

**SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 2 OF 5
RFP No. 14-15-133 Senior Nutrition Program**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Senior Nutrition Program Service Agreement (Agreement) dated July 15, 2015 between the City of Las Cruces (City) and Price's Creameries (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin July 1, 2016 and terminate June 30, 2017. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

PRICE'S CREAMERIES

 6-27-16
Signature Date

Michael Kimie Sales Manager
Printed Name/Title

CITY OF LAS CRUCES

 6-27-16
Deb Smith Date
Purchasing Manager

SERVICE AGREEMENT

THIS AGREEMENT made and entered into on this July 15, 2015 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Dean Dairy Holdings LLC dba Price's Creameries, 600 N. Piedras, El Paso, TX 79903 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Senior Nutrition Program

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP 14-15-133 incorporated herein by reference and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S, decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 14-15-133 incorporated herein by reference and made part of this Agreement.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of this contract as required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on September 1, 2015 through June 30, 2016, and pending mutual written agreement, may be extended annually thereafter for up to four (4) more years.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the CITY, CONTRACTOR shall so notify the CITY, of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY, with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon thirty (30) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. If there is no substantial failure on the City's part to perform on this Agreement, the Contractor must give a notice of one hundred twenty (120) calendar days prior to terminating the Agreement. This Agreement may also be terminated by the CITY, for its convenience or because the PROJECT has been permanently abandoned, but only upon thirty (30) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S, right to recover excessive or illegal payments.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY, will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S, prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY, and shall be delivered to the CITY, when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY, CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY, by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the

CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY, shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. \$1,000,000 (One Million Dollars) General Liability Insurance with the City named as an additional named insured with the same coverage as the CONTRACTOR.
2. \$100,000 (One Hundred Thousand Dollars) Property Damage Insurance.
3. In the case of any approved subcontract, the CONTRACTOR shall require the subcontractor to provide statutory Workers' Compensation and Employers' Liability Insurance, with the same limits as those required by the CONTRACTOR.
4. Worker's Compensation Per New Mexico Statute (3 or more employees)
 - \$1,000,000 - Bodily Injury: By Accident - Each Accident
 - \$1,000,000 - By Disease: Policy Limit
 - \$1,000,000 - By Disease: Each EmployeeThis coverage required for non-construction contractor with three (3) or more employees
Exception: Not applicable to out-of-state companies unless they are hiring in NM
5. The CONTRACTOR must immediately notify the CITY if insurance is canceled or not renewed.

The City must be named as additional insured - This coverage must be as broad as the coverage provided to the insured; coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of endorsement for this coverage must be provided as a condition of this Agreement.

Waiver of Subrogation will apply and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY, with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY, shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY, deliver to the CITY, the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces,
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Lina Guadian

With Copies to: Purchasing Manager

TO CONTRACTOR: Dean Dairy Holdings LLC
dba Price's Creameries
600 N. Piedras
El Paso, TX 79903
ATTENTION: Mike Kime

23. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

DEAN DAIRY HOLDINGS LLC
DBA PRICE'S CREAMERIES

CITY OF LAS CRUCES

BY: 
Mike Kime
General Sales Manager

BY: 
Deb Smith
Purchasing Manager

7-15-15
Date

7-17-15
Date

APPROVED AS TO FORM


City Attorney

COST PROPOSAL**RFP TITLE: Senior Nutrition Program****RFP NO: 14-15-133****Mike Kime, Price's Creameries**

14-15-133 Senior Nutrition Program - Cost Proposal

Company Name: Price's Creameries

Item #	Description	Brand	QTY	Requested Packaging	Unit Price	Bulk Price
1	Tropical Fruit In Light Syrup Us Grade A		25 cs	6/#10 cans		
2	Apple Juice		136 cs	48 - 5.5oz to 6oz. Per/CS		
3	Cranberry Juice		136 cs	48 - 5.5oz to 6oz. Per/CS		
4	Pineapple Juice		136 cs	48 - 5.5oz to 6oz. Per/CS		
5	Tomato Juice		136 cs	48 - 5.5oz to 6oz. Per/CS		
6	Orange Juice		136 cs	48 - 5.5oz to 6oz. Per/CS		
7	Cherry Pie Filling –Ready to use US Grade A		12 cs	6/#10 cans		
8	Potato Instant Granules, US Grade A		18 cs	6/#10 cans		
9	Tomato Sauce-can US Grade A		18 cs	6/#10 cans		
10	Individual Potato Chips 1oz Sun Chips		42 cs	64-1oz bags per/cs		
11	Beef Base-Paste Low Sodium (Minor's Brand Only)		24 cs	6 1LB per/cs		
12	Chicken Base-Paste Low Sodium (Minor's Brand Only)		24 cs	6 1LB per/cs		
13	Ranch Dressing		20 cs	4-Gallon per/cs		
14	Canola Clear		24 ea	5-Gallon per/cs		
15	Cream Of Mushroom		18 cs	12/50oz cans per/cs		
16	Peanut Butter PKG Individual		12 cs	200 ea per/cs		
17	Apple Jacks		25 cs	96 boxes per/cs		
18	Cereal Cheerios – Honey Wheat		28 cs	96 Boxes per/cs		
19	Cereal Raisin Bran		28 cs	96 boxes per/cs		
20	Cereal Rice Crispies		28 cs	96 boxes per/cs		
21	Milk-Low Fat 2%	Prices	1800 cs	50 - 1/2 pints per cs	0.29	14.50 per cs
22	Milk-Low Fat Chocolate 1%	Prices	550 cs	50 - 1/2 pints per cs	0.29	14.50 per cs
23	Milk-Low Fat 1%	Prices	450 cs	50 - 1/2 pints per cs	0.29	14.50 per cs
24	Colby – Cheese		360 cs	13# average/per/cs		
25	Ground Beef -85% Lean No Additives		800 lb	8-10# per cs		
26	Beef Top Round/Choice		1000 lb	3 ea per cs Avg. 70 lb		
27	Chicken Breast Ransom-Raw		32 cs	4/10 lb per/cs		
28	Chicken-Thigh Meat only Raw		100 cs	4/10 lb per/cs		
29	Pork Loin-Lean		900 lb	2/9lb per/cs		
30	Coffee- 3 Lb.		16 cs	6/32oz		
31	3-Compartment Foil Tray w/ Board Lid- Square		180 cs	200 per/cs		
32	4 Oz. Food Container - Plastic		30 cs	2,500 per/cs		
33	4 Oz. Lid (Compatible w/above) - plastic		30 cs	2,500 per/cs		
34	Trash Liners 55 gallon		36 cs	200 per/cs		
35	Sandwich Bags- Plastic		40 cs	2,000 per/cs		
36	Heavy-Duty Foil 18"		30 rolls	2,000 ft/roll		
37	Paper Sacks #6-Brown		30 cases	500 per/cs		
38	Dishwasher Detergent Low Temp		18 ea	1 - 5 gal		