

**ORDINANCE NO. 2010-2**

**AN ORDINANCE APPROVING A SPECIAL MUNICIPAL SERVICES AGREEMENT  
WITH BAY VALLEY FOODS, L.L.C., a Delaware Corporation**

**WHEREAS** pursuant to the Village of Pecatonica Ordinances, Article 10, Chapter 22, the Village is authorized to enter into special agreements between the Village and any industry whereby industrial waste of unusual strength or character may be accepted by the Village for treatment;

**WHEREAS** the Village of Pecatonica, in exchange for payment, provides as a service to its citizens wastewater treatment;

**WHEREAS** the Village of Pecatonica is in the process of constructing a new wastewater treatment plant which, in addition to wastewater treatment, will also enable the Village to accept, treat, and/or dispose of bio-solids.

**WHEREAS** BAY VALLEY FOODS, L.L.C., a Delaware corporation (hereinafter referred to as "Bay Valley"), as a part of its regular course of business, generates not only wastewater for treatment, but also bio-solids for disposal;

**WHEREAS** in recognition of the additional services which will, by necessity, be performed by the Village in dealing with and treating the wastewater and bio-solids received from Bay Valley, Bay Valley has agreed to pay \$500,000.00 to the Village in recognition of the construction and development costs of the Village's new wastewater treatment plant; and,

**WHEREAS** it is mutually deemed to be in the best interests of both the Village and Bay Valley to enter into a joint special agreement relating to the wastewater treatment and bio-solids disposal in exchange for special fees assessed, as well as contributions by Bay Valley towards the construction costs of the new wastewater treatment plant. A copy of said Agreement, along with the First Amendment thereto, is attached hereto as **EXHIBIT A**.

**NOW THEREFORE BE IT RESOLVED AND ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF PECATONICA, as follows:**

- Section 1: The foregoing recitals shall be hereby incorporated into and made a part of this Ordinance as fully set forth in this Section 1.
- Section 2: The Special Municipal Services Agreement, along with the accompanying First Amendment thereto, by and between the Village and Bay Valley, which are attached hereto as **EXHIBIT A**, is hereby adopted and approved.

Section 3: The Village President is hereby given authority to execute such Agreement and Amendment, or an agreement that is substantially similar thereto, on behalf of the Village of Pecatonica.

Section 4: This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

PASSED by the Village Board this 6th day of April, 2010.

APPROVED by the President of the Village Board this 6th day of April, 2010.

Shawn Connors

Shawn Connors

President of the Board of Trustees of  
the Village of Pecatonica, IL

ATTEST:

Ginger Binger

Ginger Binger, Village Clerk

Ayes: 5      Nays: 0      Absent: 0      Abstained: 1

Tarbert: Aye

Howard: Aye

Eytalis: Aye

Moyer: Aye

Doty: Aye

Sager: Abstain

**EXHIBIT A**

SPECIAL MUNICIPAL SERVICES AGREEMENT

BY AND BETWEEN

BAY VALLEY FOODS, L.L.C. a Delaware Corporation,

and

VILLAGE BOARD OF TRUSTEES, VILLAGE OF PECATONICA, ILLINOIS

THIS SPECIAL MUNICIPAL SERVICES AGREEMENT (“Agreement”), made and entered into this 6th day of April, 2010, by and between Bay Valley Foods, L.L.C., a Delaware Corporation, (“Bay Valley”) and the Village Board of Trustees (“Village Board”) of the Village of Pecatonica, Winnebago County, Illinois (“Village”), an Illinois Municipal Corporation.

**WHEREAS**, Bay Valley owns and operates a food processing facility doing business within the Village; and,

**WHEREAS**, the Village Board manages, maintains, and operates a municipal sewerage treatment system (“System”) for the Village; and,

**WHEREAS**, the Village Board has deemed it necessary and in the best interests of the Village that the System be improved by renovating, improving, modernizing, and upgrading its existing sewerage treatment plant and wastewater facilities (collectively “Improvements”); and,

**WHEREAS**, the Village Board, after accepting bids, anticipates that the costs for constructing the Improvements to the System will be approximately \$7,233,000.00; and,

**WHEREAS**, to pay for the cost for the Improvements to the System, the Village will obtain an IEPA Water Pollution Control Fund Loan (“Loan”); and,

**WHEREAS**, the Village’s engineers, McMahon Associates, Inc. (“Engineers”), have prepared a cost analysis, a copy of which is attached hereto and marked **EXHIBIT A**, and made a part hereof, which specifies that a portion of the Improvements to the System are attributable to Bay Valley’s wastewater discharge; and,

**WHEREAS**, Article 10, Chapter 22 of the Village of Pecatonica Municipal Code grants to the Village Board the authority to enter into special agreements; and,

**WHEREAS**, in consideration of the Village’s agreement to undertake the Improvements to the System, Bay Valley, pursuant to the terms specified below, shall reimburse the Village the total sum of \$500,000.00 for those costs attributable to the use by Bay Valley of the System, according to the terms and conditions of this Agreement.

**NOW THEREFORE, IT IS AGREED** by the parties as follows:

1. The Village has commenced and shall complete construction of the Improvements to the System. If Bay Valley wishes to receive periodic updates regarding construction progress, they may contact the Village Engineer, who is specifically granted permission to provide written and/or verbal updates as to construction progress, until such time as the construction is deemed completed by the State of Illinois.

2. Subject to the terms set forth in the First Amendment to this Agreement, Bay Valley shall pay to the Village the sum of \$500,000 for its proportionate share of the costs of the Improvements attributable to its use of the System as follows: (a) The sum of \$50,000 shall be paid no later than February 28, 2010, and (b) the balance of \$450,000 shall be paid in monthly installments of \$3,750.00 beginning on March 31, 2010, and shall continue on the last day of each month until February 28, 2020, or until the entire \$500,000 sum has been paid in full. Such payments shall fully satisfy Bay Valley's obligation to pay sums in recognition of the Improvements, including any modifications thereto.

3. Bay Valley, within its discretion under this Agreement, and subject to the approval of the Village Engineer and the Director of the Village Department of Public Works, and, otherwise, in compliance with applicable State Statutes and Village Ordinances, shall have the opportunity to dispose of organic solids generated by its wastewater pre-treatment operations ("Bio-Solids"), at the Village's wastewater sludge treatment and disposal operation. However, before any such organic solids are accepted at the Village's wastewater sludge treatment and disposal operation facility, Bay Valley must provide to the Village Engineer and the Director of the Village's Department of Public Works a report regarding the content/makeup of the organic solids in question to insure that the System will be capable of handling such solids. Bay Valley shall provide the Director of the Village's Department of Public Works with any information pertaining to the chemical/organic makeup of their waste should any solids handling problems occur. The Village shall, as a part of the design and construction of the Improvements to the System, provide for facilities to satisfactorily accommodate the receipt of the Bio-Solids from Bay Valley. Bay Valley shall be responsible for the transportation of the Bio-Solids to the Village's wastewater sludge handling facilities and all costs associated therewith. Bay Valley shall also be responsible for providing notice to the Village of any changes in the content of the Bio-Solids. The Village shall not accept, nor shall Bay Valley attempt to deliver, any such Bio-Solids after changes in content unless and until approval is received from the Village Engineer or Director of the Village Department of Public Works. Following receipt of the Bio-Solids from Bay Valley, the Village shall assume exclusive ownership and control of the Bio-Solids and shall further assume all responsibility for the safe management, treatment, transport, and disposal of all Bio-Solids in compliance with all federal, state, and local laws and regulations. Bay Valley shall conduct, at its own expense, any and all analytical testing required for the safe delivery to the wastewater treatment and disposal operations of the Bio-Solids material in accordance with applicable federal and state laws and regulations, and provide such data to the Village on a timely basis. The Village shall indemnify and hold harmless Bay Valley related to the Village's management, treatment, transport, and disposal of the Bio-Solids. The Village shall not accept any Bio-Solids from Bay Valley until there is substantial completion of the new treatment facility as determined by the Village Engineer.

4. Bay Valley shall compensate the Village for disposal of the Bio-Solids as outlined in the separately executed amendment to this Agreement.

5. Notwithstanding anything to the contrary herein, if, at any time in the future, Bay Valley ceases discharging into the system or determines that at some point in the future it will cease to discharge into the system, Bay Valley shall provide written notice to the Village of such cessation of or intent to cease discharge ("Notice of Cessation"). Commencing one year after delivery of the Notice of Cessation to the Village, Bay Valley's obligation to make the monthly installment payments set forth in Section 2 above shall cease regardless of whether the sum of \$500,000 has been paid in full.

6. In the event that Bay Valley does, at some point during the term of this Agreement, cease to discharge into the System and, consistent with Paragraph 5 above, cease to make further payments of the \$500,000 contemplated by this Agreement and should Bay Valley thereafter again seek to discharge into the System, the following shall apply: (a) Bay Valley shall, after complying with paragraph 5 above, have no obligation to pay any balance remaining of the \$500,000 contribution; (b) the Village shall no longer be obligated to accept Bio-Solids from Bay Valley; (c) any preferential sewer or water rates established by this Agreement or any Amendments hereto shall become null and void. After cessation as outlined above, if Bay Valley thereafter recommences discharge into the System, Bay Valley shall pay the greater of any industrial or residential sewer and water rates then in effect.

7. This Agreement contains the entire understanding of the parties with respect to the subject matter contained herein and shall be construed and governed in accordance with the laws of the State of Illinois. This Agreement supersedes all prior agreements and understandings, written or oral, between the parties with respect to such subject matter.

8. Bay Valley may not transfer or assign this Agreement without prior written consent of the Village, which consent will not be unreasonably withheld. No such assignment or transfer shall release Bay Valley from its obligation to perform each and every covenant and obligation herein contained to be performed by Bay Valley. This Agreement shall be binding upon and inure to the benefits of the parties hereto and their respective successors and assigns.

9. This Agreement may not be amended or modified except by written instrument duly executed by each of the parties hereto.

10. Nothing in this Agreement nor any amendment, thereto, unless expressly stated shall serve to exempt Bay Valley from payment of any surcharge due pursuant to Article 10, Chapter 26, Subparagraph E or any other provision of the Village of Pecatonica Municipal Code as amended from time to time.

11. It is agreed by the Parties that the \$500,000 paid by Bay Valley may only be used by the Village as follows: (a) The \$50,000 initial payment may be deposited into the General Fund of the Village and used at the sole discretion of the Village for any lawful purpose, and (b) the remaining \$450,000 to be paid in installments as set out in paragraph 2

above, must be applied by the Village towards either debt reduction of the IEPA Water Pollution Control Fund Loan or towards the operating and maintenance costs associated with the sewer treatment plant and system.

12. This Agreement may be executed in two or more counterparts, all of which, taken together, shall constitute one instrument.

13. Notwithstanding anything to the contrary herein, in the event any legal action or any other proceeding, including, without limitation, litigation or any other proceeding initiated under the United Bankruptcy Code is brought for the enforcement of the Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and court costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

14. The parties agree that the Circuit Court of Winnebago County, Illinois is the exclusive forum in which any disputes or claims of breach between the parties shall be heard, and by this Agreement, the parties agree that such Court shall have jurisdiction over the parties hereto, and both waive all objections to jurisdiction and venue.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date set forth above.

**BAY VALLEY FOODS, L.L.C.,**

**VILLAGE OF PECATONICA,**

On Original  
By John Kaney  
Director of Powder Mfg.

On Original  
By Shawn M. Connors  
Village President

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By  
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## **“Exhibit A”**

May 22, 2008

Mr. Dan Mathews, Village President  
Village of Pecatonica  
405 Main Street  
Pecatonica, IL 61063

*Re: Impact of Bay Valley Foods on the Wastewater Treatment Plant*

Dear President Mathews:

I have prepared a brief summary of the impact Bay Valley Foods had on the planning and cost for the new wastewater treatment facility. The purpose of this summary is to provide a basis for conversation with Bay Valley Foods regarding a potential contribution to the capital cost of the new wastewater treatment facility.

While Bay Valley Foods has a pretreatment facility, there are some challenges associated with treating the effluent from the pretreatment facility. Recent history shows a dramatic improvement in the operations of the pretreatment facility, however, process upsets can happen in any plant. The design provided for the Village provides the greatest margin of safety to accommodate a potential pretreatment facility upset. This protects both the Village and Bay Valley Foods, but there is additional cost associated with this more robust treatment system.

### **SECONDARY TREATMENT**

One of the options discarded from consideration for Pecatonica because of the presence of Bay Valley Foods was the sequencing batch reactor (SBR). This is a technology where all of the treatment and solids separation take place in one tank. Because of this combined use for a single tank, construction costs for an SBR plant are lower than a conventional plant. The disadvantage of an SBR plant is that removal of floating solids is almost impossible, and they are prone to upset by slug loading. The use of high volumes of vegetable oil (floatable) at Bay Valley Foods, and the potential for slug loading during a pretreatment plant upset removed this lower cost option from consideration.

The option selected for secondary treatment is an oxidation ditch. This is a variant of extended aeration, which is more forgiving of loading variation or slug loads than a typical activated sludge design. This design requires a larger tank (about 25% larger in the case of Pecatonica) in order to meet the design criteria requiring 24-hours of hydraulic detention time at design average flow. Additionally, separate secondary clarifiers with a WAS / RAS pump station is required with an oxidation ditch. An estimate of the difference in cost between the sequencing batch reactor and the oxidation ditch for secondary treatment is approximately \$561,000.00.

Oxidation Ditch Extra Concrete	\$109,000
Secondary Clarifiers Concrete	\$262,000
Additional Equipment	\$190,000

## **SOLIDS HANDLING**

The other area in the plant construction where the Bay Valley Foods pretreatment effluent was accounted for is the digestion and solids handling system. Again, current operation of the pretreatment system has been very reliable, but there have been occasions in the past when large amounts of solids have been discharged to the Village of Pecatonica wastewater treatment facility. Additionally, there are periods of time during the year when Bay Valley Foods is not able to land apply their solids and disposal becomes very expensive. The digesters, solids dewatering equipment and solids storage building have been designed to accommodate digestion and dewatering of a portion of Bay Valley Foods solids. This has resulted in additional capital cost, and if solids were digested and dewatered for Bay Valley Foods, some system to recover operation and maintenance costs would need to be prepared. An estimate of the difference in cost between the minimum sized digester, dewatering equipment and storage building and the digestion and solids handling system proposed for the new Village plant is \$137,000.00.

Additional Tankage Concrete	\$ 62,000
Increase Size Dewatering Equipment	\$ 75,000

## **SCHEDULE**

Our current schedule is to bid the project in June of 2008, with construction starting in July of 2008 and completion in August of 2009.

Please contact me if you have any questions or need additional information.

Very truly yours,  
*McMahon Associates, Inc.*

Timothy C. Bronn, P.E., DEE  
 Vice President

Cc: Village Trustees  
 File

FIRST AMENDMENT to

SPECIAL MUNICIPAL SERVICES AGREEMENT

BY AND BETWEEN

BAY VALLEY FOODS, L.L.C. a Delaware Corporation,

and

VILLAGE BOARD OF TRUSTEES, VILLAGE OF PECATONICA, ILLINOIS

THIS FIRST AMENDMENT TO AGREEMENT FOR MUNICIPAL SERVICES ("First Amendment") is made and entered into effective as of the 6th day of April, 2010, by and between Bay Valley Foods, L.L.C. ("Bay Valley") and the Village Board of Trustees ("Village Board") of the Village of Pecatonica, Winnebago County, Illinois ("Village").

This First Amendment is made and entered into in contemplation of the following facts and circumstances:

1. The parties hereto have entered into an Agreement whereby Bay Valley will provide reimbursement to the Village for improvements to the municipal sewerage treatment system ("System") that it owns and operates in accordance with the terms set forth in the Municipal Services Agreement dated April 6, 2010 ("Agreement").

2. In return, the Village will provide municipal services to Bay Valley, which includes potable water, wastewater treatment, and Bio-Solids disposal in accordance with the following rate structure:

- a. Bay Valley shall compensate the Village at a rate of \$0.86 per 100 gallons of metered wastewater discharge in lieu of the rate set forth in Article 10, Chapter 26, Section D(1) of the Village Municipal Code; and,
- b. Bay Valley shall compensate the Village at a rate of \$0.49 per 100 gallons of metered water for use in process operations in lieu of the rate set forth in Article 9, Chapter 19, Section A(1) of the Village Municipal Code; and,
- c. Bay Valley shall compensate the Village at a rate of \$0.04 per gallon for the management of Bio-Solids as set forth in Paragraph 4 of the Agreement.

Notwithstanding (a) and (b) above, Bay Valley agrees that its use of the System shall not exceed an average of 30,000 gallons per day or a maximum of 60,000 gallons per day of total daily flow of metered wastewater and the concentration of Biochemical Oxygen Demand (BOD) shall not exceed 200 mg/L and Total Suspended Solids (TSS) shall not exceed 240

mg/L as calculated on an average monthly basis, nor shall daily BOD exceed 100 lbs. or daily TSS exceed 120 lbs. In the event that the concentration of BOD or TSS exceeds these values based upon an average monthly basis, Bay Valley shall be subject to surcharge rates set forth in Article 10, Chapter 26(E) of the Village Code of only that amount that is in excess of applicable values. In the event Bay Valley exceeds 30,000 gallons per day of total average flow, or 60,000 gallons maximum daily flow, the excess flow volume will be subject to the current Basic User Rates set forth in Article 10, Chapter 26(D) of the Village Code, as amended. The method of calculation to determine the gallons per day shall be computed on a seven day per week basis.

3. The rates set out above shall apply for a period of ten (10) years from the date of the Special Services Agreement unless that Agreement is terminated earlier.

4. Nothing in this Amendment shall serve to waive or otherwise, exempt Bay Valley in the future from the payment of any applicable surcharges imposed by Article 10, Chapter 26, Subparagraph E or any other provision of the Pecatonica Village Code as it exists now or as amended from time to time.

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment to the Municipal Services Agreement on the date set forth.

**BAY VALLEY FOODS, L.L.C.,**

**VILLAGE OF PECATONICA,**

On Original  
By John Kaney  
Director of Powder Mfg.

On Original  
By Shawn M. Connors  
Village President

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By  
Its