

AN ORDINANCE **2016-05-19-0360**

APPROVING AN AMENDED AND RESTATED FIRE/EMERGENCY SERVICES AGREEMENT, DONATION AGREEMENT AND OTHER ASSOCIATED DOCUMENTS WITH MARUCHAN TEXAS, INC. FOR THE ACQUISITION OF APPROXIMATELY 2.507 ACRES OF PRIVATELY-OWNED REAL PROPERTY IN COUNTY BLOCK 4301, LOT 2, FOR THE CONSTRUCTION OF FIRE STATION #52 AND AUTHORIZING UP TO \$25,000.00 PAYABLE TO THE SELECTED TITLE COMPANY FOR LAND AND ASSOCIATED TITLE FEES.

* * * * *

WHEREAS, Maruchan Texas, Inc. ("Maruchan") acquired and developed an approximately 55.3 acre tract of land (the "Property") situated in the City of San Antonio's extraterritorial jurisdiction, as that term is defined in Section 42.021 of the Texas Local Government Code, and which was designated by the City as an Industrial District through City Ordinance No. 2012-06-14-0451; and

WHEREAS, in addition to the Industrial District designation, City Ordinance No. 2012-06-14-0451 authorized the City to enter into a five-year Industrial District Non-Annexation Agreement (the "Non-Annexation Agreement") and an associated Basic Fire Services Agreement (the "Basic Fire Agreement") to provide basic fire service to the Property for an annual fee of \$35,000.00; and

WHEREAS, the City and Maruchan now desire to enter into an Amended and Restated Fire/Emergency Service Agreement to provide for emergency and first responder services, in addition to basic fire services (the "Services"), at the Property for the duration of the term of the Non-Annexation Agreement; and

WHEREAS, the Services are valued at approximately \$150,000.00, and as consideration for the City providing the Services, Maruchan has agreed to convey approximately 2.057 acres of the Property to the City where it will construct Fire Station #52 (the "Fire Station Site"); and

WHEREAS, the City and Maruchan agree and acknowledge that the value of the Fire Station Site exceeds the value of the Services, and that upon the determination of the value of the Fire Station Site through a third-party appraisal, the City will deduct the value of the Services from the Fire Station Site's value and attest to Manufacturer's donation of the remaining value to the City; and

WHEREAS, such donation of the remaining acreage of the Fire Station Site will be accomplished through the execution of a Donation Agreement and deed; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Amended and Restated Fire/Emergency Service Agreement and Donation Agreement (the "Agreements") with Maruchan Texas, Inc. are hereby approved. The City Manager, or her designee, is authorized to execute the Agreements in accordance with this Ordinance along with any associated documents necessary to effectuate the purpose of this Ordinance. Copies of the Agreements, in substantial final form, are attached to this Ordinance as **Exhibits I and II.**


SECTION 2. The acquisition of property must be coordinated through the City's Finance Department to assure the addition of the asset into the City's financial records and to record the proper accounting transactions.

SECTION 3. A payment not to exceed \$25,000.00 is authorized for payment through negotiation in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 20-00045, City South Annexation - Fire Equipment, and should be encumbered and made payable to the selected title company for land and associated title fees of approximately 2.507 acres, of privately owned real property in County Block 4301, Lot 2, for Fire Station #52 in Council District 4 in Bexar County, Texas. Payments for services are contingent upon the availability of funds and the sale of future City of San Antonio tax notes in accordance with the adopted capital budget. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

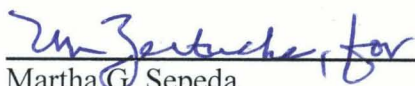
PASSED AND APPROVED this 19th day of May, 2016.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:


Martha G. Sepeda
Acting City Attorney

Agenda Item:	15A (in consent vote: 15A, 15B)						
Date:	05/19/2016						
Time:	10:03:50 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of an Amended and Restated Fire/Emergency Services Agreement, Donation Agreement and other associated documents with Maruchan Texas, Inc. for the acquisition of approximately 2.507 acres of privately-owned real property in County Block 4301, Lot 2, for Fire Station #52 and authorizing up to \$25,000.00 payable to the selected title company for land and associated title fees.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x			x	
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8	x					
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

EXHIBIT I

STATE OF TEXAS

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AMENDED AND RESTATED

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FIRE/EMERGENCY SERVICES

COUNTY OF BEXAR

§

AGREEMENT

This Amended and Restated Fire/Emergency Services Agreement (hereinafter referred to as this "Amended Agreement") is made and entered into by and between the City of San Antonio (hereinafter referred to as the "CITY"), a Texas municipal corporation acting by and through its City Manager or designee, pursuant to City Ordinance No. 2016-05-19-_____ dated May 19, 2016 and Maruchan Texas, Inc. (hereinafter referred to as the "Manufacturer"), a Texas corporation, its successors and assigns. Collectively, CITY and Manufacturer may sometimes be referred to herein as the "Parties".

WHEREAS, the Manufacturer acquired and developed an approximately 55.4 acre tract of land situated in Bexar County, Texas, which is more particularly described in Attachment I hereto (the "Property"), and which is located within the "extraterritorial jurisdiction" of the City of San Antonio, as that term is defined in Section 42.021, Extent of Extraterritorial Jurisdiction, Texas Local Government Code, and has been designated an Industrial District by City ordinance; and

WHEREAS, the Parties previously entered into that certain *Industrial District Non-Annexation Agreement* (the "Non-Annexation Agreement") and associated *Basic Fire Services Agreement* (the "First Fire Agreement") pursuant to City Ordinance No. 2012-06-14-0451, dated June 14, 2012; and

WHEREAS, the First Fire Agreement provided for the City to perform basic fire services at the Property until December 31, 2018 at an annual cost to Manufacturer of \$35,000.00; and

WHEREAS, the Parties now desire to enter into this Amended Agreement that will run concurrently and be subject to the Non-Annexation Agreement to provide for the exchange of an undivided interest in 2.057 acres of real property, as further described in Attachment II (the "Fire Station Site"), pursuant to the Donation Agreement (described below) and in consideration for the City providing emergency and first responder services in addition to basic fire services at the Property; and

WHEREAS, on even date herewith, the Parties have entered into that certain Real Estate Sales & Donation Agreement (the "Donation Agreement"), pursuant to which Manufacturer has agreed to convey the Fire Station Site to the City on the terms, conditions and provisions set forth therein; and

WHEREAS, the City has ordered an appraisal of the Fire Station Site from Debra S. Runyan (the "Appraisal") and upon receipt of such Appraisal, the City will deduct the Value of Services (as defined below) from the Fire Station Site's value as indicated by the Appraisal and attest to the donation of the remaining value for Manufacturer's tax purposes; and

WHEREAS, this Amended Agreement will become effective on the date the Fire Station Site is conveyed by Manufacturer to the City (the "Effective Date");

NOW THEREFORE:

The Parties hereto severally and collectively agree that this Amended Agreement shall replace the First Agreement in its entirety, and by the execution hereof the Parties are bound, to the mutual obligations herein contained and the performance and accomplishment of the tasks hereinafter described:

SECTION 1. CITY agrees to provide fire protection, firefighting and emergency medical services (the “Services”) to the Property in the same manner and to the same extent as if said Property were located within the City limits of San Antonio, except as limited by the provisions of this Amended Agreement. Manufacturer agrees that Services shall not include the response fee(s) required for hazardous materials (HAZMAT) incidents as such fee(s) are established in City Ordinance No. 72267, and as amended. CITY shall provide the Services beginning on the Effective Date of this Amended Agreement and ending upon the earlier to occur of: (a) the expiration of the Industrial District Non-Annexation Agreement; (b) December 31, 2018; or (c) the earlier termination of this Amended Agreement (the “Term”); provided, however, that the CITY shall be providing “First Responder” and EMS services to the Property under this Amended Agreement commencing upon the completion of the construction of a Fire Station on the Fire Station Site.

SECTION 2. The Parties acknowledge and agree that the value of the Services over the Term of this Agreement is ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (the “Value of Services”). For and in consideration of Manufacturer receiving the Services from CITY, Manufacturer shall convey the Fire Station Site to City in accordance with the Donation Agreement. The City acknowledges that the value of the Fire Station Site exceeds the Value of Services and agrees that, upon the completion of the Appraisal, the City will deduct the Value of Services from the appraised value of the Fire Station Site and acknowledge in any required instrument the remaining value as a donation from Manufacturer to City. Manufacturer’s conveyance of the Fire Station Site shall serve as proof of full payment for the Services under this Amended Agreement and Manufacturer shall have no further financial obligations to City under this Amended Agreement. Upon conveyance of the Fire Station Site to the City, the term “Property” as used in this Amended Agreement shall be deemed to exclude such Fire Station Site for so long as it remains owned by the City.

SECTION 3. Manufacturer agrees that as a condition to receiving the Services under the terms of this Amended Agreement that:

- A. All site development in the Industrial District shall comply with those requirements set forth in the Industrial District Non-Annexation Agreement.
- B. Persons designated by the CITY shall be provided reasonable access and permitted to inspect, at reasonable times, structures to be provided fire protection and firefighting services to assure that the construction on the Property is in compliance with all applicable CITY building, fire, plumbing and electrical codes, regulations and ordinances.

SECTION 4.

A. It is further agreed by Manufacturer that when any building or structure of the Property is on fire or may be deemed to be hazardous and likely to take fire or communicate the fire to other buildings, the CITY, through its Fire Chief or designated representative, may do whatever may be deemed necessary by him for the safety and protection of property and citizens when controlling a fire.

B. Manufacturer agrees to fully indemnify, defend and hold harmless the CITY and the elected officials, agents, and employees, officers, directors and representatives of CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature including, but not limited to, personal injury or death and property damage, made upon CITY directly arising out of, resulting from or related to Manufacturer's negligence pursuant to this Amended Agreement, including any acts or omissions of Manufacturer, any agent, officer, director, representative, employee, consultant of Manufacturer, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Amended Agreement, all without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the Parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Manufacturer shall promptly advise CITY in writing within 24 hours of any claim or demand against CITY or Manufacturer known to Manufacturer related to or arising out of Manufacturer's activities under this Fire Services Agreement and shall see to the investigation of and defense of such claim or demand at Manufacturer's cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving Manufacturer of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the Parties to this Agreement that the INDEMNITY provided for in this section is an INDEMNITY extended by Manufacturer to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY'S OWN NEGLIGENCE provided, however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death or damage and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. Manufacturer further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees,

officers, directors, volunteers and representatives, in connection with any such injury, death or damage for which this INDEMNITY shall apply, as set forth above. In addition, it is agreed by Manufacturer that CITY shall not be responsible for, nor will it be required to, replace or repair any such damage sustained by any building and its contents as the result of firefighting operations.

C. CITY will use due diligence in providing the Services to the Property. CITY, however, does not in any way assume to act as an insurer of the Property covered under this Amended Agreement or to pay for any damage that may occur as a result of fire, water or explosion. Nor does CITY assume any obligation under the terms of this Amended Agreement to construct additional fire stations, purchase additional firefighting equipment, or hire additional manpower for the protection of the Property. Rather, Manufacturer understands that it is not entitled to any greater protection than residents located within the CITY receive and that CITY will not be held liable for any additional time required to respond to a fire alarm because said premises and structures are located outside the corporate limits of CITY.

D. Manufacturer shall provide the City Fire Chief an engineer's site plan, approved by the City Fire Chief, showing the location of any new building or buildings to be provided fire protection prior to the date of Manufacturer's construction of any new buildings at the Property.

SECTION 5. Manufacturer agrees that the Property will be for the exclusive use of a targeted industry (food manufacturing) consistent with CITY's Industrial District Non-Annexation Agreement.

SECTION 6. It is understood by the Parties hereto that if the Industrial District Non-Annexation Agreement is terminated for any reason by either Party, then this Amended Agreement will automatically terminate. The Parties further agree that upon annexation of the Property by the CITY, this Amended Agreement will automatically terminate. It is further agreed by the Manufacturer that should any portion of the Property become annexed by CITY or de-designated (hereinafter referred to as "De-Designated Parcels") in the manner set out in the Industrial District Non-Annexation Agreement, such De-Designated parcel or parcels shall no longer be eligible for the Services under this Amended Agreement, and CITY may, without notice, immediately cease providing the Services upon the effective date of said annexation by the CITY or de-designation. If the Amended Agreement is terminated pursuant to this Section 7, then CITY shall refund to Manufacturer an amount equal to the pro rata portion of the Value of Services that is attributable to any period following the date of termination.

SECTION 7. Manufacturer understands and agrees that its rights to the Services pursuant to this Amended Agreement are not transferable or assignable by Manufacturer without the prior written consent of CITY, unless such assignment is to a successor entity or affiliate of the Manufacturer.

SECTION 8. If any clause or provision of this Amended Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws including, but not limited to, the City Charter, City Code, or ordinances of the City of San Antonio, Texas then, and in that event,

it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Amended Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.

SECTION 9. For purposes of this Amended Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Director
Economic Development Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

if by delivery to:

Director, Economic Development
City of San Antonio
100 Military Plaza
San Antonio, TX 78205

Manufacturer

Maruchan Texas, Inc.
15800 Laguna Canyon Rd.
Irvine, CA 92618

With copy to:

Golden Steves Cohen & Gordon LLP
Attn: Karl Baker
300 Convent Street, Suite 2600
San Antonio, TX 78205

SECTION 10. Should Manufacturer fail to perform any term, condition or covenant contained in this Amended Agreement, and such failure continues for a period of thirty (30) days after Manufacturer's receipt of written notice from CITY of such failure, then CITY shall have the right to terminate this Amended Agreement.

SECTION 11. This Amended Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and approved assigns, except as otherwise expressly provided for herein.

SECTION 12. THIS AMENDED AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

Signatures appear on next page.

EXECUTED on the dates set forth below to be effective as of the _____ day of _____, 2016.

CITY OF SAN ANTONIO

Carlos Contreras
Assistant City Manager

MARUCHAN TEXAS, INC.



Name: Haruo Nishida

Title:

Plant Manager

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Attachments:

Attachment I – Property Description
Attachment II – Fire Station Site

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this 6th day of May, 2016, personally appeared Haruo Nishida, Plant Manager (Title) of Maruchan Texas, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of said corporation and in the capacity therein stated.



Victoria Lin Gonzalez
NOTARY PUBLIC
State of Texas

STATE OF TEXAS

COUNTY OF BEXAR

BEFORE ME, the undersigned authority, on this ____ day of _____, 2016, personally appeared _____, _____ of the City of San Antonio, a Texas municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed as the act and deed of said corporation and in the capacity therein stated.

NOTARY PUBLIC
State of Texas

Property Description



Attachment II Fire Station Site

