

Draft 8/3/2007

**SECOND AMENDMENT TO OWNER PARTICIPATION AGREEMENT BETWEEN
LEPRINO FOODS COMPANY AND THE LEMOORE REDEVELOPMENT AGENCY**

This Second Amendment to Owner Participation Agreement (the "Second Amendment") is entered into this ____ day of _____, 2007, by and between LEPRINO FOODS COMPANY ("Leprino"), a Colorado Corporation, and the LEMOORE REDEVELOPMENT AGENCY ("Agency"), a public body.

RECITALS

A. This Second Amendment amends that certain Owner Participation Agreement entered into as of March 7, 2000, (the "Agreement"), as amended by the First Amendment to Owner Participation Agreement (the "First Amendment"), entered into as of November 5, 2002, by and between the parties to this Second Amendment.

B. Defined terms used herein shall have the same meaning as set forth in the Agreement or the First Amendment. The term "Plant" as defined in the Agreement refers to the "Project" which is now built and in operation west of Hwy 41 in Lemoore and is sometimes referred to as the "Lemoore West Plant". The term "Existing Facility" as defined in the Agreement refers to the facility located in downtown Lemoore and is sometimes referred to herein as the "Lemoore East Existing Facility".

C. All phases of the Project, as described in the Agreement and in the First Amendment, have been completed by Leprino. Nothing herein is intended to reimburse Leprino for any previous work or unfinished work described in the Agreement and the First Amendment. The parties to the Agreement and the First Amendment are continuing to honor their respective obligations as described in the Agreement and in the First Amendment, and nothing herein is intended to change those obligations except as may be otherwise expressly provided herein.

D. Leprino has decided to expand the productive capacity of the Plant to permit an increase in the milk received on a daily basis from the current level of 6,000,000 pounds of milk per day to 10,000,000 pounds of milk per day, and also install additional packaging capacity and make other process improvements. The increase in milk deliveries to the Plant will require the construction of an increased number of milk receiving bays and silos on the Project Site. The ultimate expansion will consist of approximately 200,000 square feet of new, additional facilities at the Project Site. Leprino contemplates no new stand-alone structures or facilities on the Project Site. The expansion proposed by Leprino will result in approximately 175 new, full-time jobs in the City of Lemoore by increasing the number of employees at the Plant from 466 to approximately 641; will not decrease the number of jobs at the Existing Facility (297 jobs) ; will increase the daily water usage at the Plant from approximately 1,150,000 gallons per day to approximately 1,380,000 gallons per day; and will increase the wastewater flows from the Plant from 2,000,000 gallons per day (30 day average combined flows from the Plant and the Existing Facility) to approximately 2,250,000 gallons per day (30 day average combined flows from the Plant and Existing Facility). Hereinafter, the expansion project proposed by Leprino at the Lemoore West Plant shall be called the "2007 Expansion Project".

E. The 2007 Expansion Project will require an estimated \$180,000,000 in capital expenditures by Leprino at the Plant. The 2007 Expansion Project includes the completion of the additional work at the Expanded Wastewater Pretreatment System related to (i) improving the overall quality of the effluent after treatment at the Expanded Wastewater Pretreatment System to meet Leprino's future limits under its industrial wastewater discharge permit from the City ; and (ii) increasing the capacity of the Expanded Wastewater Pretreatment System to accommodate the 2007 Expansion Project, for a combined cost of approximately \$7,500,000.

F. By this Second Amendment, the parties desire to set forth their respective duties and obligations with respect to the 2007 Expansion Project.

SECOND AMENDMENT

NOW, THEREFORE, in consideration of the Recitals, which are a material and integral part of this Second Amendment, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the parties, Leprino and the Agency hereby further amend the Agreement as follows:

1. A new Section III.H. is added to the Agreement to read as follows:

“III.H. The 2007 Expansion Project. Leprino agrees that, with respect to the 2007 Expansion Project, its obligations as described in Paragraph III of the Agreement shall apply to the 2007 Expansion Project, except Section III.B. shall not apply. The following shall also apply:

1. Leprino agrees to apply for Site Plan approval and, in connection therewith, to comply with the applicable requirements of the California Environmental Quality Act, including such additional mitigation measures described on attached **Exhibit A**.

2. Leprino shall pay the impact fees and any other required fees set forth on **Exhibit B**. Current City impact fees are established by City Council Resolutions 2006-49, 2006-46 and 2006-48, and are payable when building permits are issued. Leprino shall also pay the traffic mitigation fees referred to in the Mitigation Monitoring Plan for the 2007 Expansion Project, when said fees are established (collectively, the “Fees”).

3. Leprino agrees to operate and maintain the Expanded Wastewater Pretreatment System on City property, subject to the City's applicable Industrial Wastewater Discharge Permit. The Wastewater Improvements that Leprino will be required to build hereunder, and as a part of Project approvals for the 2007 Expansion Project, are additions to City-owned facilities and, upon acceptance by the City as complete, will become City property, the use and operation of which are subject to the terms of the Owner Participation Agreement, as herein amended, and the Discharge Permit dated December 20, 2005, issued by the City for the Leprino facility, as further described in the Mitigation Monitoring

Agreement, as amended, and a Lease between the City and Leprino pertaining to the property and the Wastewater Improvements.

4. Leprino will pay the City an annual lease fee of \$1.00 for the use of the Wastewater Improvements. Leprino will pay this annual lease fee for the balance of the Term or for so long as Leprino continues to own and operate the Plant, whichever is longer. This annual lease fee will be due on or before January 30th of each calendar year.

5. In the event that Leprino were to sell or lease the Plant and/or the Existing Facility to another dairy ingredient manufacturer, Leprino maintains the right to assign the lease rights set forth in paragraph III.H.4 above to the buyer or lessee of the Plant and/or the Existing Facility, as long as said buyer or lessee assumes all obligations under this agreement.

6. In the event that the City were to desire to sell or lease the Wastewater Improvements, the City will have no right to sell or lease such Wastewater Improvements to any party other than Leprino unless Leprino has previously consented to such sale or lease in writing.

7. Until the Agency's reimbursement payments described in Section IV.E below terminate, Leprino shall report to the Agency, in writing, as of December 31st of each year its monthly employment data at both the Plant and the Existing Facility, including the number of permanent full-time employees ("Full-time Employees") determined in accordance with paragraph IV.E.4. below."

2. A new Section IV.E. is added to the Agreement to read as follows:

"IV.E. Agency Obligations with Respect to the 2007 Expansion Project.

1. The Agency acknowledges that it has agreed to make certain reimbursement payments to Leprino ("the Expansion Reimbursement Payments") that are specified in this Second Amendment as an inducement for Leprino to locate the 2007 Expansion Project in the City and to create approximately 175 new, full-time jobs in the City of Lemoore and in recognition of the fact that Leprino will incur significant costs in (1) constructing the 2007 Expansion Project, and (2) paying the Fees and Property Taxes. Upon the Agency's request, Leprino shall submit to Agency, together with reasonable back-up documentation, one or more certificates of costs incurred ("Certificates"), which Certificates may include the entire or partial costs of a particular activity conducted or amount paid in connection with Leprino's additional improvements to the Expanded Wastewater Pretreatment System, to accommodate the new and increased wastewater flows as a result of the 2007 Expansion (herein referred to as the "Wastewater Improvements"). It is anticipated that Leprino will incur an estimated cost of approximately \$6,000,000 for such Wastewater Improvements. The Expansion Reimbursement Payments amount shall be the lesser of \$6,000,000 or the actual cost of the Wastewater Improvements as shown in the "Certificates" described hereafter.

2. Leprino's actual costs, as shown in the Certificates, incurred for Wastewater Improvements shall be submitted to the Agency at the time Leprino requests Expansion Reimbursement Payments. Said Expansion Reimbursement Payments will be made by the Agency for the reasons set forth above and solely for the additional capacity that said Wastewater Improvements will create in the Expanded Wastewater Pretreatment System to accommodate the increased flows as a result of the 2007 Expansion Project. The parties acknowledge that the Agency's Expansion Reimbursement Payments to Leprino hereunder constitute a reimbursement on behalf of the public for the creation of additional expansion at the Expanded Wastewater Pretreatment System which, if not used by Leprino and available, could be used by other industrial users; provided, however, the parties acknowledge and agree that no excess or unused treatment capacity created by the Wastewater Improvements shall be allocated or committed to another user without the prior mutual agreement of the parties. The Agency's Expansion Reimbursement Payments to Leprino shall be made from, and only from, new Incremental Tax Revenues, as defined below, received by the Agency as a result of the 2007 Expansion Project and subsequent capital improvements made to the Plant and the Existing Facility.

3. The Agency's Expansion Reimbursement Payments pursuant to IV.E.1 above shall be made to Leprino annually on or before June 1 (the first such payment to be made on or before June 1st following the calendar year in which the 2007 Expansion Project is substantially complete, as reasonably determined by the City Public Works Director). The Expansion Reimbursement Payments will continue until the Agency's obligation is excused or otherwise satisfied, as provided herein. The Agency's Expansion Reimbursement Payments shall be in addition to those payments required under IV.B, and shall be calculated as provided below. The assessed valuation of the Plant, and the Existing Facility as of January 1, 2007, as established by the Kings County Auditor-Controller's Office, plus additional valuation arising from improvements or additions to the Plant and the Existing Facility made during calendar year 2006 as reflected in the supplemental tax roll, shall be the established Baseline ("Baseline") for the calculation of all future payments. For each year following the year of substantial completion of the 2007 Expansion Project, the Agency's Expansion Reimbursement Payments shall be equal to ninety-five (95) percent of that corresponding assessment year's "Incremental Tax Revenues" (as defined below) received by the Agency as a result of the Assessed Valuation increase for the Plant and the Existing Facility above the Baseline. For purposes of this Agreement, Incremental Tax Revenues shall mean the actual tax increment received by the Agency over the tax that would have been received based on the Baseline and excluding the revenue set asides as required by Health and Safety Codes Sections 33334.2, 33607.5, 33607.7, and such other mandatory revenue reductions or payment obligations which the California Legislature may hereafter impose on the Agency. The worksheets attached herewith as **Exhibit C** illustrate the foregoing formula. In calculating the Incremental Tax Revenue for any given year, the Baseline for that specific year shall be adjusted annually to reflect: 1) appreciation of real property at a rate of 2% for each year subsequent to the year of substantial completion of the 2007 Expansion Project, but only at the Plant and not at the Existing Facility; 2) personal property additions by Leprino at the Plant with a cost of \$2,000,000 by the January 1

assessment date beginning in 2008 and continuing for subsequent years; 3) depreciation of personal property for each year in accordance with the assessor's normal replacement cost new (index) and percent goods factors attributable to a fifteen-year life.

4. The unpaid balance of the Expansion Reimbursement Payment amount shall accrue simple interest at a rate of three (3) percent per annum beginning at the time of substantial completion of the Wastewater Improvements and the 2007 Expansion Project, whichever is later. Beginning with the payment due on June 1, 2010, the annual installment of the Expansion Reimbursement Payments is subject to adjustment (and any such adjustment will also constitute a permanent reduction of the total Expansion Reimbursement obligation of the Agency hereunder) to reflect the number of "Full-time Employees," calculated as provided below, employed by Leprino at the Plant and the Existing Facility in the 12-month period immediately preceding January 1 of the year in which payment is due. The number of Full-time Employees shall be determined as follows: total number of labor hours (including sick, holiday and vacation time) divided by 1950. Accordingly, beginning in the year 2009, and every year thereafter, Leprino shall report to the Agency as of December 31, the average annual number of Full-time Employees at the Plant and the Existing Facility (for the calendar year ending December 31). The annual employment Report shall be certified by an independent certified public accountant retained by Leprino; the Report shall be accompanied by a certificate of an officer of Leprino verifying the accuracy of the information in the employment Report. If there are less than 938 Full-time Employees reported, then the next installment shall be reduced as follows and the maximum amount of Expansion Reimbursement Payments to Leprino shall be correspondingly reduced as follows: 1) If the number of Full-time Employees equals 920-937, then the Expansion Reimbursement Payments shall be reduced by \$1,800 multiplied by the difference obtained by subtracting the number of Full-time Employees at the Plant and the Existing Facility from 938. 2) If the number of Full-time Employees equals 880-919, then the Expansion Reimbursement Payments shall be reduced by \$2,000 multiplied by the difference obtained by subtracting the number of Full-time Employees at the Plant and the Existing Facility from 920. 3) If the number of Full-time Employees equals 840-879, then the Expansion Reimbursement Payments shall be reduced by \$3,000 multiplied by the difference obtained by subtracting the number of Full-time Employees at the Plant and the Existing Facility from 880. 4) If the number of Full-time Employees equals 800-839, then the Expansion Reimbursement Payments shall be reduced by \$4,000 multiplied by the difference obtained by subtracting the number of Full-time Employees at the Plant and the Existing Facility from 840. 5) If the number of Full-time Employees is less than 800, then the Expansion Reimbursement Payments shall be reduced by \$5,000 multiplied by the difference obtained by subtracting the number of Full-time Employees at the Plant and the Existing Facility from 800. Expansion Reimbursement Payments equal to ninety-five (95) percent of the Incremental Tax Revenues shall continue until 1) the Agency's Expansion Reimbursement payment obligation as set forth herein has been fully satisfied; 2) the Agency no longer collects tax increment; 3) the Assessed Valuation of the Leprino West Plant and the Lemoore East Existing Facility falls below the January 1, 2007 Baseline; 4) the Plant or the Existing Facility no longer substantially operates as a fully functioning dairy products manufacturing facility; whichever first occurs. In the event either the Plant or the

