



Council Agenda Summary

January 3, 2023

Key Staff Contact: Sean Chambers, Water & Sewer Director, 970-350-9815

Title:

Public hearing and final reading of an ordinance for the sixth amendment to the development agreement for Leprino Foods Company.

Summary:

In 2008, the City and Leprino entered into a Development Agreement for Leprino's construction of a dairy product manufacturing facility in Greeley. The Development Agreement required the City to provide Leprino with treated water service estimated at 1,344 acre feet per year at buildout. To meet Greeley's raw water requirements for the facility, the Development Agreement granted Leprino raw water credits, including a 600 acre feet credit for "Produced Water" generated from milk during processing, and allowed Leprino to pay cash-in-lieu of providing raw water at a favorable rate.

Leprino was successful and the estimated water need of 1,344 acre fee per year was low. Through 2016, Leprino had purchased 1,133 acre feet of cash-in-lieu water, which was the entirety of the favorably priced cash-in-lieu water. In March 2017, Greeley City Council approved the Fourth Amendment of the Development Agreement for Leprino that made available to Leprino additional raw water at discounted cash-in-lieu rates, but also required Leprino to match each acre foot of discounted cash-in-lieu water with a dedication of Colorado-Big Thompson (C-BT) water. Since the adoption of the Fourth Amendment, Leprino had dedicated 190 acre feet of C-BT water, but has not purchased any of the additional discounted cash-in-lieu water. After the dedication of 190 acre feet of C-BT, Leprino's total raw water allotment is 2,134 acre feet.

The original Development Agreement envisioned the Leprino facility would be built out by 2018 and that after 2018 any water usage by Leprino over the raw water allotment would be subject to a raw water surcharge. In 2020, Leprino used 2,306.53 acre feet of water, exceeding their allotment by 172.53 acre feet. At the 2020 raw water surcharge rate of \$10.05 per thousand gallons, this overage resulted in a total raw water surcharge of \$565,001.68 due to Greeley from Leprino.

The Fourth Amendment defined the option for Greeley to purchase any excess water above 600 acre feet of Produced Water. A water court application determined that the Produced Water volume was 840 acre feet of water, or 240 acre feet above the volume of raw water credit given to Leprino. Greeley and Leprino staff agreed that Leprino could satisfy their raw water surcharge liability with a portion of the excess Produced Water rather than pay the surcharge with cash. The enclosed Sixth Amendment to the Development Agreement reflects Greeley purchasing

38.70 acre feet of excess Produced Water, which is the volume of water the raw water surcharge of \$565,001.68 can purchase using the price of this water as defined in the Fourth Amendment.

Fiscal Impact:

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|---------------------------------------------------------------|----------------------------------------------------------------------------------|
| Does this item create a fiscal impact on the City of Greeley? | Yes |
| If yes, what is the initial, or onetime impact? | \$565,001.68 |
| What is the annual impact? | None |
| What fund of the City will provide Funding? | Water Acquisition Fund |
| What is the source of revenue within the fund? | Cash-in-Lieu |
| Is there grant funding for this item? | No |
| Additional Comments: | Greeley is using revenue owed from Leprino to pay for an additional water supply |

Legal Issues:

The Sixth Amendment to the Development Agreement requires legislative approval in accordance with Sec. 20-268 and Sec. 20-273 of the Greeley Municipal Code. The legislative approval process includes the following public hearing steps:

- 1) City staff presentation (if requested)
- 2) Council questions of staff
- 3) Public input (hearing opened, testimony - up to three minutes per person, hearing closed)
- 4) Council discussion
- 5) Council decision

Other Issues and Considerations:

None

Strategic Focus Areas:



Business Growth



Infrastructure and Mobility

Decision Options:

- 1) Adopt the ordinance as presented; or
- 2) Amend the ordinance and adopt as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to adopt the ordinance and publish with reference to title only.

Attachments:

Ordinance

6th Amendment – Leprino Foods Development Agreement

PowerPoint