

AN ORDINANCE 2012-01-19-0029

AMENDING A CONTRACT WITH BAY VALLEY FOODS, LLC TO EXTEND THE OPTION PERIOD FOR ONE YEAR ON THE SALE OF 10 ACRES OF VACANT CITY-OWNED PROPERTY WITHIN THE SOUTHWEST BUSINESS AND TECHNOLOGY PARK LOCATED SOUTH OF 5301 WEST OLD HIGHWAY 90 BETWEEN SOUTH CALLAGHAN ROAD AND STATE HIGHWAY 151 IN CITY COUNCIL DISTRICT 6 FOR A FEE OF \$10,000.00.

\* \* \* \* \*

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

**SECTION 1.** The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City an instrument in substantially the form attached as Attachment I, which is incorporated for all purposes as if fully set forth. The City Manager and her designee, severally, should take all other actions conducive to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering ancillary documents and instruments conducive to effectuating the transaction.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 240000000060 and General Ledger 4903101.

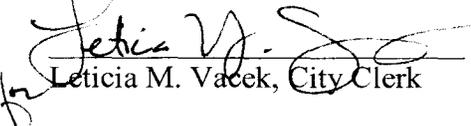
**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED** this 19<sup>th</sup> day of January 2012.

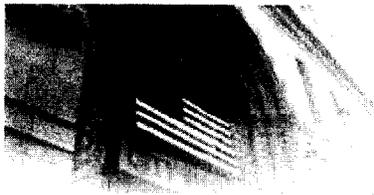
  
M A Y O R  
Julián Castro

Attest:

  
Leticia M. Vacek, City Clerk

Approved As To Form:

  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 14

<b>Name:</b>	8, 9, 11, 13, 14, 15A, 16, 18, 19, 20, 21, 22A, 22B, 22C, 22D, 22E, 22F						
<b>Date:</b>	01/19/2012						
<b>Time:</b>	11:32:07 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance to amend an existing contract with Bay Valley Foods, LLC and extend an option period for one year to sell 10 acres of vacant City-owned property within the Southwest Business and Technology Park located south of 5301 West Old Highway 90 between South Callaghan Road and State Highway 151 in City Council District 6 for a fee of \$10,000.00. [Peter Zanoni, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				x
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10	x					

## Attachment I

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### **1<sup>st</sup> Amendment to Real Estate Sales Contract (Bay Valley Foods/City of San Antonio)**

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#### **Background:**

Buyer and Seller have previously entered into the Contract to be Amended relating to the purchase and sale of two parcels out of NCB 13940, one approximately five acres and one approximately ten acres.

Buyer has already closed on the purchase of the five-acre parcel, and the Contract to be Amended gave Buyer an option until December 9, 2011 to give notice of intent to buy the ten-acre parcel.

Buyer is not ready to give notice of intent to buy, but it nevertheless wishes to retain an option on the ten-acre parcel.

This agreement sets out the terms of the option Buyer will have on the ten-acre parcel after December 9, 2011.

#### **Rights and Obligations:**

##### **1. Identifying Information.**

###### **Authorizing Ordinance:**

**Seller:** City of San Antonio

**Seller's Address:** P.O. Box 839966, San Antonio, Texas 78283-3966  
(Attention: Marcia Shelf Orlandi CIMS)

**Buyer:** Bay Valley Foods, LLC

**Buyer's Address:** 2 Westbrook Corporate Center, Suite 1070,  
Westchester, Illinois 60154

**Contract to be Amended:** Real Estate Sales Contract (Bay Valley Foods/City of San Antonio) between Buyer and Seller relating to two parcels at the Southwest Business and Technology Park and authorized by the Ordinance 2010-11-04-0951

**Subject Property:** Approximately 10 acres of land out of NCB 13940, San Antonio, Bexar County, Texas, consisting of the property described on **Exhibit A**.

## 2. Defined Terms.

All terms defined in the Contract to be Amended and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Contract to be Amended.

## 3. Extended Option.

Paragraph 2.01 of the Contract to be Amended is deleted and the following is inserted in its place.

Seller will sell Property B to Buyer as provided in the Contract to be Amended and this amendment if Buyer delivers written notice of intent to do so no later than December 9, 2012 (the "Option Expiration Date"). Buyer may, at its sole discretion, extend the Option Expiration Date by delivering the Additional Independent Consideration prior to the Option Expiration Date. The date Buyer delivers the notice is the Option Exercise Date. If Buyer delivers the notice, then Buyer must buy Property B according to the terms of the Contract to be Amended and this amendment. The following table pertains to Property B.

**Purchase Price:** The fair market value of Property B as of the Option Exercise Date

**Earnest Money:** \$40,000

**Independent Consideration:** \$15,000, which is due on City Council's approval of this amendment and is applied to the Purchase Price at closing

**Additional Independent Consideration:** \$15,000, which is due prior to the Option Expiration Date and is applied to the Purchase Price at closing

## 4. Determining Fair Market Value.

4.01. The parties should try to agree on fair market value. If they agree, the value they agree on is the Purchase Price.

4.02. If they cannot agree on fair market value within 20 days after the Option Exercise Date, they try to agree on an appraiser to determine fair market value. The parties split the appraiser's fees equally. The appraiser's estimate of fair market value is the Purchase Price.

4.03. If the parties cannot agree on an appraiser by 25 days after the Option Exercise Date, they each appoint an appraiser not later than 30 days after the Option Exercise Date. To effect appointment, the appointing party delivers notice to the other party according to the notice provisions of the Contract to be Amended. Each party pays the fee for its own appraiser. The two appraisers try to reach agreement on fair market value not later than 60 days after the Option Exercise Date. If the appraisers timely agree, the agreed value is the Purchase Price.

4.04. If they cannot timely agree but the higher of the two estimates of fair market value is within 10% of the lower, the two figures are averaged, and the average is the Purchase Price.

4.04. If the higher of the two estimates of fair market value is not within 10% of the lower, the two appraisers appoint a third appraiser not later than 65 days after the Option Exercise Date. The third appraiser makes his estimate of fair market value no later than 90 days after the Option Exercise Date. The third appraiser's estimate is averaged with the fair market value estimate of that of the first two appraisers whose estimate is closest to the third's estimate, and the average is the Purchase Price.

4.05. Discard the estimate of that of the first two appraisers whose estimate is not included in the average. The party who appointed the appraiser whose estimate is discarded pays the fees for the third appraiser.

4.06. Time is of the essence in all deadlines. If a party fails to make a timely appointment, the party forfeits the right to an appointee appraiser from that point forward in the fair market value determination process. The Assistant Director for Real Estate of the Capital Improvement Management Services Department may make all agreements and appointments and otherwise act on behalf of the City as may be necessary or convenient in determining fair market value according to the terms of this amendment.

**5. No Default.**

Neither Seller nor Buyer is in default under the Contract to be Amended and neither party is aware of a cause of action against the other arising out of or relating to the period before this Amendment.

**6. Same Terms and Conditions.**

This amendment is a fully integrated statement of the modifications to the Contract to be Amended. Except as expressly modified by this Amendment, the Contract to be Amended remains a comprehensive statement of the rights and obligations of Buyer and Seller.

**Remainder of Page Intentionally Left Blank**

**7. Public Information.**

This instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

**In Witness Whereof**, the parties have caused their representatives to set their hands,

**Seller**

**Buyer**

**City of San Antonio,**  
a Texas municipal corporation

**Bay Valley Foods, LLC,** a Delaware  
limited liability company

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

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

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

## Exhibit A: Description of Property B

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Field notes for a Tract of Land containing 10.000 Acres (435,600.00 square feet) being out of a 89.637 Acre tract of land, Parcel P-104, Block 9, N.C.B. 13940, City of San Antonio, Bexar County, Texas, recorded in Volume 6696, Page 1286 of the Real Property Records of Bexar County, Texas, and being more particularly described by metes and bounds as surveyed as follows:

**BEGINNING:** at a 1/2" iron pin with a yellow plastic cap marked Ford Eng. Inc. found along the east right-of-way line of Herbert Lane for the southwest corner of this tract, said point also being a corner of a 89.637 Acre tract of land, Parcel P-104, Block 9, N.C.B. 13940, City of San Antonio, Bexar County, Texas, recorded in Volume 6696, Page 1286 of the Real Property Records of Bexar County, Texas, and from which a 5/8" iron pin found at the point of intersection with the southeast right-of-way line of Old Highway 90 West bears N 0°13'30"E - 1,088.33 feet;

**THENCE:** N 0°13'30" E with the east right-of-way line of Herbert Lane and the west boundary line of the aforementioned 89.637 Acre tract a distance of 385.36 feet to a 1/2" iron pin with an orange plastic cap marked COSA CIMS set for the northwest corner of this tract;

**THENCE:** S 89°46'30" E a distance of 324.48 feet to a 1/2" iron pin with an orange plastic cap marked COSA CIMS set for a corner of this tract;

**THENCE:** N 64°28'46" E a distance of 671.65 feet to a 1/2" iron pin with an orange plastic cap marked COSA CIMS set along the west easement line of a 53' Drain Easement recorded in the Van De Walle Industrial Park Subdivision, Unit 2 recorded in Volume 7200, Page 141 of the Deed and Plat Records of Bexar County, Texas for the northeast corner of this tract;

**THENCE:** S 25°31'14" E with the west easement line of the aforementioned drain easement a distance of 407.61 feet to a 1/2" iron pin with an orange plastic cap marked COSA CIMS set for the southeast corner of this tract;

**THENCE:** S 64°28'46" W a distance of 806.57 feet to a 1/2" iron pin with an orange plastic cap marked COSA CIMS set along the east boundary line of Lot 4, N.C.B. 13940, Cable Ranch Subdivision recorded in Volume 6600, Page 54 of the Deed and Plat Records of Bexar County, Texas, said point also being along the west boundary line of the aforementioned 89.637 Acre tract, for a corner of this tract;

**THENCE:** N 0°19'30" E with the east boundary line of the aforementioned Lot 4, N.C.B. 13940 and the west boundary line of the aforementioned 89.637 Acre tract, a distance of 41.99 feet to a 1/2" iron pin found at the northeast corner of said Lot 4 for a corner of this tract.

THENCE: S 89°58'58" W with the north boundary line of the aforementioned Lot 4, N.C.B. 13940, and a south boundary line of the aforementioned 89.637 Acre tract, a distance of 380.10 feet to the POINT OF BEGINNING for this tract of land containing 10.000 Acres (435,600.00 square feet), more or less.

10/2/10



R. S. Hoskin



Herbert Lane  
Right Of Way varies



10,000 Acres  
(435,600.00 sq. ft.)

Parcel P-104  
89.637 Acre Tract  
Volume 6895, Page 1286.  
Rec'd in County Records  
Bexar County, Tx.  
Owner: City of San Antonio

BLOCK 9  
N.C.B. 13940

\*BEARING OF RECORD  
Source  
Van De Aville Farms Sub'd  
Volume 9923, Page 129  
Deed & Plat Records  
Bexar County, Texas

NOTE:  
1/2" Iron Pin with Orange Plastic  
Cap marked CCGA CMB was at  
each corner, except as shown.

SURVEY OF:

A TRACT OF LAND CONTAINING 10,000 ACRES  
(435,600.00 SQ. FT.) BEING OUT OF A 89.637 ACRE  
TRACT, PARCEL P-104, BLOCK 9, N.C.B. 13940, CITY  
OF SAN ANTONIO, BEXAR COUNTY, TEXAS

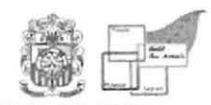
STATE OF TEXAS  
COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT  
IS TRUE AND CORRECT ACCORDING TO AN  
ACTUAL SURVEY MADE ON THE GROUND  
UNDER MY SUPERVISION AND THAT THERE  
ARE NO VISIBLE ENCROACHMENTS OR  
EASEMENTS EXCEPT AS SHOWN

THIS 27th DAY OF OCT. 2010.

*Raj S. Hosseini*

RAJ S. HOSSEINI  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 5174



CITY OF SAN ANTONIO  
CAPITAL IMPR. MGMT. SERV. DEPT.  
TECHNICAL SERVICES DIVISION  
DATE: OCTOBER 20, 2010  
SURVEYOR: C. CALLEGOS, R.E.-9