

SIXTH AMENDMENT TO THE DEVELOPMENT AGREEMENT

This Sixth Amendment to the DEVELOPMENT AGREEMENT (“Sixth Amendment”) is entered into as of _____, 2022 by and between LEPRINO FOODS COMPANY (“Leprino”), a Colorado corporation, and THE CITY OF GREELEY, COLORADO, a home rule municipal corporation (“City”).

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) by a) applying the 211 acre-feet initial raw water credit extended by the City at no charge to Leprino; b) receiving the 600 acre-feet maximum “applicable credit” for “Produced Water” defined therein and extended by the City; and c) paying cash in lieu of dedicating raw water for approximately 813 acre-feet of water at the applicable “Leprino Water Bank Rate” defined therein; and,

WHEREAS, in March 2016 Leprino paid for the remaining approximately 320 acre-feet of cash-in-lieu raw water credit available at the applicable Leprino Water Bank Rate under the Development Agreement, which brought the total amount of cash-in-lieu of raw water credit Leprino has purchased to 1,133 acre-feet, and,

WHEREAS, the Development Agreement capped Leprino’s entitlement thereunder to purchase water at the applicable Leprino Water Bank Rate at 1,133 acre feet (1,344 acre-feet estimated demand minus 211 acre-feet of initial raw water credit), but provided that Leprino could, if needed, purchase additional water in excess of 1,133 acre-feet at a rate no greater than the City’s most favorable cash in lieu rate, or at an available water bank rate, in effect at the time of such additional purchase; 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 (“Case No. 17CW3020”); 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, initially capitalized terms used herein and defined in the Development Agreement shall have the meanings contained in the Development Agreement unless otherwise modified or defined herein; and,

WHEREAS, the Development Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest; and

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

IN CONSIDERATION OF THE RECITALS, COVENANTS, AND PROVISIONS SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT, SUFFICIENCY, AND ADEQUACY OF WHICH ARE HEREBY ACKNOWLEDGED BY AND BETWEEN THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

- I. 2020 Surcharge. As of 2018, Leprino has dedicated or received a raw water dedication credit for a total allotment of 2,134 acre-feet. In 2020, Leprino’s actual use exceeded its allotment by approximately 172.53 acre-feet. Pursuant to subsections I(F)(1)(d)(iv)-(v) of the Fourth Amendment, Leprino is subject to the City’s raw water surcharge (Sec. 20-260 of the Greeley Municipal Code) for any water use that exceeds its annual allotment. Based on the 2020 raw water surcharge rate, Leprino owes a surcharge fee of approximately \$565,001.68. In lieu of a cash payment, however, Leprino has agreed to grant, and the City has agreed to accept, a license to a portion of the Excess Decreed Amount (referred to below in this Sixth Amendment as the “Excess Amount”) that is equal in value to the surcharge (or 38.70 acre-feet) as provided for in subsections I(F)(1)(d)(iv) and I(F)(1)(e) below.

- II. Relinquishment of the Option. Pursuant to the Fourth Amendment, the City was granted an option to purchase all or a portion of the Excess Decreed Amount. The City has decided not to exercise its right; and except as provided in I(F)(1)(e)(i) below, the City hereby relinquishes any and all rights to the Excess Decreed Amount (or the “Excess Amount” as defined herein), less the 38.70 acre-feet as provided above. In accordance with this relinquishment, the City acknowledges that Leprino is free to use, license, lease, or sell to any other party on terms selected by Leprino, in its sole discretion, the right to use the balance or unlicensed portion of the Excess Decreed Amount (or 201.30 acre-feet as of 2022, which amount may increase or decrease in future years).
- III. Amendments. Section I(F)(1)(d)-(e) of the Development Agreement is hereby amended and replaced in its entirety as follows:

d. Dedication of Raw Water.

i. Amounts Previously Dedicated or Credited. Separate and apart from the PIF and the water service charge specified above for treatment and delivery of water, the City requires new developers to dedicate to the City, sufficient raw water for the anticipated water needs of the development project. Prior to completion of Phase III of the Project, Leprino anticipated that its use would not exceed 2,354 acre-feet annually. In partial satisfaction of its projected demand, Leprino dedicated or received a credit for a total of 2,134 acre-feet of raw water in accordance with the Development Agreement. The amounts dedicated by or credited to Leprino are presented in the following table.

Year	Raw Water Credit (af)	Cash-in-Lieu (af)	Produced Water Credit (af)	C-BT (Units)	C-BT Credit (af)	Total Water (af)
2011	211		78.38			289.38
2012		52.35	273.82			615.55
2013		182.41	247.8			1045.76
2014		522.44				1568.20
2015		55.59				1623.79
2016		320.21				1944.00
2017				167	128.46	2072.46
2018				80	61.54	2134
Total	211	1,133	600	247	190	2134

ii. Additional Amounts Available. To meet the balance of its projected raw water dedication requirements (i.e., 220 acre-feet), Leprino may satisfy the first 55 acre-feet by paying a cash-in-lieu fee equal to the City’s former water bank rate of \$4,500/acre foot (the "Leprino Water Bank Rate"). Beginning January 1, 2015, the Leprino Water Bank Rate will increase at a rate of 4% per year, accruing and compounded annually (or \$6,158.56 /acre-foot as of the date of this Sixth Amendment). Leprino may satisfy the balance (i.e., 165 acre-feet for a total of 220 acre-feet) by paying a cash-in-lieu fee of \$12,000/acre-foot (the “New Leprino Water Bank Rate”), based on credits previously transferred into the City’s water bank in 2017. Beginning January 1, 2018, the New Leprino Water Bank Rate shall increase at the rate of 4% per year, accruing and compounded annually (or \$14,599.83/acre-foot as of the date of this Sixth

Amendment). Leprino may acquire additional water service beyond the projected 2354 acre-feet only by satisfying the City's raw water dedication requirements in existence at the time of any request for such additional service.

iii. Supplemental Cash-in-Lieu for Overages. As specified above, Leprino has previously dedicated or received a credit for a total amount of 2,134 acre-feet of raw water and may furnish an additional 220 acre-feet to the City by paying a cash-in-lieu fee in accordance with subparagraph I(F)(1)(d)(ii) above. Currently, Leprino's annual use is approximately 2102 acre-feet. If Leprino exceeds its annual allotment for two consecutive calendar years or if the amount of Produced Water available to the City is less than 638.70¹ acre-feet resulting in a reduced annual allotment for two consecutive calendar years, then Leprino shall be required to pay a cash-in-lieu fee in accordance with subparagraph I(F)(1)(d)(ii) above to increase its annual allotment by an amount equal to either (1) the average volume of water used above its annual allotment or (2) the average volume of Produced Water less than 638.70 acre-feet that is made available to the City over the applicable two consecutive calendar year period. The payment of any cash-in-lieu fee pursuant to this section shall be in addition to any surcharge assessed pursuant to subparagraph I(F)(1)(d)(v) below.

iv. Surcharge. If Leprino's actual usage in any calendar year exceeds its allotment (i.e., 2,134 acre-feet as of the date of this Sixth Amendment) or if the amount of Produced Water available to the City in any calendar year is less than 638.70 acre-feet resulting in a reduced annual allotments, then the City's standard raw water surcharge shall apply. In the City's sole discretion, Leprino may satisfy a raw water surcharge by allocating to the City a portion of the Excess Amount (defined below), if any, equal to the calculated surcharge. The value of the Excess Amount shall be determined based on the New Leprino Water Bank Rate as set out in subsection I(F)(1)(d)(ii).

e. Water Produced by Leprino; License. As a manufacturer of cheese and related dairy products, Leprino purchases a large volume of fluid milk that is delivered to its factories. The milk is then processed in the cheese making and whey manufacturing process such that most of the solids, fat, protein, and other minerals and components are removed and segregated into various product streams for eventual sale. Approximately 87% of the raw milk consists of water. The water portion of the milk that is not retained in the cheese or whey products is ultimately collected by Leprino and remains in Leprino's ownership, dominion, and control. Leprino refers to this water portion of the milk as "Produced Water."

i. License. Leprino hereby grants to the City a license, in accordance with and subject to the terms of this Agreement, to use, reuse, successively use, and/or dispose of 638.70 acre-feet per year of the Produced Water portion of Leprino's wastewater discharge from the Plant for as long as Leprino operates the Plant (the "License"). The grant of the License shall be a condition precedent to the rights and obligations of the parties under this paragraph I(F)(1)(e).

ii. Excess Amount. In 2017, the City and Leprino filed an application in Division 1 Water Court and received a decree in Case No. 17CW3020 on April 17, 2020, to use, reuse, successively use, and/or dispose of the Produced Water for use for augmentation and replacement purposes. Leprino previously estimated that the Project, upon completion, would

¹ Because it intended to satisfy the 2020 surcharge, the additional 38.70 acre-feet of Produced Water shall not be added to Leprino's annual allotment. In order to ensure that Leprino has dedicated an amount of raw water adequate to cover its annual allotment and its obligation under Section I(F)(1)(e), however, the 38.70 acre-feet shall be considered for purposes of calculating the amounts under Sections I(F)(1)(d)(iii) and (iv).

produce approximately 600 acre-feet/year of Produced Water on an annual basis. Based upon a 36-month average after completion, the Project has produced approximately 840 acre-feet of Produced Water or 240 acre-feet above its previous estimate (“Excess Amount”). If additional measurement devices at the Plant are required by the State or Division Engineer, the parties agree to share equally the costs of installation of such devices, and to mutually agree upon any burden to be assumed by either party to read, report the results of, and maintain such devices.

iii. Licensed Water. The period for revoking the License (as described in the Fourth Amendment) has passed. Pursuant to subsection I(F)(1)(d)(v), Leprino has agreed to grant, and the City has agreed to accept, a license to use, reuse, successively use, and/or dispose of 38.70 acre-feet of the Excess Amount (in lieu of a cash surcharge payment pursuant to subsection I(F)(1)(d)(iv) above), for a total 638.70 acre-feet of Produced Water available to the City under the License (“Licensed Water”). In the event that Leprino, its third party licensee, lessee, or grantee seek to use the amount of Produced Water over and above the 638.70 acre-feet of Licensed Water, the quantification of such use must be consistent with the quantification method approved in the decree entered in Case No. 17CW3020.

IV. Other Terms in Full Force and Effect. Except as specifically modified herein, all of the terms and conditions of the Development Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment remain in full force and effect.

[Signature page to follow]

**THE CITY OF GREELEY, a home rule
municipal corporation**

**LEPRINO FOODS COMPANY, a Colorado
Corporation**

By: _____
Mayor

By: _____
Its: _____

ATTESTED:

APPROVED AS TO FORM AND
ENFORCEABILITY

By: _____
City Clerk

By: _____
Its: Vice-president and General Counsel

APPROVED AS TO SUBSTANCE:

By: _____
Raymond C. Lee, III, City Manager

APPROVED AS TO AVAILABILITY OF
FUNDS:

By: _____
John Karner, Finance Director

APPROVED AS TO LEGAL FORM:

By: _____
Douglas Marek, City Attorney