

STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

PERFORMANCE AGREEMENT

This Performance Agreement (the "Agreement") is made effective on Jan. 28, 2016 by and between LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC., a Texas nonprofit corporation (hereinafter referred to as "LEDA") and Leprino Foods Company, a Colorado corporation, (hereinafter referred to as "Recipient" or "Leprino"), by and through their duly authorized officers and affiliate organizations under the terms and conditions that follow. LEDA and Recipient may collectively be referred to as the "Parties."

1. **Applicable Law:** It is understood by and between the Parties that the term "Act," as used herein, is intended to mean the Development Corporation Act of 1979, as amended. (Sec. 501.001 *et seq.*, Local Government Code, formerly Sec 5190.6, VACS). The parties hereto covenant and agree to comply with the terms of the Act as set forth in this Agreement.



2. **Parties:**

A. LEDA, a Texas non-profit corporation as well as a tax exempt 501(c)4 entity, was created by the City of Lubbock, Texas, as an Industrial Development Corporation under the Act for the purpose of creating and retaining positions and encouraging new businesses to be established in Lubbock, Texas, to stimulate business and commercial activities, as well as all other purposes allowed by the Act.

B. Recipient is developing a "Project" which shall include, but not be limited to, the addition of a new nutritional dairy product line to their existing manufacturing facility located at 4301 East 19th Street, Lubbock, Texas (NAICS 311514 – dry, condensed, and evaporated dairy product manufacturing) (the "Facility"). This Project is anticipated to result in approximately 15 new Primary Full-Time Jobs for the City of Lubbock. The Project's total capital investment is estimated to be \$165,000,000 and is anticipated to be expended by December 31, 2027.

C. Recipient is a Colorado corporation authorized to do business in Texas.

3. **Purpose:** The purpose for this agreement is to formalize the agreements between LEDA and Recipient for the payment of certain capital investment costs associated with

LEDA  Leprino 

Recipient's Project and specifically state the covenants, representations of the parties, and the incentives associated with Recipient's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement which has been approved by the Board of Directors of LEDA as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by Recipient may constitute a breach of the Agreement with the consequences of such breach being governed by Section 9 herein.

4. Definitions:

- A. The "Act" shall refer to the Development Corporation Act of 1979, as amended, as Sec. 501.001 *et seq.*, Local Government Code, formerly Sec 5190.6, VACS.
- B. "Layoff" is defined as an event, due to adverse or changing business conditions, that result in the loss of employment and shall exclude loss of employment due to casualty at the Project if the Recipient chooses to rebuild the Project. Employees meeting this definition shall have lost their jobs through no fault of their own.
- C. "LEDA" shall refer to Lubbock Economic Development Alliance, Inc. a Texas non-profit corporation, created by the City of Lubbock as an "Industrial Development Corporation", pursuant to the Act.
- D. "Primary Full-Time Jobs" shall include individuals employed by Recipient in the City in Primary Full-Time Jobs as defined by the Act.
- E. "Project" shall refer to the project identified in Section 2B.
- F. "Recipient" shall refer to Leprino, a Colorado corporation authorized to do business in Texas, and the Recipient party to this Agreement.
- G. "Term" as used herein shall begin with the start date of the execution of this Agreement and terminate on December 31, 2033, unless earlier breached by Recipient's failure to perform or provide timely evidence of capital expenditures for the Project to LEDA's third-party accountant for verification.

5. Representations of Recipient:

- A. Recipient represents that it will utilize the incentive provided to reimburse itself for costs involved and associated with the Project contemplated herein.

- B. Recipient represents that it is authorized to do business in Texas and has authorization to enter into this Agreement on its behalf.
- C. Recipient represents that it has sought from LEDA economic assistance in connection with Recipient's Project.
- D. Recipient represents that it has conferred with attorneys of its own choosing and is fully knowledgeable of the terms of the Act and understands the reporting requirements of the Act, as well as all conditions precedent and subsequent as required to be eligible for the incentive offered by LEDA, including the Payback Provisions as outlined in Section 9 herein.
- E. Recipient represents that it acknowledges that its failure to perform any reporting requirements within the designated time frame could result in payment adjustments or incentive forfeiture.
- F. Recipient understands and agrees that any variations as to any term of this Agreement or any terms or conditions of the incentives as stated must be mutually agreed to in written supplements or addenda. No oral agreements, amendments, or representations will be binding on either party.

6. Representations by LEDA:

- A. LEDA represents that it is established as an Industrial Development Corporation under the Act and further represents that Recipient's Project and the costs applied toward Recipient's Project as stated in this Agreement have been found by the Board of Directors of LEDA, sitting as fact finders, to be in compliance with the requirements and purposes of the Act, the provisions of LEDA's charter, as well as for the benefit of the City of Lubbock, Lubbock County, Texas, and the trade area.
- B. LEDA represents that it has authority to enter into this Agreement. LEDA understands and agrees that any variation in terms of this Agreement, the incentive(s) offered to Recipient, or the commitment made by Recipient will only be binding if mutually agreed to in writing.
- C. LEDA and its representatives agree to maintain confidentiality of all of Recipient's records to the extent allowable by applicable laws.

7. **Incentive:**

A. **Capital Investment Incentive to be Awarded and Terms of Award:**


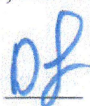
1. LEDA agrees to pay, as set forth herein, to Recipient up to \$500,000 for a Capital Investment Incentive for the purchase and installation of equipment and other capital expenses related to the Project incurred during the years of 2025, 2026, and 2027.
2. The Capital Investment Incentive is to be paid in two (2) installments, each in the amount of 50% of the earned incentive, in accordance with the sliding scale detailed below:
 - i. First installment: December 2032
 - ii. Second Installment: December 2033
3. Capital Investment Incentive Sliding Scale:

Capital Investment	Less than \$82.5M	Equal to \$82.5M and less than \$107.25M	Equal to \$107.25M and less than \$132M	Equal to or greater than \$132M
Incentive Earned	\$0	\$250,000	\$375,000	\$500,000

4. Recipient agrees to timely provide adequate evidence to LEDA's designated accounting representative regarding the final capital investments of the project within six (6) months of the project's completion, but no later than June 30, 2028. LEDA and its representative agree to maintain confidentiality of all of Recipient's records and to return all such records unless other mutually agreeable arrangements are made regarding record retention by Recipient or inspection access to LEDA.

8. **Conditions for Payment of Incentive:** It is specifically agreed and understood by and between the parties that LEDA has agreed to make the incentives available to Recipient strictly upon the following terms and conditions:

- A. Any use of LEDA or Recipient's name for publicity in connection with Recipient's business or activities must be approved in advance by Leprino and LEDA and it is understood that, pursuant to lawful Texas Public Information Act requests, LEDA

LEDA  Leprino 

may make known its written contributions to Recipient. In addition, LEDA may—in its reasonable discretion—orally disclose LEDA’s contributions to third parties who request such information in good faith.

- B. For the duration of this Agreement and for an additional five years beyond the Agreement, in order to receive benefits hereunder, Recipient must maintain a business location in the City of Lubbock or Lubbock County and its legal status under federal and state law duly and remain qualified to do business in the State of Texas.
- C. For the duration of this Agreement, the operations or activities of Recipient and its employees shall be performed and conducted in a professional businesslike manner and shall be in keeping with federal and state laws and regulations, and any ordinances of the City of Lubbock and/or governmental entities which may have jurisdiction over Recipient’s operations and activities.
- D. Recipient agrees to, in good faith, engage in a confidential review and examination of all material records with LEDA’s accountants, and the Parties mutually agree that such review is necessary to ensure compliance with the conditions of the incentive payments. Recipient agrees to timely provide to LEDA’s accountants all information reasonably requested by the accountants. Should recipient fail to provide to the accountants by June 30, 2028, the information reasonably necessary to complete the review, the Capital Investment Incentive may be forfeited. All such reviews and examinations shall be subject to the Recipient’s confidentiality and security policies.
- E. Recipient certifies that the Recipient does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Recipient is convicted of a violation under 8 U.S.C. § 1324a(f), Recipient shall repay the amount of the public subsidy provided under this Agreement, with interest at the legal pre-judgment interest rate, with reasonable attorney’s fees, not later than the 120th day after the date LEDA notifies Recipient of the violation.
- F. Any information obtained by LEDA or its agents or assigns during negotiations leading up to the execution of the Agreement or otherwise about the business, have or will be returned upon the execution of this Agreement, subject to a right to a continuing examination by LEDA in order to comply with LEDA’s reporting obligations, if any.

- G. Recipient will notify LEDA in writing within three (3) business days of any Layoff or reduction in force greater than 20% of the existing workforce. The notification must include the number of employees being laid off, their job titles, the reasoning for the Layoff, and what the Recipient is doing to assist the laid off employees. Likewise, if an announcement is made that the Recipient is closing its doors and ceasing business operations during the review of job creation incentives, LEDA, in its sole discretion, may elect to suspend payment to Recipient.

9. Payback Provisions and Events of Default:

- A. Recipient acknowledges that LEDA and Recipient are required to remain in conformance with the statutory provisions of the Act. The parties hereto agree that in the event Recipient fails to comply with the provisions of this Agreement, including but not limited to Section 7, and after written notice and failure to cure the violation continues for thirty (30) days after written notice to Recipient, then LEDA, in its sole discretion, may terminate this Agreement and permanently suspend all future payments to Recipient.
- B. The Recipient has provided to LEDA an estimated capital investment of \$165,000,000 for the Project, anticipated to be expended by the end of calendar year 2027 in the form of new equipment and personal property. LEDA based its decision to grant the Capital Investment Incentive to Recipient based upon such capital investment. If the actual capital investment amount is significantly lower (20% or greater) than the stated estimated capital investment, LEDA will reduce the Capital Investment Incentive in accordance with the Capital Investment Incentive Sliding Scale in Section 7(A)(3). In consultation with Recipient, capital investment will be measured either by documentation of construction or personal property purchase invoices to LEDA's accountants by the stated deadline of June 30, 2028.

10. Assignment, Merger, and Termination Due to Merger, Etc.: This Agreement shall not be assignable, either in whole or in part. Termination as the result of assignment or merger or change in business form shall not disqualify the remaining or new entity from applying to LEDA for new incentive consideration.

11. No Privity of Endeavor Nor Joint Venture: It is specifically agreed that there shall be no privity of endeavor nor joint venture whatsoever between LEDA and Recipient and the sole connection between the parties is the contribution of the economic assistance by LEDA under the restricted conditions as set forth herein and that such contributions as stated herein are for the sole purposes as set forth herein and it shall in no way be construed

as a continuing basis of financial support by LEDA to Recipient. The parties hereto have entered into this Agreement in an arms-length transaction. NO agency relationship or fiduciary relationship is intended to be created by this Agreement and no such relationship shall be determined to exist.

12. Good Faith – Normal Business Operations: The parties agree that this Agreement has been entered into in good faith and that each party shall act in good faith in complying with its provisions. The parties further agree to transact all their business under and that which relates to this Agreement in accordance with their normal business operations.

13. Miscellaneous Provisions:

A. Notices: for the purposes of any notices to be given, pursuant to the terms of this Agreement, the parties shall use the following addresses, or any other address as may be changed by the parties, upon written notice to the other party, as follows:

1. LEDA

John Osborne
CEO and President
Lubbock Economic Development Alliance, Inc.
1500 Broadway, Suite 600
Lubbock, Texas 79401

With a copy to:

Ann Manning
Attorney at Law
Underwood Law Firm
P.O. Box 16197
Lubbock, Texas 79490

2. Recipient

Erik Nielsen
Associate General Counsel
Leprino Foods Company
1830 W. 38th Ave.
Denver, CO 80211

With a copy to:

legal@leprinofoods.com

Notices shall be deemed to be given upon the placing in the United States Mail, Certified Mail, Return Receipt Requested, to the above-described addresses or as may be changed, pursuant to the terms and conditions hereof.

- B. No Waiver of Immunity: Notwithstanding any other provisions of this Agreement, including, without limitation, the provisions of Sections 7 and 9 of this Agreement, nothing in this Agreement shall or may be deemed to be or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or to limitation to which LEDA, the City of Lubbock, its elected officials, its officers, employees, representatives, or agents are or may be entitled, including without limitation, any waiver of immunity suit.
- C. Venue; Governing Law: All payments made pursuant to this Agreement and other obligations performed under this Agreement shall be made or performed in the City of Lubbock, Lubbock County, Texas. Exclusive venue for any action, cause of action, lawsuit, or other proceeding under or in connection with this Agreement shall be and lie in Lubbock County, Texas and the parties hereby submit themselves to the jurisdiction thereof; and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas without respect to the conflict of laws rules thereof. Recipient hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action, or proceeding, any claim that (i) it is not subject to such venue or the jurisdiction of the courts of Lubbock County, Texas, (ii) the suit, action, or proceeding is brought in an inconvenient forum, or (iii) the venue of the suit, action, or proceeding is improper.
- D. Entire Agreement: This instrument constitutes the entire Agreement between the parties hereto and neither this Agreement nor any of the Exhibits attached hereto, if any, can be altered, changed, or amended in any respect except by an instrument in writing duly executed by both parties.
- E. Partial Invalidity: In the event that any portion of this Agreement should be found or declared to be invalid for any reason, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties. The parties agree that it is their intent for this Agreement to be determined as being an indivisible obligation of the parties.

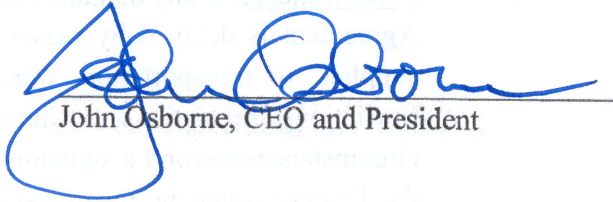
F. Binding Effect: This Agreement shall be binding upon the undersigned, their successors, and assigns, subject to the express terms of this Agreement concerning assignment.

G. Force Majeure: If any default or performance of any other covenant or term of this Agreement is delayed by reason of strike, riots, shortages of labor, materials, supplies, or transportation, war, civil commotion, act of God, governmental restrictions, regulations, or interference, fire, or other casualty, or any other circumstances beyond a signatory party's control, then the duty to do or perform the Term or covenant, regardless of whether the circumstance is similar to any of those enumerated above or not, is excused during the delay period.

[signature page follows]

EXECUTED in multiple counterparts, each of which is an original, on this Jan 28th day of 2026, YEAR.

LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE, INC.


John Osborne, CEO and President

ATTEST:



RECIPIENT:


_____ David Fowler, Vice President

ATTEST:

