RR
05/19/16
Item No. 15A

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.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

for

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	§	**AMENDED AND RESTATED**
	§	**FIRE/EMERGENCY SERVICES**
COUNTY OF BEXAR	§	**AGREEEMENT**

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
My Comm. Exp. 06-04-2017
ID# 12944585-8

Victoria Lin Gonzalez
NOTARY PUBLIC
State of Texas

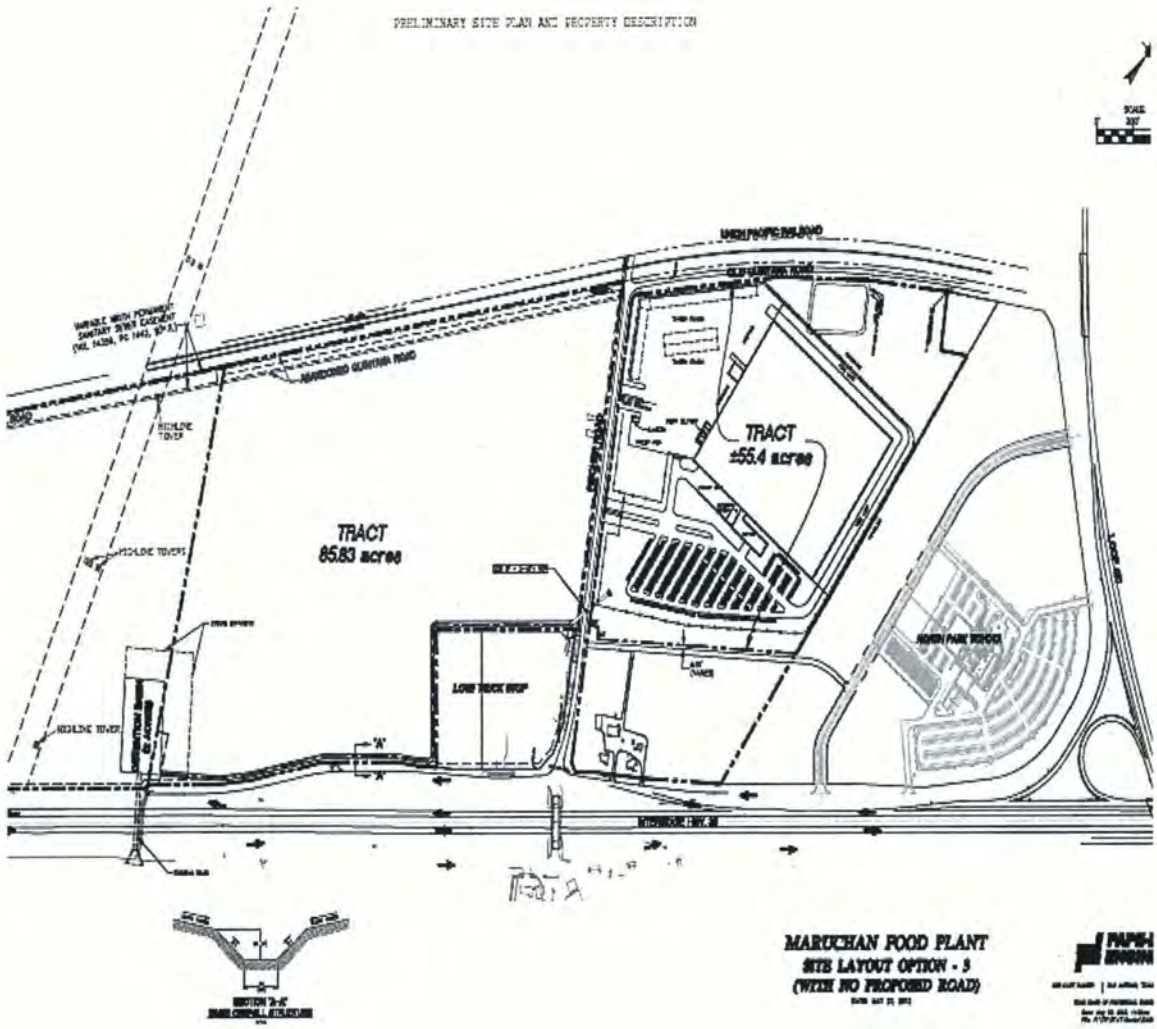
STATE OF TEXAS

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

Attachment I
Property Description



Attachment II
Fire Station Site

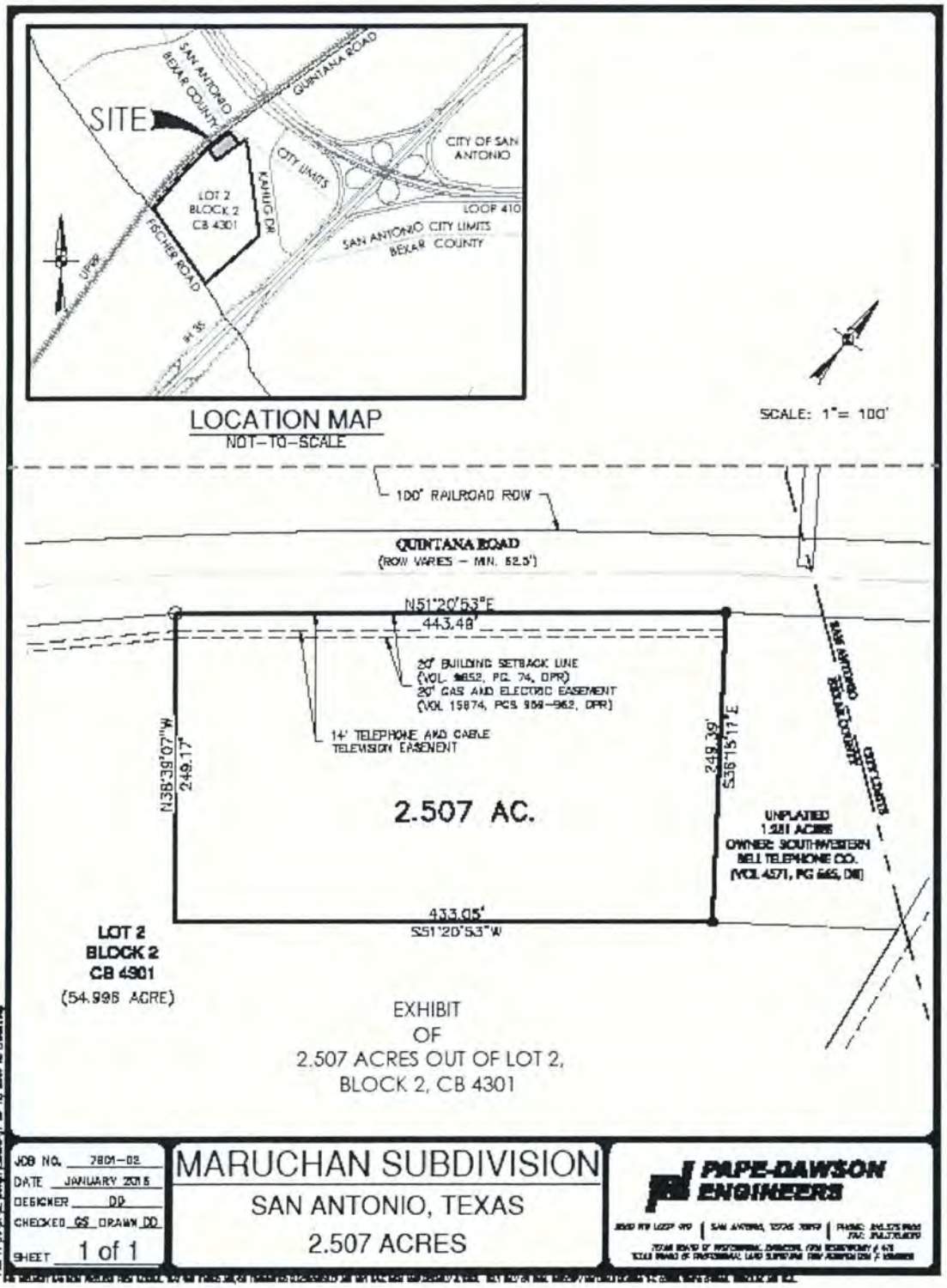


EXHIBIT II

Real Estate Sales & Donation Agreement
(Fire Station 52)

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Authorizing Ordinance:

Parcel No.: 19503

Seller: Maruchan Texas, Inc.
c/o Haruo Nishida

Address: 11000 Fischer Road
Von Ormy, Texas 78073

Type of Entity: Domestic For-Profit Corporation

Seller's Counsel: Golden Steves Cohen & Gordon LLP
Attn: Karl P. Baker

Address: 300 Convent Street, Suite 2600
San Antonio, Texas 78205

Phone: 210-745-3712

Email: kbaker@goldensteves.com

Buyer: City of San Antonio, a Texas home rule municipality

Address: 114 W. Commerce, Suite 800
c/o Steve Hodges
San Antonio, TX 78201

Phone: 210-207-8688

Buyer's Counsel: Eric Friedland

Address: City Attorney's Office, P.O. Box 839966, San Antonio, Texas 78283-3966

Phone: 210-207-8949

Email: eric.friedland@sanantonio.gov

Property: A certain 2.507 acre tract of land out of a 55.430 acre tract of land conveyed to Maruchan Texas, Inc. in deed recorded in Volume 15676, Page 1006, Bexar County, Texas, same being a portion of Lot 2, Block 2, County Block 4301, of the Maruchan Subdivision as recorded in Volume 9652, Page 74, Plat Records of Bexar County, Texas, said tract of land being generally depicted on **Exhibit "A"** attached hereto and incorporated herein

Title Company: Alamo Title of Texas

Address: 18618 Tuscany Stone, Suite 240
San Antonio, TX 78258

Phone: 210-490-1313

Fax: 210-490.1312

Email: daniel.brunner@alamotitle.com

Seller'sBroker: Corporate Real Estate Services

Address: 1900 Main Street, Suite 360, Irvine, CA 92614

Phone: (714) 813-4334

Email: rhertel@cresintl.com

Buyer's Broker: N/A

Address: N/A

Phone: N/A

Email: N/A

Consideration: As partial consideration for the conveyance of the Property, Buyer and Seller are entering into that certain Amended and Restated Fire/Emergency Services Agreement in the form attached hereto as **Exhibit "E"** pursuant to which Buyer will be accepting the conveyance of the Property from Seller in lieu of $150,000 in fees that would otherwise be payable by Seller to Buyer for Emergency Medical Services, First Responder, and Fire Protection Services.

Reference is hereby made to the certain appraisal prepared for Buyer by Debra S. Runyan (the "Appraisal") that values the Property at $328,000.00. The parties agree and acknowledge that the value of the Property in excess of $150,000 is intended to constitute a donation by Seller to the Buyer and Buyer shall reasonably cooperate with Seller in such manner as may be necessary to facilitate Seller obtaining a deduction for federal income tax purposes related to such donation and that Seller may utilize the Appraisal for such purposes or may elect, in its sole discretion, to obtain a separate appraisal for such purposes.

Effective Date: The later of (A) the effective date of the Authorizing Ordinance or (B) the date a representative of the Title Company signs a receipt for this fully executed contract

Survey Category: Category 1A Texas Land Title Survey

County for Performance Bexar County, Texas

1. Deadlines and Other Dates.

All deadlines in this Agreement expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1.02.	Delivery of Title Commitment	May 24, 2016
1.03.	Delivery of Survey	May 20, 2016
1.04.	Delivery of copies of instruments referenced in the Title Commitment and Survey	May 24, 2016
1.05.	Delivery of Seller's records as specified in Exhibit C	10 Days after the Effective Date
1.06.	Buyer's Objection Deadline	May 26, 2016
1.07.	Seller's Cure Notice Deadline	May 27, 2016
1.08.	Buyer's Termination Deadline	May 31, 2016
1.9.	End of Inspection Period	May 31, 2016
1.10.	Closing Date	June 1, 2016

The above deadlines may be altered by the mutual agreement of the parties in writing. The Director of the Transportation and Capital Improvements Department or his designee may consent to such changes on behalf of Buyer without further authorization of City Council.

2. Closing Documents.

2.01. At closing, Seller will deliver the following items:

Special Warranty Deed (the "Deed") in the form attached hereto as **Exhibit "D"** executed and acknowledged by Seller;

IRS Nonforeign Person Affidavit;

Evidence of Seller's authority to close this transaction reasonably satisfactory to the Title Company;

Seller's original executed counterpart to the Amendment to the Basic Fire Services Agreement attached hereto as **Exhibit "E"** (the "BFSA Amendment") pursuant to which at closing the existing Basic Fire Services Agreement will be amended to add First Responder and EMS Coverage to the services provided to Seller and to provide for the waiver of the remaining fees required thereunder in partial consideration for the conveyance of the Property under this Agreement; and

The applicable notices, statements, and certificates as specified in **Exhibit "C".**

2.02. At closing, Buyer will deliver the following items:

Buyer's original executed counterpart to the BFSA Amendment; and

Evidence of Buyer's authority to consummate this transaction

2.03. The documents listed above are collectively known as the "Closing Documents." Unless otherwise agreed by the parties in writing before closing, the deed will be substantially in the form attached as **Exhibit "D"**.

3. Exhibits.

The following are attached to and are part of this Agreement for all purposes as if fully set forth:

Exhibit A—Property Description
Exhibit B—Representations
Exhibit C—Notices
Exhibit D—Form of Deed
Exhibit E – BFSA Amendment

4. Purchase and Sale of Property.

Subject to the terms and provisions of this Agreement, Seller will convey the Property to Buyer, and Buyer will purchase the Property from Seller. The purchase and sale includes the land comprising the Property together with (a) all buildings, fixtures, structures and improvements (if any) located thereon; and (b) all of Seller's right, title and interest in and to (i) any strips or gores between the Property and abutting properties; (ii) any rights of ingress and egress to any roads, alleys, rights-of-way, easements, streets, and ways adjacent to and serving the Property; (iii) land lying in the bed of any public street or road in the area directly adjacent to and adjoining the Property, to the centerline of such street, road or access way; (iv) all mineral interests of any kind or character pertaining to the Property; and (v) all water rights of any kind or character pertaining

to the Property. The promises by Buyer and Seller stated in this Agreement are the consideration for the formation of this Agreement.

5. Title and Survey.

5.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

5.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company stating the condition of title to the Land. The Title Commitment must show Seller as the record title owner of the Land. "Title Policy" means a standard form of Texas Owner's Policy of Title Insurance issued by Title Company, with a policy amount to be determined by Buyer and Title Company, and in conformity with the last Title Commitment delivered to and approved by Buyer, insuring Buyer's fee simple title to the Land as good and indefeasible subject to the terms of the Title Policy and the exceptions specified in it.

5.03. *Survey.* "Survey" means an on-the-ground, staked plot of survey and metes-and-bounds description of the Land, prepared by Civil Engineering Consultants (CEC), and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category. At such time as the Survey has been completed and approved by Seller, such approval not to be unreasonably withheld so long as the Survey conforms to the depiction of the Property attached hereto as **Exhibit "A"**, the field notes prepared by the surveyor shall be deemed to be incorporated herein by reference as a new **Exhibit "A-1"** hereto and such legal description shall be used as the property description to be included in the Deed, Title Policy and other documents to be delivered at the closing.

5.04. *Delivery of Title Commitment, Survey.* Buyer must obtain the Title Commitment and the Survey by the deadline stated in Section 1. If the Property is out of a larger tract, the Commitment is not considered received by the Buyer for the purposes of this Agreement until the description of the Property has been provided by the Survey and the Commitment has been issued pertaining only to the Property as so described.

5.05. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Buyer's Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has

made no Buyer's Objection by the Buyer's Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions."

5.06. *Cure Notice.* If Buyer notifies Seller of any Buyer's Objections, Seller has until Seller's Cure Notice Deadline to notify Buyer in writing whether Seller agrees to cure the Buyer's Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Buyer's Objections before closing, Buyer may, on or before Buyer's Termination Deadline, notify Seller that this Agreement is terminated. In absence of such timely notice, Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment that are subject to cure by Seller, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Buyer's Objections that Seller has agreed in writing to cure in the Cure Notice.

5.07. *Mandatory Cure Items.* Despite any other provision of this Agreement, (i) all liquidated liens disclosed in the Title Commitment (or any subsequent commitment); (ii) all other exceptions disclosed in the Title Commitment (or any subsequent commitment) arising on or after the Effective Date of this by, through, or under Seller; and (iii) all Buyer Objections that Seller agrees in writing to cure at or prior to closing (collectively, the "Mandatory Cure Items"), must be satisfied, cured, or removed by Seller, at Seller's sole cost and expense, at or before closing.

6. Intentionally Deleted.

7. Representations.

The parties' representations stated in **Exhibit "B"** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

8. Condition until Closing; Cooperation.

8.01. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this Agreement if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen (15) days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen (15) days before closing). If Buyer does not terminate this Agreement, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in

condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

8.02. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

8.03. *Cooperation.* Seller will reasonably cooperate with Buyer (a) before closing, to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

9. Termination.

9.01. Buyer may terminate this Agreement in accordance with any of Buyer's rights to terminate.

9.02. Seller may terminate this Agreement in accordance with any of Seller's rights to terminate.

10. Allocation of Closing Costs.

10.01. Buyer will pay:

a) all costs and expenses associated with or arising in connection with the Title Commitment and the Title Policy;

b) all costs and expenses associated with or arising in connection with the Survey;

c) the full escrow fee charged by Title Company;

d) the costs to prepare and record the deed;

e) the costs to obtain, deliver, and record releases of all liens to be released at closing;

f) the costs to insure around liens not released, if any;

g) the costs to record all documents to cure Buyer's Objections agreed to be cured by Seller;

h) Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;

i) the additional premium for the "survey/area and boundary deletion" in the Title Policy;

j) the costs to obtain the Survey, UCC Search, and certificates or reports of ad valorem taxes;

k) the costs for platting Buyer's Property, if required;

l) the costs to deliver copies of the instruments described in Article 1;

m) Buyer's expenses and attorney's fees; and

n) Seller's attorney's fees.

10.02. Seller will pay:

a. Seller's broker/agent commission (if any); and

b. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense.

10.03. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date according to Section 26.11 of the Texas Tax Code. In no event is Buyer liable for any roll back taxes. Buyer shall promptly notify the Bexar County Appraisal District of its acquisition of the Property so that the Property may be assigned a separate tax parcel.

10.04. *Income and Expenses.* Seller represents to Buyer that there is no income, nor any expenses, pertaining to operation of the Property, nor will there be any prior to the Closing Date.

10.05. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety (90) days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen (15) days of receipt of notice of the errors.

11. Closing.

11.01. *Closing.* This transaction will close at Title Company's offices on the Closing Date. At closing, the following will occur:

a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

b. *Exchange of BFSA Amendment and Special Warranty Deed.*

c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse all funds, if any, required to be paid at the closing in accordance with this Agreement, record the Deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.

d. *Delivery of Originals.* Seller will deliver to Buyer the originals of the Deed and one original to Buyer and Seller each of the BFSA Amendment.

e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any lien and security interest in favor of Seller, if the sale is seller-financed.

f. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing.

g. Buyer will receive at closing the basic title policy plus endorsements removing the survey exception and the exception for rights of parties in possession.

12. Default and Remedies.

12.01. *Seller's Default.* If Seller fails to perform any of its obligations under this Agreement or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer has the following remedies as Buyer's sole remedies:

a. *Termination.* Buyer may terminate this Agreement by giving notice to Seller on or before the Closing Date.

b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this Agreement. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

12.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this Agreement ("Buyer's Default"), Seller may, as its sole and exclusive remedy, terminate this Agreement by giving notice to Buyer on or before the Closing Date.

13. Miscellaneous Provisions.

13.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Shall Be Governed By The Laws Of The State Of Texas.** Provided, however, the Texas conflicts of law rules shall not be used to cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

13.02. *Severability.* If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

13.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

13.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties Relating to the Conveyance of the Property from Seller to Buyer And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

13.05. *Modification.* This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

13.06 *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

13.07. *Notices*. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof with a copy delivered to the applicable party's attorney at the address set forth in the preamble. The giving of notice is complete three (3) days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to conform to the requirement that mailings be done by certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

13.08. *Pronouns*. In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

13.09. *Captions*. Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

13.10. *Mediation*. As a condition precedent to bringing any action to enforce or interpret this Agreement or any aspect thereof, including an action for declaratory relief, the disputants must first submit in good faith to mediation by a mediator qualified under § 154.052, Texas Civil Practice and Remedies Code. Suit may be filed only after the sooner to occur of (i) a full day of mediation by a mediator qualified as provided above or (ii) certification by the mediator that further attempts to mediate would be fruitless. Laches, waiver, and estoppel based upon any reasonable delay relating to attempts to mediate as herein provided may not be asserted by either party hereto.

13.11. *Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall be an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

13.12. *Further Assurances*. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

13.13. *Assignment.* Buyer may not assign this Agreement without Seller's prior written consent, such consent to be given or withheld in Seller's sole discretion. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

13.14. *Survival.* The obligations of this Agreement that cannot be performed before termination of this Agreement or before closing will survive termination of this Agreement or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this Agreement, the Closing Documents will control.

13.15. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

13.16. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

13.17. *Incorporation by Reference.* All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

13.18. *Administrative Agreements.* The Director of Transportation and Capital Improvements ("TCI") and the Assistant Director for Support Services of TCI may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

13.19. *Legal Holidays.* Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday or federal legal holiday, then such date shall be extended to the next following date which is not a Saturday, Sunday or federal legal holiday.

13.20 *Recordation.* Buyer shall not record this Agreement or a memorandum or other notice thereof in any public office without the express written consent of Seller. A breach by Buyer of this covenant shall constitute a material default by Buyer under this Agreement.

14. Appropriations.

All obligations of the City of San Antonio under this instrument are funded subject to the discretion of City Council. If the City Council fails to appropriate money for any obligation under this Agreement, the City may terminate this Agreement and have no further liability.

15. Prohibited Interest in Contracts.

15.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

(i) a City officer or employee;
(ii) his parent, child or spouse;
(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

15.02. Seller warrants and certifies as follows:
(i) Seller and its officers, employees and agents are neither officers nor employees of the City.
(ii) Seller has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

15.03. Seller acknowledges that City's reliance on the above warranties and certifications is reasonable.

16. Public Information.

Seller acknowledges that this instrument and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Agreement waives an otherwise applicable exception to disclosure.

17. Condition of Property.

(a) Disclaimer. Except as expressly stated herein, Seller hereby specifically disclaims any warranty, guaranty, or representation, oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, for any and all activities and uses which Buyer may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of

repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. EXCEPT AS EXPRESSLY STATED HEREIN, IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Buyer agrees to accept the Property at closing with the Property being in its present AS IS condition WITH ALL FAULTS.

(b) Property Condition. BUYER ACKNOWLEDGES AND AGREES THAT EITHER BUYER IS, OR HAS ENGAGED AND IS RELYING ON PERSONS WHO ARE, EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY OR CAUSED THE PROPERTY TO BE INSPECTED TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND EXCEPT FOR THE SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS (OR BUYER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND BUYER ACKNOWLEDGES THAT BUYER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. BUYER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND

AFTER THE DATE OF CLOSING. BUYER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT BUYER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY THIS AGREEMENT. ANY REPAIRS PAID FOR BY SELLER PURSUANT TO THIS AGREEMENT, IF ANY, SHALL BE DONE WITHOUT ANY WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS. THE PROVISIONS OF THIS SECTION 17 SHALL BE INCLUDED IN THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO BUYER AT CLOSING.

[SIGNATURES ON NEXT PAGE]

Executed as of the dates set forth below to be effective as the Effective Date defined above.

Buyer:
City of San Antonio,
a Texas municipal corporation

By:_____

Printed
Name:_____

Title:_____

Date:_____

Seller:
Maruchan Texas, Inc., a Texas Corporation

By:_____

Printed
Name: Haruo Nishida

Title: Plant Manager

Date: 5/6/2016

Approved As To Form:

_____
City Attorney

Title Company Acceptance of Escrow and Receipt for Contract

Seller: Maruchan Texas, Inc.

Buyer: City of San Antonio

Property: A certain 2.507 acre tract of land out of a 55.430 acre tract of land conveyed to Maruchan Texas, Inc. in deed recorded in Volume 15676, Page 1006, Bexar County, Texas, same being a portion of Lot 2, Block 2, County Block 4301, of the Maruchan Subdivision as recorded in Volume 9652, Page 74, Plat Records of Bexar County, Texas, said tract of land being generally described on **Exhibit "A"** attached hereto and incorporated herein

Title Company agrees to act as escrow agent according to the terms of this Agreement. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

Alamo Title of Texas

By:_____

Printed
Name:_____

Title:_____

Date:_____

Exhibit A: Property Description

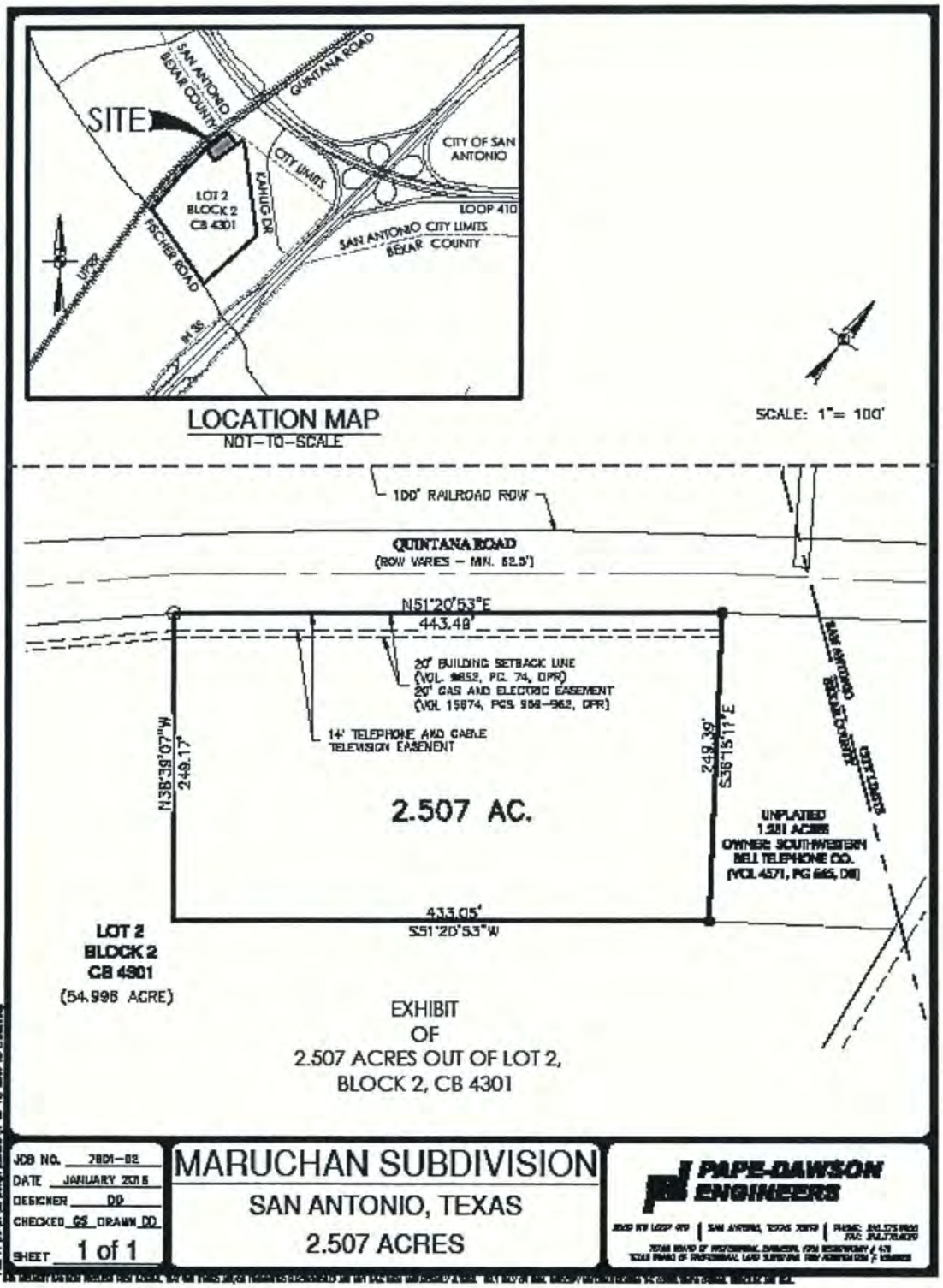


Exhibit B: Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to convey the Property to Buyer. This Agreement is, and all documents required by this Agreement to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this Agreement.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning (other than those related to the Buyer agreed rezoning), or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this Agreement will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent and the lien for unpaid property taxes for the year of the closing.

7. *Prepaid Rent.* As of closing, Seller has received no prepaid rent except as reflected on the closing statement as a credit to Buyer.

8. *Wells*. There are no water or other wells on the Property, capped or uncapped, registered or unregistered.

All of the Seller's representations stated above are made only to the extent of "Seller's actual knowledge," which is defined herein to mean the actual knowledge of Haruo Nishida as of the date the Contract is executed by Seller without any duty of inquiry whatsoever.

Except as expressly stated herein, Seller hereby specifically disclaims any warranty, guaranty, or representation, oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, for any and all activities and uses which Buyer may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. EXCEPT AS EXPRESSLY STATED HEREIN, IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Buyer agrees to accept the Property at closing with the Property being in its present AS IS condition WITH ALL FAULTS.

Property Condition. BUYER ACKNOWLEDGES AND AGREES THAT EITHER BUYER IS, OR HAS ENGAGED AND IS RELYING ON PERSONS WHO ARE, EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT BUYER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY OR CAUSED THE PROPERTY TO BE INSPECTED TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. BUYER ACKNOWLEDGES THAT IT IS FULLY RELYING ON BUYER'S (OR BUYER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND EXCEPT FOR THE SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE

OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. BUYER ACKNOWLEDGES THAT BUYER HAS (OR BUYER'S REPRESENTATIVES HAVE), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND BUYER ACKNOWLEDGES THAT BUYER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. BUYER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE OF CLOSING. BUYER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT BUYER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY THIS AGREEMENT. ANY REPAIRS PAID FOR BY SELLER PURSUANT TO THIS AGREEMENT, IF ANY, SHALL BE DONE WITHOUT ANY WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS.

Exhibit C: Notices

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this Agreement:

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code as well as proof that storage tanks are currently in compliance with Texas Commission on Environmental Quality requirements, if applicable.

Abstract or Title Policy. The Texas Real Estate License Act requires a real estate agent to advise Buyer that he should have an attorney examine an abstract of title to the Property being purchased; or a title insurance Policy should be obtained. Notice to that effect is, therefore, hereby given to Buyer.

Notice Regarding Unimproved Property Located in a Certificated Service Area. If the Property is unimproved and is located in a certificated service area of a utility service, then Seller shall give to Buyer a written notice in compliance with §13.257 of the Texas Water Code, and Buyer agrees to acknowledge receipt of the notice in writing. The notice must set forth the correct name of utility service provider authorized by law to provide water or sewer service to the Property, and must comply with all other applicable requirements of the Texas Water Code.

Special Assessment Districts. If the Property is situated within a utility district or flood control district subject to the provisions of §49.452 of the Texas Water Code, then Seller shall give to Buyer the required written notice and Buyer agrees to acknowledge receipt of the notice in writing. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code.

Notice Regarding Possible Annexation. If the Property that is the subject of this Agreement is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of the municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within

a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

Exhibit D: Form of Deed

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

SPECIAL WARRANTY DEED
(AND ASSIGNMENT OF CLAIMS)

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

Ordinance Authorizing Acceptance:

SP No./Parcel:

Grantor:

Grantor's Mailing Address (including county):

Grantee: City of San Antonio

Grantee's Mailing Address (including county): P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Capital Improvement Management Services) (Bexar County)

Consideration:

Land:

Reservations and Exceptions to Title:

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, **grants, sells, donates, and conveys the Land to Grantee, such Land to be used only** for public safety purposes, together with any and all improvements situated on the Land (the "***Improvements***"); and Grantor's right, title and interest, if any, in and to all appurtenances, strips or gores, roads, easements, streets, alleys, and drainage facilities to the extent attributable to the Land; all utility capacity, utilities, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress and fixtures (collectively, the "***Property***").

This conveyance is made and accepted subject to those certain matters set forth on **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "***Permitted Exceptions***").

Except for the special warranty of title contained herein, Grantor hereby specifically disclaims any warranty, guaranty, or representation, oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, and of the Property, for any and all activities and uses which Grantee may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. EXCEPT FOR THE WARRANTY OF TITLE CONTAINED HEREIN, GRANTOR HAS NOT MADE AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, GRANTOR DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Grantee hereby accepts the Property with the Property being in its present AS IS condition WITH ALL FAULTS.

GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTEE IS EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT GRANTEE HAS INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. GRANTEE ACKNOWLEDGES THAT IT IS FULLY RELYING ON GRANTEE'S (OR GRANTEE'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY GRANTOR OR ANY OF ITS REPRESENTATIVES. GRANTEE ACKNOWLEDGES THAT GRANTEE HAS (OR GRANTEE'S REPRESENTATIVES HAVE) THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY GRANTEE IN ORDER TO ENABLE GRANTEE TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND GRANTEE ACKNOWLEDGES THAT GRANTEE IS RELYING SOLELY UPON ITS OWN

(OR THEIR REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. GRANTEE HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT GRANTOR SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE HEREOF.

To Have and To Hold the above described Property to Grantee, and Grantee's successors and assigns forever. Grantor binds Grantor and Grantor's successors to warrant and forever defend all and singular the Land to Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor but not otherwise subject however to the Permitted Exceptions.

Ad valorem taxes and special assessments, if any, against the Property for the year 2016 have been prorated between Grantor and Grantee as of the date of this Special Warranty Deed.

When the context requires, singular nouns and pronouns include the plural and plural ones include the singular.

Restrictive Covenants

By acceptance of this Deed, Grantee expressly covenants and agrees on behalf of itself and its successors and assigns that (a) the Property shall be used only for public safety purposes, (b) that Grantor operates a food manufacturing facility on the adjoining property being retained by Grantor that operations of such facility may cause noises and smells consistent with a food manufacturing plant and that some persons may find offensive, and (c) the Property shall always be maintained in a manner that meets or exceeds that required by law and pursuant to the City of San Antonio's Unified Development Code to include, without limitation, the regular mowing of grass and control of weed growth and maintaining all buildings and structures on the Property in a good condition. Grantee's agreeing to use the Property solely for public safety purposes and acceptance of the existing conditions related to Grantor's food manufacturing company shall be restrictive covenants binding against the land and running with the land. Notwithstanding the foregoing, however, Grantor expressly acknowledges that these restrictive covenants shall not excuse Grantor from abiding by any applicable laws, regulations, ordinances or codes regarding the operation of Grantor's food manufacturing company.

Repurchase Right – Platting

By acceptance of this Deed, Grantee expressly covenants and agrees on behalf of itself and its successors and assigns that it will exercise good faith, diligent efforts towards obtaining a final approval by the appropriate governing authorities of a replat establishing the Property as a separate legal lot from the adjacent land being retained by Grantor and recording such replat in the real property records of Bexar County; it being expressly understood that Grantor shall not be left with a "remainder" lot, even if allowed by the governing authorities, and that such replat

shall not require the dedication of any additional easements or rights-of-way on the adjacent land being retained by Grantor or the imposition of any additional restrictions, plat notes or other conditions relating to such adjacent land unacceptable to Grantor in Grantor's sole discretion (collectively, the "***Platting Condition***"). If Grantee fails to satisfy the Platting Condition on or before the December 31, 2016 (the "***Initial Platting Deadline***"), then Grantor shall have a right to repurchase the Property subject to the terms, conditions and provisions set forth below (the "***Platting Condition Repurchase Right***"); provided, however, that if Grantee has been exercising good faith, diligent efforts towards satisfying the Platting Condition as of the first year anniversary of the recording of this Deed, then such Platting Deadline shall be extended to June 30, 2017 (the "***Extended Platting Deadline***"). If Grantee fails to satisfy the Platting Condition on or before the Initial Platting Deadline or the Extended Platting Deadline (if applicable), then Grantor may exercise the Platting Condition Repurchase Right in the following manner and subject to the following terms, conditions and provisions:

(a) Grantor shall provide written notice to Grantee expressing its intention to repurchase the Property;

(b) The closing on the repurchase of the Property (a "**Repurchase Closing**") shall be scheduled for the date that is ninety (90) days following the date Grantor delivers notice of its intention to repurchase the Property; provided, however, that if Grantee satisfies the Platting Condition prior to such closing date, then the Platting Condition Repurchase Right shall be deemed terminated, null and void;

(c) Prior to such Repurchase Closing, Grantor shall have a right to perform any inspections or environmental testing Grantor desires in its sole discretion and elect to forgo the acquisition of the Property in Grantor's sole discretion by providing written notice to Grantee;

(d) Prior to such Repurchase Closing, Grantee shall have the right to remove any movable or removable real or personal property provided that Grantee reasonably restores the surface of the Property disturbed by such removal. Any real or personal property remaining on the Property following the Repurchase Closing shall be deemed abandoned by Grantee on the Repurchase Closing and Grantor shall have the right to use or dispose of such property in such manner as Grantor may determine; and

(e) At such Repurchase Closing, Grantee shall deliver a deed without warranty conveying the Property to Grantor in its AS-IS condition in exchange for consideration of $150,000 to constitute a repayment of the partial consideration provided by Grantee to Grantor for the acquisition of the Property on the date hereof.

Repurchase Right – Abandonment

By acceptance of this Deed, Grantee expressly covenants and agrees on behalf of itself and its successors and assigns that if following the opening of a public safety facility on the Property the Property ever ceases to be used for public safety purposes for a period of more than three hundred sixty-five (365) consecutive days (the "**Non-Use Condition**"), then Grantor shall have a right to repurchase the Property (the "**Non-Use Repurchase Right**") subject to the following terms, conditions and provisions:

(a) Grantor shall provide written notice to Grantee expressing its intention to repurchase the Property;

(b) Upon receipt of such notice, Grantee shall have a period of one hundred eighty (180) days (the "**Cure Deadline**") to either recommence the use of the Property for public safety purposes or commence in good faith design and/or construction activities on the Property for the purposes of recommencing the use of the Property for public safety purposes within a period of not less than three hundred sixty-five (365) days (either such action referenced herein as "**Curative Action**");

(c) In the event Grantee implements a Curative Action prior to the Cure Deadline, then Grantor shall no longer have a right to repurchase the Property unless and until the Non-Use Condition is triggered at some point henceforth;

(d) In the event Grantee fails to implement a Curative Action prior to the Cure Deadline, then the closing on the repurchase of the Property (a "**Repurchase Closing**") shall be scheduled for a date ninety (90) days following the Cure Deadline or such other date as may be mutually agreed upon;

(e) Prior to such Repurchase Closing, Grantor shall have a right to perform any inspections or environmental testing Grantor desires in its sole discretion and elect to forgo the acquisition of the Property in Grantor's sole discretion by providing written notice to Grantee;

(f) Prior to such Repurchase Closing, Grantee shall have the right to remove any movable or removable real or personal property provided that Grantee reasonably restores the surface of the Property disturbed by such removal. Any real or personal property remaining on the Property following the Repurchase Closing shall be deemed abandoned by Grantee on the Repurchase Closing and Grantor shall have the right to use or dispose of such property in such manner as Grantor may determine; and

(g) At such Repurchase Closing, Grantee shall deliver a deed without warranty conveying the Property to Grantor in its AS-IS condition in exchange for consideration of $150,000 to constitute a repayment of the partial consideration provided by Grantee to Grantor for the acquisition of the Property on the date hereof.

Assignment of Claims

In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property (but excluding any claims as may be related to the adjoining property being retained by Grantor) now known or later found to exist.

Date:_____

_____

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me by ??????????????.

Date:_____

_____
Notary Public, State of Texas

My commission expires:_____

Approved as to Form:

_____
City Attorney

After recording, please return to:

City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Attention: Director, Transportation and Capital Improvements Department)

Exhibit "A" Property Description [TO BE ATTACHED PRIOR TO CLOSING]
Exhibit "B" Permitted Exceptions [TO BE ATTACHED PRIOR TO CLOSING]

Exhibit E: BFSA Amendment

STATE OF TEXAS	§	**AMENDED AND RESTATED**
	§	**FIRE/EMERGENCY SERVICES**
COUNTY OF BEXAR	§	**AGREEEMENT**

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:

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, _____(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.

_____
NOTARY PUBLIC
State of Texas

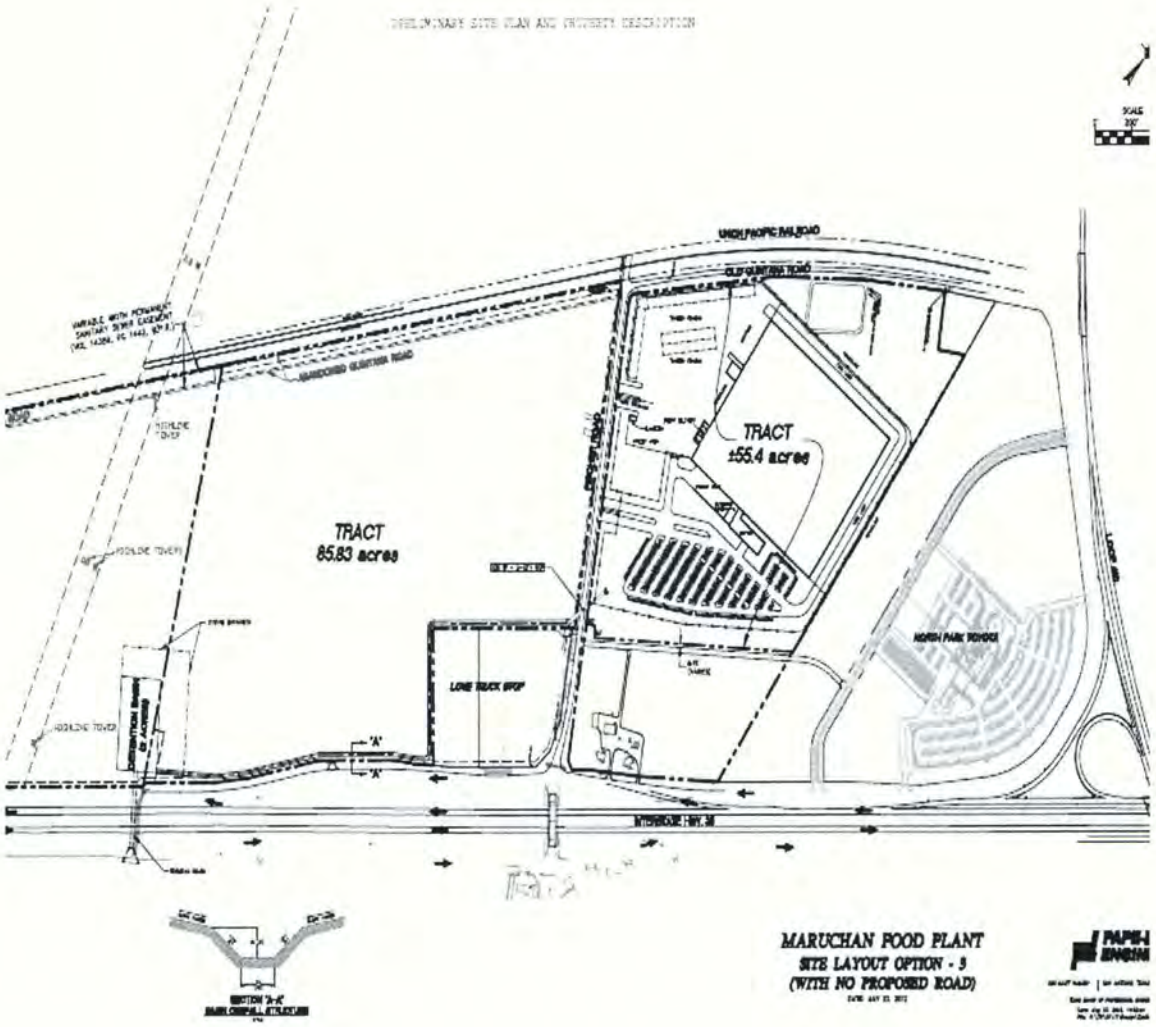
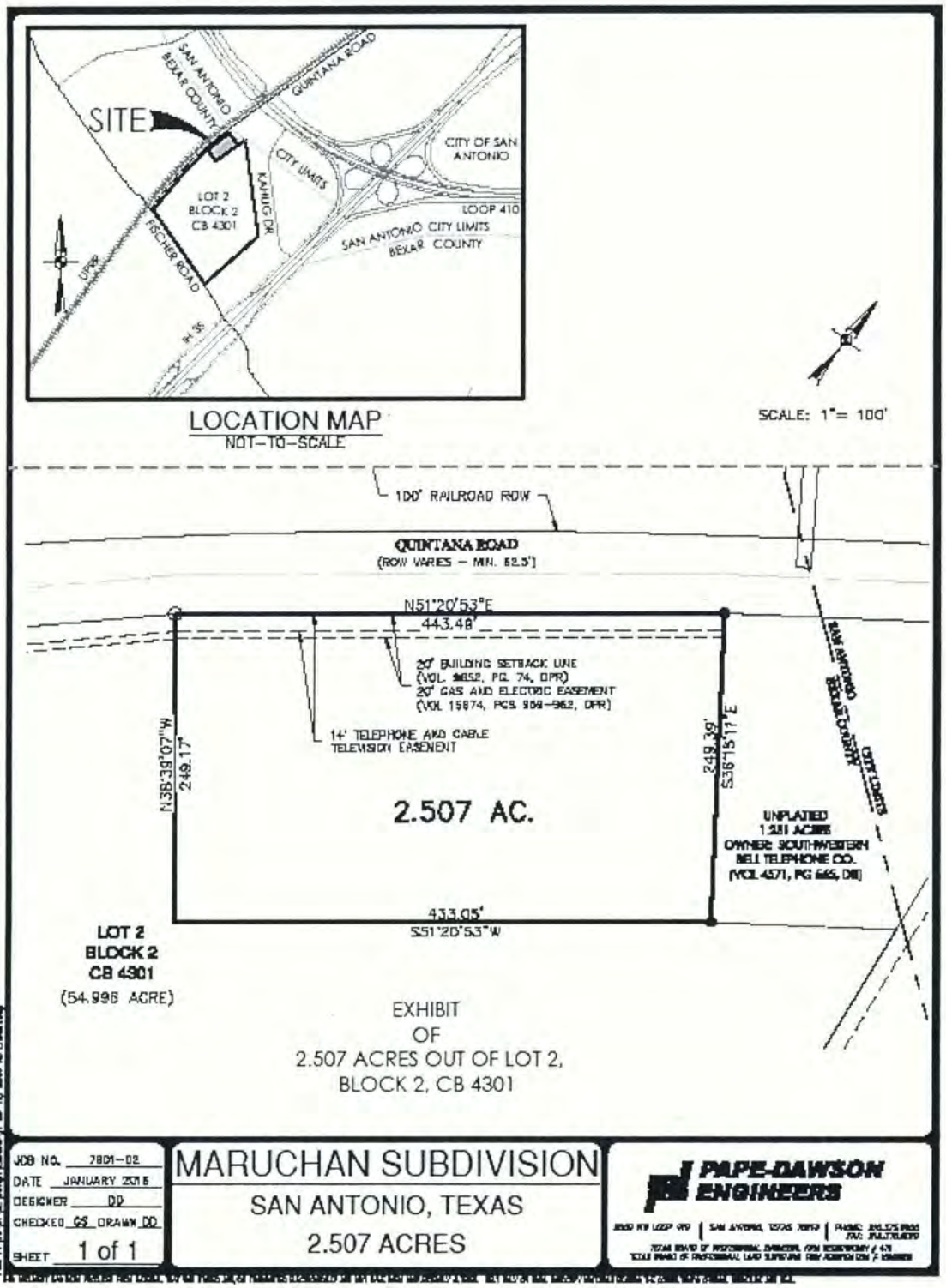
STATE OF TEXAS

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

Attachment I
Property Description



Attachment II
Fire Station Site