

Exhibit 5:
Disposition Agreement and Development Agreement

**FREE RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:**

City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attn: City Clerk

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

**DISPOSITION AGREEMENT
AND
DEVELOPMENT AGREEMENT**

by and between

THE CITY OF FRESNO

and

DARLING INGREDIENTS INC.

DISPOSITION AGREEMENT

AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AGREEMENT AND DEVELOPMENT AGREEMENT ("**Entire Agreement**") is entered into as of the Effective Date (as defined below), by and between THE CITY OF FRESNO, a California municipal corporation ("**City**") and DARLING INGREDIENTS INC., a Delaware corporation ("**Darling**").

RECITALS:

A. This Agreement is intended to effectuate: (i) the transfer of certain real property owned by the City consistent in accordance with the best interests of the City of Fresno which includes the improvement of the property by Darling; and, (ii) a statutory development agreement to provide certain development and operation assurances to Darling.

B. Darling currently owns that certain real property located 795 West Belgravia Avenue, in the City of Fresno (Assessor Parcel No. 477-054-12) ("**Darling Property**") on which Darling currently operates a rendering plant ("**Existing Plant**").

C. The City and Darling are presently in a dispute regarding the terms, conditions and authorities for Darling to operate the Existing Plant ("**Dispute**"). The City and Darling have been in mediation to resolve the Dispute. The mediation also involves Concerned Citizens of West Fresno, an unincorporated association that is pursuing certain claims against Darling in Fresno Superior Court Case No. 12 CE CG 01151 ("**Litigation**").

D. The City owns that certain unimproved real property located at the southwest corner of Jensen Avenue and Polk Avenue, in the City of Fresno (Assessor Parcel No. APN: 327-030-41T) legally described on Attachment 1 ("**City Property**").

E. The northern portion of the City Property consisting of approximately twenty (20) acres as depicted on Attachment No. 3 will be transferred to Darling for the construction of a new rendering plant by Darling ("**New Site**"). A separate 20 acre site adjacent to the New Site shall be encumbered by an Option Agreement in favor of Darling.

F. City and Darling are willing to enter into two (2) agreements which are both contained in this Entire Agreement as follows:

- i. Disposition Agreement (Part I).** City is willing to: (i) transfer the New Site to Darling for the construction and operation of a new plant; and, (ii) provide the Financial Assistance (defined below), in consideration of Darling ceasing all operations inconsistent with the land use designations or zoning in any existing neighborhood, specific, community or general plan (but retaining the right to conduct such legal non-conforming uses as are permitted by the City Development Code), including, without limitation, rendering operations ("**Prohibited Operations**") at the Existing Plant.

- ii. **Development Agreement (Part II).** City and Darling are willing to enter into a development agreement in accordance with Government Code Section 65864 et seq. for the construction and operation of the New Plant.

G. Although both the Disposition Agreement (Part I) and the Development Agreement (Part II) are contained in this document, they are separate and distinct agreements (including definitions and terms) except as specifically otherwise provided in each respective Part.

INTRODUCTORY SECTION:

1. **Recitals.** The foregoing recitals are specifically incorporated herein and are part of this Entire Agreement.

2. **Effective Date.** For purposes of this Entire Agreement, the term “**Disposition Agreement**” shall mean Part I, and the term “**Development Agreement**” shall mean Part II.

The Entire Agreement shall be subject to the approval by the City Council of the City of Fresno (“**City Council**”) by ordinance in accordance with the applicable statutes and the City of Fresno municipal code (“**Effective Date**”).

2. **Representations and Warranties.** City represents and warrants that: (i) by proper action of City, City has been duly authorized to execute and deliver this Entire Agreement, acting by and through its duly authorized officers; and, (ii) the entering into this Entire Agreement by City does not violate any provision of any other agreement to which City is a party.

Darling represents and warrants that: (i) it is duly organized and existing under the laws of the State of Delaware; (ii) by proper action of Darling, Darling has been duly authorized to execute and deliver this Entire Agreement, acting by and through its duly authorized officers; and, (iii) the entering into this Entire Agreement by Darling does not violate any provision of any other agreement to which Darling is a party.

3. **Supersedes Prior Discussions and Agreements.** This Entire Agreement contains the full and complete agreement of the parties with respect to the content hereof and supersedes in its entirety all prior negotiations, discussions and documents including, but not limited to, that certain Letter of Intent dated January 25, 2017 between the parties.

4. **Execution.** Darling shall provide two (2) executed copies of this Entire Agreement prior to the first scheduled public hearing as required to comply with the notice and posting requirements under the Brown Act.

5. **Counterpart Execution.** This Entire Agreement may be executed in counterparts, each of which shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

6. **Recordation.** City shall record this Entire Agreement in the Official Records of Fresno County within ten (10) days of the Effective Date.

7. **Termination.** Termination of the Disposition Agreement or the Development Agreement prior to the Closing shall constitute the termination of this Entire Agreement. If this Entire Agreement is terminated for any reason, the parties shall cooperate with executing a

document as reasonably required by a title company to remove it from the record title of both the Darling Property and the City Property.

8. Attachments. This Entire Agreement includes the following attachments which are incorporated herein and made a part hereof as though fully set forth herein:

| | |
|-------------------|--|
| Attachment No. 1 | Legal Description of City Property |
| Attachment No. 2 | Legal Description of Darling Property |
| Attachment No. 3 | Depiction of New Site |
| Attachment No. 4 | Depiction of Option Site |
| Attachment No. 5 | Form of Option Agreement |
| Attachment No. 6 | Schedule of Performance |
| Attachment No. 7 | Scope of Development |
| Attachment No. 8 | Grant Deed |
| Attachment No. 9 | Covenant Agreement |
| Attachment No. 10 | Certificate of Completion and Satisfaction |

[END OF RECITALS AND INTRODUCTORY SECTION]

PART I

DISPOSITION AGREEMENT

I. (§ 100) PURPOSE OF DISPOSITION AGREEMENT.

A. (§ 101) Purpose of the Disposition Agreement.

This Disposition Agreement contains the terms, conditions and obligations of the parties with respect to the transfer of the New Site to Darling and the cessation of Prohibited Operations at the Existing Plant.

B. (§ 102) City Property.

The City Property consists of that certain unimproved real property owned by the City located at the southwest corner of Jensen Avenue and Polk Avenue in the City of Fresno, County of Fresno, State of California as legally described on Attachment No. 1.

C. (§ 103) New Site.

The New Site consists of approximately twenty (20) acres of the northern portion of the City Property as depicted on Attachment 3 which shall be determined and finalized in accordance with Section 401.

D. (§ 104) Darling Property.

The Darling Property is that certain real property owned by Darling located at the 795 West Belgravia Avenue, in the City of Fresno (Assessor Parcel No. 477-054-12) in the City of Fresno, County of Fresno, State of California as legally described on Attachment No. 2 which is improved with a rendering plant that is operating as of the Effective Date.

E. (§ 105) Financial Assistance and Consideration.

Darling acknowledges that the only financial assistance being provided by City to Darling is the Financial Assistance (defined below) set forth in this Disposition Agreement.

Except for the Financial Assistance, Darling shall be solely responsible for all construction and development costs to construct the Project on the New Site, including, but not limited to, grading and site preparation; building construction; site development and infrastructure; and design. The New Plant is more particularly described in the Scope of Development.

As consideration for the Financial Assistance, Darling covenants, in accordance with the terms and conditions set forth in the Disposition Agreement, to: (i) commence construction of the Project and thereafter diligently prosecute same to completion; (ii) commence operating the new rendering plant on the New Site; and, (iii) cease Prohibited Operations at the Existing Plant.

II. (§ 200) DEFINITIONS.

The following terms as used in this Disposition Agreement shall have the meanings given unless expressly provided to the contrary:

A. (§ 201) Approved Plans.

The term "Approved Plans" shall mean the plans and specifications for the New Plant consistent with the Operational Statement and issued in accordance with Section 801.

B. (§ 202) Certificate of Completion and Satisfaction.

The term "Certificate of Completion and Satisfaction" shall mean that document in the form of Attachment No. 10, which shall evidence that the completion of construction and commencing of operation of the New Plant in accordance with Section 712.

C. (§ 203) City.

The term "City" shall mean the City of Fresno, a California municipal corporation.

D. (§ 204) Claims and Litigation.

The term "Claims or Litigation" shall mean any challenge by adjacent owners or any other third parties: (i) to the legality, validity or adequacy of the General Plan, development approvals, this Disposition Agreement, or other actions of the City pertaining to the Project (including but not limited to CEQA compliance); (ii) seeking damages against City as a consequence of the foregoing actions or for the taking or diminution in value of their property, or in any other manner; or, (iii) for any tort claim or action against the City arising in connection with the construction of the Project.

E. (§ 205) Closing.

The term "Closing" shall mean the closing of the Escrow by Escrow Agent's recording of the Deed and distributing the funds and documents received through Escrow to the party entitled thereto as provided herein, which closing shall occur on or before the date established in the Schedule of Performance.

F. (§ 206) Completion.

The term "Completion" shall mean the completion of the New Plant and the commencement of operations at the New Plant as evidenced by the recordation of the Certificate of Completion and Satisfaction.

G. (§ 207) Covenant Agreement.

The term "Covenant Agreement" shall mean that certain Covenant Agreement to be executed by Darling to be recorded against the Darling Property at the Close of Escrow in the form of Attachment No. 9, covenanting to record a deed restriction, with City as a third party beneficiary, prohibiting future Prohibited Operations on the Darling Property not more than six (6) months after the date on which Darling is required to cease Prohibited Operations at the Existing Plant.

H. (§ 208) Days.

The term "days" shall mean calendar days and the statement of any time period herein shall be calendar days, and not working days, unless otherwise specified.

I. (§ 209) Deed.

The term "Deed" shall mean that Grant Deed executed by City conveying the New Site to Darling which shall be substantially in the form of Attachment No. 8.

J. (§ 210) Disposition Agreement.

The term "Disposition Agreement" shall mean this Part I of the Entire Agreement, including all attachments which are a part hereof and incorporated herein in their entirety, and all other documents incorporated herein by reference.

K. (§ 211) Enforced Delay.

The term "Enforced Delay" shall mean any delay described in Section 1103 caused without fault and beyond the reasonable control of a party, which delay shall justify an extension of time to perform as provided in Section 1103.

L. (§ 212) Entitlements.

The term "Entitlements" shall mean the general plan amendments, rezoning, development permits, conditional use permits and any other land use entitlements to be issued by City as reasonably needed to allow Darling to construct and operate the New Plant at the New Site.

M. (§ 213) Entitlement Fees.

The term "Entitlement Fees" shall mean the fees and costs for the issuance of the Entitlements.

N. (§ 214) Escrow.

The term "Escrow" shall mean the escrow established with Escrow Agent pursuant to this Disposition Agreement for the conveyance of the New Site from City to Darling pursuant to this Disposition Agreement.

O. (§ 215) Escrow Agent.

The term "Escrow Agent" shall mean Fidelity National Title Insurance Company, located at 7485 N. Palm Avenue, Suite 106, Fresno, Ca 93711 and empowered hereunder to act as Escrow Agent for this transaction. The Escrow officer shall be Bernadette Watson (559) 261-8919 Bernadette.Watson@fnf.com.

P. (§ 216) Existing Plant.

The term "Existing Plant" shall mean the Darling plant operating on the Darling Property as of the Effective Date.

Q. (§ 217) Financial Assistance.

The following constitute the financial assistance (the "Financial Assistance") to be provided by the City for the development of the New Plant: (i) the Methane Gas Line; (ii) the Methane Gas Service Commitment; (iii) the New Site; (iv) the New Well; (v) the Nonpotable Water Service Commitment; (vi) the Nonpotable Water Supply Line; (vii) the PG&E Gas Line; (viii) the Property Tax Rebate Commitment; (ix) the Sales Tax Rebate Commitment; (xi) the Waste Water Facility Impact Fee Commitment; (xi) the waiver of Impact Fees, Entitlement Fees and other City permit fees; and (xii) the construction of public street improvements required as a condition of CEQA compliance pursuant to the Mitigated Negative Declaration prepared for the Fresno Rendering Plant Relocation Project, EA No. _____ adopted by Council on _____, 2017 (the "MND").

R. (§ 218) Impact Fees.

The term "Impact Fees" shall mean fees that are imposed by the City or other governmental agencies on the Project to pay for all or a portion of the costs of providing public services to the Project, and all development impact fees for capital fire facilities and capital police facilities imposed by the City.

S. (§ 219) Litigation.

The term "Litigation" shall mean that certain case No. 12 CE CG 01151 in the Superior Court of California, County of Fresno in which Concerned Citizens of West Fresno, an unincorporated association, is the plaintiff and Darling is the defendant.

T. (§ 220) Methane Gas Line.

The term "Methane Gas Line" shall mean a methane gas line to the New Site to be provided by the City as set forth in Section 601(2).

U. (§ 221) Methane Gas Service Commitment

The term "Methane Gas Service Commitment" shall mean the City's commitment to assure that methane is available to the New Plant through the Methane Gas Line, in accordance with the standards set forth in Section 603(1).

V. (§ 222) New Market Tax Credits.

The term "New Market Tax Credits" shall mean tax credits allocated pursuant to that certain federal tax credit program administered by the US Treasury Department's Community Development Financial Institutions (CDFI) Fund which credits are allocated by local Community Development Entities (CDEs) to incentivize business and real estate investment in low-income communities.

W. (§ 223) New Project.

The term "New Project" shall mean: (i) the construction of the New Plant in accordance with this Disposition Agreement; and, (ii) the commencement of operations at the New Plant in accordance with Section 712.

X. (§ 224) New Site.

The term “New Site” means the City Property as depicted on Attachment No. 3 with a total surface area of approximately twenty (20) acres to be finalized pursuant to Section 401.

Y. (§ 225) New Well.

The term “New Well” shall mean a new water well for the New Site to be provided by City as set forth in Section 602.

Z. (§ 226) Nonpotable Water Service Commitment.

The term “Nonpotable Water Service Commitment” shall mean the City’s commitment to assure that nonpotable water is available to the New Plant through the Nonpotable Water Supply Line in accordance with the standards set forth in Section 603(2).

AA. (§ 227) Nonpotable Water Supply Line.

The term “Nonpotable Water Supply Line” shall mean a nonpotable water pipeline to the New Site to be provided by City as set forth in Section 601(3).

BB. (§ 228) Operational Statement.

The term “Operational Statement” shall mean the statement of operational capacity provided by Darling and approved by City in accordance with Section 801.

CC. (§ 229) Pipelines.

The term “Pipelines” shall mean collectively the PG&E Gas Line, the Methane Gas Line and the Nonpotable Water Supply Line.

DD. (§ 230) PG&E Gas Line.

The term “PG&E Gas Line” shall mean the Pacific Gas and Electric gas line to the New Site to be provided by the City as set forth in Section 601(1).

EE. (§ 231) Property Tax Rebate Commitment.

The term “Property Tax Rebate Commitment” shall mean reasonable assurances evidencing and authorizing City’s and the County of Fresno’s covenant to rebate to Darling the portion of all real and personal property taxes, paid to City by the County of Fresno, or allocable to the County of Fresno General Fund, with respect to the New Site and all existing or future improvements thereon, as set forth in Section 604(1).

FF. (§ 232) Sales Tax Rebate Commitment.

The term “Sales Tax Rebate Commitment” shall mean reasonable assurances evidencing and authorizing City’s covenant to rebate the portion of sales taxes received by City from the personal property purchased by Darling for the construction and operation of the New Plant as set forth in Section 604(2).

GG. (§ 233) Schedule of Performance.

The term "Schedule of Performance" shall mean that certain Schedule of Performance set forth in Attachment No. 6.

HH. (§ 234) Scope of Development.

The term "Scope of Development" shall mean that certain Scope of Development set forth in Attachment No. 7.

II. (§ 235) SJVAPC District.

The term "SJVAPC District" shall mean the San Joaquin Valley Air Pollution Control District.

JJ. (§ 236) SJVAPC Permits.

The term "SJVAPC Permits" shall mean all permits which must be issued by SJVAPC District for the construction and operation of the New Plant.

KK. (§ 237) Site and Site Depiction.

The Project shall be located on the New Site consisting of approximately twenty (20) acres of land in the City, as generally shown in the "Site Depiction" in Attachment No. 3.

LL. (§ 238) Title.

The term "Title" shall mean the fee interest in the New Site to be conveyed to Darling.

MM. (§ 239) Title Company.

The term "Title Company" shall mean Fidelity National Title Insurance Company located at 2540 West Shaw Lane, Suite 112, Fresno, CA 93711 empowered hereunder to act as the Title Company. The title officer shall be Marc Wisneski, Direct: 559-492-4212 with an email address at Marc.Wisneski@titlegroup.fntg.com

NN. (§ 240) Transfer.

The term "Transfer" shall have the meaning set forth in Section 303.

OO. (§ 241) Waste Water Facility Impact Fee Commitment.

The term "Waste Water Facility Impact Fee Commitment" shall have the meaning in Section 605(3).

PP. (§ 242) WWTP.

The term "WWTP" shall mean the City of Fresno Waste Water Treatment Plant.

III. (§ 300) PARTIES TO THIS DISPOSITION AGREEMENT.

A. (§ 301) City.

The City is the City of Fresno, a California municipal corporation.

B. (§ 302) Darling.

Darling is Darling Ingredients Inc., a Delaware corporation. The principal office of Darling for the purposes of this Disposition Agreement is located at 251 O'Connor Ridge Blvd., Ste. 300, Irving, TX 75038. Except as may be expressly provided herein below, all of the terms, covenants and conditions of this Disposition Agreement shall be binding on and inure to the benefit of Darling and the permitted successors and assigns of Darling.

C. (§ 303) Restrictions on Transfer.

1. Transfer Defined.

The term "Transfer" shall mean and include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Disposition Agreement, the New Site, or the improvements thereon.

2. Restrictions Prior to Completion of New Plant.

Prior to issuance of the Certificate of Completion and Satisfaction, except to the extent necessary for Darling to obtain the benefits of the New Market Tax Credit funding, Darling shall not Transfer this Disposition Agreement or any of Darling's rights and obligations hereunder, or any interest in the New Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void.

In the absence of specific written agreement by City, prior to the issuance of a Certificate of Completion and Satisfaction, no assignment or transfer by Darling of all or any portion of its interest in the New Site or this Disposition Agreement (including without limitation an assignment or transfer not requiring City approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Disposition Agreement with respect to the completion of the development of the Project. In addition, no attempted assignment of any of Darling's obligations shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form reasonably approved by City assuming such obligations.

3. Exception.

The foregoing prohibition shall not apply to the conveyance or dedication of any portion of the New Site to the City or other appropriate governmental agencies, or the granting of easements or permits to facilitate the development of the New Site.

4. Restrictions after Completion.

After Completion of the New Plant as evidenced by the recordation of the Certificate of Completion and Satisfaction, Darling may transfer the New Site without the consent of City but subject to all existing covenants of record.

IV. (§ 400) PRECLOSING OBLIGATIONS OF THE PARTIES.

A. (§ 401) New Site and Ingress/Egress Easement.

City shall cause the New Site to be conveyed to Darling as a separate legal parcel. Pursuant to Government Code sections 66426.5 and 66428(a)(2), a parcel map is not required. City shall grant to Darling an easement for ingress and egress from the New Site to Jensen Avenue and from the New Site to Cornelia Avenue as shown on Attachment No. 3 (collectively, the "Driveway Easements"). Darling shall be solely responsible for improving and maintaining the Driveway Easements.

B. (§ 402) New Markets Tax Credits.

Darling shall promptly apply for New Markets Tax Credits in the Target Amount (as defined below) for the Project and shall diligently pursue such application. Darling shall seek New Markets Tax Credits sufficient to fund the sum of Nine Million Dollars (\$9,000,000) to be available for capital investments, net of fees and costs incurred for the application including, but not limited to, attorney, accountant, professional and consultant fees ("**Target Amount**"). Darling shall keep the City regularly advised as to the status of the application process. City agrees to cooperate with the application as reasonably requested by Darling. If Darling receives 95% or more of the Target Amount, Darling shall waive the nonconformity to facilitate a Closing. In the event the actual award is less than 95% of the Target Amount, then Darling and City shall meet to discuss alternatives for providing the amount of the shortfall. Nothing herein shall commit the City or Darling to provide the shortfall. If the parties are not able to resolve the shortfall within a reasonable time, either party may elect to terminate this Disposition Agreement.

C. (§ 403) New Site Due Diligence by Darling

1. AS-IS Acquisition.

Darling acknowledges and agrees that City will convey the New Site to Darling in "AS-IS" condition without representation or warranty of any kind, except as expressly set forth herein, and City shall not be responsible for any Hazardous Materials existing on the New Site. Accordingly, Darling shall be responsible for conducting all due diligence with respect to the New Site prior to its acquisition of the New Site.

2. Site Assessment and Remediation.

Darling shall, at its sole cost and expense, undertake investigation to assess both the physical condition of the New Site as well as the environmental condition of the New Site ("**Site Investigation**"). Darling shall complete its Site Investigation within the time periods provided in the Schedule of Performance. If, during the course of the Site Investigation, Darling discovers the existence of any: (i) Environmental Compliance Cost; (ii) Environmental Cleanup Liability; (iii) Hazardous Materials of any kind whatsoever in, on or under the New Site; or, (iv) other issue, problem or hazard (whether environmental or relating to the physical condition of the New Site) which in Darling's sole judgment would create undesirable costs or liabilities to Darling, Darling shall have the right to terminate this Disposition Agreement without further obligation to City by providing written notice of termination to City within time period specified in the Schedule of Performance ("**Termination Notice**"), and all funds and/or documents deposited into Escrow by either party shall be returned to such party. If Darling does not issue the Termination Notice in the

time and manner specified, Darling shall be conclusively deemed to have approved the condition of the New Site.

3. Disclaimer of Warranties.

Upon the Close of Escrow, Darling will acquire the New Site in its "AS-IS" condition and shall be responsible for any defects in the New Site, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the New Site, and the existence of any contamination, Hazardous Materials, vaults, debris, pipelines, abandoned wells or other structures located on, under or about the New Site. Except as expressly set forth in this Agreement, City does not make any representation or warranty concerning the physical, environmental, geotechnical or other condition of the New Site, the suitability of the New Site for the Project, and specifically disclaims all representations or warranties of any nature concerning the New Site made by them and their respective employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate air, water rights, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the New Site is suited, or drainage. City does not make any representation or warranty concerning the compaction of soil upon the New Site, nor of the suitability of the soil for construction.

4. Right to Enter Site; Indemnification.

Subject to compliance with the requirements set forth below, City grants to Darling, its agents and employees a limited license to enter upon the New Site for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the New Site, which studies, surveys, reports, investigations and tests shall be done at Darling's sole cost and expense.

Prior to entering the New Site, Darling shall obtain City's written consent which shall not be unreasonably withheld or delayed provided Darling complies with all the following requirements. Darling shall: (i) notify City prior to each entry of the date and the purpose of intended entry and provide the names and affiliations of the persons entering the New Site; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the New Site during or after such investigation; (iii) comply with all applicable laws and governmental regulations (including issuance of applicable permits to fee for which shall be waived by City); (iv) allow an employee of City to be present at all times at the election of City; (v) keep the New Site free and clear of all materialmen's liens, lis pendens and other liens or encumbrances arising out of the entry and work performed under this paragraph; (vi) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the New Site in the amounts required by the State of California; (vii) provide to City prior to initial entry a certificate of insurance evidencing that Darling has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000) which insurance names City as an additional insured; and other requirements specified in Section 706; (viii) return the New Site to substantially its original condition following Darling's entry; (ix) provide City copies of all studies, surveys, reports, investigations and other tests derived from any inspection without representation or warranty; and, (x) take the New Site at Closing subject to any title exceptions caused by Darling exercising this license to enter.

Darling agrees to indemnify, defend and hold City free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees) which City may suffer or incur as a consequence of Darling's exercise of the license granted pursuant to this Section or any act or omission by

Darling, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Darling (except City and its agents) with respect to the New Site, excepting to the extent such claims arise out of the negligence or misconduct of City.

City agrees to indemnify, defend and hold Darling free and harmless from and against any and all losses, damages (other than punitive damages) liabilities, claims, causes of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses (including reasonable attorneys' fees), that Darling may suffer or incur as a result of its exercise of the license granted pursuant to this Section, and arising or alleged to have arisen, out of the active negligence or misconduct of City.

Notwithstanding termination of this Disposition Agreement for any reason, the obligations of the parties under this Section as well as any agreement for early entry which may be entered into by City and Darling prior to the Effective Date shall remain in full force and effect.

5. Hazardous Materials; Release of City.

Upon transfer of the New Site to Darling, Darling agrees that in the event Darling incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Closing, then Darling may look to any prior owners of the New Site, but under no circumstances shall City be liable directly or indirectly regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Darling, and each of the entities constituting Darling, if any, from and after the Closing, hereby waives, releases, remises, acquits and forever discharges City, its directors, officers, shareholders, employees, and agents, and their heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the New Site, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Closing. It is the intention of the parties pursuant to this release that any and all responsibilities and obligations of City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Darling, its successors, assigns or any affiliated entity of Darling against City, arising by virtue of the physical or environmental condition of the New Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Closing, are by this Release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties shall be deemed third party beneficiaries of such release. In connection therewith, Darling expressly agrees to waive any and all rights which said party may have under Section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

DARLING'S INITIALS: _____

Without limiting the foregoing, Darling agrees not to initiate any legal process against the City, and hereby fully releases the City, in connection with any Environmental Claims,

Environmental Cleanup Liability or Environmental Compliance Costs, except those that constitute a Preserved Right.

For purposes of this Section 403, the following terms shall have the following meanings:

- a. **“Environmental Claim”** means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the New Site or its operations and arising or alleged to arise under any Environmental Law.
- b. **“Environmental Cleanup Liability”** means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the New Site, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the New Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.
- c. **“Environmental Compliance Cost”** means any cost or expense of any nature whatsoever necessary to enable the New Site to comply with all applicable Environmental Laws in effect. “Environmental Compliance Cost” shall include all costs necessary to demonstrate that the New Site is capable of such compliance.
- d. **“Environmental Law”** means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.
- e. **“Hazardous Material”** is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental City, the State of California, or the United States Government. The term **“Hazardous Material”** includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a “hazardous waste,” “extremely hazardous waste” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) “used oil” as defined under Section 25250.1 of the

California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time here-after, in effect.

- f. "Preserved Rights" means rights associated with an Environmental Claim or Environmental Compliance Cost that may arise after the Closing, and which relates to or arise from activities of the City: (i) in fulfilling the Methane Gas Service Commitment; (ii) in fulfilling the Nonpotable Water Service Commitment; or, (iii) which constitutes negligent or willful misconduct by the City that results in a release of Hazardous Materials that adversely affects the New Site and is in violation of Environmental Law.

Notwithstanding any other provision of this Disposition Agreement, Darling's release and indemnification as set forth in the provisions of this Section, as well as all provisions of this Section shall survive the termination of this Disposition Agreement and shall continue in perpetuity.

6. Covenant to Provide Notice. Notwithstanding anything to the contrary in this Agreement, if after the Effective Date the City receives written communication from a public agency that: (a) Hazardous Materials are alleged to exist on the New Site; or, (b) an investigation has commenced regarding potential violations of Environmental Law that affect the New Site, City shall provide Darling prompt written notice of such communication.

D. (§ 404) Entitlements.

1. Proposed Development's Consistency with Plans and Codes.

City covenants to cooperate with Darling to obtain all Entitlements as required for the construction, operation, and use of the New Plant as provided in this Disposition Agreement subject to approval of the Project in accordance with applicable law, including, but not limited to, California Environmental Quality Act.

City does not make any representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City and City reserve full police power authority over the Project. However, City shall cooperate with Darling in procuring the foregoing approvals. Nothing in this Disposition Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

2. Evolution of Development Plan.

Concurrently with the approval of this Disposition Agreement, City has approved Darling's Basic Concept Drawings. On or before the date set forth in the Schedule of Performance, Darling shall submit to the City preliminary, and thereafter final, drawings and specifications for development of the New Site in accordance with the Scope of Development, and all in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Scope of Development and the various development approvals referenced hereinabove, except as such items may be amended by City (if applicable) and by mutual consent of City and Darling. Plans (concept, preliminary and construction) shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved.

3. Darling's Efforts to Obtain Approvals.

Darling shall promptly cooperate with City to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner, and City shall cooperate with Darling in connection therewith. Not by way of limitation of the foregoing, in developing and constructing the New Plant, Darling shall comply with all applicable development standards in City's Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

4. Reasonable Assistance.

Subject to compliance with: (i) the applicable City development standards for the New Site; and, (ii) all applicable laws and regulations governing such matters as public hearings, site plan review and environmental review, City agrees to act expeditiously in processing and offering for approval, at no cost to Darling, Darling's submittals required under this Section in order that Darling can obtain a final City action on such matters within the time set forth in the Schedule of Performance. City shall not impose any public hearing requirements not required under applicable laws and regulations. City's failure to provide necessary approvals or permits within such time periods, after and despite Darling's reasonable efforts to submit the documents and information necessary to obtain the same, shall constitute an Enforced Delay.

5. Disapproval.

City shall expedite all submittals by Darling. City shall complete its first review of any submittal made by Darling pursuant to this Section within fifteen (15) business days after such submittal. All submittals made by Darling shall note the fifteen (15) business day time limit, and specifically reference this Disposition Agreement and this section. Any disapproval shall state in writing in reasonable detail the reason for the disapproval and detail the changes which City requests be made. Darling shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable, but no more than thirty (30) days of the date of disapproval. Thereafter, City shall have an additional ten (10) business days for each subsequent review, but if City disapproves the resubmittal, then the cycle shall repeat, until City's approval has been obtained. The foregoing periods may be shortened if so specified in the Schedule of Performance.

6. CEQA.

City shall be the lead agency for obtaining the approval of this Disposition Agreement and the Project as required by the California Environmental Quality Act ("**CEQA**"). City shall be solely responsible for all costs and expenses for all CEQA reports and investigations. Darling specifically acknowledges and agrees that Darling shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA requirements and applicable mitigation measures, except for such matters are addressed by the Financial Assistance, and except for the rights of Darling pursuant to Section 404(7) below. Upon City's request, Darling agrees to promptly supply information and otherwise to assist City to determine the environmental impact of the proposed development and to allow City to prepare and process such environmental documents, if any, as may need to be completed for the development pursuant to the requirements of CEQA. City agrees to indemnify and hold Darling harmless for all Claims or Litigation provided, however, that Darling shall fully cooperate with City with respect to the defense of any litigation.

7. Disapproval of Conditions or Mitigations.

If Darling determines, in its sole judgment, that any conditions of approval for the Project, or any mitigation measure imposed by CEQA compliance, provided such conditions or mitigation measures were added after Darling signed this Agreement (or are among the "MND Mitigation Burdens" listed below) would create undesirable costs or liabilities to Darling, Darling shall have the right to terminate this Agreement without further obligation to City by providing written notice of termination to City not less than forty-five (45) days after the certification of the CEQA compliance document or final adoption of the condition of approval that imposes such requirement or mitigation measure. The following items are MND Mitigation Burdens: (a) changes in the New Plant site plan or intended operations that may be imposed pursuant to the odor management plan imposed by AIR-1; (b) implementation of mitigation measures that may arise from the loss of burrowing owl nests as detailed in the MND Mitigation Measure BIO-2; (c) remediation of any contaminations that may be identified by the Phase II ESA required in MND Mitigation Measure HAZ-1; (d) implementation of mitigation measures that may arise from the requirement to have stationary equipment reduce GHG by 29% (beyond the reductions achieved through the implementation of Air District BPS standards), as detailed in MND Mitigation Measure GHG-1; and (e) changes in the New Plant site plan or intended operations that may be imposed pursuant to the noise minimization plan imposed by NOI-1.

V. (§ 500) TRANSFER OF NEW SITE TO DARLING.

A. (§ 501) Conveyance.

In accordance with and subject to all the terms, covenants and conditions of this Disposition Agreement, City agrees to convey the New Site to Darling subject to the terms of the Deed, and Darling specifically agrees to accept the New Site and covenants to develop and operate the New Site as a new rendering plant consistent with the Scope of Development, the Approved Plans and Section 800 et seq.

B. (§ 502) Escrow.

Escrow shall be opened in the time specified in the Schedule of Performance. This Disposition Agreement shall constitute the joint escrow instructions of City and Darling to Escrow Agent, and a duplicate original of this Disposition Agreement shall be delivered to Escrow Agent upon the opening of Escrow. Escrow Agent is empowered to act under the instructions in this Disposition Agreement. City and Darling shall promptly prepare, execute, and deliver to Escrow Agent such additional escrow instructions (including Escrow's standard general provisions)

consistent with the terms herein as shall be reasonably required by Escrow Agent. No provision of any additional escrow instructions shall modify this Disposition Agreement without specific written approval of the modification(s) by both parties.

C. (§ 503) Conditions to Close of Escrow.

1. Darling's Conditions to Closing.

Darling's obligation to acquire the New Site and to close Escrow, shall, in addition to any other conditions set forth herein in favor of Darling, be conditioned and contingent upon the satisfaction or written waiver by Darling, of each and all of the following conditions (collectively the "**Darling's Conditions to Closing**") within the time provided in the Schedule of Performance:

- (a) Darling has obtained the New Market Tax Credits in accordance with Section 402.
- (b) Title of the New Site will be conveyed in a good and merchantable condition subject only to those exceptions recited in the Deed and those exceptions to title approved pursuant to Section 505(5) and the Title Company has agreed to issue the Title Policy in the amount of the fair market value of the New Site with such endorsements as reasonably required by Darling.
- (c) Darling has received all required Entitlements for the Project as described in Section 404, and has obtained all other approvals and permits described in Section 707.
- (d) The Property Tax Commitment has been provided to Darling, to Darling's reasonable satisfaction.
- (e) The Sales Tax Rebate Commitment has been provided to Darling, to Darling's reasonable satisfaction.
- (f) The Impact Fee Commitment has been provided to Darling, to Darling's reasonable satisfaction.
- (g) The Permit and Entitlement Commitment has been provided to Darling, to Darling's reasonable satisfaction.
- (h) The Waste Water Facility Impact Fee Commitment has been provided to Darling, to Darling's reasonable satisfaction.
- (i) The New Site shall be delivered to Darling free and clear of any tenants or right of possession of any other persons or entities.
- (j) The Concerned Citizens of West Fresno shall have entered into a written agreement that stays further prosecution of the Litigation and provides for dismissal with prejudice of the Litigation at such time as Darling ceases rendering operations at the Existing Plant in accordance with Section 901.
- (k) No Claims or Litigation shall be pending or threatened.

- (l) No Environmental Claim that could not have been discovered with reasonable effort during the Site Investigation activities, shall exist or be threatened.

Any waiver of the foregoing conditions must be express and in writing delivered in a timely manner. In the event that the foregoing conditions have not been satisfied or waived within the time provided in the Schedule of Performance, a party may terminate this Disposition Agreement by delivering a written notice in accordance with Section 507.

2. City's Conditions to Closing.

City's obligation to deliver the New Site and to close Escrow, shall, in addition to any other conditions set forth herein in favor of City, be conditioned and contingent upon the satisfaction or written waiver by City, of each and all of the following conditions (collectively the "**City's Conditions to Closing**") within the time provided in the Schedule of Performance:

- (a) Darling has received all required Entitlements for the Project as described in Section 404, and has obtained all other approvals and permits described in Section 707.
- (b) Darling has deposited all applicable documents required under this Disposition Agreement.
- (c) As of the Closing, Darling shall not be in default hereunder, nor shall any event or occurrence exist that with the passage of time or giving of notice or both would constitute such a default by Darling.

Any waiver of the foregoing conditions must be express and in writing. In the event that Darling fails to satisfy City's foregoing conditions or defaults in the performance of its obligations hereunder, City may terminate this Disposition Agreement and the Escrow pursuant to Section 404 without any liability to Darling.

3. Parties' Conditions to Closing.

Prior to the Closing Date, City shall execute and deliver a certificate ("**Taxpayer ID Certificate**") in such form as may be required by the IRS pursuant to Section 6045 of the Internal Revenues Code or the regulations issued pursuant thereto, certifying as to the description of the New Site, date of Closing, taxpayer identification numbers and other information as required by law. Prior to the Closing, Darling and City shall cause to be delivered to the Escrow Agent such other items, instruments and documents, and the parties shall take such further actions, as may be necessary or desirable in order to complete the Closing. At the Closing neither party shall be in breach of its obligations hereunder.

D. (§ 504) Conveyance of the New Site.

1. Time for Conveyance.

Escrow shall close after satisfaction (or written waiver by the benefited party) of the applicable conditions to close of Escrow, but not later than the date specified in the Schedule of Performance, unless extended by the mutual agreement of the parties or any Enforced Delay. Possession of the New Site shall be delivered to Darling at Close of Escrow free of all tenancies and occupants other than any title matters approved in accordance with Section 505.

2. Escrow Agent to Advise of Costs.

On or before the date set in the Schedule of Performance, Escrow Agent shall advise City and Darling in writing of the fees, charges, and costs necessary to clear title and close Escrow, and of any documents which have not been provided by said party and which must be deposited in Escrow to permit timely Closing.

3. Deposits by City Prior to Closing.

On or before, but not later than two (2) business days prior to the date set for the Closing in the Schedule of Performance, City shall deposit into Escrow: (i) the Deed, executed and acknowledged by City; (ii) two (2) executed copies of the Property Tax Rebate Commitment; (iii) two (2) executed copies of the Sales Tax Rebate Commitment; (iv) two (2) executed copies of the Impact Fee Commitment; (v) two (2) executed copies of the Permit and Entitlement Commitment; (vi) two (2) executed copies of the Waste Water Facility Impact Fee Commitment; (vii) an estoppel certificate certifying that Darling has completed all acts, other than as specified, necessary for conveyance; (viii) the Taxpayer ID Certificate; and, (ix) payment of City's share of costs as set forth in Section 506.

4. Deposits by Darling Prior to Closing.

On or before, but not later than two (2) business days prior to the date set for the Closing in the Schedule of Performance, Darling shall deposit into Escrow: (i) an estoppel certificate certifying that City have completed all acts, other than as specified, necessary to conveyance; (ii) the Taxpayer ID Certificate; (iii) consent to the Deed to be attached prior to recordation; (iv) two (2) executed copies of the Property Tax Rebate Commitment; (v) two (2) executed copies of the Sales Tax Rebate Commitment; (vi) two (2) executed copies of the Impact Fee Commitment; (vii) two (2) executed copies of the Permit and Entitlement Commitment; (viii) two (2) executed copies of the Waste Water Facility Impact Fee Commitment; (ix) a Preliminary Change of Ownership (PCOR); and, (xi) payment to Escrow Agent of Darling's share of any costs in accordance with Section 506.

5. Recordation and Disbursement of Funds (if any).

Upon the completion by City and Darling of the required deliveries and actions prior to Closing, Escrow Agent is authorized to pay any transfer taxes and recording fees under applicable law, and thereafter cause to be recorded in the appropriate official records of Fresno County, California, in the following order: (i) the Deed with Darling's consent attached; (ii) the Covenant Agreement; and, (iii) any other appropriate instruments delivered through this Escrow, if necessary or proper to vest title of the New Site in Darling in accordance with the terms of this Disposition Agreement. Immediately following Closing, Escrow Agent shall deliver the Title Policy to Darling (with a copy to City) insuring title and conforming to the requirements of Section 505. Following

recordation, Escrow Agent shall deliver conformed copies of all recorded documents to Darling and City.

E. (§ 505) Title Matters.

1. Condition of Title.

At close of Escrow, City shall convey to Darling fee title to the New Site subject to: (i) non-delinquent real property taxes; (iii) quasi-public utility, public alley and public street easements of record; and, (iv) covenants, conditions and restrictions and other encumbrances and title exceptions approved by Darling under this Section 505.

2. [Not Used]

3. Delivery of Possession to Darling.

Immediately after the Close of Escrow, City shall deliver exclusive possession of the New Site to Darling free of any tenants and occupants.

4. Agreement to Not to Encumber Site.

City covenants to Darling that commencing with the Effective Date through the Close of Escrow, it will not transfer, sell, hypothecate, pledge, or otherwise encumber the New Site without the express written permission of Darling.

5. Approval of Title Exceptions.

Prior to the date in the Schedule of Performance, City shall deliver a current preliminary title report issued by the Title Company for the New Site to Darling including copies of all documents referenced therein. Prior to the date in the Schedule of Performance, Darling shall deliver to City written notice, with a copy to Escrow Agent, specifying in detail any exception disapproved and the reason therefor. Prior to the date in the Schedule of Performance, City shall each deliver written notice to Darling as to whether it will or will not cure the disapproved exceptions. If City elects not to cure the disapproved exceptions, Darling may terminate this Disposition Agreement and the Escrow but without any liability of City to Darling, or Darling may withdraw its earlier disapproval. If City elects to cure the disapproved exceptions, it shall do so on or before the Closing. Thereafter, if Escrow fails to timely close because: (i) City has failed to cure the disapproved exceptions, or, (ii) due to exceptions not previously reported but which arise due to acts of owner subsequent to issuance of the preliminary title report (provisions (i) and (ii) are referenced to herein as “**Acts of Owner**”), and if City cannot cure said defects within the time provided in Section 410, then Darling may terminate this Disposition Agreement and the Escrow, and obtain reimbursement from the City for its reasonable costs of performance under this Agreement, in an amount not to exceed \$150,000.00. In the event the failure to close is due to the existence of other conditions of title not approved by Darling which: (i) are not the result of Acts of Owner; and, (ii) are not reasonably acceptable to Darling, then the parties shall negotiate in good faith to correct the title problem, and shall consider courses of action with the title company, bonding and indemnities, and other modifications to this Disposition Agreement. If such good faith negotiations do not resolve the matter before the time period specified in the Schedule of Performance, then Darling shall have the right to either waive such failure and proceed to a close of Escrow, or terminate this Agreement and the Escrow, and neither party shall thereupon have any further duties or liabilities to the other under this Agreement.

6. Title Policy.

At the close of Escrow, Escrow Agent shall cause the Title Company to issue and deliver to Darling an ALTA extended coverage title insurance policy ("**Title Policy**") insuring that the fee simple title of the New Site is vested in Darling in the condition required by this Disposition Agreement, including any endorsements reasonably requested by Darling and in the amount of the fair market value of the New Site. City shall pay the cost of issuing to Darling an ALTA extended policy for the New Site. Darling shall pay for any additional endorsements or coverage requested by Darling. At Closing, the Escrow Agent shall provide City with a copy of the Title Policy. The Title Company shall, if requested by Darling in writing and at Darling's sole cost and expense, provide Darling with an endorsement to the Title Policy to insure the amount of Darling's estimated construction cost of the Improvements and any other endorsements requested by Darling.

F. (§ 506) Costs of Escrow.

1. Allocation of Costs.

Escrow Agent is authorized to allocate costs of the Closing to City, including but not limited to, the cost of the Title Policy; documentary taxes; and escrow fees. No recording fees should be paid as City is exempt as a governmental agency. Darling shall pay any additional premium amounts for the Title Policy beyond ALTA extended coverage and any special endorsements. Each party shall pay its own attorneys' fees for the drafting of this Disposition Agreement and any legal work required to consummate this transaction, however, this provision shall not be construed to limit the rights of a non-defaulting party under Section 1007.

2. Prorations and Adjustments.

As City is exempt from ad valorem taxes and assessments on the New Site, no prorations shall be made by Escrow Agent.

3. Extraordinary Services of Escrow Agent.

Escrow fees and charges contemplated by this Disposition Agreement incorporate only the ordinary services of Escrow Agent as listed in this Disposition Agreement. In the event that Escrow Agent renders any service not provided for in this Disposition Agreement, or that Escrow Agent is made a party to, or reasonably intervenes in, any litigation pertaining to this Escrow or the subject matter thereof, then Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses occasioned by such default, controversy or litigation.

4. Escrow Agent's Right to Retain Documents.

Escrow Agent shall have the right to retain all documents and/or other things of value at any time held by it hereunder until such compensation, fees, costs and expenses are paid. The parties jointly and severally promise to pay such sums upon demand.

G. (§ 507) Termination of Escrow.

1. Termination.

Escrow (and this Disposition Agreement) may be terminated by demand of a party who then shall have fully performed its obligations hereunder if:

- (a) The Conditions to Closing have not occurred or have not been approved, disapproved, or waived as the case may be, by the approving party by the date established herein for the occurrence of such Condition, including any grace period pursuant to this Section;
- (b) Escrow is not in a condition to close by the date set for Closing; or,
- (c) Either party is in breach of the terms and conditions of this Disposition Agreement.

In the event of the foregoing, the terminating party may, in writing, demand return of its money, papers, or documents from the Escrow Agent and shall deliver a copy of such demand to the non-terminating party or parties. No demand shall be recognized by the Escrow Agent until thirty (30) days after the Escrow Agent shall have mailed copies of such demand to the non-terminating party or parties, and if no objections are raised in writing to the terminating party and the Escrow Agent by the non-terminating party within the thirty (30) day period. In the event of such objections, the opportunity to cure shall be provided as stated below in Subsection 2 of this Section. In addition, the Escrow Agent is authorized to hold all money, papers, and documents until instructed in writing by Darling and City, upon failure thereof, by a court of competent jurisdiction; provided that after expiration of the cure period provided in Subsection 2 of this Section. If no such demands are made, the Escrow shall be closed as soon as possible and neither party shall have any further liability to the other.

2. Opportunity to Cure.

Prior to Closing, in the event any of the Conditions to Closing are not satisfied or waived by the applicable party with the power to approve said Conditions (the "**approving party**"), then such party shall explain in writing to the other party (the "**non-approving party**") the reason for the disapproval. Thereafter, the non-approving party shall have an additional thirty (30) days to satisfy any such Condition to Closing, and only if such Conditions still cannot be satisfied may the approving party terminate the Escrow. In the event Escrow is not in a condition to close because of a default by a party, and the performing party has made demand as stated in Subsection 1 of this Section, then upon the non-performing party's delivering its objection to Escrow Agent and the performing party within the above thirty (30) day period, the non-performing party shall have the right to cure the default in accordance with and in the time provided in Section 901(1).

H. (§ 508) Responsibility of Escrow Agent.

1. Deposit of Funds.

All funds received in Escrow shall be deposited by Escrow Agent in a special Escrow account with any state or national bank doing business in the State of California and may not be combined with other Escrow funds of Escrow Agent or transferred to any other general Escrow account or accounts.

2. Notices.

All communications from Escrow Agent shall be directed to the addresses and in the manner provided in Section 1101 of this Disposition Agreement for notices, demands and communications between City and Darling.

3. Sufficiency of Documents.

Escrow Agent is not to be concerned with the sufficiency, validity, correctness of form, or content of any document prepared outside of Escrow and delivered to Escrow. The sole duty of Escrow Agent is to accept such documents and follow Darling's and City's instructions pursuant to this Disposition Agreement.

4. Exculpation of Escrow Agent.

Escrow Agent shall not be liable for the failure of any of the Conditions to Closing of this Escrow, forgeries or false personation, unless such liability or damage is the result of negligence or willful misconduct by Escrow Agent.

5. Responsibilities in the Event of Controversies.

If any controversy documented in writing arises among Darling, City or with any third party with respect to the subject matter of this Escrow or its terms or conditions, Escrow Agent shall not be required to determine the same, to return any money, papers or documents, or take any action regarding the New Site prior to settlement of the controversy by a final decision by an arbitrator, by a court of competent jurisdiction, or by written agreement of the parties to the controversy, as the case may be. Escrow Agent shall be responsible for timely notifying Darling, City of the controversy. In the event of such a controversy, Escrow Agent shall not be liable for interest or damage costs resulting from failure to timely close Escrow or take any other action unless such controversy has been caused by the failure of Escrow Agent to perform its responsibilities hereunder.

VI. (§ 600) CITY'S POST CLOSING OBLIGATIONS AND COMMITMENTS.

A. (§ 601) Pipelines.

1. PG&E Gas Line.

Within ninety (90) days following Closing, City shall, at no cost or expense to Darling, coordinate with Pacific Gas & Electric to provide a gas line to the New Site to provide gas services to the New Plant ("**PG&E Gas Line**"). The PG&E Gas Line shall be constructed by PG&E, shall be stubbed to the boundary of the New Site and shall be sized sufficiently to deliver methane gas in a capacity to service the PG&E gas service demands of both the New Plant and the WWTP. Darling shall cooperate with PG&E and City with respect to the necessary specifications of the gas line and service requirements. City will ensure that the PG&E Gas Line is installed not less than three (3) months prior to the anticipated commencement of construction of the New Plant which date shall be provided by Darling.

2. Methane Gas Line.

Within ninety (90) days following Closing, but no earlier than July 1, 2018, City shall, at no cost or expense to Darling, provide a methane gas line to the New Site to provide methane services to the New Plant ("**Methane Gas Line**"). The methane line shall be stubbed to the boundary of the New Site, at a location mutually acceptable to City and Darling, in a capacity to service the New Plant consistent with the standards detailed in the Methane Gas Service Commitment. City will ensure that the Methane Gas Line is installed not less than three (3) months prior to the anticipated commencement of construction of the New Plant which date shall be provided by Darling.

3. Nonpotable Water Supply Line.

Within ninety (90) days following Closing, City shall, at no cost or expense to Darling, coordinate with WWTP to provide a nonpotable water line to the New Site to provide nonpotable water to the New Plant ("**Nonpotable Water Supply Line**"). The Nonpotable Water Supply Line shall be stubbed to the boundary of the New Site, at a location mutually acceptable to City and Darling, in a capacity to service the New Plant. Darling shall cooperate with the WWTP and City with respect to the necessary specifications of the nonpotable water and service requirements. City will ensure that the Nonpotable Water Supply Line is installed not less than three (3) months prior to the anticipated commencement of construction of the New Plant which date shall be provided by Darling.

B. (§ 602) New Well Development & Use.

Within fifteen (15) months from the Closing, City shall complete the development of a well (including installation of equipment, pumps, electrical services, pipelines, meters, and related facilities (“**New Well**”) meeting all public potable water supply well standards, adjacent to or on the New Site. The New Well shall deliver water at 50 psi to the New Site. If the New Well is to be located on the New Site, Darling will grant City such licenses to access and conduct such construction pursuant to a license agreement utilizing the City's standard form for permitting access to City owned property. If the New Well is not located on the New Site, City will provide a pipeline to the boundary of the New Site, at a location mutually acceptable to City and Darling, and an easement in favor of Darling providing for its rights to maintain and repair the New Well. Darling shall not be charged for any usage or capacity charges for the water extractions from the New Well except for extraction fees imposed by any applicable groundwater sustainability agency having jurisdiction under the Sustainable Groundwater Management Act, and only to the extent imposed on a non-discriminatory basis. However, notwithstanding the foregoing, Darling shall be solely responsible to pay the costs for: (i) electricity for operating the New Well; and, (ii) maintaining the New Well. City shall be solely responsible for all permitting, inspection, and testing required as part of the initial development of the New Well. Darling will be solely responsible for all testing and reporting of well data to the State Water Resources Control Board as part of the operations of the New Well, and will hold the regulatory permits for the New Well.

C. (§ 603) Utility Service Commitments.

1. Methane Gas Service Commitment.

City commits that, upon construction of the Methane Gas Line pursuant to Section 601(2), methane gas will be available to the New Site through the Methane Pipeline at a minimum capacity of 500 scfm for twenty (20) hours per day for every day of the year with quality at ninety-five percent (95%) methane content and 900 btus per cubic foot. No usage or capacity charges shall be imposed for delivery of the methane gas or use of the Methane Gas Pipeline. City's commitment as set forth in this Section shall continue for a period of thirty (30) years from the Closing Date. The provisions of this Section 603(1) are referred to herein as the Methane Gas Service Commitment. The City shall have the right to elect to have some or all of its Methane Gas Service Commitment satisfied by the delivery of methane gas to the New Site through the Methane Pipeline by PG&E or another third party, provided such deliveries shall be at no cost to Darling, and provided that the City shall remain responsible for assuring that the quality of the methane content and the service delivery standards set forth above, are satisfied by such alternative supplier.

2. Nonpotable Water Service Commitment.

City commits that, upon construction of the Nonpotable Water Supply Line pursuant to Section 601(3), water will be available to the New Site through the Nonpotable Water Supply Pipeline at a capacity sufficient for the New Plant operations and maintenance of the New Site. No usage or capacity charges shall be imposed for delivery of the nonpotable water supply. City's commitment as set forth in this Section shall continue for a period of thirty (30) years from the Closing Date.

D. (§ 604) Rebate Commitments.

1. Property Tax Rebate Commitment.

As a condition precedent to Closing, City and Darling shall coordinate all legislative, regulatory and administrative actions to provide reasonable assurance that all real and personal property taxes that are allocated to City by the County of Fresno, or allocable to the County of Fresno General Fund, with respect to the New Site and all existing or future improvements thereon, shall be rebated to Darling on an annual basis not later than sixty (60) days after the receipt by City and the County of their respective allocated amounts. The commitment as set forth in this Section shall continue for a period of thirty (30) fiscal years from the Closing Date.

2. Sales Tax Rebate Commitment.

In order to complete the New Plant, Darling may elect to purchase new equipment for the operation of the rendering plant either directly or through its contractors ("**Purchased Equipment**").

As a condition precedent to Closing, City shall coordinate all legislative, regulatory and administrative actions to provide reasonable assurance to Darling that all sales taxes paid for the Purchase Equipment to the extent allocated to City by the State Board of Equalization ("**Board**") for the Purchased Equipment ("**Rebated Amount**") shall be rebated to Darling as set forth below.

Within one (1) year after recordation of the Certificate of Completion and Satisfaction under this Disposition Agreement, Darling may provide to City a written request for the rebate by providing summary of all Purchased Equipment together with supporting documentation ("**Rebate Request**"). Not later than the later to occur of: (i) ninety (90) days after City's receipt of the Rebate Request; or, (ii) City's actual receipt of the Rebated Amount from the Board, City shall pay the Rebate Amount to Darling.

E. (§ 605) Impact & Related Fee Commitments.

1. Impact Fee Commitment.

As a condition precedent to Closing, City shall coordinate all legislative, regulatory and administrative actions to provide reasonable assurance to Darling that all Impact Fees or capacity charges (other than school fees) that are imposed by City shall be abated for the New Plant.

2. Permit and Entitlement Fee Commitment.

As a condition precedent to Closing, City shall coordinate all legislative, regulatory and administrative actions to provide reasonable assurance to Darling that all City permit and Entitlement Fees that may be required for the Project (except business license fees) shall be abated for the New Plant. As provided in Section 707, Darling shall not be required to pay any grading or building permit fees for the New Plant.

3. Waste Water Facility Impact Fee Commitment.

Without limiting the generality of Section 605(1) above, as a condition precedent to Closing, City shall coordinate all legislative, regulatory and administrative actions to provide reasonable assurance to Darling that all Impact Fees or capacity charges potentially imposed by WWTP for capacity up to two hundred percent (200%) of the actual capacity utilized by the Existing Plant as of the Effective Date shall be abated. Darling understands that any capacity charges for usage in excess of the specified amount shall be the responsibility of Darling. On the thirtieth (30) annual anniversary of the Closing Date, Darling shall have no further right to accrue further capacity

entitlements pursuant to this provision, but shall remain vested with the capacity entitlements that it is regularly and legally using as of such date.

VII. (§ 700) DARLING'S POST CLOSING OBLIGATIONS.

A. (§ 701) Development of New Site.

Upon City's satisfaction of all obligations in Section 600, Darling shall, at its sole cost and expense, promptly commence and diligently prosecute the construction of the New Plant as provided in the Scope of Development, Darling's Basic Concept Drawings, and the plans and permits approved by City pursuant to Section 404(3) and (4). Notwithstanding any other provision set forth in this Disposition Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Disposition Agreement (including the Scope of Development) and the approved plans and permits, the approved plans and permits shall govern.

B. (§ 702) Development Plans, Final Building Plans.

1. Development's Consistency with Plans and Codes.

Darling's proposed development, and construction, operation, and use of the New Site as provided in this Disposition Agreement are subject to the: (i) approval of the Project in accordance with applicable law; (ii) the development approvals yet to be obtained, including a conditional use permit, development permit, a general plan amendment and a zoning amendment; and, (iii) City's review and approval of the Project in accordance with the California Environmental Quality Act. Darling understands that City does not make any representations or warranties with respect to approvals required for the Project and City reserve full police power authority over the Project. Although City covenants to cooperate with Darling in procuring the required approvals, nothing in this Disposition Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

C. (§ 703) Costs of Construction; Financial Assistance.

Except for items encompassed in the Financial Assistance, the cost of developing the New Site and constructing all of the on-site and off-site improvements, if any, at or about the New Site required to be constructed for the Project shall be borne solely by Darling. Darling shall comply with all applicable laws including prevailing wages (if applicable) and shall defend and hold City harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Darling was subject to prevailing wages in connection with the construction of the Project.

D. (§ 704) Schedule of Performance; Progress Reports.

Darling shall begin and complete all plans, reviews, construction and development specified in the Scope of Development and commencement of operations within the times specified in the Schedule of Performance or such reasonable extensions of said dates as may be mutually approved in writing by the parties, except to the extent Darling's ability to maintain compliance with Schedule of Performance is frustrated due to an event of Enforced Delay. Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay. Darling shall keep City

informed of the progress of construction and submit to City written reports of the progress of the construction when and in the form reasonably requested by City.

E. (§ 705) Indemnification During Construction.

During construction on the New Site and until such time as a Certificate of Completion and Satisfaction has been issued pursuant to this Disposition Agreement, Darling shall indemnify and hold City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the New Site and which shall be directly or indirectly caused by any acts, errors or omissions of Darling or its agents, servants, employees, or contractors. Darling shall not be responsible for (and such indemnity shall not apply to) any acts errors or omissions of City or their respective agents, servants, employees or contractors.

City shall not be responsible for any acts, errors or omissions of any person or entity except its own agents, servants, employees or contractors subject to any and all statutory and other immunities. City shall also be responsible for the indemnity and related obligations provided for in Section 403-4.

F. (§ 706) CGL and Workers' Compensation Insurance.

1. Types of Insurance.

Prior to the entry of Darling on the New Site for investigation, and until such time as a Certificate of Completion and Satisfaction is issued, Darling shall procure and maintain (or cause to be procured and maintained), at its sole cost and expense, the following policies of insurance:

- (a) **Commercial General Liability Insurance ("CGL")**. Darling shall keep or cause to be kept in force for the mutual benefit of City and Darling CGL insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the New Site, improvements or adjoining areas or ways, affected by such use of the New Site or for property damage, providing protection of at least Two Million Dollars (\$2,000,000) for bodily injury or death to any one person, at least Five Million Dollars (\$5,000,000) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000) for property damage.
- (b) **Workers' Compensation**. Darling shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Darling has contracted for the performance of any work for which Darling is responsible hereunder carries workers' compensation insurance as required by law.

2. Policy Form, Content and Insurer.

All insurance required by express provisions hereof shall be carried only by insurance companies authorized to do business by California, rated "A-" or better in the most recent edition of Best Rating Guide, and only if they are of a financial category Class VIII or better. All such property policies shall contain language, to the extent obtainable, to the effect that: (i) any loss shall be payable notwithstanding any act of negligence of City or Darling that might otherwise result in the forfeiture of the insurance; (ii) the policies are primary and noncontributing with any insurance that may be carried by City; and, (iii) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City's designated representative. Darling shall furnish City with certificates evidencing the insurance as well as full copies of the policies. City shall

be named as additional insureds on all policies of insurance required to be procured by the terms of this Disposition Agreement other than workers' compensation insurance.

3. Failure to Maintain Insurance and Proof of Compliance.

Darling shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies together with a copy of the policies required hereunder within the following time limits:

- (a) For insurance required above, prior to entry of Darling on the New Site by or on behalf of Darling.
- (b) For any renewal or replacement of a policy already in existence, simultaneously with the expiration or termination of the existing policy.

If Darling fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force, such failure shall be a default hereunder, subject to the applicable cure period.

G. (§ 707) Governmental Agency Permits.

Before commencement of construction or development of any structures or other work on the New Site which are Darling's responsibility under the Scope of Development, Darling shall secure or cause to be secured any and all permits which may be required by City or any other applicable governmental agency having jurisdiction. Without limiting the generality of the foregoing, Darling shall diligently pursue all permits required by SJVAPC District for the construction and operation of the New Plant. City hereby waives all applicable fees for the issuance of City permits. Darling shall pay all normal and customary fees and charges for permits issued by other governmental agencies.

Darling shall not be obligated to commence construction if any such permit is not issued despite good faith effort by Darling.

To the extent legally permissible, City covenants to provide for expedited processing of all City permits and Entitlements required for the construction and development of the New Plant and the New Site in accordance with the Approved Plans, including (i) that permits shall be issued over-the-counter by the Planning Director or the director of other departments having responsibility for issuance of City permits; (ii) shall not require approval of the Planning Commission; and (iii) shall not require a public hearing. If there is delay beyond the usual time for obtaining any such permits due to no fault of Darling, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained.

H. (§ 708) Right of Access.

Representatives of City shall have the reasonable right of access to the New Site at any time during normal construction hours during the period of construction, for the purpose of assuring compliance with this Disposition Agreement, including, but not limited to, the inspection of the construction work being performed by or on behalf of Darling. Such representatives of City shall be those who are so identified in writing by the City Manager. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the New Site. Except in cases of emergency, no such representative of the City shall access the site unless the construction superintendent or similar person in charge on the New Site is available to accompany

him or her during the inspection, and such City representative wears the safety gear reasonably required and made available by Darling, and complies with all safety standards imposed by Darling. City shall indemnify, defend, and hold Darling harmless from any injury or property damage caused or liability arising out of City's exercise of this right of access.

I. (§ 709) Applicable Laws.

Darling shall carry out the construction of the improvements to be constructed by Darling in conformity with all applicable federal and state laws, including, but not limited to, labor laws and prevailing wage laws, if applicable.

J. (§ 710) Anti-discrimination during Construction.

Darling, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by Darling, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

K. (§ 711) Taxes, Assessments, Encumbrances and Liens.

Darling shall pay, when due, all real estate taxes and assessments assessed or levied subsequent to conveyance of the New Site, if any. Until the date that the Darling is entitled to the issuance of a Certificate of Completion and Satisfaction (as defined in Section 513) executed by City, Darling shall not place or allow to be placed thereon any mortgage, trust deed, encumbrance or lien (except mechanic's liens prior to suit to foreclose the same being filed) prohibited by this Disposition Agreement. Darling shall remove or have removed any levy or attachment made on the New Site, or assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit Darling from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to Darling in respect thereto.

L. (§ 712) Certificate of Completion and Satisfaction.

Upon both: (i) the completion of all construction required to be completed by Darling on the New Site pursuant to the terms of this Disposition Agreement; and, (ii) commencement of operations at the New Plant, City shall furnish Darling with the Certificate of Completion and Satisfaction for the New Site in the form of Attachment No. 10 upon written request therefor by Darling. The Certificate of Completion and Satisfaction shall be executed and notarized so as to permit it to be recorded in the Official Records of Fresno County.

City shall not unreasonably withhold a Certificate of Completion and Satisfaction. If City refuses or fails to furnish a Certificate of Completion and Satisfaction within thirty (30) days after written request from Darling or any entity entitled thereto, City shall provide a written statement of the reasons City refused or failed to furnish a Certificate of Completion and Satisfaction. The statement shall also contain City's opinion of the action Darling must take to obtain a Certificate of Completion and Satisfaction. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, City will issue its Certificate of Completion and Satisfaction upon the posting of a bond or other security reasonably acceptable to City by Darling with City in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed or other assurance reasonably satisfactory to City.

Such Certificate of Completion and Satisfaction is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Darling's right to obtain a Certificate of Occupancy from the City before the Certificate of Completion and Satisfaction is issued.

M. (§ 713) Estoppels.

At the request of Darling, City shall, from time to time and upon the request from Darling, timely execute and deliver to Darling a written statement of City that no default or breach exists (or would exist with the passage of time, or giving of notice or both) by Darling under this Disposition Agreement, if such be the fact, and certifying as to whether or not Darling has at the date of such certification complied with any obligation of Darling hereunder as to which Darling or such holder may inquire. The form of any estoppel letter shall be prepared by Darling and reasonably approved by City.

VIII. (§ 800) NEW PLANT: CONSTRUCTION AND OPERATIONS.

A. (§ 801) New Plant Design Capacity.

The New Plant shall be designed to be consistent with an operational statement to be provided by Darling which shall provide for a minimum capacity of rendering operations to process up to ten million (10,000,000) pounds per week, which statement shall be subject to the approval of City which approval shall not be unreasonably withheld ("**Operational Statement**").

B. (§ 802) New Plant Construction.

Promptly, but in no event later than ninety (90) days after the Closing of Escrow, Darling shall commence and diligently prosecute to completion the construction of the New Plant in accordance with the Approved Plans and applicable permits.

Without limiting the generality of the foregoing, Darling acknowledges and agrees it may only use the New Site for operation of a New Plant consistent with the terms, covenants and conditions as set forth in this Disposition Agreement, and the applicable portions of the Fresno Municipal Code.

C. (§ 803) Operation of New Plant.

In order to remain eligible for the Financial Assistance, promptly upon completion of the construction of the New Plant, Darling shall commence operating the New Plant for a period of at least twenty (20) years. City's obligation to provide the Financial Assistance shall terminate immediately upon ceasing of operations of the New Plant for three hundred sixty five (365) consecutive days (a "Plant Operation Termination"). Notwithstanding the foregoing, any cessation of operations of the New Plant that arises due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the New Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of a public or agency or entity, or any other causes beyond the reasonable control or without the fault of Darling, shall not be taken into account in determining the existence of a Plant Operation Termination.

D. (§ 804) Covenants Run with Land; Effect of Covenants.

1. Covenants Run with the Land.

- (a) All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Disposition Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the New Site, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns.
- (b) All of the provisions of this Disposition Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law.
- (c) Each covenant to do or refrain from doing some act on the New Site hereunder: (i) is for the benefit of and is a burden upon every portion of the New Site; (ii) runs with such lands; and, (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.
- (d) City's obligations to provide the Financial Assistance shall not merge into the Grant Deed to be delivered at the Close of Escrow.

2. Beneficiary and Third Party Beneficiary.

The covenants in favor of City shall run with the land without regard to whether City has been, remains or is an owner of any land or interest in the vicinity of the New Site. City shall have the right, if any of the covenants set forth in this Disposition Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. No other person or entity shall have any right to enforce the terms of this Disposition Agreement under a theory of third-party beneficiary or otherwise. The covenants running with the land and their duration are set forth in the Deed.

E. (§ 805) Obligation to Refrain from Discrimination.

There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the New Site, or any portion thereof, nor shall Darling, or any person claiming under or through Darling, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the New Site or any portion thereof. The nondiscrimination and non-segregation covenants contained herein and set forth in the Deed shall remain in effect in perpetuity.

F. (§806) Form of Nondiscrimination and Non-Segregation Clauses.

Darling shall refrain from restricting the rental, sale, or lease of any portion of the New Site on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

1. Deeds.

In Deeds the following language shall appear: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any persons claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

2. Leases.

In Leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee, or any person claiming under or through him or her, establish or permit any such practice or practices, of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

3. Contracts.

Any contracts which Darling or, Darling's heirs, executors, administrators, or assigns propose to enter into for the sale, transfer, or leasing of the New Site shall contain a nondiscrimination and non-segregation clause substantially as set forth in this Section. Such clause shall bind the contracting party and subcontracting party or transferee under the instrument.

G. (§ 807) Maintenance of New Plant & Improvements.

Darling covenants and agrees for itself, its successors and assigns, that, after issuance of the Certificate of Completion and Satisfaction pursuant to this Disposition Agreement, Darling shall be responsible for maintenance of the New Plant and all improvements on the New Site from time to time (including without limitation buildings, parking lots, lighting, signs, and walls), in good condition and repair, and in accordance with all requirements of the Fresno Municipal Code.

IX. (§ 900) EXISTING PLANT.

A. (§ 901) Cessation of Operations at Existing Plant.

Within six (6) months of the later to occur of: (i) City's issuance of a certificate of occupancy for the New Plant; or, (ii) SJVAPC District issuance of SJVAPC Permits for the operation of the New Plant, Darling shall cease all further rendering operations at the Existing Plant.

B. (§ 902) Decommissioning of Existing Plant.

Within six (6) months from the ceasing of rendering operations at the Existing Plant as required by Section 901, Darling shall, at Darling's sole cost and expense and subject to obtaining all applicable permits, have removed all silos and equipment from the Darling Property in accordance with all applicable laws and ordinances. Notwithstanding the foregoing, to the extent that portable structures are classified as "equipment" rather than a structure, such items may remain on the Darling Property together with buildings. Based on Darling's representations and warranties in Section 903, City is not imposing additional environmental site evaluations as part of the decommissioning activities.

C. (§ 903) Representations and Warranties Regarding Darling Property.

Darling represents and warranties to City that as of each of the Effective Date, the Closing Date, the date that the Existing Plant ceases operations and the date that the Existing Plant is decommissioned as set forth in Section 902, there are no known conditions on the Darling Property that constitute human health risks. The representation and warranty in this Section 903 does not limit any liability for Darling regarding the Darling Property and that certain letter dated December 11, 2011 from the United States Environmental Protection Agency to Oliver Baines as Councilmember of the City of Fresno.

IX-A (§ 904) DARLING OPTION RIGHTS FOR ADJACENT ACREAGE

At the Closing, City shall grant Darling an option to purchase up to 20 acres of the adjoining site as depicted in Attachment 4 ("Option Site"), expiring on December 31, 2022 at 11:59 p.m. ("Option Term") for the purchase price of \$22,000 per acre, which is the appraised value. Concurrent with the Closing, the City and Darling shall enter into an Option Agreement in the form of Attachment 5. Darling may exercise this option any time during the Option Term by providing written notice of such exercise and an executed Purchase and Sale Agreement in the form of Exhibit "B" to Attachment 5. This option is assignable to a business conducting a use related to rendering, with the written approval of the City.

IX-B (§ 905) PRESERVATION OF PERMITTED USES.

In the event the New Site is not transferred to Darling and operations continue at the Existing Plant, then Darling shall retain whatever rights and obligations it may currently possess with respect to the Existing Plant, irrespective of the approval of an applicable Specific Plan or rezoning to implement such Specific Plan; however, if Darling seeks to expand operations at the Existing Plant, the expansion will be processed consistent with the procedure in place prior to the adoption of the South West Specific Plan and any rezoning to implement the South West Specific Plan. This provision shall survive termination of the Agreement should Darling not relocate; however, if Darling does relocate pursuant to this Agreement, then this provision shall be of no effect. Darling may, by a written election delivered to the City, waive the provisions of the foregoing and elect to be governed by subsequent land use designations or zonings adopted by the City.

X. (§ 1000) DEFAULTS, REMEDIES, TERMINATION, AND LITIGATION.

A. (§ 1001) Defaults, Right to Cure and Waivers.

Subject to any Enforced Delay, failure or delay by either party to timely perform any covenant of this Disposition Agreement constitutes a default under this Disposition Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

Except as otherwise provided in this Disposition Agreement, waiver by a party of the performance of any covenant, condition, or promise, shall not invalidate this Disposition Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by a party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

B. (§ 1002) Legal Actions.

1. Institution of Legal Actions.

In addition to any other rights or remedies, and subject to the requirements of Section 701, a party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Disposition Agreement. Legal actions must be instituted and maintained in the Superior Court of the County of Fresno, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

2. Applicable Law and Forum.

The internal laws of the State of California shall govern the interpretation and enforcement of this Disposition Agreement, without regard to conflict of law principles.

3. Acceptance of Service of Process.

In the event that any legal action is commenced by Darling against City, service of process on City shall be made by personal service upon the City Manager or City Clerk, or in such other manner as may be provided by law.

In the event that any legal action is commenced by City against Darling, service of process on Darling shall be made in such manner as may be provided by law.

C. (§ 1003) Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Disposition Agreement, the rights and remedies of the parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another party.

D. (§ 1004) Waiver.

Except as otherwise provided in this Disposition Agreement, waiver by a party of the performance of any covenant, condition, or promise shall not invalidate this Disposition Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by a party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by a party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

E. (§ 1005) Specific Performance.

In addition to any other remedies permitted by this Disposition Agreement, if a party defaults hereunder by failing to perform any of its obligations herein, that party agrees that the other party shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy. In this regard, Darling specifically acknowledges that City and Agency are entering into this Disposition Agreement for the purpose of assisting in the termination of rendering activities at the Existing Plant and not for the purpose of enabling Darling to speculate with land.

F. (§ 1006) Right of Reverter.

City shall have the right, at its option, to reenter and take possession of the respective portion of the New Site which it conveyed, with all improvements thereon (other than equipment) and to terminate and re-vest in City the estate it conveyed to Darling if, after Closing and prior to the recordation of the Certificate of Completion and Satisfaction, Darling (or its successors in interest) shall:

1. Fail to commence construction of the improvements as required by this Disposition Agreement for a period of ninety (90) days after written notice to proceed from City, provided that Darling shall not have obtained an extension or postponement to which Darling may be entitled pursuant to this Disposition Agreement; or
2. Abandon or substantially suspend construction of the improvements for a period of ninety (90) days after written notice of such abandonment or suspension from City, provided that Darling shall not have obtained an extension of time to which Darling may be entitled pursuant to this Disposition Agreement; or
3. Assign or attempt to assign this Disposition Agreement, or any rights herein, or transfer, or suffer any involuntary transfer of, the New Site, or any part thereof, in violation of this Disposition Agreement, and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by City to Darling.

This right of reverter shall be interpreted liberally in order to protect City's contribution of financial assistance to Darling which was made as material consideration for Grantee constructing the New Plant and terminating rendering operations at the Existing Plant as set forth in this Disposition Agreement.

In the event of a sale of the property pursuant to the foregoing, the proceeds thereof shall be applied as follows:

- (a) First, to reimburse City for all costs and expenses incurred by City, including but not limited to, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and sale of the New Site; all unpaid liabilities for taxes, assessments and water and sewer charges with respect to the New Site; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the New Site or part thereof; and amounts otherwise owing City by Darling, its successors, or transferees; and,
- (b) Second, to reimburse Darling, its successor or transferee, up to the amount equal to: (i) the sum equal to the fair market value of the New Site; (ii) the costs incurred for the development of the New Site and for the agreed improvements existing on the New Site at the time of the re-entry and repossession; less, (iii) any gains or income withdrawn or made by Darling from the New Site or the improvements thereon.
- (c) Any balance remaining after such reimbursements shall be retained by City, as applicable, as its property.

The rights established in this Section are to be interpreted in light of the fact that City is contributing the New Site to Darling for development and not for speculation in undeveloped land.

The Right of Reverter shall automatically terminate upon the recordation of the Certificate of Compliance.

G. (§ 1007) Attorney's Fees.

If a party to this Disposition Agreement is required to initiate or defend any action or proceeding in any way arising out of the parties' agreement to, or performance of this Disposition Agreement, or is made a party to any action or proceeding by Escrow Agent or other third party, such that the parties hereto are adversarial, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees from the other. As used herein, the "**prevailing party**" shall be the party determined as such by a court of law pursuant to the definition in Code of Civil Procedure Section 1032(a)(4), as it may be subsequently amended. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

XI. (§ 1100) GENERAL PROVISIONS.

A. (§ 1101) Notices, Demands and Communications between the Parties.

Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; in either case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

Darling: Darling Ingredients Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: Rick Elrod
Executive Vice President, DAR PRO U.S.A.

With a copy to: Darling Ingredients Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: John Sterling
Executive Vice President,
General Counsel and Secretary

City: City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

With copy to: City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Attorney

B. (§ 1102) Non-Liability of City Officials and Employees; Conflicts of Interest; Commissions.

1. Personal Liability.

No member, official, employee, agent or contractor of City shall be personally liable to Darling in the event of any default or breach by City or for any amount which may become due to Darling or on any obligations under the terms of the Disposition Agreement; provided, it is understood that nothing in this Section 802 is intended to limit City's liability.

2. Conflict of Interest, Warranty, and Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Disposition Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Disposition Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non "interest" pursuant to California Government Code Sections 1091 and 1091.5. Darling warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Disposition Agreement. Darling further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result or consequence of obtaining or being awarded any agreement. Darling is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Disposition Agreement void and of no force or effect.

3. Commissions.

City and Darling represent and warrant to the other that it has not retained any broker or finder or paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Disposition Agreement. A party shall not be liable for any real estate commissions, brokerage fees or finders' fees which may arise from this Disposition Agreement, and each party agrees to hold the other parties harmless from any claim by any broker, agent, or finder retained by such party.

C. (§ 1103) Enforced Delay: Extension of Times of Performance.

Time is of the essence in the performance of this Disposition Agreement.

Notwithstanding the foregoing, in addition to specific provisions of this Disposition Agreement, performance by a party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the New Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of a public or agency or entity (except that acts or the

failure to act of the agency shall not excuse performance by the agency); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "**Enforced Delay**"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the enforced delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other parties within ten (10) days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim.

Times of performance under this Disposition Agreement may also be extended by mutual written agreement by City and Darling. The City Manager of City shall have the authority on behalf of City to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the New Site.

D. (§ 1104) Books and Records.

1. Darling to Keep Records.

Darling shall prepare and maintain all books, records and reports necessary to substantiate Darling's compliance with the terms of this Disposition Agreement or reasonably required by City.

2. Right to Inspect.

A party shall have the right, upon not less than seventy-two (72) hours' notice, at all reasonable times, to inspect the books and records of another party pertaining to the New Site as pertinent to the purposes of this Disposition Agreement.

3. Ownership of Documents.

Copies of all drawings, specifications, reports, records, documents and other materials pertaining to the condition of the New Site prepared by Darling, its employees, agents and subcontractors, in the performance of this Disposition Agreement, which documents are in the possession of Darling and are not confidential shall be delivered to City upon request in the event of a termination of this Disposition Agreement, and Darling shall have no claim for additional compensation as a result of the exercise by City of its rights hereunder. City shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same, provided, however, that: (i) City shall have no rights of reliance thereon; and, (ii) Darling makes no warranty or representation regarding the completeness, accuracy or sufficiency of such documents, and Darling shall have no liability therefor or in connection therewith. Notwithstanding the foregoing, City shall not have any right to sell, license, convey or transfer the documents and materials to any third party, or to use the documents and materials for any other site, except in the case of a termination of this Disposition Agreement due to default of Darling.

E. (§ 1105) Assurances to Act in Good Faith.

City and Darling agree to execute all documents and instruments and to take all action, including deposit of funds in addition to such funds as may be specifically provided for herein, and as may be reasonably required in order to consummate conveyance and development of the New Site as herein contemplated, and shall use their commercially reasonable efforts, to accomplish the Closing and subsequent development of the New Site in accordance with the provisions hereof. City and Darling shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

F. (§ 1106) Interpretation.

The terms of this Disposition Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against a party by reason of the authorship of this Disposition Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Disposition Agreement. This Disposition Agreement includes all attachments attached hereto, which are by this reference incorporated in this Disposition Agreement in their entirety. This Disposition Agreement also includes the Redevelopment Plan and any other documents incorporated herein by reference, as though fully set forth herein.

G. (§ 1107) Entire Agreement, Waivers and Amendments.

This Disposition Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and this Disposition Agreement supersedes all negotiations and previous agreements among the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Disposition Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of City or Darling, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Darling.

H. (§ 1108) Severability.

In the event any term, covenant, condition, provision or agreement contained herein is held to be invalid, void or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any term, covenant, condition, provision or agreement contained herein.

I. (§ 1109) Time for Acceptance of Disposition Agreement.

This Disposition Agreement, when executed by Darling and delivered to City, must be authorized, executed and delivered by City not later than the time set forth in the Schedule of Performance or this Disposition Agreement shall be void, except to the extent that Darling shall consent in writing to further extensions of time for the authorization, execution, and delivery of this Disposition Agreement. After execution by Darling, this Disposition Agreement shall be considered an irrevocable offer until such time as such offer shall become void due to the failure of City to authorize, execute and deliver the Disposition Agreement in accordance with this Section.

[END OF DISPOSITION AGREEMENT]

PART II

DEVELOPMENT AGREEMENT

RECITALS

A. Legal Authority. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 et seq. of the Government Code ("**Development Agreement Law**"). Pursuant to the Development Agreement Law, City is authorized to enter into a binding development agreements having a legal or equitable interest in real property for the development of the real property. As a charter City, while City is not limited to the Development Agreement Law to enter into development agreements, City has elected to enter this Development Agreement under the Development Agreement Law and in accordance with the Fresno Municipal Code Sections 15-6001 et seq.

B. Development Approvals. City has issued certain applicable development approvals affecting the New Site pursuant to the Disposition Agreement including the following ("**Development Approvals**"):

1. A general plan amendment ("**General Plan Amendment**"),
2. This Development Agreement ("**DA Application**").
3. A zoning designation change ("**Rezone Application**").
4. CEQA approval as specified in the Disposition Agreement ("**CEQA**").

C. Certainty Desired. Darling desires to carry out the Project and the development of the New Site for the New Plant in accordance with the Disposition Agreement and Development Approvals. The complexity, magnitude and build-out of the Project would be difficult for Darling to undertake if City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the New Site. In order to obtain the tax and other benefits the development of the New Site will provide and to assure that the impacts of the project will be adequately addressed, City desires certainty as to the scope of development, including the design standards, and in particular that needed infrastructure, facilities and services related to the Project will be provided in a timely fashion. Darling desires certainty regarding the type and amount of development fees and exactions that it will be charged by City and to define the design review and permitting process. Both parties desire to determine which party will be responsible for particular infrastructure improvements, including financing of the public facilities and improvements, and the timeline for constructing these improvements. As a result of the execution of this Development Agreement, both parties can be assured that the development of the New Site can proceed without disruption caused by a change in City planning and development policies and requirements.

D. Subsequent Development Approvals. In addition to the Development Approvals, the development of the New Site will require certain additional future land use and construction approvals from City to implement the Development Approvals ("**Subsequent Development Approvals**"). The Subsequent Development Approvals include, but are not limited to, the following:

1. A Conditional Use Permit (“**CUP**”) pursuant FMC section 15-5301 et. seq. to operate a rendering facility as required by Fresno Municipal Code 15-1302 on the New Site.

2. A Development Permit (“**Development Permit**”) pursuant to FMC section 15-5201 et. seq.

E. Consistent with General Plan and Specific Plan. City hereby finds and determines that execution of this Development Agreement is in the best interests of the public health, safety and general welfare and is consistent with the General Plan and the Specific Plan.

F. City Determinations. The City Council has determined this Development Agreement furthers the public health, safety, and general welfare, and the provisions of this Agreement are consistent with the goals and policies of the Fresno General Plan. For the reasons recited herein, City and Darling have determined the Darling Project is a development for which this Development Agreement is appropriate and will eliminate uncertainty regarding the Darling Project and certain subsequent development approvals. This Development Agreement and the Darling Project: (1) will provide for the development of unused land; (2) result in the ceasing of operation of the Existing Plant; (3) allow the Darling rendering operation to continue to operate on the New Site which is in a more suitable location away from residential areas and will keep jobs within the City; (4) provide appropriate infrastructure improvements; (5) meet the goals of the Fresno General Plan; and (6) facilitate the settlement of the resolution of the Litigation. It is based upon these benefits to City that the City is agreeable to proceeding with the Darling Development Approvals and CEQA to facilitate the Darling Project.

G. Voluntary Agreement. This Development Agreement is voluntarily entered into by Darling in order to implement the General Plan and the Specific Plan and in consideration of the rights conferred and the procedures specified herein for the development of the New Site. This Development Agreement is voluntarily entered into by City in the exercise of its legislative discretion in order to implement the General Plan and the Specific Plan and in consideration of the agreements and undertakings of Darling under this Development Agreement.

H. Survival of Agreement. This Agreement shall survive beyond the term of the present City Council.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Darling agree as follows:

ARTICLE 1

GENERAL PROVISIONS

100. Property Description and Binding Covenants. The New Site is that certain real property described on Attachment No. 3. Darling represents that it has an equitable interest in the New Site pursuant to the Disposition Agreement. This Development Agreement is a covenant which shall run with the New Site, and the burdens and benefits hereof shall bind and inure to all successors in interest.

101. Vested Rights. Darling shall have a vested right to develop the New Plant on the New Site for the period this Development Agreement is in effect in accordance with the Development Approvals, Subsequent Development Approvals, the provisions of this Development Agreement and Applicable Rules, (as defined in Section 102). Pursuant to the Disposition Agreement, the

parties have negotiated and agreed upon the impact fees, dedications, and exactions. The parties intend that these shall be the only impact fees, dedications, and exactions applicable to the development of the New Site. The amounts of the impact or entitlement/permit processing fees shall be only those provided in the Disposition Agreement.

Darling shall be exempt from any new development impact fees that City may adopt in the future for facilities, permits or impacts not currently covered by existing fees or existing development impact fees.

To the extent not otherwise provided in this Development Agreement, the conditions of approval and mitigation measures in the Development Approvals related to dedications and reservation of easements are intended to meet the requirements of Government Code Section 65865.2 related to a development agreement providing a provision for the reservation or dedication of land for a public purpose.

Darling understands and covenants to comply with all conditions specified in the respective Development Approvals to prevent violation of any of the Development Approvals.

102. Rules, Regulations and Official Policies.

102.1 Applicable Rules, Regulations and Official Policies. For the term of this Development Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the New Site shall be the Applicable Rules as defined in this Section 102.1. The Applicable Rules are defined as those rules, regulations, and official policies set forth in: (i) the Development Approvals; (ii) this Development Agreement (including Exhibits); and, (iii) with respect to matters not addressed by these documents, those plans, codes, rules regulations, official policies, standards and specifications in force on the Effective Date, to the extent not inconsistent with the Development Approvals and this Development Agreement. The Applicable Rules shall also include any subsequent Development Approvals granted as of the date of their effect and any changes in the General Plan and Specific Plan, Fresno Municipal Code or any future rules, ordinances, regulations or policies adopted by City which are made applicable by the provisions of Section 102.2.

Except as otherwise provided in this Development Agreement, to the extent any future changes in the General Plan and Specific Plan, Fresno Municipal Code or any future rules, ordinances, regulations or policies adopted by City purport to be applicable to the development of the New Site but are inconsistent with the terms and conditions of this Development Agreement, the terms of this Development Agreement shall prevail, unless the parties mutually agree to amend or modify this Development Agreement pursuant to Section 700.

To the extent not otherwise provided in this Development Agreement, the requirements of the Applicable Rules shall fulfill the requirements of Government Code Section 65865.2 related to the agreement specifying allowed uses, allowed density and intensity of uses and maximum height and size of proposed buildings.

102.2. Changes in State or Federal Law. This Section shall not preclude the application to the development of the New Site of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required to be applied to the New Site by changes in state or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Development Agreement, or action by any governmental jurisdiction other than City, prevent or preclude compliance with one or more provisions of this Development Agreement or require changes in plans, maps or permits approved by City, then the parties shall meet and

confer in good faith to determine the feasibility of modifying, extending or suspending one or more provisions of this Development Agreement as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction. In any such meeting, Darling carries the burden, in the first instance, to provide options to City that demonstrate the feasibility of modifying, extending or suspending the Agreement in part. Darling is required to provide all engineering and analyses to support its position that meet industry and City standards.

To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including City, required by federal or state agencies) have the effect of preventing, delaying or modifying development of the New Site, City shall not in any manner be liable for any such prevention, delay or modification of said development. Darling is required, at its cost and without cost to or obligation on the part of City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies (or such actions of regional and local agencies, including City, required by federal or state agencies).

103. City's Reservation of Authority. The parties acknowledge that the intent of the parties is that this Development Agreement be construed in a manner that protects the vested rights granted to Darling herein to the maximum extent allowed by law. The parties further acknowledge and agree, however, that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Development Agreement are intended to reserve to City all of its police power and/or statutory or other legal powers or responsibilities that cannot be so limited. This Development Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract, including compliance with CEQA. Nor shall this Development Agreement be construed to limit the authority or obligation of City to hold necessary public hearings, to limit the discretion of City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by City or any of its officers or officials in a manner not inconsistent with this Agreement.

104. Term; Recordation. The term of this Development Agreement shall commence upon the Effective Date and shall extend for a period of thirty (30) years. Thereafter, unless said term is modified or extended by circumstances set forth in this Development Agreement or by mutual consent of the parties, subject to the provisions of Section 700 hereof, upon expiration of said term, this Development Agreement shall be deemed terminated and of no further force and effect and the parties shall, upon request of City, execute an appropriate certificate of termination which shall be recorded in the Official Records of the County of Fresno, subject, however, to the provisions of Section 307 hereof. In the event that any litigation is commenced by any third party challenging the Development Approvals, the term of this Development Agreement shall be extended for the period involved in achieving final resolution of such litigation.

105. Sale or Assignment; Release. This Development Agreement, its rights, duties or obligations may be assigned, sold, exchanged or transferred, in whole or in part, in connection with a transfer by Darling of the New Site, subject to the following conditions:

105.1 Except as set forth in subsection 105.2, a sale, transfer or assignment of all or a portion of Darling's interest in this Development Agreement shall not require the approval of City provided that (i) any proposed assignee or transferee also obtains title to the New Site and agrees to assume and be bound by all applicable duties, obligations and covenants of Darling under this Development Agreement and the Disposition Agreement; and, (ii) Darling affirms its commitment to terminate Prohibited Operations at the Existing Plant (or has otherwise already terminated such operations and recorded the Covenant Agreement defined in the Disposition Agreement). The

assumption must be set forth in an assumption agreement in a form reasonably acceptable to and approved in writing by City.

105.2 Darling shall reimburse City for its legal and administrative costs to review the assignment and provide notice and interpretations to the assignee. Upon such assignment and assumption Darling shall be released from Darling's obligations hereunder with respect to the transfer of the New Site and provided that Darling remains obligated to terminate Prohibited Operations at the Existing Plant. Darling shall have the right to designate any successor as Darling ("**Successor Developer**") if Darling no longer retains any interest in the New Site so long as the Successor Developer assumes all Darling's responsibilities.

105.3 If Darling transfers the New Site and assigns this Development Agreement in violation of the terms of this Section, City may terminate the Agreement at its discretion with fifteen (15) days written notice.

ARTICLE 2

DEVELOPMENT OF THE NEW SITE

200. Permitted Uses and Development Standards. In accordance with and subject to the terms and conditions of this Development Agreement, Darling shall develop the New Site for the uses in accordance with the Disposition Agreement and the Applicable Rules as set forth in Section 102.1 of this Development Agreement.

201. Approvals.

201.1 Processing Subsequent Development Approvals.

201.1.1 Timely Submittals by Darling. Darling acknowledges that City cannot begin processing Subsequent Development Approvals until Darling submits complete applications. Darling shall use its best efforts to: (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and, (ii) cause Darling's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other required materials as set forth in the Applicable Rules. Darling shall use all reasonable efforts to submit or cause to be submitted documents, applications, plans and other information necessary for City to carry out its obligations hereunder that are in a final form, not subject to unreasonable changes by Darling and that comply with this Development Agreement and all Applicable Rules.

201.1.2 Timely Processing by City. Upon submission by Darling of all appropriate applications and applicable processing fees for any Subsequent Development Approval, City shall expeditiously commence and complete all steps necessary to act on Darling's Subsequent Development Approval applications. City reserves the right to reject any incomplete non-conforming submittals, subject to its obligations to provide comments pursuant to Section 404(5) of the Disposition Agreement.

201.1.3 Effect of Legal Proceedings. Notwithstanding any pending administrative or judicial proceedings, initiative or referendum concerning the Development Approvals or Subsequent Development Approvals, and provided that such actions by City or Darling are not proscribed by law or court order, City shall process Darling's applications for Subsequent Development Approvals as provided for herein to the fullest extent allowed by law and Darling may proceed with development pursuant to the Development Approvals or Subsequent Development Approvals to the fullest extent allowed by law.

201.2 Certificates of Occupancy. Subject to any requirements in this Development Agreement for issuance of certificates of occupancy, City shall use all reasonable efforts to diligently and promptly provide a certificate of occupancy for any portion of the New Site when applied for by Darling and upon completion of all necessary requirements to obtain a certificate of occupancy.

201.3 Non-Development Entitlement Plan Review. Nothing provided in this Section 201 is intended to include the submission and review by City of plans for off-site improvement including, but not limited to, constructions plans for streets, sewer lines, and traffic signals. Review of off-site improvements shall be pursuant to the existing adopted City policies, ordinances and standards including payment of any required fees (some of which shall be City's responsibility as specified in the Disposition Agreement.)

202. Improvements and Public Facilities.

202.1 Financing and Construction. Except as set forth in the Disposition Agreement, Darling is responsible for financing and constructing the on-site improvements (whether private or public) and public facilities in conjunction with the development of the New Site, all as set forth in the mitigation measures of the MND for the Project and the Development Approvals:

202.1.1 On-Site Improvements. For purposes of this Development Agreement, the term "on-site improvements" shall mean only those improvements developed on the New Site, and which are to be dedicated to the ownership of the City. Except for any on-site improvements required to be constructed by City pursuant to the Disposition Agreement, Darling shall provide to City a list of on-site improvements that constitute public works of improvement and shall pay prevailing wages for labor required to construct those improvements on that list, to the extent required under the Labor Code, Sections 1720, 1721 and any other applicable provisions related to the payment of prevailing wages. Darling shall provide a public utility easements or equivalent easements to be granted to City to support any on-site improvements.

202.1.2 Off-Site Improvements. For purposes of this Development Agreement, the term "**off-site improvements**" shall mean only those off-site improvements applicable to the Project which are not the specific responsibility of City pursuant to the Disposition Agreement.

Darling will construct all off-site improvements required for the New Plant pursuant to the Approved Plans as specified in the Disposition Agreement. Darling acknowledges that off-site improvements constitute public works of improvement and are, therefore, subject to the requirements of California Labor Code, Sections 1720, 1721 and any other applicable provisions related to the payment of prevailing wages. Darling shall provide payment and performance security for the construction of the off-site improvements. The type and amount of the payment and performance security shall be as set forth in Fresno Municipal Code, Section 12-1016, entitled "Improvement Security".

202.1.3 Financing of Off-Site Improvements. Darling is responsible for financing the construction of the off-site improvements. Darling will receive reimbursements and credits from City from appropriate fee programs for off-site improvements to the extent that they are expressly provided for in the Applicable Rules or in this Development Agreement.

202.2 Community Facilities District. Darling may request and City shall use its good faith efforts to form a community facilities district(s) ("**CFD**") or to include the New Site in an existing CFD, for the purpose of funding all or a portion of the off-site improvements which are to be dedicated to City, including without limitation, design, acquisition and construction costs, and public facility maintenance costs or public services. Upon request from Darling, City shall diligently

and expeditiously initiate CFD proceedings utilizing the special tax mechanisms authorized under the law of the State of California or the Fresno Municipal Code where the property subject to special taxes provides primary security for payment of the special taxes, provided, however, any such CFD shall be in conformance with City policies regarding land-based financing. City's obligations under this section are contingent upon Darling providing adequate security to cover the costs of formation of the district and issuance of the bonds and upon Darling providing the information or documents within Darling's control which are necessary to form the district and issue the bonds (e.g., the list of infrastructure intended to be funded by the District and the area to be included in the District.) Darling may recover costs of formation and issuance from bond proceeds to the extent permitted by law. Nothing provided herein is intended to create a legal duty of City to form a CFD.

202.3 Public Works Development Standards; Specifications. In completing the construction of the on-site and off-site improvements, Darling shall comply with: (a) the conditions and terms of the Development Approvals and Subsequent Development Approvals; (b) all approved construction plans; (c) all applicable laws, ordinances, and resolutions in effect at the time of construction; and, (d) the construction standards applicable to the Project contained in City's Standard Specifications in effect at the time of construction applicable to the Project. If City does not have standard specifications for any particular construction to be performed but appropriate standards are available from the State of California, Department of Transportation (Caltrans), then, Darling will complete construction in accordance with such standards and specifications. City Engineer may inspect all construction and materials.

202.4 Completion and Acceptance of Public Facilities. Final written acceptance of any on-site and off-site improvements to be offered for dedication to City and to be maintained by City thereafter will constitute a finding that the improvements comply with the applicable plans and specifications. Individual on-site improvements and off-site improvements may be separately bonded by Darling. City may not unreasonably condition, delay or withhold acceptance of off-site improvements based upon the completion of on-site improvements. The determination of when certain on-site and off-site improvements need to be completed and the amount of improvement security for said improvements shall be made between City and Darling pursuant to a written agreement the terms of which shall not be inconsistent with the terms of this Development Agreement. On-site improvements and off-site improvements to be dedicated as public facilities shall be owned by City upon their completion and acceptance.

202.5 Warranty of Public Facilities. Prior to City's acceptance of particular on-site improvements or off-site improvements, Darling shall provide a warranty for any defects (whether latent or patent) in work or material or design in the off-site improvements that occur or appear within one (1) year after the date of written acceptance to take effect as to each of those at the time of their acceptance. The warranty shall provide that City may give written notice to repair or correct any defect within (7) seven calendar days of notice, occurring or appearing within one year, and Darling and/or its warrantor will repair or correct the defect without additional cost to City. After a failure of the on-site improvement or off-site improvements requiring an emergency repair by City crews, Darling or its warrantor shall reimburse all reasonable costs for labor and materials within forty-five (45) days of invoice. Failure to repair or correct any defect may result in an offset to, or suspension of, reimbursements, if any, or may be considered a default of this Development Agreement, until the repair or correction is completed to the reasonable satisfaction of City. Darling shall include City as a named beneficiary to any subcontract for or warranty of the public facilities. Furthermore, Prior to City acceptance of on-site or off-site improvements, Darling shall provide Warranty Security of the type and in the amounts set forth in Fresno Municipal Code, Section 12-1016. This subsection will survive termination of this Development Agreement.

203. Dedications and Other Exactions. Darling shall be responsible for only those dedications and other exactions provided in the Development Approvals which are not otherwise to be the specific responsibility of City pursuant to the Disposition Agreement.

204. Impact Fees; Reimbursements and Credits. Darling shall be responsible for paying only those fees provided in the Development Approvals. Darling shall be eligible for reimbursements and credits for the off-site improvements required under Section 202.1.3 as provided in Section 101. Notwithstanding the above, Darling shall be responsible for paying any fees City collects for other agencies pursuant to: (i) State or Federal law; or, (ii) any City agreements or City ordinances adopted or entered into to comply with State or Federal law or judgment of a court of law.

204. Conditions to and Formula for Reimbursement for Off-Site Improvements. Reimbursement and/or credits that Darling is expressly allowed for off-site improvements shall be given from appropriate fee programs as provided in the Fresno Municipal Code and/or adopted City policies for those fee programs as they exist at the time the reimbursement and/or credit is sought, but to no lesser degree than provided as of the Effective Date.

205. Books and Records. Darling shall establish and maintain throughout the term of this Development Agreement, and for a four (4) year period following the date of the last reimbursement of an off-site improvement, records and accounts on the New Site and its development, in accordance with normal business practices. At the times and in the forms as City may reasonably request, Darling shall furnish City with statements, records, reports, data and information related to the costs to be reimbursed for off-site improvements.

206. Project Timing. Promptly upon Darling acquiring the New Site pursuant to the Disposition Agreement, Darling shall promptly commence and diligently construct the New Plant in accordance with the Development Approvals.

207. Amendments to Development Approvals. The parties acknowledge that development of the New Site may require amendments to Development Approvals or Subsequent Development Approvals which shall be processed as follows:

207.1 Administrative Amendments (Minor Amendments). Upon the written request of Darling for an amendment or modification to a Development Approval or Subsequent Development Approval, the Planning Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor; and, (ii) whether the requested amendment or modification is consistent with the Applicable Rules. If the Planning Director or his/her designee finds that the proposed amendment or modification is minor, consistent with the Applicable Rules, and is not subject to further environmental review under CEQA (See CEQA Guidelines §§ 15162, 15163), the amendment shall be determined to be an "**Administrative Amendment**" or a "**Minor Amendment**" and the Planning Director or his/her designee may approve, or may approve with appropriate conditions, the Administrative Amendment consistent with City's procedures for minor revisions and/or amendments to special permits, including any requirements for notice, public hearing, and appeal rights. The determination of whether a requested amendment or modification is an Administrative Amendment shall be within the reasonable discretion of the Planning Director. Notwithstanding the foregoing provision, if the Director determines that an amendment has the potential to affect a facility under the responsibility of another City department, the Director shall refer the amendment to the Director of the affected Department (and/or his or her designee) who must also concur that the amendment is a minor amendment under the terms provided in this Section. For example, if an amendment has the ability to affect traffic, the Director of Public Works (and/or his or her designee) must concur that the amendment is administrative, if an amendment has the ability to affect sewer loads, the Director of Public Utilities Department (and/or his or her

designee) must concur that the amendment is administrative.

Examples of amendments or modifications which may, depending on particular circumstances, be treated as Administrative Amendments, include, but are not limited to, the following: (1) lot line adjustments that do not result in a significant change in the lot size and that comply with the requirements of the Subdivision Map Act; (2) alterations in vehicle circulation patterns or vehicle access points which do not adversely affect capacity or service levels; (3) changes in trail alignments; (4) substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan; (5) variations in the location of structures that do not substantially alter the design concepts of the project; and (6) minor alterations in design or configuration of buildings, infrastructure or other facilities that are consistent with the Development Standards set forth in the Development Approvals; and (7) minor adjustments to the New Site legal description. Administrative Amendments are subject to a processing fee as provided in Section 101.

208.2 Material Amendments. Any request of Darling for an amendment or modification to a Development Approval or Subsequent Development Approval that is determined by the Planning Director or his/her designee (or a director of another City department under the terms in Section 208.1) to be a material amendment ("**Material Amendment**"), as opposed to an Administrative Amendment, shall be subject to review, consideration and action pursuant to the laws in effect at the time the Material Amendment is considered for approval. Notwithstanding any provision in the Agreement to the contrary, City may impose mitigation measures necessary to comply with CEQA for Material Amendments. Material Amendments are subject to processing fees as provided in Section 101.

208.3 Future Amendments. Any future amendment or modification to a Development Approval or Subsequent Development Approval shall be incorporated in this Development Agreement without the need to amend this Development Agreement.

209. Encumbrances and Lender's Rights.

209.1 Permitted Encumbrances. This Development Agreement shall be superior and senior to any lien placed upon the New Site. Neither entering into this Development Agreement nor a breach of this Development Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the New Site made in good faith and for value. The parties agree that this Development Agreement shall not prevent or limit any owner of an interest in the New Site from encumbering the New Site or any portion thereof with any mortgage, deed of trust or other security device (any such device, a "**Mortgage**") securing financing with respect to the New Site. City acknowledges that the holder of any such mortgage, deed of trust or other security device ("**Lender**") may require certain agreement interpretations and modifications and agrees, from time to time, to meet with Darling and representatives of such Lender(s) to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Development Agreement and does not result in City subordinating this Development Agreement to any lien or deed of trust. As used herein the term "Lender" does not include any affiliate of or entity controlled by Darling or its owners, officers, directors, principals or members.

209.2 Lender's Rights. If Lender timely requests, in writing, receipt of notice of any event of default given under this Development Agreement to Darling or any other holder of an interest in part or all of the New Site, then City shall provide a copy of such notice to Lender within ten (10) days of sending the notice of default to Darling or other holder of an interest in part or all of the New Site. The Lender shall have the right, but not the obligation to cure the default during the

remaining cure period allowed to the defaulting party under the terms of this Development Agreement. Notwithstanding anything to the contrary herein, each Lender has a period of ninety (90) days after the receipt of that notice from City to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice. If the event of default or the noncompliance is of a nature that can only be remedied or cured by the Lender upon obtaining possession, the Lender shall diligently seek to obtain possession through a receiver or otherwise, and shall thereafter remedy or cure the event of default or noncompliance within ninety (90) days after obtaining possession. If any event of default or noncompliance cannot, with diligence, be remedied or cured within those ninety (90) day periods, then the Lender has additional time as may be reasonably necessary, as reasonably determined by City, to remedy or cure the event of default or noncompliance if the Lender commences to cure during those ninety (90) day periods, and thereafter diligently pursues completion of that cure. Nothing in this Development Agreement permits or authorizes any Lender to undertake or continue construction or completion of any improvements comprising the Project beyond the extent necessary to conserve or protect improvements or construction already made, without first having expressly assumed Darling's obligations under this Development Agreement in the manner specified herein and curing all defaults. The Lender shall receive a second default notice thirty (30) days before City institutes legal proceedings.

209.3 Lender Non-Liability. Any Lender who comes into possession of the New Site, or any part thereof, pursuant to foreclosure of a Mortgage or taking a deed in lieu of such foreclosure, shall take the New Site, or part thereof, subject to the terms of this Development Agreement, provided, however: (1) in no event shall such Lender be liable for any defaults or monetary obligations of Darling arising prior to acquisition of title to the New Site by such Lender; (2) no Lender has any obligation under this Development Agreement to construct or complete the construction of improvements, or to guarantee that construction or completion; and, (3) if Darling shall have defaulted under this Development Agreement before Lender takes title to the New Site or any part thereof, Lender shall enjoy the same rights and privileges with respect to such default as if (a) Lender were Darling, and (b) title were still held by Darling. Nothing in this Development Agreement shall be deemed or construed to permit or authorize Lender to devote the New Site, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Development Agreement, subject to all of the terms and conditions of this Development Agreement. The foregoing provisions shall not accrue to the benefit of a Lender who proceeds in the manner of a Subsequent Darling in developing and approving the New Site. Limiting itself to those development activities set forth in the next to last sentence of Section 209.2 shall create a presumption that a Lender has not proceeded to become a Subsequent Darling.

209.4 Estoppel Certificate. Within thirty (30) days following any written request which either City or Darling may make from time to time, the other shall sign and deliver to the requesting party a statement certifying that: (1) this Development Agreement is unmodified and in full force and effect or, if there have been modifications hereto, that this Development Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (2) there are not current uncured defaults under this Development Agreement or specifying the dates and nature of any such defaults; and, (3) any other reasonable information requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Development Agreement is in full force and effect without modification and that there are no uncured defaults in the performance of the requesting party. City's Planning Director, or other City officer having adequate knowledge to do so, shall be authorized to execute any such statement. An estoppel certificate obtained under this section may be relied upon by transferees and Lenders.

ARTICLE 3
DEFAULT, REMEDIES, TERMINATION

300. General Provisions.

Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either party to perform any term or provision of this Development Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Development Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged with being in default shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Development Agreement may at its option:

1. Terminate this Development Agreement, in which event neither party shall have any further rights against or liability to the other with respect to this Development Agreement or the New Site; provided, however, if portions of the New Site are held in separate ownership at the time such event of default occurs and such event of default is related only to one portion, this Development Agreement may be terminated only as to such portion and no such termination shall impair the continuing applicability of this Development Agreement to the remainder of the New Site; or

2. Institute legal or equitable action to cure, correct or remedy any default, including, but not limited to, an action for specific performance of the terms of this Development Agreement; provided, however, that in no event shall either party be liable to the other for money damages for any default or breach of this Development Agreement.

301. Darling Default; Enforcement.

No building permit shall be issued or building permit application accepted for the building shell of any structure on any portion of the New Site if the permit applicant owns or controls such portion of the New Site and if such applicant or any entity or person controlling such applicant has been found to be in default as to such portion of the New Site by City Council of City of Fresno under the terms and conditions of this Development Agreement, unless such default is cured or this Development Agreement is terminated. A default as to an owner of any portion of the New Site shall have no impact on any portion of the New Site not owned by such defaulting owner. Darling shall cause to be placed in any covenants, conditions and restrictions applicable to the New Site, or in any ground lease or conveyance thereof, an express provision for an owner of the New Site, lessee or City, acting separately or jointly, to enforce the provisions of this Development Agreement and to recover attorneys' fees and costs for such enforcement.

302. Annual Review.

City Manager shall, at least every twelve (12) months during the term of this Development Agreement, review the extent of good faith substantial compliance by Darling with the terms and conditions of this Development Agreement ("**Annual Review**"). The Annual Review shall be limited in scope to compliance with the terms and conditions of this Development Agreement pursuant to California Government Code Section 65865.1. Notice of the Annual Review shall include the statement that any review may result in amendment or termination of this Development Agreement.

The costs of notice and related costs incurred by City for the Annual Review conducted by City pursuant to this Section 302 shall be borne by Darling.

City Manager shall provide thirty (30) days prior written notice of such periodic review to Darling. Such notice shall require Darling to demonstrate good faith compliance with the terms and conditions of this Development Agreement and to provide such other information as may be reasonably requested by City Manager and deemed by him to be required in order to ascertain compliance with this Development Agreement. If, following the Annual Review, City Manager is not satisfied that Darling has demonstrated good faith compliance with all the terms and conditions of this Development Agreement, City Manager may refer the matter, along with his recommendations, to City Council.

Failure of City to conduct an Annual Review shall not constitute a waiver by City of its rights to otherwise enforce the provisions of this Development Agreement; nor shall Darling have or assert any defense to such enforcement by reason of any such failure to conduct an Annual Review.

303. Enforced Delay; Extension of Times of Performance.

In addition to specific provisions of this Development Agreement, either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, systemic financial distress, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities' enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation or similar grounds for excused performance. If written notice of such delay is given within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

304. Limitation of Legal Acts.

In no event shall City, or its officers, agents or employees, be liable in damages for any breach of violation of this Development Agreement, it being expressly understood and agreed that Darling's sole legal remedy for a breach or violation of this Development Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement.

305. Applicable Law and Attorneys' Fees.

This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Darling acknowledges and agrees that City has approved and entered into this Development Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Development Agreement shall be that accorded legislative acts of City. Except as set forth herein, should any legal action be brought by a party for breach of this Development Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

306. Invalidity of Agreement.

1. If this Development Agreement is determined by a court to be invalid or unenforceable, this Development Agreement shall automatically terminate as of the date of final entry of judgment.

2. If any provision of this Development Agreement is determined by a court to be invalid or unenforceable, or if any provision of this Development Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Development Agreement and either party in good faith determines that such provision is material to its entering into this Development Agreement, either party may elect to terminate this Development Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 300, subject, however, to the provisions of Section 307 hereof.

307. Effect of Termination on Darling's Obligations.

Termination of this Development Agreement shall not affect Darling's obligations to comply with the General Plan and the terms and conditions of any and all land use entitlements approved with respect to the New Site prior to such termination, nor shall it affect any other covenants of Darling specified in this Development Agreement to continue after the termination of this Development Agreement. If portions of the New Site are held in separate ownership at the time of such termination, this Development Agreement may be terminated only as to such portion and no such termination shall impair the continuing applicability of this Development Agreement to the remainder of the New Site.

308. Certificate of Compliance.

If after an Annual Review based upon City's own investigation and information provided by Darling, City finds Darling has complied in good faith with this Development Agreement, City shall issue to Darling a Certificate of Compliance certifying that Darling has so complied through the period of the applicable Annual Review. The Certificate of Compliance must be in recordable form and must contain such information as may be necessary to impart constructive notice of City's finding. Upon issuance of the Certificate of Compliance, City is estopped from pursuing any remedy under this Development Agreement for any default which City knew or should have known existed prior to or on the date of the Certificate of Compliance. Darling may record the Certificate of Compliance in the Official Records of the County of Fresno.

309. Certificate of Completion and Satisfaction.

After completion of the Project, City, upon request of Darling, shall execute in recordable form and deliver to Darling a Certificate of Completion and Satisfaction in the form of Attachment No. 10, certifying that Darling has satisfied all of Darling's obligations under this Development Agreement to the date of the certification. Upon issuance of a Certificate of Completion and Satisfaction, City is estopped from pursuing any remedy under this Development Agreement for any default which City knew or should have known existed prior to or on the date of the Certificate of Completion and Satisfaction. Darling may record the Certificate of Completion and Satisfaction in the Official Records of the County of Fresno.

ARTICLE 4
INDEMNITY; INSURANCE

400. Indemnity/Insurance.

400.1 Indemnification. To the furthest extent allowed by law, Darling shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Darling or any other person, for any and all claims, demands and actions in law or

equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Darling's performance of this Development Agreement or the performance of any or all work on on-site improvements or off-site improvements to be done by Darling pursuant to this Development Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance unless and until the facility is dedicated to and officially accepted by City and compliance with prevailing wages laws to the extent applicable). Darling's obligations under the preceding provisions include any claims related to or arising out of Darling's claim of a right to exclude public utilities from private streets. Darling's obligations under the preceding sentence shall apply regardless of whether Darling or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers. If Darling should subcontract all or any portion of the services to be performed under this Development Agreement, Darling shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

To the furthest extent allowed by law, the City shall indemnify, hold harmless and defend Darling and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Darling or any other person, for any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers, and arising or alleged to have arisen directly or indirectly out of City's performance of this Development Agreement or the performance of any or all work to be done on on-site improvements or off-site improvements to be done by the City pursuant to this Development Agreement. In addition, City shall be responsible for all costs associated with all CEQA compliances required to attain approval of the Development Agreement, the Disposition Agreement, and the Entitlements, including the costs of defending any legal challenges to such CEQA compliance. City will indemnify Darling for the costs of any litigation that Darling may be required to participate in, as a Real Party In Interest, with respect to such matters.

400.2 Insurance. In the event Darling undertakes construction of any off-site improvements, it shall procure and maintain (or cause to be procured and maintained), at its sole cost and expense, in a form and content reasonably satisfactory to City, during the entire term of such construction is commenced until the facility is dedicated to and officially accepted by City, the following policies of insurance:

(a) **Commercial General Liability Insurance ("CGL")**. Darling shall keep or cause to be kept in force for the mutual benefit of City and Darling CGL insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the New Site, improvements or adjoining areas or ways, affected by such use of the New Site or for property damage, providing protection of at least Two Million Dollars (\$2,000,000) for bodily injury or death to any one person, at least Five Million Dollars (\$5,000,000) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000) for property damage.

(b) **Workers' Compensation**. Darling shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Darling has contracted for the performance of any work for which Darling is responsible hereunder carries workers' compensation insurance as required by law.

(c) Policy Form, Content and Insurer. All insurance required by express provisions hereof shall be carried only by insurance companies authorized to do business by California, rated "A-" or better in the most recent edition of Best Rating Guide, and only if they are of a financial category Class VIII or better. All such property policies shall contain language, to the extent obtainable, to the effect that: (i) any loss shall be payable notwithstanding any act of negligence of City or Darling that might otherwise result in the forfeiture of the insurance; (ii) the policies are primary and noncontributing with any insurance that may be carried by City; and, (iii) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City's designated representative. Darling shall furnish City with certificates evidencing the insurance as well as full copies of the policies. City shall be named as additional insureds on all policies of insurance required to be procured by the terms of this Disposition Agreement other than workers' compensation insurance.

401. Notice of Claim.

Each party shall promptly give notice to the other party in accordance with Section 600 of this Development Agreement of any case, action or proceeding brought against either party concerning this Development Agreement or the New Site.

ARTICLE 5
PROJECT AS A PRIVATE UNDERTAKING

500. Project as a Private Undertaking.

It is specifically understood and agreed by and between the parties hereto that the development of the New Site is a separately undertaken private development and that the contractual relationship created hereunder between City and Darling is such that Darling is an independent contractor and is not an agent of City. None of the terms or provisions of this Development Agreement shall be deemed to create a partnership or joint venture between City and Darling or to provide third party beneficiary rights to any person or entity not a party hereto. The only relationship between City and Darling is that of a governmental entity regulating the development of private property and the owner of such private property.

ARTICLE 6
NOTICES

600. Notices.

All formal notices required by this Development Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the principal offices of City and Darling with copies sent as set forth below. The addresses of the parties as of the date hereof are as set forth below. Such written notices, demands, correspondence and communication may be directed in the same manner to such other persons and addresses as either party may from time to time designate in writing. Darling shall give written notice to City, within ten (10) days after the close of escrow, of any sale or transfer of any portion of the New Site and any assignment or partial assignment of this Development Agreement, specifying the name or names of the transferee, the transferee's mailing address, the legal description of the land sold or transferred, and the name and address of any person or entity to whom any notice relating to this Development Agreement shall be given with respect to such transferred portion of the New Site.

Notices required to be given to City shall be addressed as follows:

Darling: Darling Ingredients Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: Rick Elrod
Executive Vice President, DAR PRO U.S.A.

With a copy to: Darling Ingredients Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: John Sterling
Executive Vice President,
General Counsel and Secretary

City: City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

With copy to: City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Attorney

ARTICLE 7

MISCELLANEOUS

700. Amendment of Agreement.

This Development Agreement may be amended from time to time with respect to any portion of the New Site by mutual consent of City and Darling (to the extent that it continues to own any portion of the New Site) and of the then-current owner(s) of the portions of the New Site affected by such amendment, with City costs payable by the amendment applicant, in accordance with the provisions of Government Code Sections 65867 and 65868.

701. Waiver of Provisions.

No waiver of any provision of this Development Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any other occurrence or event.

702. Time of Essence.

Time is of the essence for each provision of this Development Agreement of which time is an element.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Disposition Agreement and Development Agreement as of the date of execution by City.

REMINDER:

Darling must also initial Section 403.5.

DARLING:

DARLING INGREDIENTS INC.,
a Delaware corporation

By: _____
Rick Elrod, Executive Vice President
DAR Pro U.S.A.

Dated: _____, 2017

CITY:

CITY OF FRESNO,
a California municipal corporation

By: _____
Wilma Quan-Schechter, City Manager

Dated: _____, 2017

APPROVED AS TO FORM:

By: _____
DOUGLAS T. SLOAN
City Attorney

ATTEST:

YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

**ATTACHMENT NO. 1
TO ENTIRE AGREEMENT**

LEGAL DESCRIPTION OF CITY PROPERTY

That certain real property in the City of Fresno, County of Fresno, State of California legally described as follows:

**ATTACHMENT NO. 2
TO ENTIRE AGREEMENT**

LEGAL DESCRIPTION OF DARLING PROPERTY

That certain real property in the City of Fresno, County of Fresno, State of California legally described as follows:

**ATTACHMENT NO. 3
TO ENTIRE AGREEMENT**

**DEPICTION OF NEW SITE
ATTACHMENT NO. 4
TO ENTIRE AGREEMENT**

DEPICTION OF OPTION SITE

**ATTACHMENT NO. 5
TO ENTIRE AGREEMENT**

FORM OF OPTION AGREEMENT

PURCHASE OPTION AGREEMENT

This Purchase Option Agreement (the "Agreement") is made and entered into as of this _____ day of _____, 2017 by and between the City of Fresno, a public body (the "City") and Darling Ingredients Inc., a Delaware corporation ("Darling") with reference to the following recitals of fact:

RECITALS:

A. WHEREAS, the City owns certain property located at the southwest corner of Jensen Avenue and Polk Avenue, in the City of Fresno (APN 327-030-41T) of which it has agreed to convey the northern 20 acres ("New Site") to Darling for the construction of a new rendering plant pursuant to the Disposition Agreement and Development Agreement between the City and Darling dated _____, 2017.

B. WHEREAS, Darling desires to acquire an option to purchase up to an additional 20 acres adjacent to the New Site, as more particularly described in Exhibit "A" (the "Property").

C. WHEREAS, the parties hereto desire to set forth the terms of the option granted herein from the City to Darling to purchase the Property.

NOW, THEREFORE, the parties hereto agree as follows:

1. Grant of Option. City hereby grants to Darling an option (the "Option") to purchase the Property, on the terms and conditions set forth in this Agreement.

2. Term of Option. The term of the Option (the "Option Term") shall commence on the date hereof, and shall expire at 11:59 p.m. (Pacific Standard Time) on December 31, 2022.

3. Manner of Exercising Option. Darling may exercise the Option by delivering to City, at any time during the Option Term, written notice of such and an executed Purchase and Sale Agreement in the form of Exhibit "B".

4. Purchase Price. The purchase price for the Property pursuant to the Option shall be a sum equal to a per acre price of 22,000.00 per acre based upon a professional survey to be paid for by Darling.

5. Completion of Sale.

5.1 Prior to the close of escrow on the Property following exercise of the Option, Darling shall cause a title company to issue, upon close of escrow, an ALTA standard owner's policy of title insurance dated as of the close of escrow, in an amount

equal to the Purchase Price for the Property, showing title to the Property vested in Darling and showing as exceptions all encumbrances of record as of the date hereof.

5.2 Escrow for the sale of the Property shall close on the date selected by Darling, which date shall be no later than the Option Termination Date, at which time the Purchase Price shall be due and payable in cash. City shall convey the Property to Darling by means of a grant deed. The costs of such sale shall be apportioned between City and Darling according to the custom then in effect in Fresno County, California.

6. Quitclaim Deed and Termination of Option. Upon termination of the Option Term, Darling agrees, upon City's request, to (a) execute and deliver to City a quitclaim deed, releasing all of Darling's right, title, and interest in and to the Option within thirty (30) days after termination of the Option Term, and (b) execute, acknowledge and deliver such other documents as may be reasonably required by City's title company to remove the cloud of the Option from title to the Property.

7. Notices. Notices, demands and communication between the parties shall be in writing and shall be served personally or by depositing the same in the certified United States mail, return receipt requested, post prepaid, and, if intended for City shall be addressed to:

City of Fresno
2600 Fresno Street
Fresno, CA 93721

If intended for Darling shall be addressed to:

Darling Ingredients Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: Rick Elrod
Executive Vice President, DAR PRO U.S.A.

Or to such address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given on the delivery date, or the date that delivery is refused by the addressee, as shown on the return receipt.

8. Attorney's Fees. In the event of any action or proceeding at law or in equity between any of the parties hereto to enforce any provision of this Agreement or to protect or establish any right or remedy of either party hereunder. The unsuccessful party to the litigation shall pay to the prevailing party all costs and expenses, including with limitation, reasonable attorneys' fees incurred therein by the prevailing party, and if the prevailing party recovers judgment in any action or proceeding, the costs, expenses and attorney's fees shall be included in and as part of the judgment.

9. Assignment. This Option Agreement may be assigned to a business conducting a use related to rendering, with the written approval of City.

10. Miscellaneous.

10.1 City and Darling each represent and warrant that neither has had or will have any dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the transactions contemplated hereby. Each party hereto hereby agrees to indemnify and hold harmless the other party from and against costs, expenses of liabilities for compensation, commissions or charges which may be claimed by any broker, finder or similar party by reason on any actions of the indemnifying party.

10.2 The rights and obligations of City and Darling under this Agreement shall inure to the benefit of, and bind the respective successors and assigns.

10.3 The captions used herein are for convenience of reference only and are not part of the Agreement and do not in any way limit or amplify the terms and provisions hereof.

10.4 Time is of the essence of each and every agreement, covenant and condition of this Agreement.

10.5 This Agreement shall be interpreted in accordance with, and governed by, the laws of the State of California.

10.6 This Agreement constitutes the entire agreement by and among City and Darling with respect to the subject matter hereof, and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by City and Darling.

IN WITNESS WHEREOF, City and Darling have executed this Agreement as of the date first above written.

CITY

DARLING

CITY OF FRESNO,
A California Municipal Corporation

DARLING INGREDIENTS INC., a
Delaware corporation

By: _____
Wilma Quan-Schechter, City Manager

By: _____
Rick Elrod, Executive Vice President,
DAR PRO U.S.A.

Dated: _____

Dated: _____

Exhibit "A"

To Attachment No. 5 Option Agreement
(Legal Description of Option Property)

Exhibit "B"
To Attachment No. 5 Option Agreement

**REAL PROPERTY PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THE CITY OF FRESNO, a municipal corporation, in its capacity as Housing Successor to the Redevelopment Agency of the City of Fresno ("Seller"), and DARLING INGREDIENTS INC., a Delaware corporation, ("Buyer"), enter into this Real Property Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement"), effective as of the date that the Buyer has executed it and the City Council has approved it.

RECITALS

- A. The Seller owns certain real property described in Exhibit A, attached, (the "Property").
- B. The Buyer has agreed to purchase the entire property as-is.
- C. The Buyer desires to purchase the Property on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

- 1. **Purchase and Sale.** Seller will sell the Property to Buyer, and Buyer will purchase the Property from Seller on the terms and conditions set forth in this Agreement.
- 2. **Conditions Precedent.** Closing shall be conditioned upon performance of all of obligations in this Agreement and satisfaction of the conditions listed in Sections 2.1 and 2.2 provided that Seller may, in Seller's sole discretion, elect to waive any such condition of Closing.
 - 2.1 **Compliance with CEQA.** Buyer must comply with the California Environmental Quality Act.
 - 2.2 **Environmental Assessment.** The Property is being sold in an "As is" condition. The Buyer may perform a Phase 1 Environmental Site Assessment at Buyer's cost. Seller shall provide Buyer with any copies of

environmental reports pertaining to the Property in Seller's possession without any warranty as to their accuracy.

3. **Purchase Price.** The purchase price for the Property is TWENTY TWO THOUSAND DOLLARS (\$22,000) for a total purchase price of _____ ("Purchase Price"). The Purchase Price, subject to adjustments provided in this Agreement (if any), will be paid by Buyer in cash or by wire transfer of immediately available funds at the Closing.

4. **Seller's Warranties.** Seller represents and warrants that: (a) Seller owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, leases, encroachments on the Property from adjacent Property, encroachments from the Property onto adjacent Property, and any rights of way, other than those disclosed by the public record; (b) Seller has no knowledge of any pending litigation involving the Property; (c) Seller has no knowledge of any violations of, or notices concerning defects or noncompliance with any code, statute, regulation, ordinance, judicial order, judicial holding, or other applicable law concerning the Property;

The continued accuracy in all respects of Seller's representations and warranties shall be a condition precedent to Buyer's obligation to close. All representations and warranties contained in this Agreement shall be deemed remade as of the date of Closing and shall survive the Closing. If any of the representations and warranties are not correct at the time made or as of the Closing, Buyer may terminate this Agreement and there shall be no further liability on the part of Buyer to Seller.

5. **Opening Escrow/Escrow Deposit.** Within ten business days after the execution of this Agreement by both parties, the parties will open an escrow ("Escrow") with _____ ("Title Company"), Attention: _____, and Buyer shall deposit into Escrow the sum of _____ (5% of the Purchase Price) ("Deposit") to be placed in an interest bearing account.

5.1 **Agreement as Joint Escrow Instructions.** This Agreement, when signed by Buyer and Seller and deposited into escrow with the Title Company, will be the parties' joint escrow instructions. Buyer and Seller will sign and deliver any other form instructions the Title Company may require that are consistent with this Agreement.

5.2 **Deposits into Escrow.** Buyer and Seller will deposit all instruments, documents, money, and other items into escrow with the Title Company that (i) this Agreement identifies or (ii) the Title Company may require that are consistent with the terms and purposes of this Agreement, and necessary to Closing. Within thirty days after the City Council approves this Agreement, Seller will deposit into the escrow with Title Company, or will conditionally deliver to Buyer, a recordable grant deed duly executed and acknowledged before a notary public, and accompanied by documentation reasonably necessary to establish the authority of any

signatory executing such deed on behalf of Seller.

- 5.3 **Title.** Seller will convey title of the Property to Buyer AS IS, without regard to all title defects, liens, encumbrances, conditions, covenants, restrictions, leases or agreements, and other adverse interests of record or known to Seller.
- 5.4 **Title and Closing Costs.** Buyer will pay any costs of clearing and conveying title. Buyer will pay the cost of a CLTA or ALTA owner's title policy insuring Buyer's title in the condition described in Section 5.3. Escrow fees, costs to record the grant deed, etc., shall be split equally between Buyer and Seller.
- 5.5 **Closing.** The escrow will be considered closed ("Closing" or "Close" or the "Closing Date") on the date that the Title Company records the grant deed. The escrow will be in condition to Close when all conditions to Close are satisfied or waived, the Title Company is prepared to issue the title policy described herein, and the Title Company is otherwise able to record the grant deed. Unless extended by the mutual consent of the parties, the escrow and this Agreement shall terminate if Closing does not occur within sixty days following final execution of this Agreement (including attestation by the Clerk) (the "Outside Closing Date"). Seller's Executive Director is authorized to agree to administratively extend this Agreement as necessary to accommodate satisfaction of conditions precedent. Upon termination of the escrow, the Title Company will return all funds, including the Deposit, and documents to the respective depositor, less any termination fee if applicable, and this Agreement will be of no further effect except as herein provided.
- 5.6 **Recordation.** At Closing, Title Company shall date the grant deed, and all other undated documents in escrow, with the date of Closing, and the Title Company shall record the grant deed, performance deed of trust and all other documents necessary to the Closing.
- 5.7 **Disbursements.** At Closing, Title Company shall disburse the Purchase Price, less Seller's costs to clear title (placing it in the condition set forth in Section 5.3), prorations, and other costs, if any, to Seller, when Title Company is committed to issue a standard CLTA or ALTA owner's title insurance policy to Buyer insuring its fee title in the condition set forth in Section 5.3, above, for the Purchase Price or such lesser amount as Buyer may designate.
- 5.8 **Risk of loss.** Any loss or damage, to the Property or any improvements on it, before Closing is at Seller's risk.
- 5.9 **Broker.** Neither party engaged a broker for this transaction.
- 6. **Delivery of Possession.** Seller shall deliver exclusive possession of the Property at Closing.

7. **Buyer's Right to Enter and Inspect the Property.** Buyer shall have the right to enter, inspect, and conduct any due diligence tests on the property that Buyer deems advisable. Seller grants Buyer, and/or Buyer's agents, the right, upon 24 hours notice, to enter onto the Property to conduct tests and investigations, if all the following occur: (a) Buyer conducts tests and investigations at its sole cost and expense; (b) the tests and investigations do not unreasonably interfere with Seller's possession.

8. **Miscellaneous Provisions.**

8.1 **Further Assurances.** Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.

8.2 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of service if served personally on the person to receive the notice, (b) on the date deposited in the U.S. mail, if delivered by depositing the notice or communication in the U. S. mail, postage prepaid, and addressed to the relevant party at the address set forth below, (c) on the date of transmission if delivered by facsimile, to the number provided below, that provides a transmission confirmation showing the date and time transmitted, or (d) on the date of transmission if delivered electronically via email and showing the date and time transmitted.

To Seller:

City of Fresno
2600 Fresno Street
Fresno, CA 93721

To Buyer:

Darling Ingredients Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: Rick Elrod
Executive Vice President, DAR PRO U.S.A.

8.3 **Entire Agreement.** Each Exhibit referred to in this Agreement is by that reference incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the purchase and sale of the Property, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.

8.4 **Amendment or Cancellation.** Buyer and Seller may amend or cancel this Agreement only by mutual written consent of the parties, unless otherwise expressly provided herein.

8.5 **Successors and Assigns.** This Agreement is binding upon and shall

inure to the benefit of each party, and each party's heirs, successors, assigns, transferees, agents, employees or representatives. The Buyer may assign this agreement and its rights hereunder without the consent of Seller.

- 8.6 **Time of the Essence.** Time is of the essence of each term in this Agreement.
- 8.7 **Attorneys' Fees.** If any party to this Agreement or the Title Company begins any action, proceeding, or arbitration arising out of this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive from the other party, besides any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.
- 8.8 **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed according to California law. Venue for the filing of any action to enforce or interpret this Agreement or any rights and duties hereunder shall be in Fresno, California.
- 8.9 **Headings.** The section headings in this Agreement are for convenience only. The headings are not part of this Agreement and shall not be used to construe it.
- 8.10 **Waiver.** If Buyer or Seller waives a breach of any provision herein, the waiver will not be a continuing waiver. The waiver will not constitute a waiver of any subsequent breach, or a waiver of a breach of any other provision hereof.
- 8.11 **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any provision in this Agreement will not affect the other provisions.
- 8.12 **Interpretation.** This Agreement is the result of the combined efforts of the parties. If any provision of this Agreement is found ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any party, but by construing the terms according to their generally accepted meaning.
- 8.13 **Precedence of documents.** If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.
- 8.14 **Counterparts.** This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument. Facsimile or electronic copy signatures shall be deemed as valid and binding as original signatures.
- 8.15 **Survival.** All representations and warranties, indemnifications, and other

provisions which, by their nature are intended to continue, shall survive Closing and delivery of the grant deed.

8.16 **Seller's Default and Buyer's Remedies.** If the sale of the Property is not consummated due to Seller's material default hereunder that is not cured within five business days of Notice from Buyer of Default, then Buyer shall have the right, to elect, as its sole and exclusive remedy, to either (a) terminate this Agreement by written notice to Seller, promptly after which the Deposit shall be returned to Buyer, (b) waive the default and proceed to close the transaction contemplated herein. Notwithstanding anything to the contrary contained herein, Seller shall not be deemed in default unless and until Buyer provides Seller with written notice of such default and Seller fails to cure such default within five business days of its receipt of such written notice.

8.17 **Buyer's Default and Seller's Remedies.** If the sale of the Property is not consummated due to Buyer's material default, then Seller shall have the right, to elect, as its sole and exclusive remedy, to terminate this Agreement by written notice to Buyer, after which the Deposit shall be forfeited.

IN WITNESS WHEREOF the Seller and Buyer have signed this Agreement on the dates set forth below.

CITY

DARLING

CITY OF FRESNO,
A California Municipal Corporation

DARLING INGREDIENTS INC., a
Delaware corporation

By: _____
Wilma Quan-Schechter, City Manager

By: _____
Rick Elrod, Executive Vice President,
DAR PRO U.S.A.

Dated: _____

Dated: _____

The City of Fresno has signed this Agreement pursuant to authority granted on _____, 20____

ATTEST:
YVONNE SPENCE, CMC
City Clerk

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By _____
Deputy

Dated: _____, 20__

By _____
Deputy

Dated: _____, 20__

Attachments:

Exhibit A: Legal Description

EXHIBIT "A"

**To Purchase and Sale Agreement
Legal Description of Option Property**

**ATTACHMENT NO. 6
TO ENTIRE AGREEMENT**

SCHEDULE OF PERFORMANCE

| | ITEM TO BE PERFORMED | TIME FOR PERFORMANCE | AGREEMENT REFERENCE |
|----|-----------------------------|-----------------------------|--------------------------------|
| 1. | | | |
| 2. | | | |
| 3. | | | |

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text of the Agreement; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both (i) Darling, and (ii) City. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager on behalf of City shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of one hundred eighty (180) days as provided in Section 1103.

**ATTACHMENT NO. 7
TO ENTIRE AGREEMENT**

SCOPE OF DEVELOPMENT

A. General

Darling agrees that the New Site shall be developed and improved in accordance with the provisions of this Agreement including all attachments, and the plans, drawings, and related documents approved by City pursuant hereto. Darling, its supervising architect, engineers, and contractor shall work with City staff to coordinate the overall design, architecture, site layout, open areas, landscaping and parking with regards to mass, scale, bulk, color and materials. Any questions or issues regarding the Scope of Development not included or addressed herein or in the Disposition Agreement shall be resolved in accordance with the Fresno Municipal Code.

B. Design Criteria

1. **Site Plan.** The New Site Plan shall be consistent with the Schematic Site Plan attached hereto as Exhibit "A."

C. Site Work

Darling shall be responsible for construction and installation of all Site improvements. Darling's improvements are currently designed to include, but may not be limited to the following:

1. Construction of ____ buildings designed as follows _____

_____.
2. Parking area(s) shall be provided on-site. The design and construction, as well as the number of parking spaces provided shall be in accordance with the Fresno Municipal Code. Construction of the parking areas shall include installation of necessary drainage system(s) (including connections within the public right-of-way), paving, installation of required landscaping and irrigation, striping and labeling, all in accordance with the Fresno Municipal Code and the Approved Plans.
3. On-site landscaping and automatic irrigation system shall be installed and maintained per Approved Plans consistent with the Fresno Municipal Code.
4. On-site lighting shall be installed in a manner consistent with the approved lighting and electrical plans. The design of light standards and fixtures shall be consistent with the requirements of the Fresno Municipal Code.

D. Landscaping

Landscaped yards shall be maintained with landscaping and automatic irrigation.

E. Trash and Recycling Storage

Trash storage areas shall be provided of sufficient size to ensure containment of all solid waste materials generated from the New Site. The size of the enclosure shall be determined by the City staff based upon the size and nature of the facility proposed but

shall not be less than thirty (30) square feet. The trash enclosure shall be constructed of solid masonry walls and shall not be less than five (5) feet in height with solid metal panel gates equipped with self-closing devices. Adequate access shall be provided to the enclosure for refuse pickup.

F. Signs

All signs shall be installed by Darling.

G. Not Used.

H. Mechanical Equipment

No mechanical equipment, including electrical transformers shall be located in any required setback area.

I. Applicable Codes

All improvements shall be constructed in accordance with the California Building Code (with Fresno modifications), the City of Fresno Fire Code, the Fresno Municipal Code and current City standards.

J. Not Used.

**EXHIBIT "A" TO ATTACHMENT NO. 7
TO ENTIRE AGREEMENT**

SCHEMATIC SITE PLAN

[To Be Inserted]

**ATTACHMENT NO. 8
TO ENTIRE AGREEMENT**

GRANT DEED

**FREE RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:**

Darling Ingredients, Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: John Sterling
Executive Vice President,
General Counsel and Secretary

APNs. _____
THE UNDERSIGNED GRANTOR(S) DECLARE(S):
DOCUMENTARY TRANSFER TAX IS \$____ per
R&T Code _____

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF FRESNO, a California municipal corporation ("**Grantor**") hereby grants to DARLING INGREDIENTS INC., a Delaware corporation ("**Grantee**"), the real property in the City of Fresno, County of Fresno, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("**Property**").

As conditions of this conveyance, Grantee covenants by and for itself and any successors-in-interest for the benefit of Grantor as follows:

1. Governing Documents. The Property is being conveyed: (i) pursuant to a Disposition Agreement and Development Agreement ("**DADA**") entered into by and between Grantor and Grantee dated _____, 2017; and (ii) subject to the terms of the DADA and this Deed, as those terms are defined in the DADA. The DADA is a public record on file in the office of the City Clerk of the City of Fresno ("**City**"), located at 2600 Fresno Street, Fresno, CA 93720 and is incorporated herein by this reference. Any capitalized terms not defined herein shall have the meanings ascribed to them in the DADA. Grantee covenants and agrees for itself and its successors and assigns to develop the Property in accordance with the DADA and thereafter to use, operate and maintain the Property in accordance with this Deed. The Property is also conveyed subject to easements and rights-of-way of record and other matters of record. In the event of any conflict between this Deed and the DADA, the provisions of the DADA shall control.

2. Term of Restrictions. Grantee covenants and agrees for itself, its successors, its assigns, and every successor-in-interest to the Property that Grantee, such successors and such assigns, shall not develop, operate, maintain or use the Property in violation of the terms and conditions of the DADA. Grantee shall commence to construct the improvements within the time period specified in the DADA and diligently prosecute same to completion.

3. **Right of Reverter.** Grantee covenants by and for itself and any successors-in-interest that Grantor shall have the right, at its option, to reenter and take possession of the Property hereby conveyed, with all improvements thereon, and revert in Grantor the estate conveyed to the Grantee if after Closing and prior to recordation of the Certificate of Completion and Satisfaction, Grantee or successor-in-interest shall commit a material default as described in the DADA. Within five (5) days after Grantor gives Grantee written notice that Grantor intends to exercise its right to reenter and take possession of the Property, Grantee shall deliver a grant deed duly executed and acknowledged transfer the Property to Grantor. This right of reverter shall be interpreted liberally in order to protect Grantor's contribution of financial assistance to Grantee which was made as material consideration for Grantee constructing and operating the New Plant Project as set forth in the DADA.

The Right of Reverter shall automatically terminate upon the recordation of the Certificate of Compliance in compliance with the DADA.

4. **Transfer Restrictions.** Grantee shall not transfer or encumber the Property or any of its interests therein except as provided in Section 303 of the DADA.

5. **Reservation of Existing Streets.** Grantor excepts and reserves any existing street, proposed street, or portion of any street or proposed street lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property.

6. **Non-Discrimination.** Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Property, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property or any portion thereof. The nondiscrimination and non-segregation covenants contained herein shall remain in effect in perpetuity.

7. **Form of Nondiscrimination Clauses in Agreements.** Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Property on the basis of race, color, creed, religion, sex, marital status, age, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

- (a) **Deeds:** In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself, or any persons claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."
- (b) **Leases:** In leases the following language shall appear: "The lessee herein covenants by and for itself, its heirs, executors, administrators, successors, and

assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

- (c) **Contracts:** In contracts pertaining to conveyance of the realty the following language shall appear: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, age, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

The foregoing covenants shall remain in effect in perpetuity.

8. **Covenants to Run With the Land.** The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Property, whether their interest shall be fee, easement, leasehold, beneficial or otherwise.

[SIGNATURE LINES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers or agents hereunto as of _____, 201__.

"GRANTOR"

CITY OF FRESNO,
a California municipal corporation

By _____
Wilma Quan-Schechter, City Manager

APPROVED AS TO FORM:

By: _____
DOUGLAS T. SLOAN
City Attorney

ATTEST:

YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

CERTIFICATE OF ACCEPTANCE

By its acceptance of this Deed, Grantee hereby agrees as follows:

1. Grantee expressly understands and agrees that the terms of this Deed shall be deemed to be covenants running with the land and shall apply to all of the Grantee's successors and assigns (except as specifically set forth in the Deed).
2. The provisions of this Deed are hereby approved and accepted.

Date: _____, 201__

"DARLING"

DARLING INGREDIENTS INC.,
a Delaware corporation

By: _____
Rick Elrod, Executive Vice President,
DAR PRO U.S.A.

**EXHIBIT "A" ATTACHMENT NO. 8
TO ENTIRE AGREEMENT**

LEGAL DESCRIPTION OF PROPERTY

That certain real property in the City of Fresno, County of Fresno, State of California legally described as follows:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 201_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 201_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL:

**ATTACHMENT NO. 9
TO ENTIRE AGREEMENT
COVENANT AGREEMENT**

**ATTACHMENT NO. 10
TO ENTIRE AGREEMENT**

CERTIFICATE OF COMPLETION AND SATISFACTION

**FREE RECORDING REQUESTED BY &
WHEN RECORDED RETURN TO:**

Darling Ingredients Inc.
251 O'Connor Ridge Blvd.
Ste. 300
Irving, TX 75038
Attn: John Sterling
Executive Vice President,
General Counsel and Secretary

APNs. _____

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code §6103)

CERTIFICATE OF COMPLETION AND SATISFACTION

Pursuant to that certain Disposition Agreement and Development Agreement ("**Entire Agreement**") dated _____, 201__ by and between the CITY OF FRESNO ("**City**") and DARLING INGREDIENTS INC., a Delaware corporation ("**Darling**"), Darling has agreed to develop that certain real property situated in the City of Fresno, County of Fresno, State of California, described on Exhibit "A" attached hereto and made a part hereof ("**Property**").

RECITALS:

- A.** Terms not otherwise specifically defined in this document shall have the meaning specified in the Entire Agreement.
- B.** As referenced in the Disposition Agreement (Part I) of the Entire Agreement ("**Disposition Agreement**") and the Development Agreement (Part II) ("**Development Agreement**") of the entire Agreement, City is required to furnish Darling with a Certificate of Completion and Satisfaction upon completion of construction and development and new plant and the commencement of operations, which certificate shall be in such form as to permit it to be recorded in the Official Records of Fresno County, California.
- C.** The Disposition Agreement provides for certain covenants to run with the land, which covenants were incorporated in the Deed (as defined in the Disposition Agreement).
- D.** This Certificate of Completion and Satisfaction shall constitute a conclusive determination by City of the satisfactory completion by Darling of the construction and development required by the Disposition Agreement and of Darling's compliance with the terms of the Disposition Agreement with respect to such construction, development and commencement of operations of the New Plant, but not of the Deed nor of the Declaration, the provisions of which shall continue to run with the land pursuant to their terms.

- E. City has conclusively determined that the construction and development on the Property required by the Disposition Agreement has been satisfactorily completed by Darling in full compliance with the terms of the Disposition Agreement and that the New Plant has commenced operations on the Property.

NOW, THEREFORE

1. The improvements required to be constructed have been satisfactorily completed and New Plant has been commenced operations in accordance with the provisions of the Disposition Agreement and the Development Agreement.

2. This Certificate of Completion and Satisfaction shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Disposition Agreement and the Development Agreement with respect to the obligations of Darling, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof.

3. This Certificate of Completion and Satisfaction shall constitute a conclusive determination of the termination of the Right of Reverter in the Disposition Agreement and the Deed.

4. This Certificate of Completion and Satisfaction shall not constitute evidence of Darling's compliance with continuing operations covenant and other covenants in the Deed, the provisions of which shall continue to run with the land.

5. This Certificate of Completion and Satisfaction is not a Notice of Completion as referred to in California Civil Code Section 3093.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Disposition Agreement, the Development Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, City has executed this Certificate of Completion and Satisfaction this ____ day of _____, 201__.

"CITY"

CITY OF FRESNO,
a California municipal corporation

By _____
Wilma Quan-Schechter, City Manager

CONSENT TO RECORDATION

DARLING INGREDIENTS INC., a Delaware corporation as the owner of the fee title to the real property legally described herein, hereby consents to the recordation of this Certificate of Completion and Satisfaction against the Property (defined herein).

"DARLING"

Date: _____, 201__

DARLING INGREDIENTS INC.,
a Delaware corporation

By: _____
Rick Elrod, Executive Vice President,
DAR PRO U.S.A.

**EXHIBIT "A" TO ATTACHMENT NO. 10
TO ENTIRE AGREEMENT**

LEGAL DESCRIPTION

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 201_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 201_ before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

SEAL: