

Fireworks Productions of Arizona
17034 S.54th St.
Chandler, AZ 85226
Office 480-948-0090 ~ Fax 480-423-5430

FIREWORKS DISPLAY CONTRACT

This fireworks display contract is between FPA, Ltd., an Arizona Corporation DBA Fireworks Productions of Arizona ('FPA'), and City of San Luis.

FPA is in the business of selling and displaying fireworks, and City of San Luis wants FPA to provide a fireworks display for City of San Luis' benefit. The parties therefore agree as follows:

1. **The Display.** FPA will provide and exhibit fireworks for a display on Tuesday, July 4, 2023. The display will last approximately 15 minutes, and will substantially comply with the program set forth in Exhibit A.
2. **Contract Price.** City of San Luis will pay FPA the sum of \$20,500.00 (the 'Contract Price') as consideration for the fireworks display. Payment will be made as follows:
 - a. Signed Contract due on or before **Monday, May 15, 2023**;
 - b. 50% deposit of the Contract Price (\$10,250.00) due on or before **Monday, May 15, 2023**;
 - c. The balance of the Contract Price (\$10,250.00) within twenty days after the completion of the Fireworks Display.

City of San Luis agrees to pay interest at the rate of 1% per month on any delinquent balance until the debt is paid in full.

3. **Permits.** FPA will apply for and secure, at FPA's cost, all permits, licenses, and approvals required by all applicable local, state, or federal laws and regulations as well as any imposed or required by local police or fire departments. FPA will provide City of San Luis evidence of the acquisition and validity of all required permits, licenses, and approvals no later than seven days before the Original Date.
4. **Insurance.** FPA shall at its expense, for the performance contracted hereunder: (1) insure the instruments and equipment belonging to FPA against loss or damage; (2) carry the types and amounts of insurance as shown on Exhibit C attached hereto. FPA shall procure, pay for, and deliver to City the policies of insurance covering the risks described in the preceding paragraphs. All insurance companies issuing such policies shall have what is commonly known as an "A" rating with A.M. Best Company and shall insure City. Certificates of insurance shall be delivered to City before the effective date of this agreement, and new policies shall be delivered fourteen (14) days before the old policies expire. If FPA fails to deliver the policies in the manner stated to City, City may obtain the required policies and charge their costs to FPA, and the city may deduct these costs from any sums due and owing FPA. If the policy or policies of insurance is/are a "claims made" policy, it/they shall be maintained for two (2) years following termination of this agreement.

All such insurance policies shall be first payable in case of loss by means of a standard noncontributory clause, shall be written by such companies, on such terms, in such form and for

such periods and amounts as the City shall from time to time designate or approve, shall be primary and without right of contribution from other insurance which may be available, shall waive any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of FPA or City, shall provide that with respect to the City, the insurance shall not be invalidated by any action or inaction by FPA, including but not limited to any representations made by FPA in the procurement of such insurance, and shall provide that they shall not be cancelled or amended without at least [30] days' prior written notice to the City. FPA grants the City full power and authority as attorney irrevocable of FPA to cancel or transfer such insurance, to collect and endorse any checks issued in the name of FPA and to retain any premium and to apply the same to the obligations promised by this agreement.

5. **Display Site.** City of San Luis will procure and furnish a place suitable to FPA for the fireworks display pursuant to instructions supplied by FPA in Exhibit B. The site will be cleared of brush, grass, dead trees or any other materials that present a possible fire danger. The site will also have a flat area for the fireworks equipment set-up. The site will be sufficient to accommodate spectator viewing areas, vehicle parking areas, and the Display Site. 'Display Site' means the discharge site, the fallout site, and the required separation distance from mortars to the spectator viewing areas in compliance with the most recent edition of the National Fire Protection Association 1123 Code for Fireworks Display. City of San Luis will ensure that the ground of the Display Site is dry prior to set-up of the fireworks and that there will be no sprinklers or irrigation prior to or during the Display and not until after tear-down of the Display Site is complete.
6. **Security and Indemnification.** As required, City of San Luis, will furnish all necessary materials for and will set up restraining lines in compliance with most recent edition of the National Fire Protection Association 1123 Code for Fireworks Displays. The City of San Luis will hold harmless and indemnify FPA from any demands, claims, causes of action or liability arising from damage to or destruction of real or personal property or bodily or personal injuries, whether arising from tort, contract, or otherwise, that occur directly from the failure of the City of San Luis to comply with its security obligations and responsibilities as set forth in this Section, including reasonable attorney fees and costs. City of San Luis will hire and provide, at its own cost and expense, adequate private or public security personnel to ensure that no vehicles are parked within the Display Site and that no individuals, other than those specifically authorized by FPA, enter the Display Site. The security personnel will remain on the perimeter of the Display Site and will not enter the Display Site before, during, or immediately following the fireworks display.
7. **Cleanup of Display Area.** Following the display, FPA will be responsible for cleanup of all boxes and equipment and policing of the display area including the removal of all unexploded fireworks, removal of frames and lumber. Any additional clean-up required will be the responsibility of City of San Luis.
8. **Weather or Safety Cancellation.** FPA or the Authority Having Jurisdiction (AHJ) may determine that the time or length of the display of fireworks may need adjustment based on wind/weather/safety conditions. If FPA or the Authority Having Jurisdiction (AHJ) determines that display of fireworks on the date and at the time set forth in paragraph one (the 'Original Date') would be impossible or impractical because of inclement weather or safety concerns, the display will be canceled. Should there be a cancellation under this paragraph, City of San Luis will pay FPA, its 'Actual Expenses' related to preparation for the unsuccessful displays on the Original Date. 'Actual Expenses' shall include expenses for travel, lodging,

labor, meals, rentals, permits, setup and dismantling of the display, and any other expenses related to the unsuccessful attempts to present the display on the Original Date.

9. **Interruption and Continuation of the Fireworks Display.** There are instances or situations where a fireworks display may require to be interrupted due to safety, weather or equipment damage due to debris or fire. If repairs can be effected or the situation passes, City of San Luis has the option to continue or cancel the remainder of the display. Regardless of continuation or cancellation, City of San Luis will not be refunded any portion of the Contract Price if the display can safely continue. In the event the display begins but is halted due to wind, weather or safety conditions, FPA will refund or credit City of San Luis the applicable deposit minus “Actual Expenses” incurred. Actual Expenses includes the cost and taxes on the fireworks provided prior to the stopping of the display. In the event a product fails to function (here to be classified as a Dud), City of San Luis will be entitled to a refund or credit of that individual product’s purchase price, plus tax, only.
10. **Cancellation. (*other than paragraph 8, above).** The parties acknowledge that, if City of San Luis cancels this contract, FPA will suffer damages. They further acknowledge that those damages will be uncertain as to amount and difficult to prove. In the event that City of San Luis does cancel this contract, therefore, FPA will be entitled to recover, not as a penalty, but as liquidated damages, an amount set forth below:
 - a. If cancellation occurs more than 30 days before the Original Date, an amount equal to 10% of the Contract Price;
 - b. If cancellation occurs no more than 30 days and no less than 1 days before the Original Date, an amount equal to 50% of the Contract Price;
 - c. On or after the Original Date, an amount equal to 100% of the Contract Price.
11. **Force Majeure.** In the event of natural disasters or “acts of God;” manmade disasters; war and civil issues; labor disputes or strikes; government embargoes or other government actions affecting the supply chain; and/or transportation issues such as overseas shipping, domestic shipping (trucking, rail) and/or port delays, or other causes beyond the reasonable control of either party that prevent performance of either or both parties' obligations under this contract (other than inclement weather or safety concerns as described in paragraph eight) each party hereby releases the other from any and all obligations hereunder, except for liabilities, recognized as “Actual Expenses” (including but not limited to permit fees, credit card fees, vehicle rental and/or loading and packing labor) that may have already accrued to such time. FPA submits this contract based on planned costs and display size. The size and/or the cost of the display may be re-proposed based on product availability or cost adjustments. FPA submits this contract in good faith, planning to provide communication on any changes in a timely manner.
12. **Indemnifications and Liability.** FPA agrees to indemnify City, its officers, agents, representatives, and employees and to release and hold them harmless from and against all liability or loss, and from and against all claims or actions based on or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the fireworks exhibition and display, whether located on the property of City or the right of way of City. FPA shall also indemnify City and its officers, agents, representatives, and employees against any and all costs, attorney fees, and liabilities incurred in or about any such claim or in or about any action or proceeding brought on such claim or claims.

13. General Provisions.

- A. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the FPA or City of the breach of any covenant of this agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this contract.
- B. Attorneys' Fees. In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the another party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.
- C. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.
- D. Headings. The descriptive headings of the paragraphs of this agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- E. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this contract.
- F. Time of the Essence. Time is of the essence of this contract.
- G. No Partnership and Third Parties. It is not intended by this agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other similar arrangement between FPA or City. No term or provision of this agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- H. Entire Agreement. This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.
- I. Amendment. No change or additions are to be made to this agreement except by a written amendment executed by the parties hereto.
- J. Governing Law. This agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this agreement is subject to the provisions of A.R.S. § 38-511.

K. Reformation. Should any term, provision, covenant or condition of this agreement be held to be void or invalid, the parties shall reform this agreement to conform as closely as possible to the original intent thereof.

L. Venue. Any legal action relating to this agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the District of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

M. Severability. Every provision of this agreement is, and will be construed to be, a separate and independent covenant. If any provision of this agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

N. No Personal Liability. No member, official or employee of the City shall be personally liable to FPA, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to FPA or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this contract.

O. Employment Eligibility. FPA hereby warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. §23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the agreement and is subject to penalties up to and including termination of this agreement. City retains the legal right to inspect the papers of FPA and any contractor or subcontractor employee of FPA to ensure that FPA and any of its contractors or subcontractors are compliant with this warranty.

P. Compliance with Law. FPA agrees that it will comply with all federal, state, and local statutes, laws, ordinances, rules and regulations. .

Q. Assignment. The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

R. Incorporation. Exhibits A, B, and C are incorporated into this Agreement by this reference.

[Intentionally left blank, signature page follows.]

IN WITNESS WHEREOF, the parties have hereunto set our hands and seals on the date and year first above written.

FPA, Ltd.



(Authorized Signature)

Title: Pyro Planning Specialist

Date: April 25, 2023

City of San Luis

(Authorized Signature)

Title: _____

Date: _____

ATTEST:

Sonia Cornelio, City Clerk

Approved as to form:

Kay Marion Macuil, City Attorney



CITY OF SAN LUIS
Tuesday, July 4, 2023



15 minute display
(2 sec. pace)

Total Aerial Effects 1,928

Total Shells 728

Total in Basins 1,200

Opening:

Your show begins with an impressive series of powerful booms to excite and thrill the audience.

14 – 3” Titanium Salutes

14 – 3” Color Fancies

Aerial Display:

A large assortment of brilliantly-colored shells, including Chrysanthemums, Waves, Crowns, Peonies, Strobes, Brocade Crowns, Diadems, and Crossettes in gorgeous Reds, Yellows, Blues, Greens, Silvers, and Golds.

Your Aerial Display will contain a total of **504** aerial shells and **1,200** basin effects.

12 - 1.5” FPA Premier Specialty Basins

252 - 3” Chinese Fancy’s & Specials

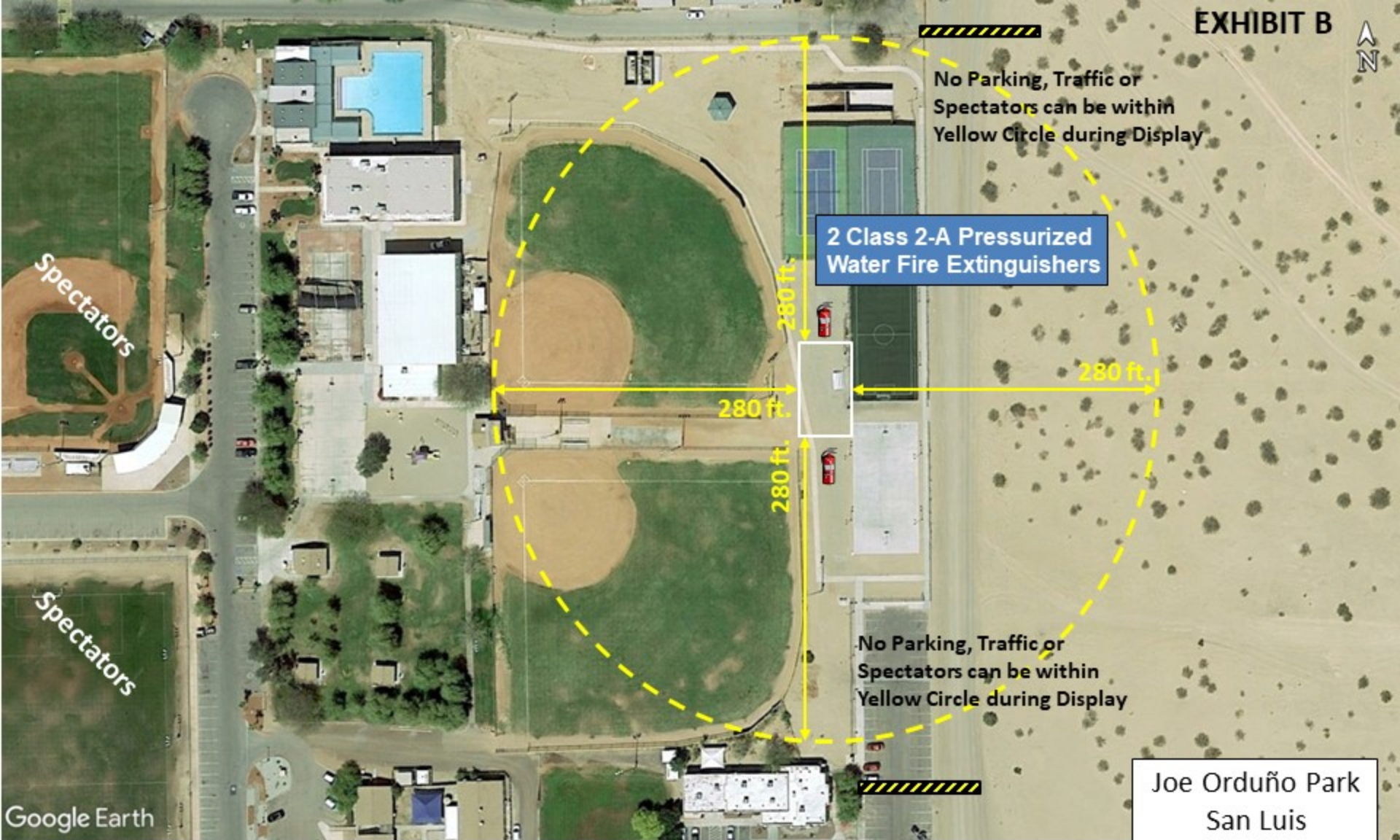
252 - 4” Chinese Fancy’s & Specials

GRANDE FINALE:

Your celebration will close in spectacular excitement as multiple styles of brilliantly-colored shells, rocket skyward growing and glowing in breath-taking Blues, Golds, Greens, Silvers, Yellows, Purples and Red.

Your Grande Finale consists of **196** aerial shells:

Your Grande Finale: **72** – 2.5” Titanium Salutes, **100** - 3” shells,
and **24** – 4” shells.



No Parking, Traffic or Spectators can be within Yellow Circle during Display

2 Class 2-A Pressurized Water Fire Extinguishers

280 ft.

280 ft.

280 ft.

No Parking, Traffic or Spectators can be within Yellow Circle during Display

Joe Orduño Park
San Luis

965 N. Park Ave.
San Luis, AZ 85349

Site Map

Maximum Shell Size: 4" Shells

Fireworks Productions of Arizona

480-948-0090

info@fireworksaz.com

Exhibit C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/28/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Partners Group Ltd 11225 SE 6th St., Suite 110 Bellevue WA 98004	CONTACT NAME: Janet Nau PHONE (A/C. No. Ext): 425-455-5640 E-MAIL ADDRESS: jnau@tpgrp.com		FAX (A/C. No.): 425-455-6727
	INSURER(S) AFFORDING COVERAGE		
INSURED FPA, LTD Fireworks Productions of Arizona 17034 S. 54th Street Chandler AZ 85226	16021	INSURER A : Everest Indemnity Insurance Co INSURER B : Everest Denali Insurance Company INSURER C : AXIS Surplus Lines Insurance Company INSURER D : Travelers Property Casualty Co of America INSURER E : INSURER F :	NAIC # 10851 16044 26620 25674

COVERAGES

CERTIFICATE NUMBER: 916254187

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	Y	y	SI8ML02344221	10/9/2022	10/9/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ /A PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			SI8CA00258221	10/9/2022	10/9/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			P00100069169702	10/9/2022	10/9/2023	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	6R08411	10/9/2022	10/9/2023	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	General Liability & Auto Excess over \$4M			SI8EX01790221	10/9/2022	10/9/2023	Each Occurrence \$5,000,000 Aggregate \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The following are included as Additional Insured on General Liability as their interest may appear as respects operations performed by or on behalf of the Named Insured, as required by written contract:
 Date of Display: July 4, 2023
 Location of Display: Joe Orduño Park, 965 N. Park Ave.
 Additional Insured(s): State of Arizona; Yuma County; City of San Luis. Waiver of Subrogation applies to the General Liability per form attached.

CERTIFICATE HOLDER**CANCELLATION**

City of San Luis 744 Cesar Chavez Blvd P.O BOX 1170 San Luis AZ 85349	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2010/05)

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THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
State of Arizona; Yuma County; City of San Luis Date of Display: July 4, 2023 Location of Display: Joe Orduño Park, 965 N. Park Ave.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" but only to the extent caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

B. The insurance afforded to an additional insured shall only include the insurance required by the terms of the written agreement and shall not be broader than the coverage provided within the terms of the Coverage Part.

C. The Limits of Insurance afforded to an additional insured shall be the lesser of the following:

1. The Limits of Insurance required by the written agreement between the parties; or
2. The Limits of Insurance provided by this Coverage Part.

D. With respect to the insurance afforded to an additional insured, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of any act or omission of an additional insured or any of its employees.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- ELECTRONIC DATA LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
- POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

<p>Name Of Person(s) Or Organization(s): State of Arizona; Yuma County; City of San Luis Date of Display: July 4, 2023 Location of Display: Joe Orduño Park, 965 N. Park Ave.</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.