

**CITY OF GREELEY, COLORADO
ORDINANCE NO. 2, 2023**

**AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A SIXTH AMENDMENT TO THE
DEVELOPMENT AGREEMENT WITH LEPRINO FOODS COMPANY**

WHEREAS, on June 13, 2008, the City and Leprino entered into a Development Agreement ("Initial Development Agreement"); and,

WHEREAS, on November 25, 2008, the City and Leprino entered into the First Amendment to the Initial Development Agreement ("First Amendment"); and,

WHEREAS, on July 15, 2013, the City and Leprino entered into the Second Amendment to the Initial Development Agreement ("Second Amendment"); and,

WHEREAS, on February 17, 2016, the City and Leprino entered into the Third Amendment to the Initial Development Agreement ("Third Amendment"); and,

WHEREAS, on March 13, 2017, the City and Leprino entered into the Fourth Amendment to the Initial Development Agreement ("Fourth Amendment"); and,

WHEREAS, on April 4, 2019, the City and Leprino entered into the Fifth Amendment to the Initial Development Agreement ("Fifth Amendment"); and,

WHEREAS, pursuant to the Initial Development Agreement as amended (hereinafter, the "Development Agreement"), Leprino has satisfied its obligation to supply the City with raw water sufficient to meet the needs of the first two phases of the Project (as defined in the Development Agreement); and,

WHEREAS, in 2017 Leprino determined that it would require water service for Phase III of the Project that exceeded the amounts initially estimated and addressed in the Development Agreement and previously purchased by Leprino pursuant thereto; and,

WHEREAS, the City and Leprino addressed Leprino's satisfaction of its raw water obligations with respect to its anticipated water demands for Phase III of the Project and, in connection therewith, amended certain related provisions of the Development Agreement (see the Fourth Amendment); and,

WHEREAS, in satisfaction of Subsections I(F)(1)(e)(i)-(v) of the Fourth Amendment, the City filed the Water Court Application and obtained a water court decree acceptable to Leprino; and,

WHEREAS, under Subsections I(F)(1)(e)(v) of the Fourth Amendment, the City was granted 600 acre-feet of Produced Water, and the exclusive option to purchase that quantity of Produced Water greater than 600 acre-feet of water per year (based upon the accounting approach approved in the Water Court Application and based upon the average quantity of water available to the City annually over a 36 month time period commencing after Leprino has completed Phase III of the Project and achieved full production and milk receiving capacity

at the anticipated Phase III milk receiving design capacity) (defined as the "Excess Decreed Amount" under the Fourth Amendment); and,

WHEREAS, in January 2019, Leprino completed Phase III of the Project, and based on the 36 month average, the parties have determined that the Excess Decreed Amount is approximately 240 acre-feet; and,

WHEREAS, in 2020, Leprino's annual raw-water allotment was 2,134 acre-feet but its actual use was 2,306.53 acre-feet, exceeding its allotment by approximately 172.53 acre-feet. In lieu of paying cash to satisfy the applicable surcharge, Leprino has agreed to grant, and the City has agreed to accept, a license to 38.70 acre-feet of the Excess Decreed Amount; and,

WHEREAS, subject to the terms of this Sixth Amendment, the City is acquiring 38.70 acre-feet of the Excess Decreed Amount and relinquishing its rights to exercise the exclusive option to purchase all or a portion of the remaining Excess Decreed Amount; and,

WHEREAS, the City and Leprino desire to amend the Development Agreement in accordance with this Sixth Amendment; and,

WHEREAS, pursuant to Section 20-268 of the Greeley Municipal Code ("Municipal Code"), City Council is authorized to approve special agreements that modify the requirements for water service under Chapter 3, Title 20 of the Municipal Code; and,

WHEREAS, it is in the best interest of the citizens of the City of Greeley for Council to enter into this Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The City Council hereby authorizes the City to enter into an Agreement entitled "Sixth Amendment to the Development Agreement", a copy of which is attached hereto and incorporated herein as Exhibit A.

Section 2. This Ordinance shall take effect on the fifth day following its final publication, as provided by Section 3-16 of the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED ON THIS ____ DAY OF JANUARY 2023.

ATTEST

CITY OF GREELEY, COLORADO

City Clerk

Mayor