursuant to Education Code section 17596.

**Section 4. Contract Price.** As full consideration for the full and faithful performance by the Contractor of each and all of its obligations pursuant to the Contract, the District shall pay to the Contractor the total annual amount ("Contract Price") of: \_\_\_\_\_ dollars (\$ \_\_\_\_\_). The Contract Price, which is based on the applicable itemized products listed in the Contractor's Bid, is subject to increase and/or decrease as provided in the Contract Documents. The District shall pay the Contract Price based on monthly itemized statements provided to the District by Contractor. The Contract Price and the price of each individual itemized product listed in the Contractor's Bid, as appropriately increase or decreased, shall be extended if the Contract is extended under Section 3.

**Section 5. Required Standard of Care.** The Contractor shall perform or cause to be performed all the services required to complete the Project using such levels of care as are not less than the reasonable levels of care employed by other Contractors providing similar services to school districts within the State of California ("State") in similar circumstances.

**Section 6. Compliance with Law.** The Contractor shall perform as required by the Contract Documents in compliance with all applicable federal, State and local laws, regulations, ordinances and other governmental requirements.

**Section 7. Contractor Records.** The Contractor shall prepare and maintain, in accordance with generally-accepted accounting principles, all financial and other records related to this Contract as necessary, appropriate, or required by law ("Contractor Records"). Pursuant to Government Code Section 8546.7, the State Auditor has the right, for a period of three years following final payment, to review, audit and/or copy records of the contracting parties with respect to each contract providing for expenditure of public funds in excess of \$10,000. The District and other governmental entities with competent jurisdiction also shall hereby have an independent right pursuant to this Contract, for a period of four years following final payment, to review, audit, and/or copy the Contractor Records. The Contractor shall make the Contractor Records available for inspection by the District, the State, and any other governmental entity with competent jurisdiction, at all reasonable times during the four-year period following final payment to the Contractor pursuant to this Contract; provided that, if the District or any other governmental entity commences, but does not complete, an audit within such four-year period, the Contractor shall maintain the Contractor Records until such time as the audit has been completed. This Section is meant to include and hereby incorporates the provisions of Title 7 of the Code of Federal Regulations, Sections 210.23(c), 3016.36(i)(10), 3016.36(i)(11).

**Section 8. Required Insurance.** Prior to execution and delivery of this Contract, the Contractor shall procure at its sole cost and expense, and, during all periods as required by this Contract, shall maintain in effect, the policies of insurance required by the Contract Documents.

**Section 9. Waiver of Subrogation.** The Contractor hereby waives, on behalf of its insurers, any and all rights to subrogation that any such insurer may acquire by virtue of the payment of any loss. Each policy of the General Liability Insurance and the Vehicle Liability Insurance shall be endorsed with a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District. The policy of Workers' Compensation Insurance shall be endorsed with a waiver of the insurer's rights of subrogation against the District.

**Section 10. Contractor Insurance is Primary.** To the extent permitted by law, insurance policies required by this Contract to be maintained by the Contractor shall be primary and non-contributing with respect to any insurance or self-insurance programs covering the District, the District

Governing Board or individual members thereof, or the District's other officers, employees, or agents. The General Liability Insurance and the Vehicle Liability Insurance shall be endorsed to provide that they are so primary and non-contributory.

**Section 11. Deductibles and Self-Insured Retentions.** Prior to execution and delivery of this Contract, the Contractor shall disclose in writing to the District any deductibles or self-insured retentions applicable to any of the insurance that the Contractor shall have in effect pursuant to this Contract. Any such deductibles or self-insured retentions are subject to discretionary approval by the District. At the option of the District, the Contractor either: (i) shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to claims arising in connection with this Contract; or (ii) shall provide a financial guarantee satisfactory to the District that guarantees payment of losses and related investigations, claim administration, and defense expenses.

**Section 12. Evidence of Coverage.** Prior to execution and delivery of this Contract, the Contractor shall provide to the District such duly-authorized and executed certificates of insurance evidencing that the insurance policies to be maintained by the Contractor pursuant to this Contract are in effect (each a "Certificate of Insurance"), together with a copy of each endorsement to such insurance as is required pursuant to this Contract. As applicable, the Certificates of Insurance shall identify those who are additional insureds in accordance with this Contract. Not less than thirty days prior to the expiration of any insurance policy that the Contractor is required to maintain pursuant to this Contract, the Contractor shall provide updated Certificates of Insurance to the District evidencing the renewal of such policy.

**Section 13. Notice of Change in Policies.** Each Certificate of Insurance and corresponding policy of insurance required pursuant to this Contract shall expressly require, or be endorsed to require, that the insurer notify the District not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of any such insurance policy, except for cancellation due to non-payment of premium, in which case the insurer shall provide such notice not less than ten days prior to cancellation. Language in any Certificate of Insurance or policy of insurance to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable.

**Section 14. Review of Coverage.** The District may at any time request that the Contractor provide a full and complete copy of any or all policies of insurance to be maintained by the Contractor pursuant to this Contract, and the Contractor shall provide a copy of each requested policy to the District within ten days of the District's request. The District shall review the insurance policies, along with the Certificates of Insurance and endorsements also provided by the Contractor, to determine whether the Contractor's insurance complies with the insurance-related requirements of this Contract. However, no failure by the District to conduct such review, to properly or completely conduct such review, or to identify any non-compliance with the insurance requirements of this Contract, shall be deemed or construed to relieve the Contractor from any of its obligations in regard to such insurance-related requirements. Notwithstanding anything else in this Contract, any failure by the Contractor to comply with such insurance-related requirements shall be deemed a material breach by the Contractor of its obligations pursuant to this Contract and not as a waiver of any such insurance-related requirement.

**Section 15. Indemnification.** The Contractor shall defend, indemnify and hold-harmless the District, the Governing Board and each member thereof, and the District's other officers, employees, Contractors and agents (collectively, not including the District, the "District Agents"), and each of them, from and against any and all claims, actions, damages, losses, costs, expenses and other liabilities

(including, but not limited to, damage to property and injury, including death, of any person) arising from, pertaining to, or relating to the negligence, recklessness or willful misconduct of the Contractor, or anyone working under or for the Contractor, in connection with the performance of this Contract. Any defense of the District and/or District Agents shall be by qualified and appropriately experienced legal counsel reasonably acceptable to the District, but selected and retained by the Contractor at its sole cost. The Contractor's obligations pursuant to this Section shall survive the expiration or termination of this Contract.

**Section 16. Limitation on Contractor Obligations.** The Contractor shall not be obligated pursuant to Section 15 of this Contract to the extent any claim, demand, action, judgment, damage, loss, cost or expense, or other liability results from the active negligence, sole negligence, or willful misconduct of the District or any District Agent. In each such event, the Parties shall be responsible and liable on a comparative basis.

**Section 17. District Settlement of Disputes.** Without jeopardizing or compromising any of its rights pursuant to this Contract or as may be available in accordance with law, the District may settle any claim, demand, action or other legal proceeding on terms reasonably determined by the District Governing Board to be in the best interests of the District. Prior to settling, the District shall attempt to obtain the Contractor's consent to each such settlement, and the Contractor shall not unreasonably deny, delay, or condition its approval. If the Parties are unable to agree on the particular terms for settlement of any dispute, with the result that the Contractor does not consent to the settlement, the District may nonetheless settle the dispute if the District Board has determined that the settlement will be in the District's best interests.

**Section 18. Payment of Costs.** The Contractor shall reimburse to the District, or upon request of the District shall directly pay, any and all costs, expenses, penalties, judgments, settlements, and other amounts paid or owed by the District that are payable by the Contractor pursuant to the indemnity provisions of this Contract. The Contractor shall pay each such amount not later than when the amount is due or within thirty days of receipt of a written invoice from the District requesting payment. Any late payments by the Contractor shall accrue interest at the maximum legal rate.

**Section 19 Insurance Not a Limitation.** The obligations of the Contractor pursuant to Sections 15, 16, 17, and 18 of this Contract shall not be deemed or construed to be: (i) conditioned upon or in any other manner limited by the existence of any insurance coverage maintained by a Party or other person or entity; or (ii) conditioned upon the receipt by any person or entity of, or limited to the amount of, any insurance proceeds.

**Section 20. Survival of Obligations.** With respect to any and all acts, omissions or incidents occurring prior to the expiration or termination of this Contract, the Contractor's obligations pursuant to Sections 15, 16, 17, 18, and 19 of this Contract shall survive the expiration or termination of this Contract.

**Section 21 Default, Termination, and Remedies.** Default and termination of this Contract shall be governed by the provisions in the Instructions/Information for Bidders. In the event the Contractor has any dispute or cause of action against the District, the Contractor must comply with the requirements of the Government Claims Act (Government Code §§ 810-998.3) prior to commencing any suit or litigation. The District may prosecute any dispute or cause of action it has against Contractor in any manner acceptable by any applicable State or federal law.

**Section 22 Fair and Reasonable Interpretations.** Prior to execution and delivery of this Contract, each Party has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of executing this Contract and the meaning of the provisions herein. Therefore, the provisions of this Contract shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was primarily responsible for drafting this Contract or any particular provision herein.

**Section 23 Headings and Captions.** The headings and captions set forth in this Contract are for the convenience of the reader only and shall not be deemed or construed to establish, define, or limit the meaning of any Section or other provision herein.

**Section 24 Meaning of "Days."** Except as expressly provided in this Contract in any particular case, each reference in this Contract to a specific number of days shall be construed to mean consecutive calendar days, not business days.

**Section 25 Entire Agreement.** This Contract constitutes the entire understanding and agreement between the Parties pertaining to the Project, and all prior and contemporaneous agreements, representations and understandings of the Parties relating to such subject matter, whether oral or written, are hereby superseded and replaced.

**Section 26 Modifications of Agreement.** This Contract may be modified only by means of duly-approved written agreement executed and delivered by both Parties.

**Section 27 Waiver.** A waiver by a Party of any provision of this Contract shall be binding only if the waiver is set forth in writing and has been duly approved and signed by the waiving Party. Unless so specified in the written waiver, a waiver by a Party of any provision of this Contract shall not constitute a waiver of any other provision(s) herein, similar or not, and shall not be construed as a continuing waiver. Except as waived in accordance with this Section, neither the failure by a Party at any time to require performance of any requirement of this Contract, nor any forbearance or indulgence of the Party in regard to such requirement, shall in any manner affect the Party's right at a later time to enforce the same or any other provision of this Contract.

**Section 28 Governing Law and Venue.** This Contract shall be governed by and interpreted in accordance with the laws of the State. Any action, arbitration, or other proceeding arising from this Contract shall be initiated and conducted only in the county in the State in which the District's principal administrative offices are located.

**Section 29 Correct Legal Requirements Deemed Included.** Each and every provision required by any applicable State, federal, or local law to be included in this Contract is hereby deemed to be so included, and this Contract shall be construed and enforced as if all such provisions are so included. If, for any reason, any provision required by any applicable law is not expressly included herein, or is not correctly included herein, then, upon request of either the District or the Contractor, they shall amend this Contract to include or incorporate, or to correctly include or incorporate, such provision.

**Section 30 Severability.** If a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Contract is invalid or unenforceable, such determination shall not invalidate or render unenforceable any other provision or requirement of this Contract. In such event, the provisions and requirements that are not the subject of the court's determination shall be

interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the invalid or unenforceable provision or requirement. Likewise, if a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Contract is invalid or unenforceable as applied to a specific person or entity, such determination shall not affect the applicability of such provision or requirement to other persons or entities. In such event, the provisions and requirements that are not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the inapplicable provision or requirement.

**Section 31 Successors and Assigns.** The Contractor may not assign this Contract without the express written consent of the District, and any attempt to do so shall be null and void. Subject to the foregoing, this Contract shall inure to the benefit of, and be binding on, the Parties' authorized successors and assigns.

**Section 32 No Third-Party Beneficiaries.** The Parties have entered into this Contract solely for their own purposes, and this Contract shall not be deemed or construed to: (i) benefit any third party; (ii) create any right for any third party; or (iii) except as provided by law, provide a basis for any claim, demand, action, or other proceeding by any third party.

**Section 33 Contract is Public Record.** Notwithstanding anything in any proposal or any discussions or writings relating hereto: (i) nothing in this Contract shall be deemed or construed to constitute confidential information; and (ii) this Contract is a public record which the District may disclose in accordance with State law or otherwise.

**Section 34 Requirements for Procurement.** As required by Title 7 of the Code of Federal Regulations, Section 3016.36(i), the Contractor must, where applicable for this Contract, comply with all standard, orders, or requirements of: (1) Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); (2) standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871); and (3) United States Department of Agriculture regulations regarding rights in data and reporting of discoveries and inventions.

***(Remainder of this Page Intentionally Left Blank)***

**Section 35 Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Contract having original signatures of both Parties.

**Section 36 Due Authority.** Each person signing this Contract on behalf of a Party represents and warrants that he or she has been duly authorized by such Party to sign, and thereby bind such Party to, this Contract.

**IN WITNESS WHEREOF,** the authorized representatives of the Parties have executed this Contract as evidenced by their signatures below.

**[CONTRACTOR]** \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Fed. Tax ID No: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**William S. Hart Union High School District**

By: \_\_\_\_\_  
Erin Lillibridge, Chief Financial Officer

Date Signed: \_\_\_\_\_

**Approved as to form:**

By: Bowie, Arneson, Wiles & Giannone,  
Attorneys for the William S. Hart  
Union High School District

By: \_\_\_\_\_  
Wendy H. Wiles, Legal Counsel

Date Signed: \_\_\_\_\_