

## SHADLE & WALSMAN, PLC

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\*\*Also Admitted in Missouri

July 14, 2011

RECEIVED BY  
*S.P. 7-18-11*  
DEPARTMENT OF DEVELOPMENT SERVICES  
PLANNING & ZONING DIVISION  
CITY OF SAN LUIS

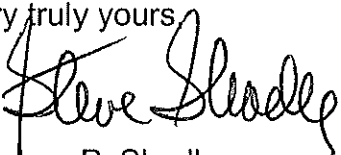
Sharon E. Williams  
Planning & Zoning Director  
City of San Luis  
P.O. Box 3750  
San Luis, AZ 85349

Dear Sharon:

Enclosed is a copy of the Preannexation Development Agreement that we had with the City. The provision I am concerned about is on page 4, subparagraph E, Section Seven. It provided the \$10,000 per acre credit for the 20-acres we sold to the City for the Sewer Plant.

It appeared to me that the Amendment of the Development Agreement excluded that particular clause and it was supposed to be valid for 15 years or until 2015. I would appreciate it if you would talk with Glen about it and see if we can make sure that part of our Preannexation Development Agreement is still in effect as we go forward for the next four years.

Very truly yours,



Stephen P. Shadle

SPS:jad  
Enclosure

c: Glen Gimbut

OFFICIAL RECORDS OF  
YUMA COUNTY RECORDER  
SUSAN MARLER



**FEE #: 2000-03014**

02/02/2000 03:42 PAGES: 0013  
FEES: 6.50 4.00 .00 .00 .00  
REQ BY: GERALD HUNT  
REC BY: PATTY MAGANA

When recorded, mail to:

Gerald W. Hunt  
330 West 24<sup>th</sup> Street  
Yuma, AZ 85364

CITY OF SAN LUIS, ARIZONA

RESOLUTION NO. ~~163~~ 421

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE  
CITY OF SAN LUIS, STATE OF ARIZONA, APPROVING A PRE-  
ANNEXATION DEVELOPMENT AGREEMENT FOR SAN LUIS PORT,  
L.L.C., AND AUTHORIZING SIGNATURE

WITH

PREANNEXATION DEVELOPMENT AGREEMENT DATED THE  
12<sup>TH</sup> DAY OF JANUARY, 2000 BY AND BETWEEN THE CITY  
OF SAN LUIS AND SAN LUIS PORT, L.L.C.





# Resolution

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

## RESOLUTION 421

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, STATE OF ARIZONA, APPROVING A PRE-ANNEXATION DEVELOPMENT AGREEMENT FOR SAN LUIS PORT, L.L.C., AND AUTHORIZING SIGNATURE.**

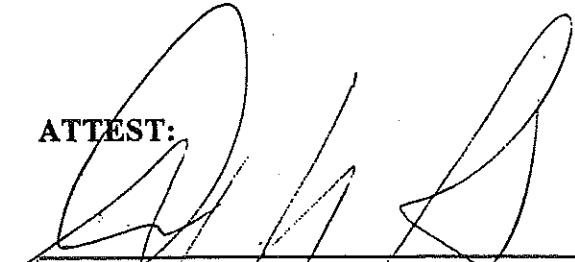
**WHEREAS**, pursuant to the provisions of A.R.S. Section 9-500.05, the City of San Luis is authorized to enter into pre-annexation development agreements; and

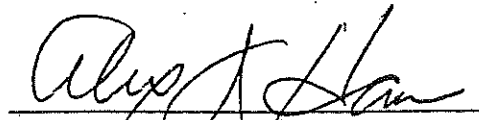
**WHEREAS**, the City of San Luis, Arizona, and San Luis Port, L.L.C., desire to enter into a pre-annexation development agreement;

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and City Council of the City of San Luis, Arizona, that the pre-annexation development agreement between the City of San Luis, Arizona, and San Luis Port, L.L.C., a true copy of which is marked Exhibit "A" attached hereto, and by this reference incorporated herein, is hereby approved and authority for the City of San Luis to enter into said agreement is hereby authorized, and, further, the Mayor is hereby authorized to execute said pre-annexation development agreement on behalf of the City of San Luis.

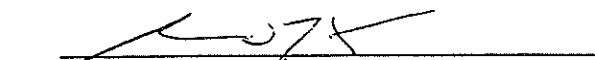
**PASSED AND ADOPTED** by the Mayor and City Council of the City of San Luis, Arizona, this 12<sup>th</sup> day of January, 2000.

**ATTEST:**

  
\_\_\_\_\_  
Alex U. Ruiz, City Administrator/Clerk

  
\_\_\_\_\_  
Alex Joe Harper, Mayor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Gerald W. Hunt, City Attorney

Copy  
3/29/01  
YPM

### Preannexation Development Agreement

Agreement entered into on the 12<sup>th</sup> day of JANUARY, <sup>2000</sup>~~1999~~, between the City of San Luis, State of Arizona, a municipal corporation, herein referred to as City, and San Luis Port L.L.C., Yuma, Arizona, an Arizona Limited Liability Company authorized to carry on business in the State of Arizona, herein referred to as Developer.

#### Recitals

A. Developer is the owner of a tract (s) of land located in the County of Yuma as further described on exhibit A as attached hereto, and, by this reference, incorporated in and made a part of this agreement.

B. City and Developer desire to enter into an agreement providing for the annexation of the land described on exhibit A in into the municipal limits of City, and further provide for terms and conditions regarding the zoning and development of said land.

In consideration of the mutual agreements and covenants set forth herein, the parties agree as follows:

#### Section One

##### Purpose

The purpose of this preannexation development agreement is to provide terms and conditions for the annexation of certain territory, as described on exhibit A the attached hereto, ("territory"), into the boundaries of City by promising, within the limits of legislative and administrative powers of City, to Developer to provide for proper zoning and provide terms and conditions regarding infrastructure to allow for the development of the territory.

#### Section Two

##### Development Agreement

This Agreement is a "Development Agreement" within the meaning of Arizona Revised Statutes §9-500.05.

### Section Three

#### Effective Date and Term

This Agreement is conditioned upon and shall not be binding on the parties until the property is annexed into the City of San Luis. The term of this agreement shall be for a period of fifteen years from the effective date of this agreement, unless otherwise modified or terminated pursuant to the terms and agreements herein contained.

### Section Four

#### Annexation, Procedure, and Timing

It is understood that the Developer is presently in negotiations to sell a portion of the territory to Alternative Programs Inc. ("API") for the development of a private prison. Contingent only on the close of any escrow of sale of any portion of the territory to API, within one year of the execution of this agreement, the Developer, and any successor in interest to Developer, including but not limited to API, agrees to petition for and consent to the annexation of the territory into the City of San Luis pursuant to the Arizona Revised Statute §9-471, as amended.

### Section Five

#### Consistency With General Plan

As required by State law, the City and Developer stipulate that the development of the property is or will be consistent with the City's General Plan. It is understood that the City does not presently have a General Plan, but is in the process of developing one.

### Section Six

#### Use Of Property; Zoning

On the portion of the territory described on Exhibit B attached hereto, the City agrees, under the existing zoning ordinances of the City, permission will be given to allow the development of and the establishment of the use of a private prison. The exercise of legislative discretion and the granting of permission to develop and use the property as a private prison is being granted as part of approval of this development agreement, and the City agrees that as an administrative matter it will pass such ordinances or issue such conditional use permits or grant such other authorizations needed and/or necessary to use said property as a site for a private prison.

City agrees to waive any and all fees for the granting of zoning or other use approval for the use of said property as a private prison. This waiver shall not apply to fees for building permits, building code regulation, or other approvals, other than as described above, necessary for the

actual development or construction of any private prison on said described land.

With respect to the remaining territory of the Developer, City recognizes that the remaining territory will be impacted by the prison and is suitable for development for warehousing or light manufacturing uses. Therefore the City agrees to provide for light industrial zoning to the remaining land, conditioned upon developer or its successors seeking a special use permit before any light industrial use is permitted to be located upon the land. Both Developer and City anticipate the development of a new commercial port of entry within the municipal limits of City. Both Developer and City agree that the development of this new commercial port of entry will not occur for a period of several years after the effective date of this agreement. Both Developer and City agree that the development of this proposed new port of entry will have great impact upon the proper development and the highest and best use of the territory being annexed, and that a light industrial rezoning is consistent with the development of a new port of entry. City agrees to waive any and all fees for the rezoning to light industry. Any act of zoning or rezoning shall be subject to the laws and procedures of the State of Arizona and the City of San Luis then in effect.

#### Section Seven

##### Water Services and/or Wastewater Services

- A. It is understood that for the development of the territory, and in particular to serve the proposed private prison referred to herein above, Developer or its successors may need the development of water and/or wastewater treatment facilities and lines, hereinafter referred to as "water system" or "wastewater system."
- B. To the end of developing water and/or wastewater systems, to the extent permitted by law, City use its powers to assist Developer and/or its successor in the creation of any and all special districts that are deemed by City and Developer to be appropriate for the funding and/or construction and/or operation of infrastructure needs in the development of a water system and/or a wastewater system. Said special districts may include but are not limited to Community Facilities Districts, Water Districts, Sewer Districts, and Improvement Districts. In making this pledge of assistance, the Developer understands that the City is not making any commitment to spend any monies from current revenue sources of the City.
- C. With respect to the development of the proposed private prison, in the event that either the City or a special district is to provide a water system and/or a wastewater system, Developer, on behalf of itself, its heirs, successors, and assigns, agrees to make up to 5 acres of the territory described on Exhibit "A" as a site for a wastewater system and/or as a site for a water system, at no cost to either the City and/or the special district. Said site may be located on the property described on Exhibit "B". Title to said property shall vest to City, or its designee, in fee simple free and clear of all liens and encumbrances.
- D. In addition, in exchange for the offsets and credits against hook-up fees and impact fee

charges as set forth below, Developer, on behalf of itself, its heirs, successors, and assigns, agrees to make up to an additional 10 acres of the territory described on Exhibit "A" as a site for a wastewater system and/or as a site for a water system, at no cost to either the City and/or the special district, other than as set forth below. Said site may be located on the property different that the site described in Section 7.C above and may be located on the property described on Exhibit "B".

E. With respect to the additional 10 acres as set forth in Section 7.D above, in consideration for said property, Developer shall be entitled to credit against any hook-up fees or impact fees of the City at the rate of \$10,000.00 per acre. Said right to offset(s) and credit(s) may be transferred by Developer to any its heirs, successors, or assigns to the interest of Developer in the territory described on Exhibit "A". The amount of credit shall be determined by the amount of acreage taken, and the right to credit shall accrue upon taking and shall exist for a period of 15 years from the date of taking. Title to said property shall vest to City, or its designee, in fee simple free and clear of all liens and encumbrances.

## Section Eight

### Infrastructure

It is understood that for the development of the territory proper streets, roads, and other forms of infrastructure will need to be developed. It is understood that there will need to be developed an access road from the proposed new commercial port of entry to the proposed Area Service Highway. City promises to use its best efforts to facilitate the development of said access road and the maintenance of said road. This facilitation may take the form of working with other governmental units in Yuma County. Developer, on behalf of itself, its heirs, successors, and assigns hereby agrees to dedicate, in fee simple, free and clear of all liens and encumbrances, such land as needed and necessary for right of way for such roads as may be needed to connect the territory and the proposed port of entry to the aforementioned Area Service Highway.

The City is committed to facilitate and assist in the development of all proper transportation elements in the region surrounding the proposed new commercial port of entry and the development of all proper transportation elements to serve and service the territory of Developer. This facilitation and assistance shall include, within the limitations of City's police power and legal authority, the establishment and/or development of roadways to serve the territory being annexed. In so doing it is recognized that City will commit itself to facilitate the development of access highways from existing municipal limits to the territory of Developer other than the proposed Area Service Highway. In making this pledge of facilitation, the City is not making any commitment to spend any monies from current revenue sources of the City

With respect to roads to serve the proposed private prison referred to herein, the City is committed to facilitate and assist in the development of all proper transportation elements. Developer agrees to provide all right of way located within the territory needed to reasonably

serve and service said prison and it is understood any public road built to serve said prison shall be built to City standards with the cost of said development and construction to be borne by the Developer and/or the private prison. However, the City agrees to use its powers of condemnation to assist in the acquisition of right of way across private land not owned or controlled by Developer which may be needed to serve or service said private prison, if desired by Developer or its successor. If Developer or its successor desires the City to so use its powers, Developer and/or its successor understand and agree that as a condition for such exercise that they shall indemnify and hold the City harmless from all costs and expenses associated therewith including but not limited cost to purchase the property rights in question and all legal and professional fees and other costs associated with said condemnation.

### Section Nine

#### Special Districts

In addition to water and wastewater services as hereinbefore set forth, City will assist Developer in the creation of any and all special districts that are deemed by City and Developer to be appropriate for the funding and/or construction of infrastructure needs in the development of the territory. Said special districts may include but are not limited to Community Facilities Districts, Water Districts, Sewer Districts, and Improvement Districts.

### Section Ten

#### General Provisions

##### A. Time is of Essence; Binding Effect

Time is of the essence of this agreement. Such agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

##### B. Notifications

(i) All notices, demands or other communications must be in writing and are deemed newly delivered upon personal delivery, or as of the fifth (5th) day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To City: City Manager, City of San Luis, 23222 First Street, P.O. Box 1170, San Luis, Arizona, 85349.

To Developer: Stephen P. Shadle, Manager, San Luis Port L.L.C., 2260 S.4th Ave., Yuma, Arizona, 85364.

(ii). If either party changes addressed, a must give written notice to the other party. Notice of

change of address is deemed effective five days after mailing by the party changing address.

#### C. Successor and Assigns

Subject to the right of a successor in interest to Developer to choose zoning classifications as provided in Section 6 hereinabove, this Agreement is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.

#### D. Waiver

If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.

#### E. Governing Law and Venue

(i) The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The parties must institute and maintain any legal actions or other judicial proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.

(ii) This agreement is subject to the cancellation provisions of Arizona Revised Statute § 38-511, as amended.

#### F. Severability

If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid enforceable.

#### G. Counterparts

This agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

#### H. Attorney Fees and Costs

If either party brings an action or proceeding for failure to observe any of the terms or provisions of this agreement, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court

costs, and reasonable attorneys fees.

I. Integration

This Agreement contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this agreement must be in writing, signed in endorsed by the parties.

In witness whereof, the parties have executed this agreement on the day and year first above written, and written below.

DATED this 12<sup>th</sup> day of JANUARY, 2000 ~~1999~~

CITY OF SAN LUIS

Alex Joe Harper  
Alex Joe Harper  
Mayor

ATTEST:

Alex Ruiz  
Alex Ruiz  
City Clerk

APPROVED AS TO FORM:

Gerald W. Hunt  
GERALD W. HUNT  
City Attorney

DEVELOPER  
SAN LUIS PORT LLC

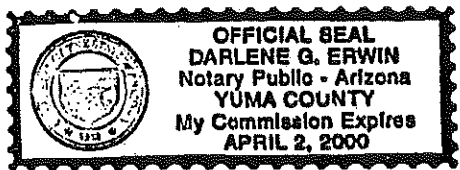
By: Stephen P. Shadle  
Manager

State of Arizona )  
                          )ss  
County of Yuma )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of December 1999 by Stephen P. Shadle, Manager of San Luis Port LLC.

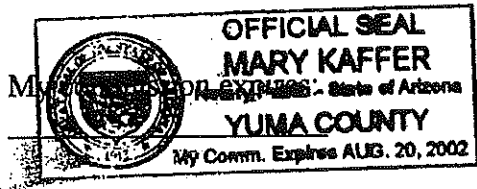
Darlene G. Erwin  
Notary Public

My commission expires:  
April 2, 2000



State of Arizona )  
                          )ss  
County of Yuma )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of JANUARY  
~~1999~~<sup>2000</sup> by Alex Joe Harper, Mayor of the City of San Luis, Arizona.



Mary Kaffer  
Notary Public

Approved as to form and content:

Alternative Programs, Inc.

By: [Signature]  
President

**EXHIBIT A**

The South half of Section 11, Township 11 South, Range 24 West of the Gila and Salt river Base and Meridian, Yuma County, Arizona;

Except the East 33 feet; and

Except the South 33 feet; and

Except the West 33 feet; and

Except beginning at the Southwest corner of the Southeast quarter of Section 11;

Thence North 0 degrees 26 minutes 29 seconds to East, a distance of 33 feet along the West line of the Southeast quarter to the true point of beginning;

Thence North 0 degrees 26 minutes 29 seconds East, a distance of 626.65 feet to a point;

Thence South 89 degrees 31 minutes 30 seconds East, a distance of 2606.18 feet to a point;

Thence South 0 degrees 27 minutes 38 seconds West, a distance of 625.94 feet to a point;

Thence North 89 degrees 32 minutes 26 seconds West, a distance of 2605.96 feet to the true point of beginning.

**EXHIBIT B**

The North half of the Southeast quarter of Section 11, Township 11 South, Range 24 West, Salt River Base and Meridian, Yuma County, Arizona, except the East 33 feet.