

MEMORANDUM OF AGREEMENT  
FOR INDUSTRIAL WASTE WATER TREATMENT

WHEREAS, The City of Lexington, Nebraska (“CITY”) owns and maintains a waste water treatment plant (“WWTP”) for treatment of residential, commercial and industrial waste water; and

WHEREAS, Darling International Inc. (“CUSTOMER”) operates an industrial facility located at 1208 East Walnut Street in Lexington, NE, which generates and discharges waste water to the WWTP for treatment, pursuant to the National Pollutant Discharge Elimination System/Nebraska Pretreatment Program (“NPDES/NPP”); and,

WHEREAS, the CITY and CUSTOMER , (Collectively the “PARTIES”) each possesses a permit authorizing the CITY to collect, treat and discharge wastewater and CUSTOMER to pretreat and discharge wastewater to WWTP; and,

WHEREAS, the CITY and CUSTOMER, each has been given notice of non-compliance by the Nebraska Department of Environmental Quality (“NDEQ”) with the provisions of their respective discharge permits, requiring capital improvements in order to comply with current and anticipated wastewater standards; and,

WHEREAS, each of the PARTIES has determined it is in its respective best interests to enter into a cooperative agreement to design and construct improvements at the WWTP necessary to put both parties back into compliance; and,

WHEREAS, the parties wish to memorialize such agreement in this document (the “AGREEMENT”).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the PARTIES, the PARTIES hereby agree as follows:

A. FINANCING UPGRADES AT WWTP

1. CITY agrees to design and build improvements to the WWTP to ensure that the final waste water effluent of PARTIES is in compliance with current and reasonably anticipated wastewater discharge permit requirements of NDEQ;
2. CUSTOMER agrees to contribute \$2,750,000 towards the ultimate cost of said improvements to be paid as follows:
  - a. 5% to be paid by CUSTOMER within 30 days of receipt of invoicing noting commencement of project design.
  - b. 15% to be paid by CUSTOMER within 30 days of receipt of invoice noting commencement of actual construction.

- c. The balance to be paid in four equal annual installments beginning September 15, 2012, each such installment to include interest on the unpaid balance at the rate of 3% per annum, and as evidenced by a Promissory Note to be executed by CUSTOMER, which Promissory Note shall be secured by a standby letter of credit. The PARTIES agree that CUSTOMER shall not be required to make any remaining installment payments in the event that construction on the WWTP upgrades contemplated by this Agreement has been discontinued or in the event of CITY's continued breach of any of the provisions in this Agreement.

B. DESIGN DEVELOPMENT AND IMPLEMENTATION

1. CITY shall retain a qualified professional, acceptable to CUSTOMER, which acceptance shall not be unreasonably withheld, to determine the necessary upgrades and design the improvements required to complete the upgrades, which improvements must ensure that the WWTP can handle all of CUSTOMER's anticipated waste water stream (with room for reasonable expansion) sufficient to handle the following loadings (the "APPROVED PARAMETERS"):

	<u>Daily Maximum</u>	<u>Weekly Average</u>
CBOD (5-Day) #/day	12,000	10,000
TSS #/day	10,000	7,500
Ammonia #/day	2,500	1,900
FOG #/day	625	375

*The Minimum pH value shall be 5*

2. CUSTOMER shall have the right to review and comment on the design and CITY shall cause all such reasonable comments to be incorporated into the final design. CUSTOMER shall have the right to approve the final design, which approval shall not be unreasonably withheld.
3. CITY shall submit the final design to the NDEQ for approval, which approval shall focus on whether the design shall ensure that the WWTP can treat all wastewater provided by CUSTOMER consistent with the APPROVED PARAMETERS.
4. Upon final approval of the design, CITY shall put the design out for bids with the requirements that all bids contain a binding time frame for completion of the upgrades, the failure of which to satisfy shall result in the contractor incurring specific penalties. CITY shall provide CUSTOMER with copies of all bids along with CITY's recommendation as to its choice of contractor and CUSTOMER shall have the right to approve the contractor, which approval shall not be unreasonably

withheld, and to comment on the contract and CITY shall use reasonable efforts to cause CUSTOMER's reasonable comments to be incorporated into the final contract.

5. CITY shall provide CUSTOMER with periodic updates regarding construction, which updates shall be no less frequent than once per month and include current status, anticipated completion and budget update.

### C. POST-COMPLETION TREATMENT

1. CITY agrees to receive and treat industrial waste generated by CUSTOMER at the WWTP, such waste to be in compliance with the reasonably anticipated future pretreatment permit; however, it is understood that the improvements are being designed to allow CUSTOMER to be reissued a pretreatment permit with the APPROVED PARAMETERS, and CUSTOMER agrees to deliver waste water with loading no greater than what will be allowed by the reasonably anticipated future pretreatment permit, provided reasonably anticipated includes a permit with the APPROVED PARAMETERS, but regardless such waste water must meet the general prohibitions contained in the Federal Pretreatment Program Regulations (40 CFR Part 403), as well as a prohibition against slug discharges and the discharge of any contaminant that would result in pass-through or interference with WWTP processes or facilities.
2. CUSTOMER agrees that the CITY has the right to measure and test the wastewater delivered to the WWTP for volume and concentration in connection with its permit, although the costs of such measurements and testing shall be borne by CITY.
3. The annual cost to treat CUSTOMER's waste water shall be \$204,000 annually, or \$17,000 per month, based on estimated flows in a range of 125,000 to 175,000 gallons per day. This treatment cost will remain in effect for 10 years from the date of the completion of the upgrades; however, on the fifth anniversary of completion of the upgrades, the CITY shall have the right to evaluate the actual treatment cost of CUSTOMER waste water, and in consultation with CUSTOMER, amend the annual treatment costs based upon the likely cost of service for the year of service.
4. The CITY shall bill CUSTOMER the cost of such treatment on a monthly basis. Payment shall be due upon the issuance of the statement, and shall be deemed delinquent [15] days after receipt of the bill by CUSTOMER; upon delinquency, the amount due shall commence drawing interest at the rate of 1.5% per annum.
5. CUSTOMER agrees that the delivery of waste water which exceeds CUSTOMER's NPDES/NPP permit standards (but without regard to the APPROVED PARAMETERS) and causes an upset of normal WWTP processes or damage to WWTP facilities shall carry an additional cost to the CUSTOMER. The CITY shall charge CUSTOMER such costs based upon actual additional operating, labor, supply, material, and facility costs incurred by CITY. Such additional cost shall be billed to CUSTOMER as a facility charge. CUSTOMER agrees to pay such facility charge in

whole or in equal monthly payments for no longer than a 12 month period following such upset event. CUSTOMER shall have the opportunity to protest such facility charge within 30 days notice of charge; such protest will not extend the facility charge payment period.

6. CITY shall ensure that the WWTP is able to receive and treat industrial waste generated by CUSTOMER at the WWTP consistent with the APPROVED PARAMETERS.
7. The PARTIES agree that, when CUSTOMER's pretreatment permit issued by NDEQ comes up for renewal, the CITY will support CUSTOMER's request for a pretreatment permit with unrestricted parameters, other than those that are necessary for the continued operation of the WWTP, as designed, and if unrestricted parameters cannot be achieved in all categories, the PARTIES will work cooperatively to eliminate those parameters that are acceptable to the PARTIES.

#### D. CONDITIONS PRECEDENT

1. Notwithstanding anything to the contrary herein, CUSTOMER's obligation under this AGREEMENT shall not become effective until the NDEQ has issued CUSTOMER a new industrial wastewater permit that includes the APPROVED PARAMETERS and the Environmental Protection Agency Region VII provides approval to the approach.
2. Each person executing this AGREEMENT represents and warrants that he or she has the capacity and legal authority to execute this AGREEMENT on behalf of the respective entity for which he or she is representing.

#### E. GENERAL PROVISIONS

1. The PARTIES understand that each has made significant commitments and capital contributions that benefit the PARTIES and understand that it is the objective of the PARTIES to eliminate CUSTOMER's need to pretreat waste for the APPROVED PARAMETERS. To the extent the activities of other users could reasonably be anticipated to adversely affect CUSTOMER's ability to comply with its permit or this AGREEMENT, CITY shall inform CUSTOMER and work diligently with CUSTOMER to develop a solution that minimizes the future increased costs to CUSTOMER. To that extent, without the prior written consent of CUSTOMER, CITY shall not accept waste water from any other users that would result in CUSTOMER being unable to deliver waste water with the APPROVED PARAMETERS as contemplated by this Agreement.
2. This AGREEMENT contains the entire agreement between the PARTIES with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the PARTIES other than these set forth or referred to herein.

3. If any provision of the AGREEMENT or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.
4. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute on and the same instrument.
5. This AGREEMENT may not be amended, modified or supplemented, and none of its provisions may be waived, except by an agreement in writing signed by the PARTIES.
6. This AGREEMENT, and all disputes arising out of or in connection with this AGREEMENT, shall be governed by and interpreted, construed and determined in accordance with the applicable provisions of the internal laws of the State of Nebraska (without regard to any conflict of laws provision that would require the application of the law of any other jurisdiction).
7. The headings set forth in this AGREEMENT are used solely for convenience of reference and shall not control or affect the meaning or interpretation of any of the provisions. In this AGREEMENT, where any group or category of items or matters is defined collectively in the plural number, any item or matter within such definition may be referred to using such defined term in the singular number and vice versa.

City of Lexington, Nebraska

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John Fagot  
Mayor

Darling International Inc.

By:  \_\_\_\_\_ Date: 1/10/12  
William R. McMurtry  
VP of Environmental Affairs