

**DARLING INTERNATIONAL INC. AND CITY OF FRESNO AGREEMENT  
REGARDING RENDERING FACILITY**

THIS AGREEMENT (“Agreement”) is entered into on \_\_\_\_\_, by and between DARLING INTERNATIONAL INC., a Delaware corporation (“**Darling**”), and the CITY OF FRESNO (“**City**”) and affects that real property at 795 West Belgravia Road, Fresno, CA (also known as Assessor’s Parcel Number 477-054-12) (“**Subject Site**”).

**RECITALS**

A. The Subject Site consists of an approximately 5.22 acre parcel located on Belgravia Road between Church Avenue and E. California Avenue and Fruit Avenue and West Avenue in the Southwest area of the City of Fresno. The Subject Site was annexed to the City in December of 1971.

B. Currently, the Subject Site and all of its improvements are used for a rendering operation (“Existing Darling Operation”) which currently processes up to 850,000 lbs/day of raw material.

C. Darling has a permit (“Air Permit”) from the San Joaquin Valley Air Pollution Control District (the "SJVAPCD") which includes a condition limiting the daily volume of raw material processed to a maximum of 850,000 lbs/day. A true and correct copy of the Air Permit is attached hereto and incorporated herein as Exhibit “A.”

D. The City has concerns that the Existing Darling Operation has in the past and will continue in the future to cause a public nuisance, as that term is defined by Fresno Municipal Code; section 10-605, in the Subject Site’s neighboring community. The City has several documented instances between May 2008 and May 2009, where offensive odors from the industrial park were detectable off-site by City Code Enforcement Officers. The City and Darling dispute the negative effect the operation of the plant may have had on the neighborhood, but desire to address any potential problems by entering into this agreement.

E. As part of the process to negotiate this Agreement, the City hired Insight Environmental Consultants to evaluate and provide recommendations related to Darling’s current operations as compared to industry standards and best practices in relation to public nuisances, odor generation and control, traffic impacts, timely processing of materials, onsite material storage, offsite shipping, operating schedules, noise and routing. Insight was asked to ascertain the efficacy and operational condition of all venting and/or odor reduction equipment and verify Darling’s claim that existing equipment is “state of the art” and is installed, maintained and used to its fullest potential. A true and correct copy of the City’s scope of work with Insight is attached and incorporated herein as Exhibit “B.”

F. In July 2009, Insight released a final report (“Insight Report”) on their evaluation of the Existing Darling Operation. A true and correct copy of the Insight Report is attached and incorporated herein as Exhibit “C.”

G. The Insight Report made several recommendations and adherence to these recommendations is expected to reduce current adverse impacts and enhance future operation by Darling at the Subject Site.

H. Darling and the City desire to enter into this Agreement to ensure that if the Existing Darling Operation continues on the Subject Site it will not result in a public nuisance.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein below, the parties agree as follows:

1. The City agrees to the following:

1.1. Subject to the terms and conditions established in this Agreement, City shall forego enforcement of its zoning and other land use laws, including the requirement of obtaining a conditional use permit, as they may pertain to the Subject Site and the activities to be conducted thereon by Darling, which activities are described on Exhibit “D” Description of Post-Agreement Darling Operational Statement, attached hereto and incorporated herein.

1.2 City shall issue building permits that are consistent with the Post-Agreement Darling Operation as described in Exhibit “D” and in compliance with applicable law related to the issuance of building permits.

2. Darling agrees to the following:

2.1. Darling Operation. Darling will conduct its operations in compliance with Exhibit “D” (Post-Agreement Darling Operational Statement). Any changes to Exhibit “D” shall require the preparation of an amendment approved by mutual agreement of City and Darling.

2.2. Physical Modifications. As soon as practicable, but in no instance (subject to Section 3.5 below) more than twelve (12) months after the execution of this Agreement, Darling will make the permanent physical modifications to their facilities on the Subject Site as contained in the Insight Report, and as listed below, and ensure that these modifications are maintained at all times thereafter during the term of this Agreement:

2.2.1. Install permanent ductwork with a valve to re-route high intensity vapors to a scrubber or boiler in the event of a breakdown of the Thermal Oxidizer, to ameliorate the requirement of temporary ductwork.

2.2.2. Install permanent ducting and/or louvers to the roof or wall(s) in the Boiler Room to provide make-up air to the boiler.

2.2.3. All doors that depend on the negative air system (or have the potential to defeat the system) are to be connected to a "notification" system that indicates their position to the supervising personnel such that it can immediately be determined if a door can or should be closed to retain the negative air pressure on the building. Any override of this system should be documented by site management and the reason(s) why.

2.2.4. All doors shall be tested and fixed if necessary to ensure that they can maintain the integrity of the negative air system.

2.2.5. Make the necessary modifications to the internal ducting, ventilation or minor equipment configuration to ensure that pockets of malodorous air are not allowed to remain trapped within the building and not processed by the scrubbers that are detailed on Exhibit "E" and which were determined to be appropriate by the Planning and Development Director (Director) based on a report prepared by Integrated Environmental Systems (IES). Darling shall provide to the City the final report from IES for review and comment.

2.2.6. Ensure that all areas on the Subject Site upon which motorized vehicles and trailers used for transporting raw material will be parked or otherwise stored are paved in good condition, and that the paved areas are sloped to a liquid/solid material collection point for grounds wash down, maintenance and cleaning.

2.2.7 Provide a written report to the City confirming and detailing its evaluation of the feasibility, availability and proven effectiveness of emerging technologies that provide real time detection and quantification of specified odorous compounds or other chemical indicators of potential external noxious odor releases, to serve as an early warning system to notify facility operators and management when an odor episode may be occurring. The City may accept or reject the report. The City's acceptance of the report shall not be unreasonably withheld. If the City rejects the report it shall inform Darling in writing of the rejection and the reasons for its rejection. Darling shall diligently revise the report as necessary until the City accepts the report as revised. If the report that is accepted by the City confirms the feasibility, availability and effectiveness of an existing technology that meets these standards, Darling shall acquire and install this technology within twelve (12) months after the City's final review and approval of the system. Any installation of such a system shall be subject to review and approval of the City.

2.2.8 Operate in strict compliance with all SJVAPCD Permits to Operate and/or Authorities to Construct and any other permit, license or directive issued by any other regulatory or enforcement agency.

2.2.9 Notify the City of the receipt of any Notice of Violation, Notice to Comply, Cease and Desist Order or any corrective or enforcement action taken by or received from the SJVAPCD or any other regulatory or enforcement agency with

respect to the Subject Site, within 48 hours of receipt, and provide a copy to the City of Fresno.

2.2.10 Notify \_\_\_\_\_ at the City within 24 hours of the receipt of any public complaint related to Subject Site plant operations, provided such public complaint is communicated to Darling by a call initiated to the phone number that has been promoted by Darling to the local community for the report of plant operation related concerns [(866) 460-4731], and that the caller has confirmed their identity for purposes of the ability to conduct follow-up investigation. City and Darling acknowledge that any incidents reported to the City through this notification process will not be used in any enforcement or other legal actions by the City against Darling, unless the incident is the subject of further investigation by a City Code Enforcement Inspector which independently validates the circumstances detailed in the complaint. Darling will provide City with monthly reports summarizing all complaints made to Darling within that particular month, the results of Darling's investigations of those complaints, and any and all corrective or abatement actions performed by Darling whether triggered by a complaint or conducted as a result of a violation or offending condition discovered by Darling.

2.3. Operational Modifications. Within six (6) months of execution of this Agreement, Darling shall implement the operational modifications to the Post-Agreement Darling Operation (as described in Exhibit "D", pages # through #) and provided in this Section. The time period for satisfaction of this condition is subject to change should SJVAPCD permit modification be required.

2.3.1. All doors to the Main Processing Building, Meal Building and Meal Loadout Facilities, including, Meal Loadout Room, shall be required to be kept closed at all times during operations and one hour after operations have ceased and all air in the buildings has been run through the scrubber system, except during actual entry or exit of trucks, equipment or personnel. The Odor Control Plan shall confirm that these doors remain closed, as specified above.

2.3.2. Personnel responsible for monitoring the "notification" system that indicates closed status of doors required to retain negative pressure in the building shall be properly trained, and shall document the following regarding that notification system: (1) the date and time of any override or shutdown; (2) the time period the override or shut down was in effect; (3) the reason(s) for the override or shutdown; (4) efforts taken by Darling to ensure that such an override or shutdown will not be necessary in the future.

2.3.3. All odor control systems shall be operated whenever the rendering plant is in operation. This requirement specifically includes the requirement that the Packed-Tower Scrubbers shall be used at all times during operations including first

loads after the plant has been shutdown for any period of time, even if the loads are frozen or chilled.

2.3.5. All of the requirements in this Section 2.3 shall be included in the Odor Control Plan required under Section 2.4.1.

2.3.6. Any trucks that contain rendering material that will not be unloaded for processing during the current operating day shall not be stored outside, but shall be stored inside the enclosed structures of the rendering plant.

2.4. Recordkeeping and Documentation Modifications. Darling shall implement the recordkeeping and documentation requirements provided in this Section 2.4 under the timelines provided herein.

2.4.1. Odor Control Plan. Upon execution of this Agreement, Darling shall implement the Odor Control Plan attached hereto and incorporated herein as Exhibit "F". Any subsequent amendments to the Odor Control Plan shall be subject to review and approval by the City, which approval shall not be unreasonably withheld or unreasonably conditioned. Darling shall reimburse the City for all reasonable costs associated with review of the Odor Plan or any subsequent amendment thereto.

2.4.2. Daily Raw Material Received Records. Darling shall use the form attached as Exhibit "G" to better capture and document compliance with the SJVAPCD's limitations and requirements regarding daily deliveries, shipments and process rates of daily limits.

2.4.3. Raw Material Receipt/Weight Tickets Records. Darling shall use the form approved by the City, attached as Exhibit "G", to better document raw material weights for each truck off-loading at the facility, holding time for each truck, sufficient detail to correlate all raw materials received to the daily raw material process limit, and separate documentation for trucks received at the facility but not unloaded at the facility.

2.4.4. Truck Scales. All truck scales used for the Post Agreement Darling Operation shall be certified as required by law which shall be documented at least annually.

2.4.5. Scrubber Service Records. Darling shall use the form attached as Exhibit "H" as the the Scrubber Service reporting form to document that the maintenance and service work required under the Air Permit for the air scrubbers is completed as required. Exhibit "H" shall detail all service work done on the air scrubbers, who did work on the air scrubbers (including name, address, and telephone numbers), and any corrections or repairs that were required for the air scrubbers.

2.4.6. Calibration and Maintenance Records. Darling shall use the form attached as Exhibit "H" as the form to document that the calibration and maintenance records for the pH probes located in the Scrubber Towers. Exhibit "H" shall detail 1) proper and timely calibration of each probe based on manufacturer requirements and recommendations; 2) notation of any adjustments or repairs made to bring the probes into recommended calibration limits; 3) notation of any manufacturer recommended maintenance work conducted on the probes; 4) date the calibration and/or maintenance work or repairs that were completed; and 5) the name of the Darling representative who completed the calibration, maintenance and/or repairs.

2.4.7. Operating and Training Procedures. Darling shall document that all plant operators and management personnel are trained in the proper operation of the odor abatement and control equipment, which training shall include at a minimum the review and familiarization of the equipment and its operation. Darling shall maintain records of the required training that includes the following: (1) a statement of the time, place of the training provided; (2) the names of the employees trained; (3) the method of training; and (4) a written outline of the topics discussed during the training. The facility should also have available operating information related to the odor abatement system.

2.4.8. All of the requirements provided in this Section shall be included in the Odor Control Plan.

2.4.9. Trucks transporting rendering material to and from the rendering plant shall travel within the City of Fresno subject to the restrictions set forth in the Operational Statement. These routes may be changed from time to time provided any revisions are pre-approved by the Director in consultation with the City's Traffic Engineer, so as to ensure that the trucks do not travel directly through residential neighborhoods provided that a reasonable access to the plant is maintained. All Darling owned trucks and trailers delivering raw materials to the rendering plant shall have signage that identifies them as owned by Darling.

2.5. Consent to City Inspection. Throughout the duration of this Agreement, Darling agrees to allow City Code Inspectors, and professional consultants contracted to the City and escorted by a City Code Inspector to assist in an evaluation of compliance with this Agreement, to enter onto the Subject Site during all hours the facility is in operation without prior notice to Darling for the purpose of ensuring compliance with this Agreement. While the City officers and/or inspectors are on the Subject Site, Darling shall permit the City Officers and/or inspectors to inspect both the interior of all buildings and all exterior yards. In addition, during business hours, such inspectors shall have access to review all records that Darling is required to maintain pursuant to the terms of this Agreement.

2.6. Fines. Darling agrees to the following enforcement mechanism under this Agreement to serve as a similar function as the administrative citation and fine system in the City's municipal code. Darling agrees to pay fines to the City for any breach of Darling's obligations under the terms of this Agreement under the schedule consistent with

the schedule established pursuant to Fresno Municipal Code Section 10-710. The violation schedule currently established by Section 10-710 is as follows:

First breach in a rolling twelve (12) month period.	\$ 1000.00
Second breach in a rolling twelve (12) month period	Up to \$ 10,000.00
Third or subsequent breach in a rolling twelve (12) month period.	Up to \$50,000.00

A separate fine may be imposed by the City for each breach of a different obligation that occurs for every day the breach continues. The City shall notice the fine by providing mailed notice pursuant to mechanisms set forth in Fresno Municipal Code Section 1-308(d), with the notice mailed to the address set forth in Section 3.7 of this Agreement. Darling may appeal the imposition of the fine to the City Administrative Hearing Officer following the procedures in Chapter 1, Article 4 of the Fresno Municipal Code. Any decision of the City's hearing officer shall be final and determinative upon the agreement unless an action is filed in court to enforce the agreement by either party within thirty (30) days of the decision. All fines shall be paid by Darling to the City within thirty (30) days of the fine becoming final. All fines will be final within fifteen days of the notice by the City to Darling of the fine if no appeal is filed under Chapter 1, Article 4 of the Fresno Municipal Code. If an appeal is filed, the fine is final thirty (30) days after the hearing officer's decision if no action is filed in Superior Court by either party to enforce the Agreement. Darling agrees that the City may collect any fines pursuant to Chapter 1, Article 5 of the Fresno Municipal Code. To the extent that any provision of this Agreement is different from the procedures or provisions in Chapter 1, Article 4 or Article 5 of the Fresno Municipal Code, the terms of this Agreement shall control.

2.7. Building Permits. Darling agrees to obtain any and all necessary building permits to conduct the Post-Agreement Darling Operation from the City of Fresno. Nothing provided herein is intended to waive or modify any City processes, fees or requirements for obtaining building permits.

2.8. No Vesting Rights Created by Investments Made or Permits Issued Under this Agreement. Darling agrees that nothing in this Agreement, nor any actions Darling or the City may take consistent with this Agreement, including Darling making additional capital investments pursuant to or under the authority of this Agreement, or the City issuing permits pursuant to or consistent with this Agreement, shall create any additional legal or equitable rights in Darling to operate rendering operations at the Subject Site beyond the express terms of the Agreement. Specifically, Darling agrees to waive the right in any future administrative, legal or special proceeding to put forward any argument (whether in the affirmative or as a defense) that it has acquired any legal or equitable interest to continue its rendering operations at the Subject Site based on investments made under the terms of this Agreement or permits issued by the City consistent with this Agreement.

Should Darling allege, argue or make any reference to investments it has made at the Subject Site during the effective term of this Agreement in any administrative, legal or special proceeding, Darling agrees that the Agreement may be submitted into evidence by the City to demonstrate an express waiver by Darling of any legal or equitable rights pursuant to the terms of this Section.

3. The City and Darling agree to the following:

3.1. Term. This Agreement will be effective upon the date of execution of Darling and the City, and will terminate only upon notification and mutual written agreement of both parties.

3.2. Default. Any failure or delay by either party in performing its obligations under this Agreement constitutes a default if, within thirty (30) calendar days after receipt of notice of default from the other party, (i) the defaulting party does not remedy the failure or delay; or (ii) if the delay or failure cannot be remedied within the thirty (30) day period, the defaulting party does not within the thirty (30) day period begin substantial efforts to remedy the delay or failure, and does not diligently pursue the efforts to completion within a reasonable time. The notice of default will provide reasonable detail of the delay or failure claimed as a default, and the manner, if any, in which the defaulting party may remedy the delay or failure. During the periods specified in (i) or (ii) of this subsection, except as expressly provided above, the defaulting party will not be considered in default for purposes of terminating this Agreement or for invoking any other remedy for default. Nothing provided herein is intended to limit the City's rights to enforce the Agreement pursuant to Section 2.8. Additionally, the City does not limit its rights under this Section if the City pursues enforcement of the Agreement under Section 2.8.

3.3. Termination. Darling may terminate this Agreement at any time by ceasing all rendering operations on the Subject Site and/or obtaining a CUP for its then proposed operations. Upon either party's default as described in subsection 3.2, the non-defaulting party has the right to terminate this Agreement immediately by giving notice to the defaulting party.

3.4. Cumulative Remedies. All remedies of the parties are cumulative. Termination of this Agreement by either party under this Section is an additional remedy, and except as otherwise expressly provided in this Agreement, does not limit any other rights or remedies available to that party, whether granted by this Agreement or available at law or in equity including, but not limited to, the right to bring an action for specific performance, injunction, mandamus, or damages. The exercise by a party of any remedy is not an election of remedies and is not a waiver of any other remedies. Notwithstanding any provision in this Agreement to the contrary, the only remedy available to the Darling for a default by the City under the Agreement is specific performance.

3.5. Timelines and Exigent Circumstances. Time is of the essence with respect to this Agreement. Failure to meet a timeline is considered a material breach of this Agreement

unless accepted in writing by the non-breaching party. Neither party shall unreasonably deny the other party's written requests for extensions of time to comply with the terms of this Agreement due to events not of the requesting Party's making and beyond its reasonable control. In addition, the parties acknowledge that temporary relaxation of operational standards may be compelled by emergency circumstances that arise due to events beyond Darling's reasonable control. Should Darling experience such an emergency or exigent circumstance, City shall be notified immediately in writing before any temporary relaxation of operational standards occurs. If the nature of the emergency or exigent circumstances require Darling to relax the standards before it is possible to notify the City, Darling shall then notify the City in writing as soon as possible after it temporarily relaxes its operational standards. In any event, any temporary relaxation of operational standards that lasts for more than seven calendar days shall require the City's written approval.

3.6. Waiver. The waiver by any party of a breach by any other party of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

3.7. Notices. All notices under this Agreement will be in writing and will be given by personal delivery; or by registered or certified U.S. mail, postage prepaid, return receipt requested; or by facsimile if transmitted by a machine that produces a transmission report verifying the date and time of transmission and the telephone number to which transmitted, and a confirming hard copy is mailed to the recipient; or by overnight delivery service that issues a receipt; and addressed to the appropriate party at the address set forth below. Notice given (a) by personal delivery will be effective upon delivery; (b) by mail will be effective upon receipt or three calendar days after the postmark date, whichever is earlier; (c) by facsimile will be effective on the date shown on the transmission receipt; and (d) by overnight delivery service will be effective on the date of receipt.

**To the City:**

City of Fresno  
2600 Fresno Street, Room 3065  
Fresno, California 93721-3601  
Attention: Planning and Development Director  
Fax No.: (559) 498-1304

**With Copy to:**

City Attorney  
2600 Fresno Street, Room 2031  
Fresno, California 93721-3602  
Fax No.: (559) 488-1084

**To Darling:**

Darling International, Inc.  
Attention: John F. Sterling, General Counsel  
251 O'Conner Ridge Blvd.  
Suite 300  
Irving, Texas 75038  
Fax No.: 972-281-4475

**With a Copy to:**

McCormick, Barstow, Sheppard Wayte & Carruth, LLP  
Attention: Jeffrey M. Reid, Esq.  
5 River Park Place East  
Fresno, California 93720

Either party may change its address or the addressee for notice by giving notice in accordance with this Section.

3.8. Enforcement by Other Governmental Entities. Nothing found herein is intended to waive or excuse Darling from complying with any past, present or future enforcement action by the SJVAPCD or any other governmental entity. Additionally, Darling agrees to comply with all Federal, State and local laws related to the Darling Operation and Darling agrees to notice the City of any regulation or notice by any other governmental entity that would make it impossible for Darling to comply with this Agreement.

3.9. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

3.10. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

3.11. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability, of any one provision in this Agreement shall not affect the other provisions.

3.12. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

3.13. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

3.14. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

3.15. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

3.16. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by all the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written and the signatories provide that they have authority to represent their respective parties in this matter.

CITY OF FRESNO, a municipal corporation

DARLING INTERNATIONAL INC, a Delaware Corporation.

By: \_\_\_\_\_  
\_\_\_\_\_  
City Manager

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved as to form:

JAMES C. SANCHEZ  
City Attorney

By: \_\_\_\_\_  
\_\_\_\_\_  
Deputy City Attorney

**Exhibit "A"**  
Air Permit

**Exhibit “B”**  
Insight Scope of Work

**Exhibit “C”**  
Insight Report

**Exhibit “D”**

Description of Post-Agreement Darling Operational Statement

**Exhibit “E”**  
Modifications to Address Air Pockets  
Based on a report by Integrated Environmental Systems

**Exhibit “F”**

Odor Control Plan (Including Emergency Odor Response Plan)

**Exhibit "G"**  
Revised Form to Document  
Daily Raw Material Received Records And  
Raw Material Receipt/Weight Tickets Records

**Exhibit “H”**  
Revised Form to Document  
Scrubber Service and pH Probe Calibration