



## NOTICE OF SPECIAL COUNCIL MEETING

In accordance with § 38-431.01 of the Arizona Revised Statutes of the State of Arizona, notice is hereby given to the Members of City Council and to the general public that the Mayor and Council of the City of San Luis, Arizona, will hold a Special City Council meeting at 6:00 p.m., Monday, September 25, 2023. The meeting will take place at the City Council Chambers, located at 1090 E. Union Street, San Luis, Arizona, 85349. The public is invited to attend the open meeting.

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the City of San Luis does not discriminate on the basis of disability in the admission of or access to, or treatment or employment in its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in City programs, activities, or services contact: ADA/Section 504 Coordinator, City of San Luis Human Resources Department, 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the City Clerk to such recording or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

THIS NOTICE IS GIVEN BY:

/s/ Sonia Cornelio, City Clerk

## AVISO DE JUNTA ESPECIAL

De acuerdo con los Estatutos del Estado de Arizona A.R.S. § 38-431.01, se le informa a los miembros del Cabildo y al público en general que el Alcalde y el Cabildo, tendrán una Junta Especial a las 6:00 p.m., el día Lunes, 25 de Septiembre del 2023. La junta se llevará a cabo en la Sala del Cabildo, ubicada en el 1090 E. Union Street, San Luis, Arizona, 85349. El público está invitado a la junta.

De acuerdo con el Acta de Americanos con Discapacidades y la Sección 504 del Acta de Rehabilitación del 1973, la Ciudad de San Luis, Arizona no discrimina por causa de discapacidad la admisión y acceso a sus programas, actividades, servicios o en el trato en cuanto a empleo. Para más información referente a derechos y provisiones del Acta de Americanos con Discapacidades o Sección 504, o para solicitar adaptaciones que sean razonables para la participación en programas, actividades o servicios de la Ciudad, contactar al: Coordinador del Acta de Americanos con Discapacidades/Sección 504, Departamento de Recursos Humanos de la Ciudad de San Luis, Arizona, ubicado en el 1090 E. Union Street, San Luis, Arizona, 85349; (928) 341-8520.

Por medio de este aviso y de acuerdo con los Estatutos del Estado de Arizona A.R.S § 1-602.A.9, sujeto a ciertas excepciones reglamentarias, los padres de familia tienen el derecho de dar el consentimiento ante el Estado o cualquiera de sus subdivisiones políticas para hacer una grabación de audio o video de su hijo menor de edad. Las juntas del Cabildo se graban en audio y/o video y como resultado, el hecho de que haya menores presentes puede ser sujeto a que sean grabados. Para que los padres de familia puedan ejercer sus derechos pueden dar el consentimiento por escrito con la Secretaria de la Ciudad a tal grabación, o tomar acción personal para asegurarse que su hijo menor no esté presente cuando la grabación se lleve a cabo. Si un menor de edad está presente en el momento de la grabación, la Ciudad asumirá que los padres de familia están cediendo los derechos sobre una posible grabación de acuerdo con los Estatutos del Estado de Arizona A.R.S. § 1-602.A.9.

ESTE AVISO ES DADO POR:

/f/ Sonia Cornelio, Actuaría de la Ciudad

**AMENDED AGENDA ON 9/22/23**

**PREVIOUSLY ITEMS 3.B. AND 3.C. HAVE BEEN REMOVED AND RE-NUMBERED ACCORDINGLY**



**AGENDA  
Special Meeting  
San Luis City Council  
Council Chambers  
1090 E. Union Street  
San Luis, AZ 85349  
September 25, 2023  
6:00 p.m.**

PLEASE TAKE NOTICE THAT MEMBERS OF THE CITY COUNCIL WILL ATTEND EITHER IN PERSON, TELEPHONE, OR VIDEO CONFERENCE COMMUNICATION. THE MAYOR OR ACTING MAYOR FOR THIS MEETING MAY CHANGE THE ORDER OF THE ITEMS; IF AUTHORIZED BY LAW AND BY A MAJORITY VOTE OF A QUORUM OF CITY COUNCIL MEMBERS PRESENT, AN EXECUTIVE SESSION WILL BE HELD IMMEDIATELY FOLLOWING THE VOTE IN ACCORDANCE WITH A.R.S. § 38-431.03(A) AND THE MEETING WILL BE TEMPORARILY RECESSED WHILE THE CITY COUNCIL RETIRES TO EXECUTIVE SESSION WHICH WILL NOT BE OPEN TO THE PUBLIC.

TENGA EN CUENTA QUE LOS MIEMBROS DEL CABILDO DE LA CIUDAD ASISTIRÁN EN PERSONA, TELÉFONO O COMUNICACIÓN POR VIDEO CONFERENCIA. LA ALCALDESA O ALCALDE INTERINO DE ESTA REUNIÓN PUEDE CAMBIAR EL ORDEN DE LOS TEMAS; SI ESTÁ AUTORIZADO POR LA LEY Y POR MAYORÍA DE VOTOS DE UN QUÓRUM DE MIEMBROS DEL CABILDO PRESENTES, SE LLEVARÁ A CABO UNA SESIÓN EJECUTIVA INMEDIATAMENTE DESPUÉS DE LA VOTACIÓN DE ACUERDO CON LOS ESTATUTOS DEL ESTADO DE ARIZONA A.R.S. § 38-431.03 (A) Y LA REUNIÓN SERÁ TEMPORALMENTE RECESADA MIENTRAS EL CABILDO DE LA CIUDAD SE RETIRE A UNA SESIÓN EJECUTIVA QUE NO ESTARÁ ABIERTA AL PÚBLICO.

1. **CALL TO ORDER/ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **DISCUSSION AND POSSIBLE ACTION ITEMS:**
  3. A. Discussion and possible action on any and all matters regarding Subdivision Case No. 2023-0295F - Los Mezquites Townhomes Final Plat. A request by Edais Engineering Inc., on behalf of Riedel Holdings LLC, for the approval of Los Mezquites Townhomes Final Plat; the property is located west of 24th Avenue and south of Los Mezquites Unit 2 Subdivision in San Luis, Arizona. **(Jose A. Guzman, Director of Planning & Zoning)**
  3. B. Discussion and possible action on any and all matters regarding the authorization to reallocate Council Contingency Funds for Landscaping Improvements for the Fernando Padilla City Building and San Luis Fire Station No. 2. **(Lizette Varela, Assistant Director of Parks & Recreation)**
  3. C. Discussion and possible action on any and all matters regarding a 12-month lease agreement on a 2024 Peterbilt Solid Waste Side Loader Truck with Rush Refuse Systems. **(Manuel Hernandez, Acting Assistant Director of Public Works)**
  3. D. Discussion and possible action on any and all matters regarding the engagement of James Davey and Associates, Inc. and budget transfer for the conceptual design of 6th Avenue and County 22nd Street. **(Eulogio Vera, Director of Public Works)**

**3. E.** Discussion and possible action on any and all matters regarding Resolution No. 2291. A resolution of the Mayor and City Council of the City of San Luis, Arizona, declaring that the City Council deems the granting of a franchise with Southwest Gas Corporation beneficial for the City of San Luis; ordering an election to be held on March 12, 2024, at which election there shall be submitted to the voters of the City of San Luis whether said franchise shall be granted to Southwest Gas Corporation. **(Melissa Lopez, Deputy City Clerk)**

**3. F.** Discussion and possible action on any and all matters regarding Ordinance No. 445. An ordinance of the Mayor and City Council of the City of San Luis, Arizona, amending Chapter 6.05 Animal Control of the City of San Luis by adding provisions for definitions and licensing; providing for penalties; repealing any conflicting provisions; and providing for severability. **(Nigel Reynoso, Administrative Lieutenant)**

A. Action on reading Ordinance No. 445 by title only

B. Action on Ordinance No. 445

**4. ADJOURNMENT**



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. A.

**Meeting Date:** 09/25/2023

**Department Head:** Jose A. Guzman, Director of Planning & Zoning, Planning & Zoning Department

**Submitted By:** Juan Tejeda, Associate Planner, Planning & Zoning Department

**Action Requested:** Motion

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#### ITEM:

Discussion and possible action on any and all matters regarding Subdivision Case No. 2023-0295F - Los Mezquites Townhomes Final Plat. A request by Edais Engineering Inc., on behalf of Riedel Holdings LLC, for the approval of Los Mezquites Townhomes Final Plat; the property is located west of 24th Avenue and south of Los Mezquites Unit 2 Subdivision in San Luis, Arizona. **(Jose A. Guzman, Director of Planning & Zoning)**

#### SUMMARY:

Los Mezquites Townhomes is a subdivision of lot 564 of Los Mezquites Unit 3 subdivision. This subdivision will contain approximately 4.65 acres and will consist of 46 residential lots and four (4) tracts. The residential lots range in size from approximately 2,900 square feet to 5,600 square feet.

On March 8, 2023, the City Council approved Rezoning Case No. 2022-0693, which rezoned a portion of Assessors Parcel Number 227-11-393 to Medium-High Density Residential (R-2). Medium-High Density Residential (R-2) allows the applicant to increase the residential density with smaller size lots.

#### GENERAL PLAN:

In 2021, Major Amendment Case No. 2021-0340 was approved by the City Council to change the land use designation of the subject parcel and adjacent parcels to the north from Commercial (C) to Medium Density Residential (MDR). As per General Plan Page 2-10, under Land Use Guidance,

- *"Townhomes, condominiums, small footprint, and other attached/detached single-family formats ranging from 6-12 du/ac are appropriate along arterial streets and serving as a land use transition between lower density single-family areas and higher density/intensity uses."*
- *"Multi-family residential development ranging from 12-25 du/ac is appropriate at or near arterial street intersections and should serve as a land use transition between nonresidential uses and lower density residential areas."*

The R-2 zoning district allows 10 dwelling units per acre, and it is located as a transition between commercial and lower-density residential, therefore, the proposed use is consistent with the land use designation of the San Luis General Plan 2040.

#### DEVELOPMENT AGREEMENT:

This property is part of a development agreement that was approved by Resolution No. 2204. The term of the development agreement is for five (5) years. The development agreement approved includes the following conditions:

- Dedication of Right of Way. At present time, owners shall dedicate appropriate right-of-way to the City along County 23 ½ Street and Avenue D ½ alignments in accordance with the updated standards for right-of-way as provided by the Public Works Department. Dedication of right of way

on County 24th shall be 62 feet from the center of alignment and 130 feet within 300 feet of the intersection. Dedication of said right-of-way shall occur at such time and in such manner as required by the City in its sole discretion.

- Development of Improvements. At such time that any lot created by City Lot Split Case Number 2021-0387 or any lot within the Rezoning Case No. 2021-0693 is developed, public improvements, including but not limited to streets, roads, retention basins, utility extensions, utility mains, including pumping stations, lift stations, force mains, traffic signalization, and other off-site public improvements will be made pursuant to City standards as may be required by the Public Works Director of City in his sole discretion. The location of such improvements and/or their development is not confined to the lot being developed but rather may be located on any portion of the entire Property that is the subject of this agreement.
- The owner agrees to make such dedications of property as may be needed or necessary for such development at the discretion of the Public Works Director. Such dedications and the development of such improvements as described above shall be a condition of the issuance of any building permit(s) or other use permit(s) for the development of any such lot or portion of such lot.
- Streetlights. At such time that any lot created by City Lot Split Case Number 2021-0387 or any lot within Rezoning Case No. 2021-0693 is developed, the Public Works Director may require, in his sole discretion, that the development of streetlights in the public right-of-way is needed or desired, the development of such street lighting in the manner and at the locations as may be determined by the Public Works Director, in his sole discretion, shall be a condition of the issuance of building permit(s) or other use permit(s) for the development of any such lot.
- Residential Development. The developer is requesting Rezoning Case No. 2021-0693 to change Assessor Parcel Number 227-11-004 and portion of parcel 227-11-005 to Medium Density Residential (R1-6) to allow for single-family development. At such time as any portion of the property is developed with single-family homes, the development will be of lots no less in size than 6,000 square feet, amending the lot size requirement and removing the minimum home size on Resolution No. 933.
- Traffic Light Contribution. Any development of the property, or portion thereof, and/or the approval of any subdivision plat, be conditioned upon payment to the city the sum of \$260.00 per acre, or any portion of an acre, as a proportionate contribution for a traffic signal at the intersection of County 24th Street and Avenue E.
- Waste Water Treatment Plant. The developer agrees to execute, record, and deliver such agreements, easements, and/or covenants, conditions, and restrictions that run with the land which is the subject of this development agreement for the benefit of the City of San Luis that will allow the real property of Developer that is the subject of this agreement to be used for fumes or odors from its wastewater treatment operations located at 358 N. Avenue D, and to waive any claims for any damages that might arise from wastewater treatment operations, whatsoever, and agree to indemnify and hold the City of San Luis and its officers, agents, and employees harmless from any and all claims, whatsoever, known or unknown, emanating from wastewater treatment operations including, but not limited to, claims arising from fumes or odors.
- Land Dedication for Park. The owner wishes to donate to the city, and the city agrees to accept from the Owner certain land within the Property, containing five (5) gross acres of buildable land in addition to the open space requirement. The owner agrees to convey to the City by executing a Deed, free and clear of all liens and encumbrances.
- Covenants, Conditions, and Restrictions. For any lot developed or to be developed as other than residential development, the Owner shall record a covenant, condition, and restriction to run with the land prohibiting the development and use of the property as a school, public or private, of any kind nature, or description.
- Special Taxing Districts. The owner agrees to agree to the formation of a street lighting improvement district, a community facilities district, and any enhanced municipal district needed.
- Regulations. The terms of this Agreement are in addition to City codes, rules, fees, and regulations that are applicable to this action.
- Buffer. The developer agrees to build an 8-foot cmu wall along the entire property line along the Detention Center and the East Waste Water Treatment Plant. Including as a buffer, a 30 feet wide

green area, and the residential street, totaling 82 feet.

**STAFF RECOMMENDATION:**

The applicant has provided the information and materials necessary for the review of the final plat for Los Mezquites Townhomes Subdivision.

Staff recommends approval of Subdivision Case No. 2023-0295F with the following conditions:

1. Applicant must address comments from Comment Letter dated August 29, 2023.
2. Developer must comply with the development agreement approved by Resolution No. 2204.
3. Developer shall develop and construct any and all improvements needed and necessary for the signalization of the intersections at 24th Street and Ave. E and 23 ½ and Ave. E in accordance with the Public Works Standards of the City and the standards of the Arizona Department of Transportation, subject to the payback provisions of Section 15.10.130 (C) of the City Code.
4. Los Mezquites Unit 3 Subdivision plat needs to be recorded prior to the recordation of Los Mezquites Townhomes Final Plat.

**RECOMMENDATION / SUGGESTED MOTION:**

**I MOVE TO APPROVE SUBDIVISION CASE NO. 2023-0295F WITH CONDITIONS AS PRESENTED BY STAFF.**

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**Fiscal Impact**

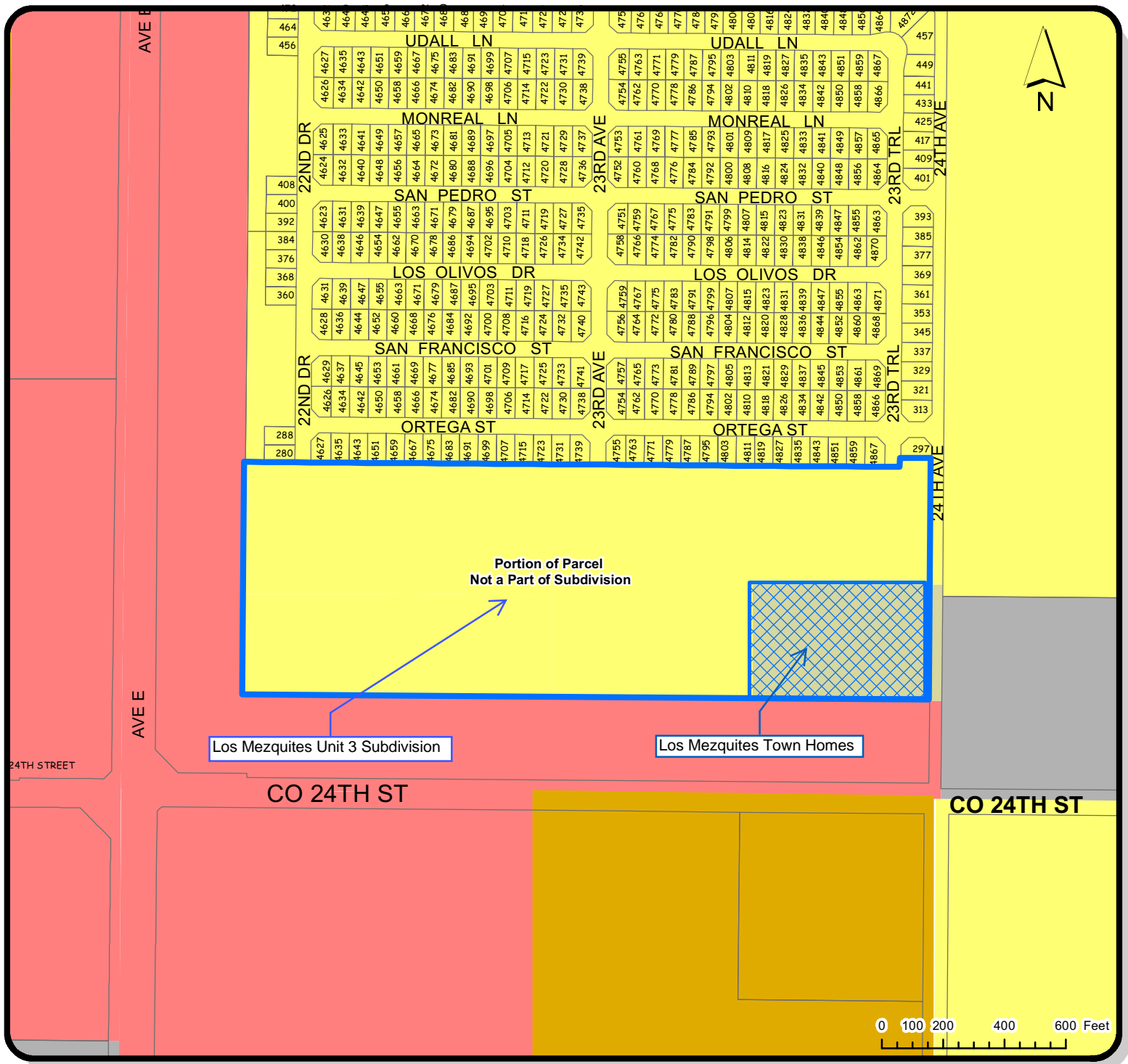
<b>IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:</b>	N/A
<b>CITY/STATE/FEDERAL FUNDS:</b>	N/A
<b>TOTAL:</b>	N/A
<b>BUDGETED AMOUNT:</b>	N/A
<b>AVAILABLE AMOUNT TO TRANSFER:</b>	N/A
<b>ACCT NAME &amp; GL#/REMAINING BALANCE BEFORE PURCHASE:</b>	N/A
<b>FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):</b>	
	N/A

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**Attachments**


Location Map  
Final Plat  
Resolution No. 2204-Development Agreement  
Comment Letter 8-29-23

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**LOCATION OF SUBJECT PROPERTY**

 Assessor's Parcel Number:  
22711393

 Location of Town Homes

**LOCATION MAP**

- Zoning**
-  SINGLE RESIDENCE ZONING DISTRICTS
    -  R-14
  -  MULTIPLE RESIDENCE ZONING DISTRICTS
    -  R-2
    -  R-3
  -  COMMERCIAL ZONING DISTRICTS
    -  C-2
  -  INDUSTRIAL ZONING DISTRICTS
    -  I-1

**SUBDIVISION**

**CASE #**  
2023-0294 P  
2023-0295 F

**DATE:**  
6/12/2023

**CHECKED BY:**  
JUAN TEJEDA

**PLANNING & ZONING**



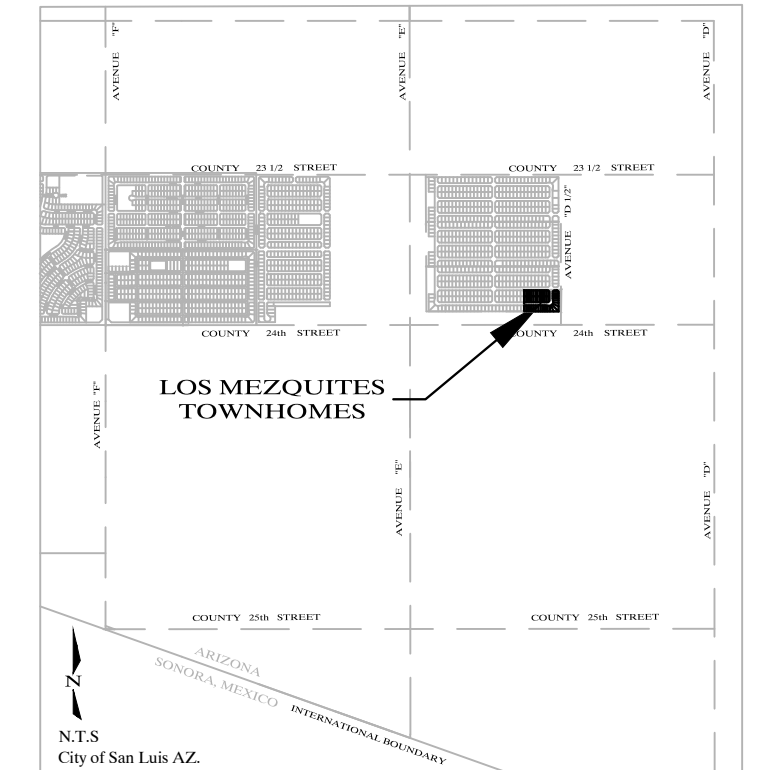
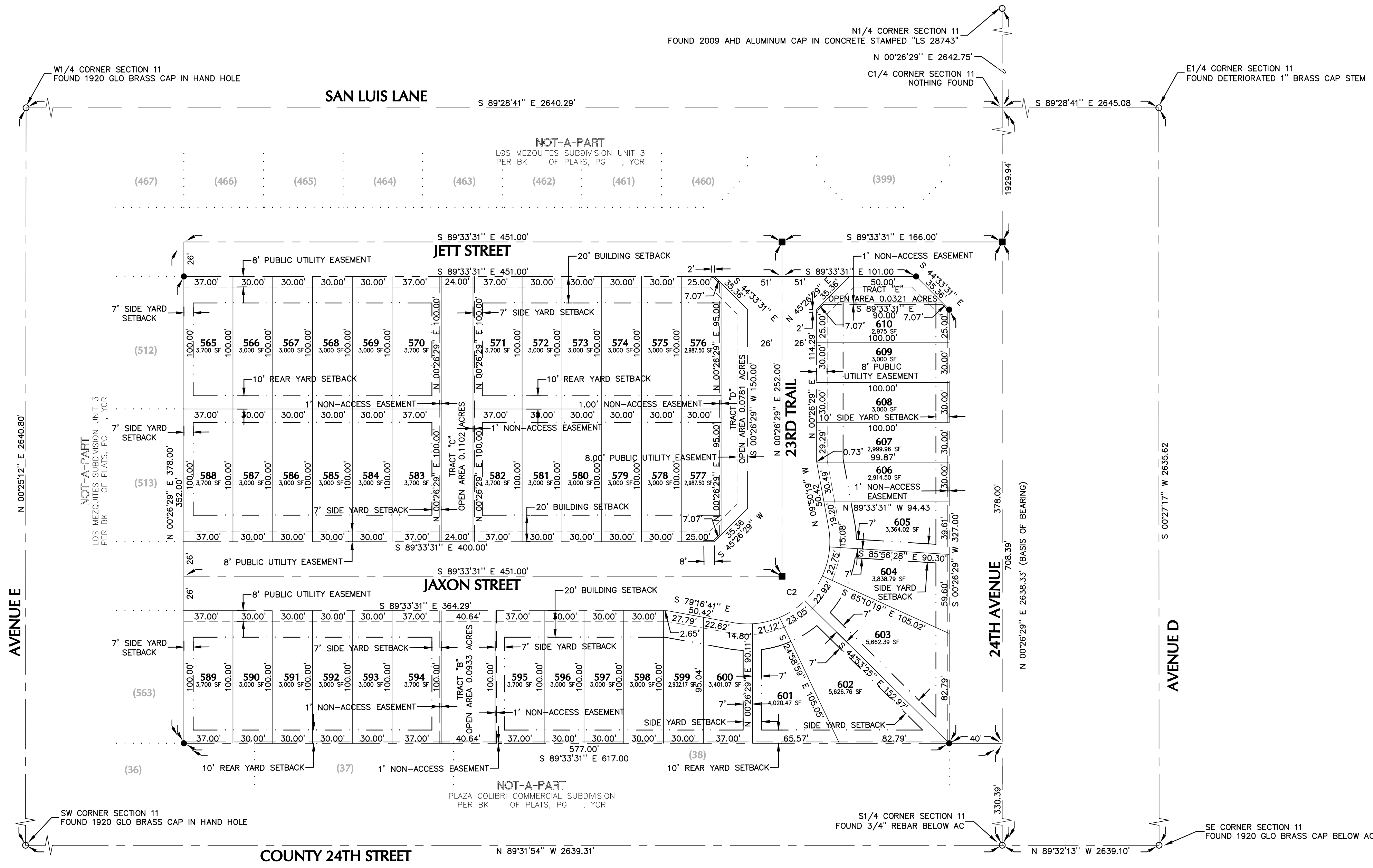
**GIS**

**CREATED BY:**  
ISAAC GUTIERREZ

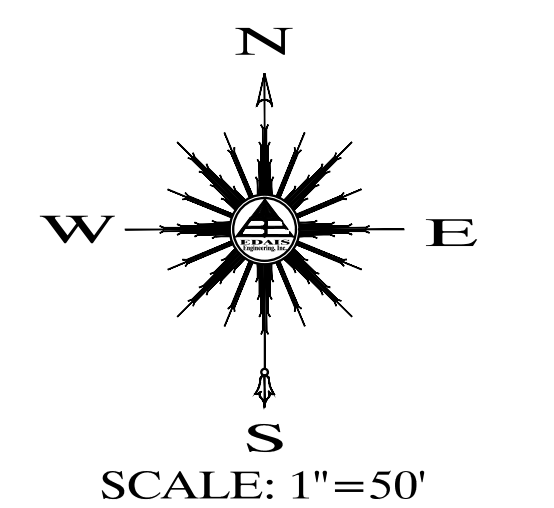
**APPROVED BY:**  
JOSE A. GUZMAN

# LOS MEZQUITES TOWNHOMES

A SUBDIVISION OF LOT 564 OF THE LOS MEZQUITES SUBDIVISION UNIT 3 AS RECORDED IN BOOK -- OF PLATS,  
PAGE --, YUMA COUNTY RECORDERS OFFICE, YUMA COUNTY, ARIZONA  
BEING A PORTION OF THE S 1/2 OF THE SW 1/4 OF SECTION 11, T11S, R24W, G.&S.R.B.&M., YUMA COUNTY, ARIZONA  
DATE OF PREPARATION: MAY 2023 NUMBER LOTS: 46 ACREAGE: 4.6554 ACRES  
FINAL PLAT



VICINITY MAP



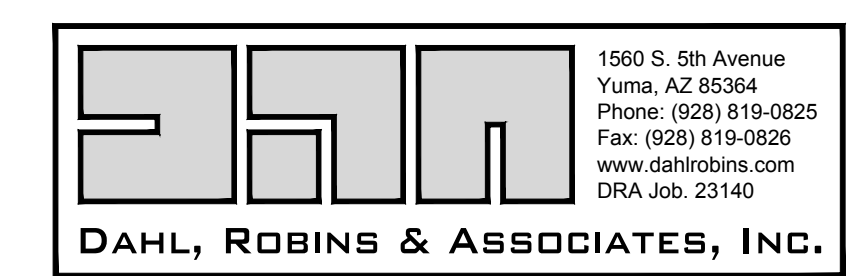
- LEGEND**
- CENTERLINE / SECTION LINE
  - - - RIGHT OF WAY LINE
  - - - SETBACK LINE
  - - - EASEMENT LINE (TYPE AS SHOWN)
  - - - LOT LINE (TYPE AS SHOWN)
  - 1 NEW LOT NUMBER
  - (1) EXISTING LOT NUMBER
  - NEW STREET MONUMENT
  - CITY OF YUMA STD DETAIL No. 4-030
  - NEW BOUNDARY MONUMENT
  - CITY OF YUMA STD DETAIL No. 4-015
  - EXISTING MONUMENT (TYPE AS NOTED)
  - ROW RIGHT OF WAY
  - NAE NON ACCESS EASEMENT
  - PUE PUBLIC UTILITY EASEMENT
  - APN ASSESSOR'S PARCEL NUMBER
  - BK BK
  - PG PG
  - YCR YUMA COUNTY RECORDS

**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT I AM A LAND SURVEYOR LISTED ON THE ROSTER OF ACTIVE REGISTRANTS BY THE STATE BOARD OF TECHNICAL REGISTRATION OF ARIZONA AND THAT THIS MAP CONSISTING OF ONE (1) SHEET CORRECTLY REPRESENTS A SURVEY MADE UNDER MY SUPERVISION. THAT ALL MONUMENTS SHOWN HEREON ACTUALLY EXIST AND THEIR POSITIONS ARE CORRECTLY SHOWN.



JUAN N. LOMEI R.L.S. 22767  
**LAND SURVEYOR**



**PREPARED BY:**  
**Edais Engineering, Inc.**  
3075 S. AVENUE 4 E  
YUMA, ARIZONA 85365  
(928) 344-3566

**DEDICATION**

KNOW ALL MEN BY THESE PRESENTS: THAT RIEDEL HOLDINGS, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER HAS THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2023, CAUSED A PORTION OF THE S1/2 OF THE SW1/4 OF SECTION 11, T11S, R24W, G. & S. R. B. & M. YUMA COUNTY, ARIZONA, AS PLATTED HEREON, TO BE SUBDIVIDED INTO LOTS, TRACT & STREETS UNDER THE NAME OF "LOS MEZQUITES TOWNHOMES" AND HEREBY DECLARES THAT THE ACCOMPANYING PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS AND STREETS, CONSTITUTING SAID "LOS MEZQUITES TOWNHOMES" AND THAT EACH LOT SHALL BE KNOWN BY THE NUMBER, THE TRACT BY THE LETTER AND THE STREETS BY THE NAME GIVEN EACH RESPECTIVELY ON SAID PLAT;

AND THAT RIEDEL HOLDINGS, L.L.C., AS OWNER, HEREBY DEDICATES THE STREETS SHOWN HEREON TO THE CITY OF SAN LUIS FOR ITS USE AND BENEFIT, AND THAT THE EASEMENTS ARE DEDICATED FOR THE USES SHOWN AND DEFINED ON SAID PLAT AND AS SET FORTH IN THE DECLARATION OF RESERVATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED CONCURRENTLY HEREWITH. TRACTS "B,C,D&E" IS DEDICATED TO THE RESIDENCE OF SAID LOS MEZQUITES TOWNHOMES FOR USE AS RECREATIONAL AREAS. THE EASEMENTS ARE DEDICATED FOR THE PURPOSE SHOWN HEREON. A THREE FOOT NON-CONSTRUCTION AND NO OBSTRUCTION EASEMENT FROM THE FURTHER PROJECTION ON ANY SIDE OF ALL FIRE HYDRANTS; A TWELVE INCH NON-CONSTRUCTION AND NO OBSTRUCTION EASEMENT AROUND WATER METERS; AND 24 INCH NON-CONSTRUCTION AND NO OBSTRUCTION EASEMENT FOR STREET LIGHTS IS HEREBY GRANTED.

IN WITNESS WHEREOF: RIEDEL HOLDINGS, L.L.C., HAS CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE SIGNATURE OF NIEVES GARCIA RIEDEL, AS MEMBER, THEREUNTO DULY AUTHORIZED ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2023.

BY: NIEVES GARCIA RIEDEL, MEMBER  
RIEDEL HOLDINGS, L.L.C.

**ACKNOWLEDGMENT**

STATE OF ARIZONA )  
) SS  
COUNTY OF YUMA )

ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023 BEFORE ME, THE UNDERSIGNED OFFICER PERSONALLY APPEARED, NIEVES GARCIA RIEDEL, WHO ACKNOWLEDGED HERSELF TO BE MEMBER OF RIEDEL HOLDINGS, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY, AND SHE AS SUCH OFFICER BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED, BY SIGNING THE NAME OF THE LIMITED LIABILITY COMPANY BY HERSELF, AS SUCH OFFICER.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL.

BY: \_\_\_\_\_  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: \_\_\_\_\_

**BASIS OF BEARING**

THE NORTH-SOUTH MIDSECTION LINE OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 24 WEST OF THE GILA AND SALT RIVER BASE MERIDIAN, YUMA COUNTY, ARIZONA, NAMELY N00°26'29"E AS SHOWN ON AMENDED SAN LUIS PORT LOT SPLIT OF THE SW1/4 OF SECTION 11 T11S., R24W., RECORDED AT FEE # 2022-00417 IN BK. 33, PG 64, YUMA CO. RECORDS.

**APPROVED**

STATE OF ARIZONA )  
) SS  
CITY OF SAN LUIS )

THIS SUBDIVISION AS PLATTED HEREON HAS BEEN APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA.

VICE MAYOR \_\_\_\_\_ DATE \_\_\_\_\_

CITY MANAGER \_\_\_\_\_ DATE \_\_\_\_\_

DIRECTOR OF PLANNING AND ZONING DEPARTMENT \_\_\_\_\_ DATE \_\_\_\_\_

CITY ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

CITY PUBLIC WORKS DIRECTOR \_\_\_\_\_ DATE \_\_\_\_\_

**CURVE DATA**

NUMBER	DELTA	TANGENT	RADIUS	LENGTH
C2	110°38'11"	89.60'	62.00'	119.72'

**RESTRICTIVE COVENANTS**

HAVE BEEN RECORDED CONCURRENTLY AND ARE A PART OF THIS PLAT

**OPEN SPACE**

MIN. OPEN SPACE REQUIRED = (4.6554 AC) X 5% = 0.2328 AC  
OPEN SPACE PROVIDED = 0.3214 AC

**SUBDIVIDER/OWNER**

RIEDEL HOLDINGS, LLC  
1910 JUAN SANCHEZ BLVD  
P.O. BOX 1649  
SAN LUIS, AZ. 85349  
(928) 627-6593

CONFORMED COPY  
2021-47097 RESOLUTION  
12/22/2021 09:51:20 AM Pages: 13 Fees: \$15.00  
Requested By: CITY OF SAN LUIS  
Recorded By: arios  
Robyn Stallworth Poudre County Recorder, YUMA County AZ

**WHEN RECORDED MAIL TO:**

**CITY OF SAN LUIS  
ATTN: CITY CLERK  
P.O. BOX 1170  
SAN LUIS, ARIZONA 85349**

The above area is to be reserved for recording information

\*\*\*\*\*

**CAPTION HEADING:**

**Resolution**  
Resolution No. 2204  
Riedel Holdings, L.L.C.  
Los Mezquites Development Agreement



# Resolution

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

NO. 2204

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AND DIRECTING THE ENTERING INTO A DEVELOPMENT AGREEMENT DEVELOPMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND RIEDEL HOLDINGS, AZ LLC.**

**WHEREAS**, Nieves Riedel, Riedel Holdings, L.L.C.; Owner, desires to enter into a development agreement for Los Mezquites project to be located in San Luis, Arizona; and

**WHEREAS**, A.R.S. § 9-500.05 grants power to a municipality to enter into development agreements; and

**WHEREAS**, the parties desire to enter into such agreement; and

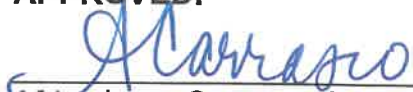
**WHEREAS**, the applicant and the city staff agreed to all matters in the City's proposed development agreement; and

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

**SECTION 1.** That the development agreement proposed by the staff of the City of San Luis, Arizona attached hereto as Exhibit "A", is hereby approved;

**PASSED AND ADOPTED** by the Mayor and City Council of the City of San Luis, Arizona, this 21<sup>st</sup> day of December 2021.

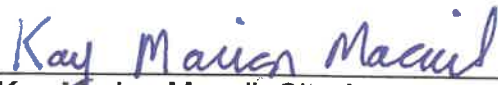
**APPROVED:**

  
Africa Luna-Carrasco, Vice-Mayor

**ATTEST:**

  
for Sonia Cornelio, Deputy City Clerk  
Sonia Cornelio, City Clerk

**APPROVED AS TO FORM:**

  
Kay Marion Macuil, City Attorney

## LOS MEZQUITES DEVELOPMENT AGREEMENT

21<sup>st</sup> THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of day of December, 2021 (“**Effective Date**”) by and between the City of San Luis an Arizona municipal corporation (the “**City**”) and Riedel Holdings, AZ LLC, (the “**Owner**”). This Agreement is entered into pursuant to City Resolution Number 2204.

### RECITALS

- A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City; and
- B. WHEREAS, Owner, owns real property located in the municipal limits of the City which is legally described on Exhibit 1 (the “**Property**”) and is currently being developed for a commercial shopping center (“**Shopping Center**”) and residential housing (“**Housing**”), and
- C. WHEREAS, Owner has applied for a rezoning and lot split in order to develop the aforementioned Shopping Center and Housing Projects;
- D. WHEREAS, A.R.S. § 9-500.05 provides, in part, that a development agreement can provide for the permitted uses of land; the density and intensity of uses; reservation or dedication of land for public purposes; conditions, terms, restrictions and requirements for public infrastructure; conditions, terms, restrictions and requirements relating to the governing body's intent to form a special taxing district pursuant to title 48; and any other matters relating to the development of the property; and
- E. WHEREAS, the City and Owner desire to enter into an agreement to provide for the rezoning and the splitting of land and provide for the lands future development; and
- F. WHEREAS, the City’s governing body has authorized execution of this Agreement by Resolution No. 2204;

NOW, THEREFORE, the parties agree as follows:

### AGREEMENT

#### DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

Agreement shall mean this development agreement.

City shall mean and refer to the City of San Luis, an Arizona municipal corporation, and any successor public body or entity.

Owner shall mean and refer to Riedel Holdings LLC, and any successor in ownership.

Property as used in this Agreement shall mean and refer to all of the real Property, which is legally described in Exhibit 1.

## **ARTICLE 1. DEVELOPMENT PLAN**

1.1. Duration of Development Agreement. The term of this Agreement shall be for a period of five (5) years from date of execution.

1.2 Failure of Timely Performance. In the event that either party hereto fails to perform any of its obligations which are set forth in or contemplated by this Agreement in a timely manner, and should such failure not otherwise be excused by agreement of the parties or by the terms of this Agreement, such failure shall be considered to be a breach of this Agreement and the nonbreaching party shall have their respective remedies set forth in Section 5.3 of this Agreement.

1.3.Review Process. The City acknowledges the necessity for expeditious review by the City of all plans and other materials ("**Submitted Materials**") submitted by the Owner to the City hereunder or under any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable efforts accomplish such an expeditious review of the Submitted Materials whenever possible.

## **ARTICLE 2. SPECIAL PROVISIONS FOR DEVELOPMENT**

2.1 Dedication of Right of Way. At present time Owners shall dedicate appropriate right-of-way to the City along County 23 ½ Street and Avenue D ½ alignments in accordance with the updated standards for right-of-way as provided by Public Works Department. Dedication of right of way on County 24<sup>th</sup> shall be 62 feet from center of alignment and 130 feet within 300 feet of the intersection. Dedication of said right-of-way shall occur at such time and in such manner as required by the City in its sole discretion.

2.2 Development of Improvements. At such time that any lot created by City Lot Split Case Number 2021-0387 or any lot within the Rezoning Case No. 2021-0693 is developed, public improvements, including but not limited to streets, roads, retention basins, utility extensions, utility mains, including pumping stations, lift stations, force mains, traffic signalization, and other off-site public improvements will be made pursuant to City standards as may be required by the Public Works Director of City in his sole discretion. The location of such improvements and/or its development is not confined to the lot being developed, but rather may be located on any portion of the entire Property (Exhibit 1) that is the subject of this agreement. Owner agrees to make such

dedications of property as may be needed or necessary for such development in the discretion of the Public Works Director. Such dedications and the development of such improvements as described above shall be a condition of the issuance of any building permit(s) or other use permit(s) for the development of any such lot or portion of such lot.

2.3 Street Lights. At such time that any lot created by City Lot Split Case Number 2021-0387 or any lot within Rezoning Case No. 2021-0693 is developed, the Public Works Director may require, in his sole discretion, that the development of street lights in the public right-of-way is needed or desired, the development of such street lighting in the manner and at the locations as may be determined by the Public Works Director, in his sole discretion, shall be a condition of the issuance of building permit(s) or other use permit(s) for the development of any such lot.

2.4 Residential Development. Developer is requesting Rezoning Case No. 2021-0693 to change Assessor Parcel Number 227-11-004 and portion of parcel 227-11-005 to Medium Density Residential (R1-6) to allow for single-family development. At such time as any portion of the property is developed with single family homes, the development will be of lots no less in size of 6,000 square feet, amending the lot size requirement and removing the minimum home size on Resolution No. 933.

2.5 Traffic Light Contribution. Any development of the property, or portion thereof, and/or the approval of any subdivision plat, be conditioned upon payment to the city the sum of \$260.00 per acre, or any portion of an acre, as a proportionate contribution for a traffic signal at the intersection of County 24th Street and Avenue E.

2.6 Waste Water Treatment Plant. Developer agrees to execute, record, and deliver such agreements, easements, and/or covenants conditions and restrictions that run with the land which is the subject of this development agreement for the benefit of the City of San Luis that will allow the real property of Developer that is the subject of this agreement to be used for fumes or odors from its wastewater treatment operations located at 358 N. Avenue D, and to waive any claims for any damages that might arise from wastewater treatment operations, whatsoever, and agree to indemnify and hold the City of San Luis and its officers, agents, and employees harmless from any and all claims, whatsoever, known or unknown, emanating from wastewater treatment operations including, but not limited to, claims arising from fumes or odors.

2.7 Land Dedication for Park. Owner wishes to donate to the City, and City agrees to accept from Owner, certain land within the Property, containing 5 gross acres of buildable land in addition to the open space requirement. Owner agrees to convey to the City by executing a Deed, free and clear of all liens and encumbrances.

2.8 Covenants Conditions and Restrictions. For any lot developed or to be developed as other than residential development, Owner shall record a covenant, condition and restriction to run with the land prohibiting the development and use of the property as a school, public or private, of any kind nature, or description.

2.9 Special Taxing Districts. Owner agrees to agree to the formation of a street lighting improvement district, a community facilities district and any enhanced municipal district needed.

2.10 Regulations. The terms of this Agreement are in addition to City codes, rules, fees, and regulations that are applicable to this action.

2.11 Buffer. Developer agrees to build an 8 foot cmu wall along the entire property line along the Detention Center and the East Waste Water Treatment Plant. Including as a buffer, a 30 feet wide green area and the residential street, totaling 82 feet.

### ARTICLE 3. INDEMNIFICATION

3.1. Owner agrees to defend, indemnify and hold harmless City, its officers, officials and employees ("**Indemnified Group**") for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense), relating to, arising out of, resulting from or alleged to have resulted from the Owner's acts, errors, mistakes or omissions relating to any action or inaction of the Owner under this Agreement, including but not limited to work or services in the performance of this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the Owner or a subcontractor or anyone for whose acts any of them may be liable.

3.2. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this agreement, Owner (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Indemnified Group by the attorney of the Owner, or if covered by insurance, Owner's insurer, all of which must be approved by City, which approval shall not be unreasonably withheld or delayed. The City shall cooperate with all reasonable efforts in the handling and defense of such claim. Notwithstanding the foregoing, the City may engage its own attorney to defend or assist in its defense, and the Owner shall pay the reasonable costs and expenses thereof.

3.3. Any settlement of claims must fully release and discharge the Indemnified Group from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. If Owner neglects or refuses to defend any of the Indemnified Group as required by this Agreement, any recovery or judgment against the Indemnified Group for a claim covered by this Agreement shall conclusively establish Owner's liability to the Indemnified Group in connection with such recovery or judgment. If the City desires to settle such dispute, the City shall be entitled to settle such dispute in good faith and Owner shall be liable for the amount of such settlement, and all expenses in connection with such settlement.

3.4. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

#### **ARTICLE 4. MEDIATION AND DEFAULT**

4.1. Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the “**City Representative**”) shall be the City Manager, and the initial representative for the Owner shall be its project manager, as identified by the Owner from time to time (the “**Developer Representative**”). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

4.2. Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yuma County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

4.3. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

#### **ARTICLE 5. CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

5.1. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or

the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This agreement is subject to the provisions of A.R.S. §38-511.

5.2. No Personal Liability. No member, official or employee of the City shall be personally liable to Owner, 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 the Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

## ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:           City Manager  
                                  City of San Luis  
                                  P.O. Box 1170  
                                  1090 E. Union Street  
                                  San Luis, Arizona 85349

If to the Owner:       Nieves Riedel, Riedel Holdings, L.L.C.  
                                  1964 E. Cesar Chavez Blvd., Suite 1  
                                  P O Box 1649  
                                  San Luis, Arizona 85349

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

6.2. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

6.3. 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 of the Agreement.

6.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing

under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement, the Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

6.5. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

6.6. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

6.7. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

6.8. Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Owner execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

6.9. Attorneys' Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

6.10. Notice of Conveyance or Assignment. The Owner shall give notice to the City of any sale of the entire Property at least ten (10) days prior to the effective date of the sale.

6.11. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

6.12. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

6.13. Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by the

City or for any amount that may become due to the Owner or successor, or under any obligation under the terms of this Agreement.

6.14. Employment Eligibility, E-Verify

1. The Owner warrants his compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23214, subsection A.
2. A breach of a warranty under paragraph 1 shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the contract.
3. That the City retains the legal right to inspect the papers of any contractor or subcontractor employee who work on the Agreement to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.

6.15. Time is of the Essence. Time is of the essence of this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE CITY OF SAN LUIS,  
an Arizona municipal corporation

THE OWNER, Riedel Holding, L.L.C.

By: *A Carrasco*  
Vice Mayor  
KMM

By: *[Signature]*  
Its: President

ATTEST:

By: *[Signature]* Deputy City Clerk  
City Clerk

APPROVED AS TO FORM:

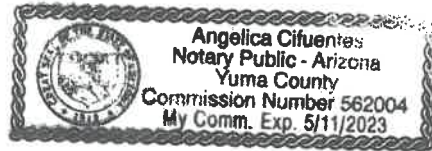
*Kay Maureen MacNeil*  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Yuma            )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December 2021, by Africa Luna-Carrasco, Vice-Mayor of the City of San Luis, Arizona, a municipal corporation.

Angelica Cifuentes  
Notary Public

My Commission Expires: 05-11-2023

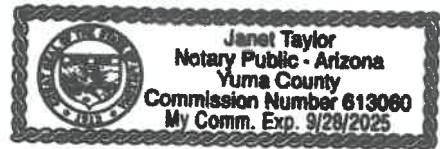


STATE OF ARIZONA        )  
  ) ss.  
County of Yuma            )

The foregoing instrument was acknowledged before me this 22<sup>ND</sup> day of DECEMBER 2021, by NIEVES RIEDEL, on behalf of Riedel Holdings L.L.C., an Arizona Limited Liability Corporation.

Janet Taylor  
Notary Public

My Commission Expires: 09/28/2025

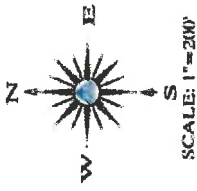


# **Exhibit 1**

## **Los Mezquites Development Agreement**

# LOS MEZQUITES SUBDIVISION

DATE OF PREPARATION: NOVEMBER 2021 NUMBER OF LOTS: 897  
 MASTER PLAN LAYOUT



**Parcel 227-11-005:** A portion of the SW¼ of Section 14, Township 11 South Range 24 West. Except road right of way. (108.91 acres)

**Parcel 227-11-004:** South East ¼ of Section: 11 Township: 11S Range: 24W SE4 EXC THE E 751.25 FT OF N 1449.58 FT & EXC S 660 FT +/- & EXC THE E 1652.78 FT OF THE N 576.11 FT +/- OF S 1185.05 FT +/- (74.64 acres)



PRELIMINARY  
 NOT FOR  
 CONSTRUCTION



# City of San Luis

Planning and Zoning Department

Development Services · GIS · Building Safety · Code Enforcement

August 29, 2023

Najeh Edais  
Edais Engineering  
3075 S. Avenue 4E  
Yuma, Az 85365

Re: Subdivision Case No. 2023-0295F Los Mezquites Townhomes Subdivision

City staff has reviewed the final plat for Los Mezquites Townhomes Subdivision and have the following comments:

**City Engineer:**

**Final Plat**

1. Provide additional Non-Access Easements along the site triangle lines of corner lots and along side lot lines of lots adjacent to the four Tracts.
2. Provide CC&R's/HOA documents and Title Report.
3. Fill in Plaza Colibri plat recording information.

**Planning and Zoning Department:**

**Final plat**

1. Plat should be labeled as "Final Plat".
2. Add 24<sup>TH</sup> Avenue street name on plat.
3. On DEDICATION it should read: "A PORTION OF THE S1/2 OF THE SW1/4..." to match legal description on top.

Please be advised that the comments made here are tentative in nature. Until all documentation, information, and drawings are submitted and approved in final form, and all permits for construction are approved and issued, the City of San Luis reserves the right to make further comments or require further information or submissions. Any construction which occurs prior to issuance of proper permits is occurring in contravention of the ordinances of the City and is occurring at the risk of the Developer.

If you have any questions on these comments, please contact the Planning and Zoning Department at 928-341-8563 extension 2064.

Thank you,

Juan Tejeda  
Associate Planner



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. B.

**Meeting Date:** 09/25/2023

**Department Head:** Lizette Varela, Assistant Director to Parks & Recreation, Parks & Recreation Department, Recreation

**Submitted By:** Crystal Ochoa, Administrative Coordinator, Parks & Recreation Department

**Action Requested:** Motion

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#### ITEM:

Discussion and possible action on any and all matters regarding the authorization to reallocate Council Contingency Funds for Landscaping Improvements for the Fernando Padilla City Building and San Luis Fire Station No. 2. (**Lizette Varela, Assistant Director of Parks & Recreation**)

#### SUMMARY:

The city has recently changed the use of the Fernando Padilla City Building and reconditioned it to house various city departments. The newly constructed San Luis Fire Station No. 2 is soon to become operational. The exterior of these facilities was not contemplated, and funds were not allocated for landscaping purposes. Parks Grounds staff conducted an assessment and evaluation of the scope, requirements, and feasibility of the projects and determined they possess the necessary expertise and experience to successfully complete these projects. As no contractors will be involved, the required materials will need to be purchased independently. This will optimize resource allocation and minimize costs.

For the Fernando Padilla City Building landscaping improvements, staff received various estimates totaling \$11,813.86. These include the purchase of artificial turf, plants, irrigation equipment, and cement for curving. For the San Luis Fire Station No. 2, staff received various estimates totaling \$17,507.85. These include the purchase of artificial turf, plants, irrigation equipment, cement for curving, decorative rock, flagpole installation, and sand containment. The combined total for the two (2) separate projects is \$29,321.71.

As landscaping improvements were not budgeted for these two (2) projects, Parks and Recreation staff are requesting authorization from the Mayor and City Council to reallocate \$29,321.71 from the Council Contingency Fund to complete these projects.

Since these are two (2) separate projects, there are two (2) separate motions that comply with a conservative interpretation of the Arizona state bidding statutes.

#### RECOMMENDATION / SUGGESTED MOTION:

##### Motion for landscaping for the Fernando Padilla City Building:

**I MOVE TO APPROVE THE LANDSCAPE IMPROVEMENT PROJECT FOR THE FERNANDO PADILLA CITY BUILDING IN AN AMOUNT NOT TO EXCEED \$11,815.00 AND TRANSFER THE BUDGET FROM COUNCIL CONTINGENCY TO THE GENERAL LEDGER ACCOUNT SHOWN IN THE FISCAL IMPACT.**

**Motion for landscaping for the Fire Station 2:**

**I MOVE TO APPROVE THE LANDSCAPE IMPROVEMENT PROJECT FOR FIRE STATION NO. 2 IN AN AMOUNT NOT TO EXCEED \$17,510.00 AND TRANSFER THE BUDGET FROM COUNCIL CONTINGENCY TO THE GENERAL LEDGER ACCOUNT SHOWN IN THE FISCAL IMPACT OF THIS ITEM.**

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**Fiscal Impact**

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** YES  
**CITY/STATE/FEDERAL FUNDS:** CITY  
**TOTAL:** See fiscal impact statement  
**BUDGETED AMOUNT:** See fiscal impact statement  
**AVAILABLE AMOUNT TO TRANSFER:** \$447,660.00  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** CONTINGENCIES -  
100-110-8100 / \$447,660.00

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

(1) Staff is requesting a budget transfer from the council contingency account 100-110-81000 to 100-999-90015 to landscape the Fernando Padilla City Building in an amount not to exceed \$11,815.00.

(2) Staff is requesting a budget transfer from the council contingency account 100-110-81000 to 100-999-90015 to landscape the Fire Station 2 in an amount not to exceed \$17,510.00.

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**Attachments**

Fernando Padilla Landscape Project - Quotes  
Fernando Padilla Landscape Design-Rough Draft  
Fire Station No. 2 Landscape Project - Quotes  
Fire Station No. 2-Landscape Design

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# QUOTE

SUN GRAPHICS - (928) 783-8371

## YUMA NURSERY SUPPLY

4405 South Avenue A  
YUMA, ARIZONA 85365-5014

(928) 344-2820  
Fax: (928) 341-1575

SALESPERSON \_\_\_\_\_

SALES # \_\_\_\_\_

TO CITY OF SAN WIS

DATE <u>8/31/2023</u>	P.O. #
SHIP TO	
<u>FERNANDO PADILLA</u>	
DELIVERED BY:	

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
10	15 GAL. AUSTRALIAN BOTTLE TREE 93.99	84.59	845.90
24	1 GAL. VILCDS 6.99	6.29	150.96
8	3 GAL. PIGMY PALM 21.99	19.79	158.32
10	5 GAL. BANGKOK BOUGAINVILLEA 21.99	19.79	197.90
16	5 GAL. BOXWOOD BEATY 17.99	16.19	259.04
10	OMMIT 4 PORT MANIFOLD ADJ. 6.79	6.11	61.10
10	6" ROUND VALVE BOXES 5.49	4.94	49.40
20	RAINBIRD 1300-AF BUBBLERS 1.19	1.07	21.40
200	FT 3/4" PVC SCH 40 PIPE .6413		128.26
50	1/2" x 6" WT OFF FUSERS .25	.22	11.00
			1,883.28
		TAX	158.42
			2,041.70

Sign Name:

Print Name:

TOTAL

NOTE: Yuma Nursery Supply will make every effort to deliver where customer desires. Customer waives all claim for any damages done inside curb or property line. All invoices are due net 10th. All invoices over 30 days will be charged 1 1/2% per month. All checks returned by your bank for any reason will be charged a \$30.00 collection fee. Buyer agrees to pay Seller's attorney's fees, court costs and expenses incurred by Seller if Buyer's account, and this agreement are referred to collections and enforcement to an attorney.

WHITE - OFFICE

YELLOW - WITH STATEMENT

PINK - CUSTOMER

GREEN - CONTROL/NEVER TAKE FROM OFFICE

PROJECT ESTIMATE

JUAN PARK DEPARTMENT

CONTACT: CORREA, JUAN  
CUST #: 231913411

SALESPERSON: BEDELL, TINA  
SALES #: 135090

PROJECT NUMBER: 793660528

DATE ESTIMATED: 08/31/23

QTY	ITEM #	ITEM DESCRIPTION	VEND PART #	PRICE
20	81523	QK 47LB PORTLAND CEMENT TYPE I	112547	259.60
TOTAL FOR ITEMS				259.60
FREIGHT CHARGES				0.00
DELIVERY CHARGES				20.00
TAX AMOUNT				21.84
TOTAL ESTIMATE				301.44

This Quote is valid until 09/03/23.

Tina Bedell

08/31/2023

MANAGER SIGNATURE

DATE

THIS ESTIMATE IS NOT VALID WITHOUT MANAGER'S SIGNATURE.  
THIS IS AN ESTIMATE ONLY. DELIVERY OF ALL MATERIALS CONTAINED IN THIS ESTIMATE ARE SUBJECT TO AVAILABILITY FROM THE MANUFACTURER OR SUPPLIER. QUANTITY, EXTENSION, OR ADDITION ERRORS SUBJECT TO CORRECTION. CREDIT TERMS SUBJECT TO APPROVAL BY LOWES CREDIT DEPARTMENT.

LOWES IS A SUPPLIER OF MATERIALS ONLY. LOWES DOES NOT ENGAGE IN THE PRACTICE OF ENGINEERING, ARCHITECTURE, OR GENERAL CONTRACTING. LOWES DOES NOT ASSUME ANY RESPONSIBILITY FOR DESIGN, ENGINEERING, OR CONSTRUCTION; FOR THE SELECTION OR CHOICE OF MATERIALS FOR A GENERAL OR SPECIFIC USE; FOR QUANTITIES OR SIZING OF MATERIALS; FOR THE USE OR INSTALLATION OF MATERIALS; OR FOR COMPLIANCE WITH ANY BUILDING CODE OR STANDARD OF WORKMANSHIP.

Southwest Turf Supply, LLC  
 4200 E 32nd St  
 Yuma, AZ 85365 US  
 +1 9283188873



**SOUTHWEST  
 TURF & ROCK**

Quote

**ADDRESS**

Jose Santiago  
 City of San Luis

**SHIP TO**

Jose Santiago  
 City of San Luis

**QUOTE # 4443**

**DATE 08/30/2023**

PRODUCT NUMBER	QTY	DESCRIPTION	PRICE	TOTAL
<b>Southwest 82 Play Pro</b>	3,000		2.15	6,450.00T
<b>M/A Fines</b>	15		22.00	330.00T
<b>Nails 50 lb Box</b>	1		85.00	85.00T
<b>Staples 100 Count</b>	1		12.50	12.50T
<b>Saddleback Brown 1/2" Screened</b>	20		86.00	1,720.00T
<b>SAN LUIS DELIVERY</b>	3		50.00	150.00

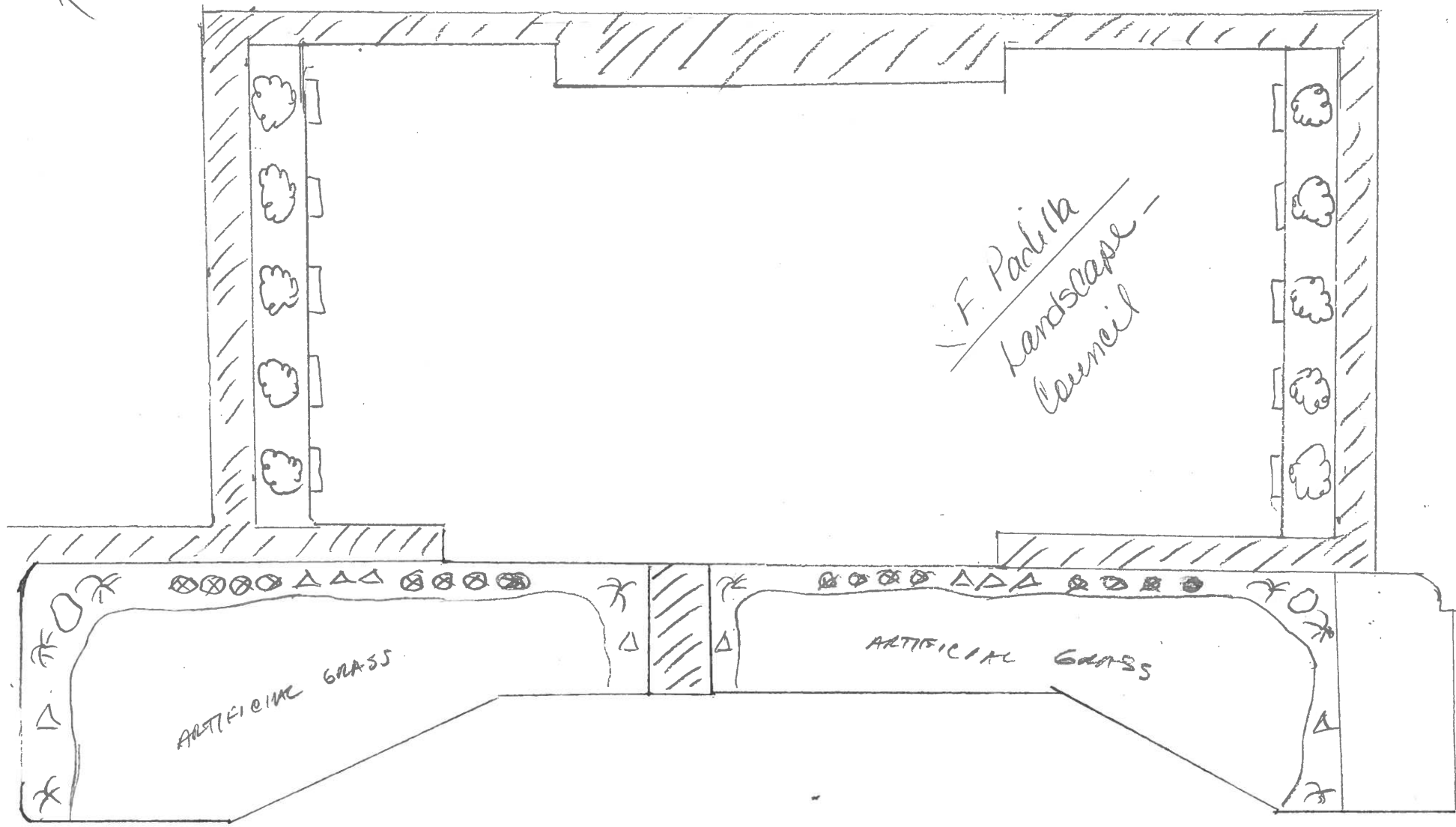
\*All rock and turf deliveries are CURBSIDE unless customer has indicated otherwise and a waiver has been signed.

SUBTOTAL 8,747.50  
 TAX 723.22  
**TOTAL \$9,470.72**

\*15% restocking fee for all accepted returns. Approved returns only accepted within 30 days of purchase.

Accepted By

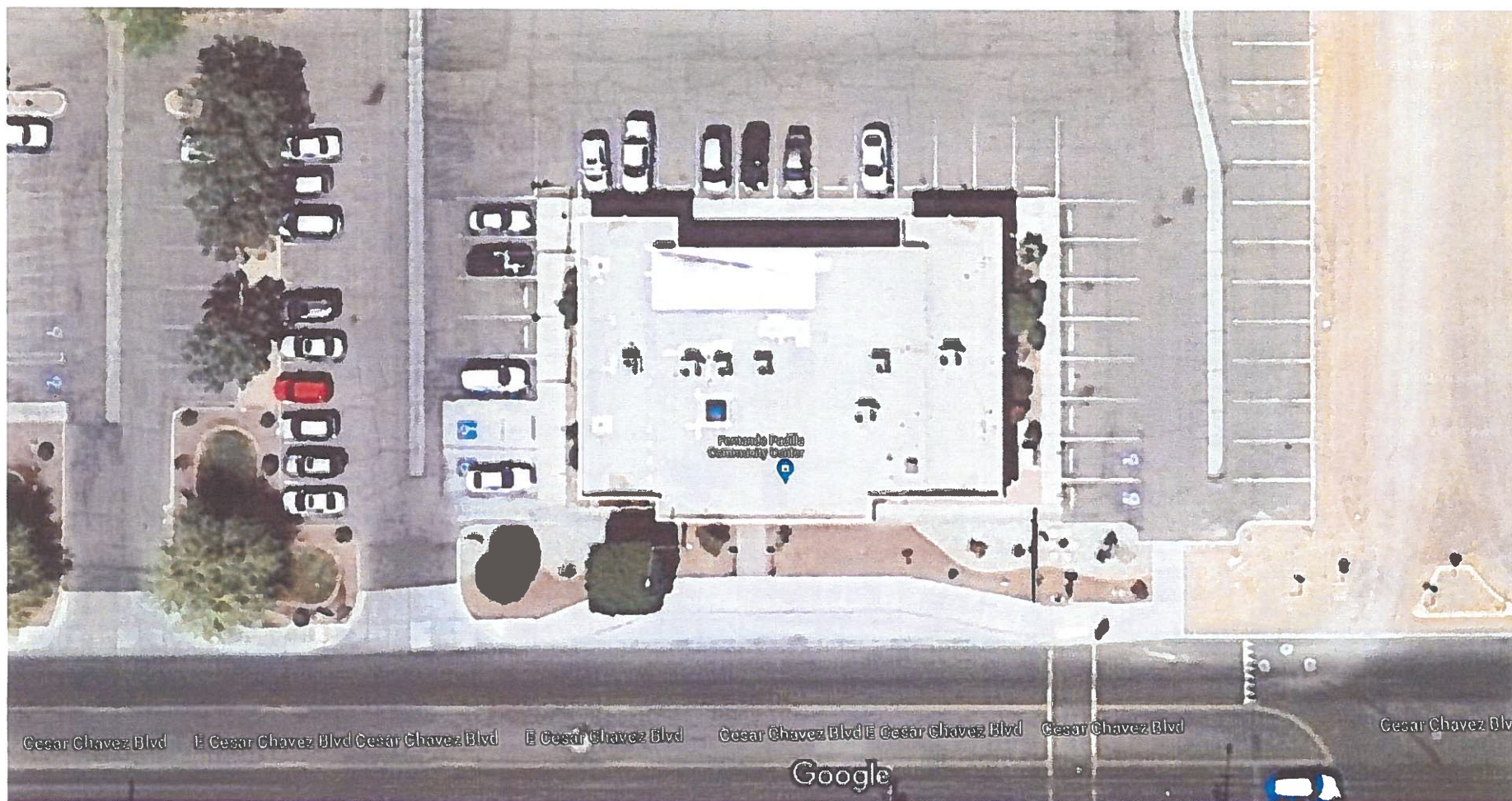
Accepted Date



F. Parikh  
Landscape  
Council

ARTIFICIAL GRASS

ARTIFICIAL GRASS



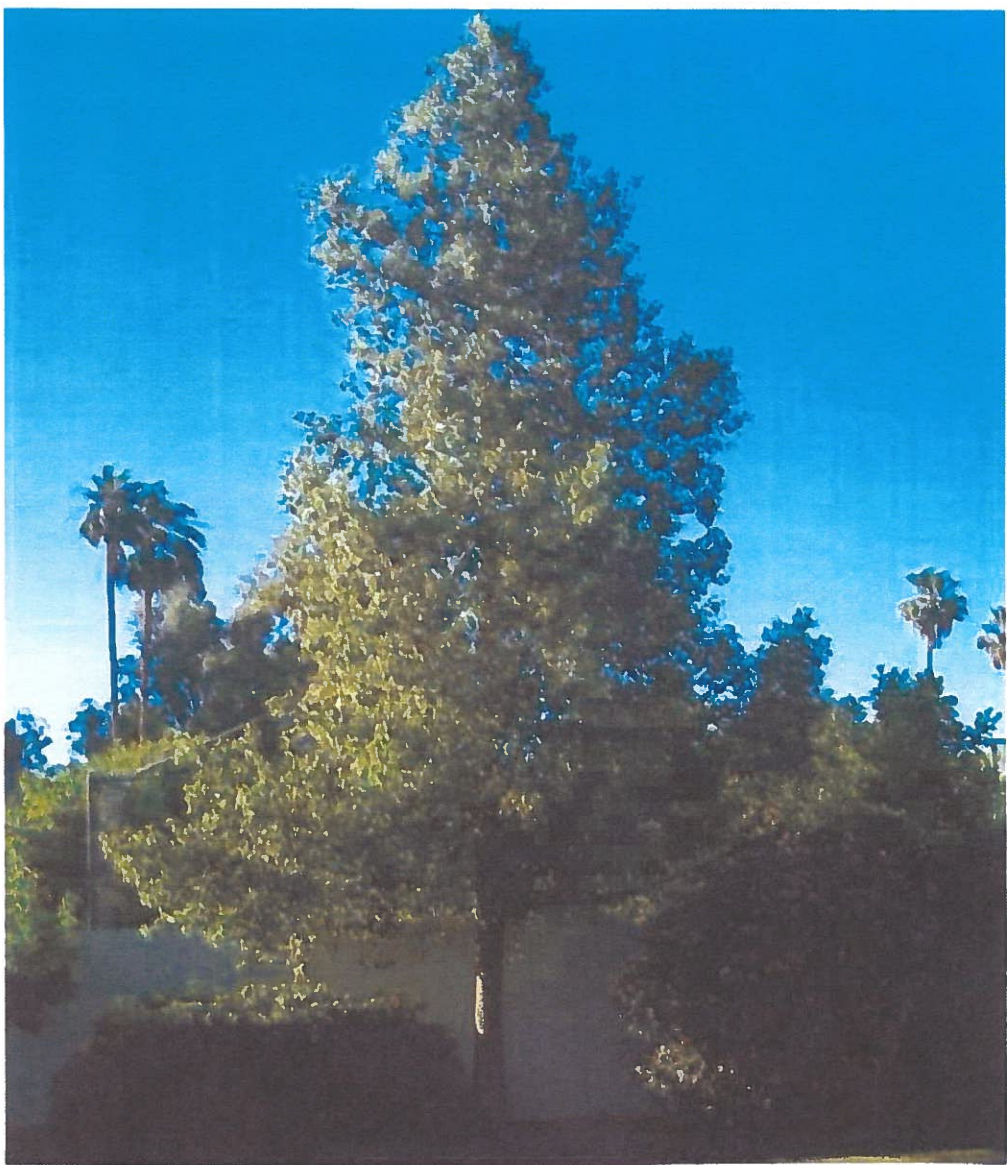




**MOON**  
VALLEY  
**NURSERIES**







Southwest Turf Supply, LLC  
 4200 E 32nd St  
 Yuma, AZ 85365 US  
 +1 9283188873



**SOUTHWEST  
 TURF & ROCK**

## Quote

**ADDRESS**

Robert Solis  
 City of San Luis Fire  
 Department

**SHIP TO**

Robert Solis  
 City of San Luis Fire  
 Department

**QUOTE # 4428**

**DATE 08/22/2023**

PRODUCT NUMBER	QTY	DESCRIPTION	PRICE	TOTAL
Southwest 108 Dura Pro	1,800	15x20 = 1800	3.15	5,670.00T
20 Grit Infill 100 lb	25		15.00	375.00T
Nails 50 lb Box	1		85.00	85.00T
M/A Fines	20		22.00	440.00T
SAN LUIS DELIVERY	5		50.00	250.00
LV Black 60mm 6x9 PALLET	2	BLACK	375.00	750.00T
Pallet Fee - refundable	2	Refundable: \$14 cash refund or \$16 credit memo	20.00	40.00
Mesa Gray 3/4"	20		30.00	600.00T
Mohawk Brown Boulders	4,500	Rough estimate for boulders can change depending on customer request .	0.14	630.00T

\*All rock and turf deliveries are CURBSIDE unless customer has indicated otherwise and a waiver has been signed.

SUBTOTAL	8,840.00
TAX	719.23
<b>TOTAL</b>	<b>\$9,559.23</b>

\*15% restocking fee for all accepted returns. Approved returns only accepted within 30 days of purchase.

Accepted By

Accepted Date

C J Bell Hay Sales  
P O Box 5660  
Yuma, AZ 85366-2481

# Estimate

Date	Estimate #
9/8/23	2023-0908

<b>Name / Address</b>
City of San Luis Fire Department Ric Bauerman P O Box 445 San Luis AZ 85349-0445

<b>Project</b>

Description	Qty	Rate	Total
160 small Wheat Straw bales		0.00	0.00
* \$6.50/bale	160	6.50	1,040.00T
* Freight \$375/flat		375.00	375.00
		<b>Subtotal</b>	\$1,415.00
		<b>Sales Tax (6.712%)</b>	\$69.80
		<b>Total</b>	\$1,484.80

# QUOTE

SUN GRAPHICS - (928) 783-8371

## YUMA NURSERY SUPPLY

4405 South Avenue A  
YUMA, ARIZONA 85365-5014

(928) 344-2820  
Fax: (928) 341-1575

SALESPERSON \_\_\_\_\_

SALES # \_\_\_\_\_

TO CITY OF SAN MUIS

DATE <b>9/8/2023</b>	P.O. #
SHIP TO	
<b>EAST FIRE DEPARTMENT</b>	
DELIVERED BY:	

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	FABCO 975XL2 REDUCER PRESSURE <sup>541.99</sup>	492.92	492.92
2	1" BRASS ST 90° ELBOWS 11.89	10.70	21.40
2	1" BRASS 90° ELBOWS 7.99	7.19	14.38
2	1" BRASS UNIONS 24.69	22.22	44.44
2	1" SCH 80 MALE ADAPTERS 7.77	6.99	13.98
4	1" COPPER MALE ADAPTERS 7.79	6.97	27.88
2	HUNTER ICV-101-G VALVES 94.29	84.86	169.72
2	RAINBIRD PRESS. REGULATOR/FILTER 1" 41.19	37.07	74.14
1	HUNTER X2-400 OUTDOOR TIMER 106.29	95.66	95.66
6	RAINBIRD AF-1300 BURSTERS 1.19	1.07	6.42
4	ORBIT 4 PORT MANIFOLD ADJ. 6.79	6.11	24.44
50	1/2" X 6" CUT OFF NUTS .25	.22	11.00
200	FT 3/4" PVC SCH 40 PIPE	.6413	128.26
Sign Name: _____		Print Name: _____	<b>TOTAL</b>

**NOTE:** Yuma Nursery Supply will make every effort to deliver where customer desires. Customer waives all claim for any damages done inside curb or property line. All invoices are due net 10th. All invoices over 30 days will be charged 1 1/2% per month. All checks returned by your bank for any reason will be charged a \$30.00 collection fee. Buyer agrees to pay Seller's attorney's fees, court costs and expenses incurred by Seller if Buyer's account, and this agreement are referred to collections and enforcement to an attorney.

WHITE - OFFICE

YELLOW - WITH STATEMENT

PINK - CUSTOMER

GREEN - CONTROL/NEVER TAKE FROM OFFICE

# QUOTE

SUN GRAPHICS - (928) 783-8371

## YUMA NURSERY SUPPLY

4405 South Avenue A  
YUMA, ARIZONA 85365-5014

(928) 344-2820  
Fax: (928) 341-1575

SALESPERSON \_\_\_\_\_

SALES # \_\_\_\_\_

TO CITY OF SAN LUIS

DATE <u>9/8/2023</u>	P.O. #
SHIP TO	
<u>EAST FIRE DEPARTMENT</u>	
DELIVERED BY:	

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	STANDARD VALVE BOX 31.19	28.07	28.07
3	6" ROUND VALVE BOX 5.49	4.94	14.82
8	5 GAL. JAPANESE BOX WOOD 19.99	17.99	143.92
1	1/4" X 100' POLY TUBING 5.79	5.21	5.21
			1,316.66
		TAX	110.76
			1,427.42
Sign Name:	Print Name:	<b>TOTAL</b>	

**NOTE:** Yuma Nursery Supply will make every effort to deliver where customer desires. Customer waives all claim for any damages done inside curb or property line. All invoices are due net 10th. All invoices over 30 days will be charged 1 1/2% per month. All checks returned by your bank for any reason will be charged a \$30.00 collection fee. Buyer agrees to pay Seller's attorney's fees, court costs and expenses incurred by Seller if Buyer's account, and this agreement are referred to collections and enforcement to an attorney.

WHITE - OFFICE

YELLOW - WITH STATEMENT

PINK - CUSTOMER

GREEN - CONTROL/NEVER TAKE FROM OFFICE





3815 E. Southern Ave  
Phoenix, AZ. 85040

Phone # 6024375194  
Fax # 602-437-4719

Date	S.O. No.
9/12/2023	962

Name / Address
Non Account

Ship To & additional Comments
City of San Luis Attention Alvaro

Terms	P.O. # / Job Name	Created by	Rep
COD		rob	RP

Ordered	Item	Description	Rate	U/M	Amount
2	2002.017 -15g ...	BKD Bizmarkia Palm 15g	200.00	15G	400.00T

\* Bid price valid for 30 days from the Quote date, prices subject to availability at time order is confirmed.  
 \* There is no warranty  
 \* 20% restocking charges applies on all returned material and must be in resaleable condition.  
 \* Returns are for account credit only for same day exchange or future purchases.

**Subtotal** \$400.00

**Sales Tax (8.6%)** \$34.40

Signature & Date:

**Total** \$434.40





## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. C.

**Meeting Date:** 09/25/2023

**Department Head:** Eulogio Vera, Director of Public Works, Public Works Department

**Submitted By:** Manuel Hernandez, Project Manager, Public Works Department

**Action Requested:** Motion

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#### ITEM:

Discussion and possible action on any and all matters regarding a 12-month lease agreement on a 2024 Peterbilt Solid Waste Side Loader Truck with Rush Refuse Systems. **(Manuel Hernandez, Acting Assistant Director of Public Works)**

#### SUMMARY:

The Department of Public Works and its Solid Waste Division are seeking the Mayor and City Council's approval of a 12-month lease agreement on a new 2024 Peterbilt Solid Waste Side Loader Truck with Rush Refuse Systems. The monthly lease total is \$8,400.00 for a minimum term of 12 months (\$100,800.00 for 12 months). Rush Refuse Systems is offering the option to purchase this vehicle after the 12-month lease. Additionally, 50% of the lease would be applied as a credit (\$50,400.00) towards the purchase if the City of San Luis opts to purchase this vehicle.

New solid waste trucks are difficult to source. Public Works was offered this vehicle due to our good-standing relationship with the vendor. Public Works is currently leasing a 2023 Side Loader with Rush Refuse Systems that was approved on May 31, 2023. As per our Fleet Services and Solid Waste Division, they are having good experience with Rush Refuse System's service and the vehicle. Public Works is also requesting authorization from the Mayor and City Council to waive the formal procurement procedures as authorized under Section 3.05.010 (F) *Procedures Waived* of the City Code.

The City Attorney notes that the lease is heavily weighted in favor of the vendor. However, given the long delays in obtaining these specialized trucks and the trucks out of commission with repairs, and it is for a new 2023 truck from a manufacturer (Peterbilt) with a good reputation, and the proposal has a promise for separate component warranties. The City Attorney supports staff in its calculation of the benefits outweighing the risks.

#### RECOMMENDATION / SUGGESTED MOTION:

**I MOVE TO APPROVE A 12-MONTH LEASE AGREEMENT ON A 2024 PETERBILT SOLID WASTE SIDE LOADER TRUCK, NOT TO EXCEED \$100,800.00, AND TO WAIVE FORMAL PROCUREMENT PROCEDURES.**

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#### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** Yes

**CITY/STATE/FEDERAL FUNDS:** City

**TOTAL:** \$100,800.00 over the course of  
12 months or \$8,400.00  
monthly  
**BUDGETED AMOUNT:** \$120,610.31  
**AVAILABLE AMOUNT TO TRANSFER:** \$120,610.31  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** Lease Payments - Principal &  
Interest #320-321-80015/  
\$120,610.31

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE  
BUDGET ADJUSTMENT FORM):**

N/A

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**Attachments**

Lease Purchase Proposal - City of San Luis, AZ - VIN 115823 and Unit# 955-1776 - 8-30-2023  
Master Lease Agreement and Schedule B

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rushrefusesystems.com

## LEASE PROPOSAL

Date: 8/30/2023

Customer: City of San Luis, AZ - Manuel Hernandez

Equipment: 2024 Peterbilt 520DS MX11 FLEET Spec W/McNeilus 28yd Zero Radius ASL (VIN 115823 / Unit# 955-1776)

Lease Rate: \$8,400 per month for a minimum term of 12 months (50% credit for up to 12 months, purchase option price of \$339,600 after rental credit of \$50,400 is applied).

Extended Warranty: CARB Paccar Premium MX11 Engine Warranty (5 Year/200k Miles), CARB 5 Year/350k Mile Emissions Warranty, Allison 5 Year Refuse Packer Extended Warranty, and 1 Year Peterbilt Towing Warranty

Salesmen: Bradley Taylor

# RUSH

## MASTER LEASE/RENTAL AGREEMENT

This Master Lease/Rental Agreement (this "Agreement"), is made \_\_\_\_\_, \_\_\_\_, 20\_\_ between Rush Truck Leasing, Inc., a Delaware corporation, with offices at 8810 IH-10 East, San Antonio, Texas 78219 ("Owner"), and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Customer").

### W I T N E S S E T H:

WHEREAS, Owner is the owner of certain equipment and is engaged in the business of leasing/renting such equipment; and

WHEREAS, Customer desires to lease/rent certain equipment for commercial use;

NOW THEREFORE, in consideration of the following mutual promises and covenants, Customer and Owner hereby agree as follows:

1. **DESCRIPTION OF LEASED/RENTED EQUIPMENT.** Owner agrees to lease/rent to Customer, and Customer agrees to lease/rent from Owner the equipment described on the attached Schedule(s), as amended and/or supplemented from time to time, executed by Customer and Owner and made part of this Agreement (individually, an "item of Equipment" and collectively, the "Equipment").
2. **TERM; CHARGES.** The Agreement shall become effective with respect to each item of Equipment on the date such item of Equipment is delivered by Owner to Customer, and shall continue for the term specified on the applicable attached Schedule(s) unless terminated earlier as provided hereinafter. In consideration for the lease/rental by Owner to Customer of the Equipment, Customer agrees to pay base lease/rental payments and other charges as specified on the applicable attached Schedule(s) and in this Agreement.
3. **ACCEPTANCE AND INSPECTION.** By accepting delivery of any item of Equipment, Customer acknowledges and accepts the warranty and limitations with respect thereto as set forth in Paragraph 4 and Paragraph 5, respectively, and further acknowledges and represents that Customer has inspected each item of Equipment and concluded that it is in proper operating or serviceable condition and that it has been selected by Customer as adequate and sufficient for Customer's intended uses. Customer is responsible to provide all O.S.H.A., federal, and state required safety equipment. Customer assumes all responsibility for the care and use of each item of Equipment and agrees to pay to Owner, in addition the base rental payments and all other amounts required to be paid to Owner hereunder, an amount equal to all damages to and losses with respect to any item of Equipment.
4. **WARRANTY. OWNER LEASES/RENTS EACH ITEM OF EQUIPMENT TO CUSTOMER "AS IS" AND MAKES NO WARRANTIES REGARDING ANY ITEM OF EQUIPMENT (INCLUDING, WITHOUT LIMITATION, (a) THE BODY, ENGINE, TRANSMISSION, DRIVETRAIN, AND ANY OTHER MECHANICAL PART OF ANY ITEM OF EQUIPMENT, (b) THE ELECTRICAL SYSTEM OF ANY ITEM OF EQUIPMENT, (c) ANY ACCESSORIES ON ANY ITEM OF EQUIPMENT AND (d) ANY OPTION ON ANY ITEM OF EQUIPMENT), WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION PERFORMANCE GUARANTIES AND IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY EXCLUDED.** Owner shall not be liable for any direct, indirect, incidental or consequential damages or losses resulting from the operation or use of any item of Equipment, including, without limitation, damages for loss of business profits or business interruption. In addition, Owner shall not be responsible for any loss, damage or claim caused by or attributable to any defect or deficiency in any item of Equipment whether arising out of such item of Equipment's manufacture, design or otherwise.

Customer agrees that Owner does not guarantee performance of any item of Equipment and Customer hereby waives and releases Owner from any losses or claims due to the non-performance of any item of Equipment, the inability of any item of Equipment to perform a task, repair time required for any item of Equipment and/or any other cause.

Customer's Initials: \_\_\_\_\_

Owner's Initials: \_\_\_\_\_

5. **LIMITATION OF LIABILITY. OWNER'S LIABILITY WHETHER IN CONTRACT OR OTHERWISE, WITH RESPECT TO THIS AGREEMENT AND/OR ANY ITEM OF EQUIPMENT SHALL IN NO EVENT EXCEED THE AMOUNT RECEIVED BY OWNER FROM CUSTOMER UNDER THIS AGREEMENT ATTRIBUTABLE TO SUCH ITEM OF EQUIPMENT.**
  
6. **TAXES; LICENSES; PERMITS; RELATED FEES.** Customer acknowledges that the base payments are exclusive of any federal, state, or local taxes and license or registration fees now in force or hereafter imposed, unless otherwise specified herein or on the attached Schedule(s). Customer shall pay all sales, use and other taxes and all fees and charges that are levied on any item of Equipment during the term of this Agreement. Customer shall also pay all taxes (other than income taxes) that are charged to Owner by reason of Owner's interest in any item of Equipment. Unless otherwise specified herein or on the attached Schedule(s), Customer shall, at Customer's sole expense, (a) license and register each item of Equipment to the extent required by federal, state, and local law or regulations and (b) maintain such licenses and registrations in full force and effect throughout the term of this Agreement. Customer shall furnish to Owner copies of any filings required under this Agreement.
  
7. **MAINTENANCE; REPAIR; TIRE WEAR.** Customer shall provide and pay for all gas, oil, anti-freeze fluid, lubrication and routine servicing for each item of Equipment. Subject to reasonable and normal wear and tear, unless otherwise stated in the attached Schedule(s), Customer shall keep each item of Equipment in good operating condition and repair and shall pay the costs of all repairs to each item of Equipment. All service and repairs shall be done when needed, but in any event no less often than as set forth in the owner's manual for such item of Equipment, receipt of which owner's manual is hereby acknowledged by Customer. Tread depth measurements of the Equipment's tires shall be made and documented immediately prior to the delivery of the Equipment. All tire repair and servicing is the responsibility of Customer, unless otherwise stated on the attached Schedule(s). Customer shall provide to Owner a record of all the foregoing maintenance and repair.

Customer agrees not to cause or permit Customer's drivers, employees or agents to make any repairs or adjustments to any item of Equipment or to tamper with the governors on any item of Equipment. In all cases of defect or failure or when repairs are necessary, Customer shall notify Owner by the speediest means of communication available giving a description of the repairs needed and the location of the item of Equipment. Customer shall further abide by Owner's directions concerning emergency repair service. Owner shall not be responsible for any repair of or service to any item of Equipment by a third party unless expressly authorized in advance by Owner.

Upon return of each item of Equipment, in addition to the other amounts due hereunder, Customer shall be charged and agrees to pay charges for (a) any damage or loss, other than normal wear and tear, to any item of Equipment, (b) excessive clean-up required for any item of Equipment, and (c) the cost of any fuel provided by Owner.

8. **PURCHASE OF EQUIPMENT.** If, but only if, specified on a Schedule, and further provided that Customer is not in default under this Agreement, Customer shall have the option to purchase the Equipment from Owner at the end of this Agreement at the purchase price stated on the Schedule. Customer shall notify the Owner sixty (60) days prior to the expiration of this Agreement if Customer desires to purchase the Equipment. If applicable, Owner shall deliver title to Customer within fifteen (15) business days after payment to Owner of the purchase price, plus taxes and all other debts of Customer due to Owner as set forth herein. Customer shall have no interest in the Equipment as a result of this option until the exercise by Customer of the option and payment in full to Owner of all amounts due from Customer to Owner in connection with this Agreement.
  
9. **INSURANCE.** Customer shall bear the risk of loss and damage to the Equipment during the term of this Agreement and shall be fully responsible for the cost of, at Owner's option, replacing or repairing any damage to any item of Equipment. Customer shall also be liable for all damages and injuries to persons and property involving any item of Equipment during the term of this Agreement. Customer is required to carry insurance of the following kinds and in the amounts specified for the term of this Agreement: (1) all risks of physical damage insurance (including collision, upset and overturn) on Equipment in an amount adequate to replace the Equipment with Owner named as Loss Payee, a Deductible not to exceed \$2,500, and with the Waterborne Exclusion, Boom Overload Exclusion and Boom Exclusion deleted; (2) General Liability Insurance written on an Occurrence Form providing a Combined Single Limit of at least \$5 million per occurrence for Bodily Injury and Property Damage (\$1 million per occurrence for refuse equipment) with an Annual Aggregate of \$10 million (\$2 million Annual Aggregate for refuse equipment), with deductible amounts to be approved by Owner; (3) Automobile Liability Insurance providing a Combined Single Limit of at least \$5 million per occurrence for Bodily Injury and Property Damage (\$1 million per occurrence for refuse equipment) covering all Owned, Hired and Non-Owned Automobiles, with deductible amounts to be approved by Owner; (4)

Customer's Initials: \_\_\_\_\_

Owner's Initials: \_\_\_\_\_

Workers' Compensation Insurance providing Statutory Coverage for all employees in all states where the Customer operates or has employees with Employers' Liability Insurance coverage limits of at least \$1 million for Bodily Injury By Accident or Disease. When Equipment is being used at a petrochemical installation, the General and Automobile Liability Insurance limits must be increased to \$10 million with a \$20 million Annual Aggregate. Customer is required to provide Owner with evidence of such insurance satisfactory to Owner, in Owner's sole discretion. All liability policies, except Workers' Compensation and Employers' Liability, must be endorsed to name "Rush Enterprises, Inc. and its subsidiaries and its affiliates, successors and assigns, and PACCAR Leasing Company, as their interests may appear" as additional insureds ("Additional Insureds"). In addition, Customer, as well as any and all of Customer's insurer(s) and or reinsurer(s), agree to waive any and all subrogation rights against Rush Enterprises, Inc. and its subsidiaries and affiliates. The Workers' Compensation policy and all liability policies must be endorsed to include the waiver subrogation. Customer's insurers shall be obligated to give Owner 30 days' prior written notice of their intent to cancel or alter Customer's insurance. Customer hereby authorizes Owner to receive or collect any money paid under the insurance policies, endorse checks and drafts relating to payment, cancel the insurance or settle or release any claim with respect to the insurance coverages. Regardless of whether or not the Equipment is insured, Customer shall pay the base rental payments for the Equipment during the term of this Agreement in the event the Equipment is lost, damaged or destroyed. **EQUIPMENT INSURANCE AND/OR LIABILITY INSURANCE IS NOT PROVIDED BY OWNER.**

10. ACCIDENT REPORTING. Customer shall notify Owner within twenty-four (24) hours of any accident or occurrence involving any item of Equipment in which a person or property is, or is claimed to be, injured or damaged.
11. USE, LOCATION AND MARKING OF EQUIPMENT. Customer shall have the sole use, control and responsibility for each item of Equipment until it is returned to Owner. Customer hereby affirms that it is leasing/renting each item of Equipment for a business, agricultural or commercial purpose and that no item of Equipment shall be used for personal, family or household uses. Customer shall obey all federal, state, and local laws and regulations in using each item of Equipment and shall only allow any item of Equipment to be used by competent and qualified personnel. Customer shall use each item of Equipment only in the state where it was titled and/or registered as of the commencement of this Agreement, unless (a) Owner gives Customer written permission to use it in another state, or (b) Customer's use of any item of Equipment in another state is for not more than 30 days. In no event shall Customer transport or use any item of Equipment outside the United States of America without obtaining the prior written consent of Owner, which consent may be granted or withheld in Owner's sole and absolute discretion. Customer shall not place any sign or mark on any item of Equipment without Owner's consent and Customer shall pay the costs of removing the sign or markings and all needed repairs that are caused by such removal.
12. INDEMNITY. Customer agrees to defend, indemnify, and hold Owner and its parent company, affiliates, officers, employees, agents and representatives harmless from and against any and all claims, causes of action, damages, demands, liabilities, and expenses of any kind (including without limitation attorney's fees, fines and penalties) relating to or arising out of the ownership, maintenance, possession, use, operation, control or storage of each item of Equipment, and/or contents thereof, covered by this Agreement, including, without limitation, any injury to persons and/or property. The provision of this Paragraph 12 shall survive expiration or termination of this Agreement. Nothing contained in Paragraph 9 or Paragraph 10 shall be construed to limit the provisions of this Paragraph 12. If Customer fails to pay any fine(s) and Owner pays the same, Customer shall continue to be responsible for the amount of the fine(s) and shall also pay Owner a \$20.00 administration charge each time Owner is required to pay a fine on behalf of Customer.
13. TITLE AND OWNERSHIP. The Equipment shall at all times remain the property of Owner and Customer shall have no right or property interest therein during the term of this Agreement. Owner shall have the right to display notice of its ownership of the Equipment by affixing an identifying plate, stencil or other indicia of ownership on any item of Equipment. Upon Owner's request, Customer shall execute and pay all filing costs of UCC financing statements, including, without limitation, continuation statements, deemed appropriate by Owner, covering any item of Equipment and setting forth Owner's interest therein. Customer shall not pledge, encumber or permit any lien to attach to any item of Equipment.
14. DEFAULT. Time is of the essence of this Agreement. The due dates for base payments and the performance of the other obligations of Customer under this Agreement are among its most crucial provisions. The occurrence of any of the following events shall constitute a default hereof: (a) Customer shall fail to pay on or before the due date the full amount of any payment (including, without limitation, any base payment), tax, insurance premium or other obligation of Customer under this Agreement, (b) Customer shall fail to perform any other of Customer's obligations under this Agreement, (c) Customer shall attempt to remove, sell, transfer, sublease, encumber, or otherwise transfer, dispose or part with possession of any item of

Customer's Initials: \_\_\_\_\_

Owner's Initials: \_\_\_\_\_

Equipment without Owner's prior written consent, (d) Customer shall make any false or misleading statement to Owner in connection with this Agreement, (e) any check, note or other instrument given for any payment under this Agreement, shall be dishonored when presented for payment, (f) Customer shall become insolvent or shall become the subject of a petition in bankruptcy, either voluntarily or involuntarily, or shall make an assignment for the benefit of creditors or shall be named or subjected to a suit for the appointment of a receiver, (g) any item of Equipment shall be seized or levied upon by reason of any legal or governmental process directed against Customer, (h) Owner shall reasonably deem any item of Equipment to be in danger of misuse, confiscation, damage or destruction or (i) Customer shall violate, neglect or fail to observe, keep or perform any covenant, agreement or stipulation to be observed, kept or performed by Customer under this Agreement.

15. **REMEDIES.** In the event of any default by Customer under this Agreement, Owner shall have all of the rights and remedies permitted at law and in equity. Customer acknowledges and agrees that Owner shall be entitled to exercise any and all available rights and remedies in any combination or sequence not expressly prohibited by law. Unless prohibited by law, Owner's available rights and remedies in the event of a default by Customer include, without limitation, (a) suing for and recovering all accrued and thereafter accruing amounts owing under this Agreement, (b) requiring Customer to assemble any item of Equipment or all of the Equipment, to make the same available to Owner at a reasonable time and place designated by Owner, and to put Owner in possession thereof, (c) immediately and without legal proceedings or notice to Customer (and at Customer's expense) and without liability for any damages occasioned by such taking of possession, entering Customer's premises, taking possession of, removing and retaining any item of Equipment or all of the Equipment or rendering the same unusable, (d) without notice to Customer, terminating this Agreement as to any item of Equipment or all of the Equipment, but such termination shall not release Customer from the liabilities and obligations arising from such breach, (e) filing a construction lien on Customer's projects, (f) selling or otherwise disposing of any item of Equipment or all of the Equipment, whether or not in possession, with or without notice to Customer, at private or public sale, or re-leasing/re-renting any or all of the same on such terms and conditions as Owner deems appropriate and (g) utilizing any and all other remedies at law or in equity available to Owner. In the event that Owner re-leases, re-rents, sells or otherwise disposes of any item of Equipment, Customer shall receive a credit against amounts due to Owner under this Agreement equal to the net proceeds of such action, after deducting all cost of such re-lease, re-rent and sale. Unless otherwise required by applicable law, any remaining net proceeds shall belong solely to Owner. Irrespective of the remedies exercised by Owner hereunder, Customer shall continue to remain liable for any amounts due to Owner hereunder after application of the net proceeds as set forth above.

Customer hereby expressly waives any rights it may have to possession of any item of Equipment after default and all claims it may have for damages or injuries suffered through or loss caused by any repossession, sale or other disposition of any item of Equipment hereunder. Customer agrees that any property, other than an item of Equipment, which is in or upon any item of Equipment at time of repossession may be taken and held without liability until its return is requested by Customer. Customer hereby acknowledges and agrees that any applicable standard of commercial reasonableness shall be satisfied if Owner sells or otherwise disposes of any item of Equipment by any method which is customarily used for similar items of Equipment, or which Owner has used or would use for similar items of Equipment owned solely by Owner, even if Customer believes or proves that a different method of disposition would have been more beneficial for Customer.

Nothing herein contained shall require Owner to re-lease, re-rent, sell or otherwise dispose of any item of Equipment.

Owner's remedies are cumulative and may be exercised concurrently and repeatedly and the exercise of one remedy shall not be deemed an election of remedies. No waiver of a default is a waiver of any other default or subsequent breach of this Agreement by Customer. In addition to all other charges provided under this Agreement, Customer agrees to pay all removal, freight, storage, labor and other charges and costs insured by Owner as a result of Customer's breach of this Agreement.

16. **PAYMENT; DELIQUENCY CHARGES.** Customer agrees to pay to Owner all base payments and other amounts set forth in this Agreement, including Schedule A, Schedule B or Schedule C, as applicable, without deduction or setoff. All base payments shall be invoiced in advance; provided, however, mileage and all charges other than fixed charges shall be invoiced in arrears. All payments shall be delivered to Owner at the address set forth above, or at such other address as may be designated in writing from time to time by Owner. All amounts due to Owner hereunder shall be paid within ten (10) days after the date of the invoice.

Customer acknowledges that Customer's failure to timely pay all base payments or any other amounts which become owing to Owner during the term hereof shall cause Owner to incur costs not contemplated by this Agreement, the exact amount of

Customer's Initials: \_\_\_\_\_

Owner's Initials: \_\_\_\_\_

which shall be difficult to ascertain. Such costs include, without limitation, processing and accounting charges. Accordingly, for each base payment or other amount due to Owner hereunder which is not paid within ten (10) days after it is due, Customer agrees to pay Owner a delinquency charge calculated thereon equal to the greater of (a) interest at the rate of one and one-half percent (1 ½ %) per month on such unpaid base payment or other amount due hereunder calculated from the day the same is due until Owner receives payment thereof or (b) five percent (5%) of such base payment or other amount due hereunder; **provided, however**, that in no event shall such delinquency charge exceed the maximum amount permitted by applicable law. Customer shall also pay all reasonable costs of collection, including attorney's fees incurred by Owner in the collection of any amounts owing to Owner hereunder.

17. **TERMINATION.** Except as otherwise set forth herein, this Agreement shall terminate with respect to each item of Equipment upon the occurrence of all of the following events with respect to each item of Equipment: (a) the end of the term of this Agreement for such item of Equipment as stated on the attached Schedule(s), (b) the return of such item of Equipment to Owner, and (c) the payment by Customer of all amounts owed to Owner under this Agreement. Notwithstanding the foregoing, Owner may (i) immediately terminate this Agreement pursuant to Paragraph 15 if Customer defaults under this Agreement and (ii) terminate this Agreement upon giving thirty (30) days' prior written notice to Customer, at Owner's sole and absolute discretion.
18. **RETURN OF EQUIPMENT.** Upon the expiration of this Agreement for any item of Equipment, Customer shall return, at Customer's sole expense, such item of Equipment to Owner at the address shown above or to such other place as Owner may direct. Unless stated otherwise on the attached Schedule(s), each item of Equipment shall be returned by Customer in the same condition as when received by Customer. Customer shall pay to Owner on demand, the cost of any repairs necessary to place any item of Equipment in the condition required by this Agreement. A recovery charge of \$10.00 per mile shall be charged against and shall be paid by Customer if any item of Equipment is not returned by Customer at the termination of this Agreement.

If Customer retains possession of any item of Equipment after the expiration of the term of this Agreement or the prior termination of this Agreement pursuant to Paragraph 15 or Paragraph 17, Customer shall continue to pay the base payments and other charges as set forth herein and on the attached Schedule(s). Acceptance of such base payments by Owner, however, shall not be deemed a renewal of this Agreement and Customer shall pay Owner any damages which Owner may incur because Customer fails to return any item of Equipment as required herein.
19. **DEPOSITS.** If Customer fails to pay any base payment or any other amount under this Agreement when due, Owner may use, apply and retain all or any portion of any of Customer's deposits for payment or satisfaction of the amounts owed to Owner, or to compensate Owner for any loss or damage which Owner may suffer as a result of Customer's default. Customer shall continue to remain liable for any amounts due Owner hereunder after application of any deposit.
20. **USE; ASSIGNMENT.** This Agreement is between Owner and Customer alone and the Equipment must be used exclusively by Customer or Customer's employees. This Agreement may not be assigned, or any item of Equipment subleased by Customer without Owner's prior written consent. Owner may assign this Agreement and any or all base payments or other amounts payable by Customer hereunder. Upon notice of such assignment by Owner, Customer shall pay such amounts to the assignee without offset, counter-claim or defense of any kind. Owner may also execute any type of security instrument with respect to any item of Equipment and Customer's rights shall be subordinate to the rights of the holder of such instrument.
21. **NOTICES.** All notices, demands, requests, base payments and other payments required to be made under this Agreement shall be in writing and shall be either delivered personally, or mailed, postage prepaid, to the address indicated above, or to such other addresses as either party may designate to the other by a written communication to the other party in accordance with this Paragraph 21. Notices shall be deemed effective on the day of delivery if delivered personally or on the fifth (5<sup>th</sup>) business day following mailing.
22. **GOVERNING LAW; VENUE.** This Agreement shall be governed by the laws of the State of Texas, exclusive of its conflict of law rules. The venue of any legal action to collect or enforce the obligations under this Agreement shall be in Bexar County in the State of Texas. Any legal action regarding this equipment must be filed only in Bexar county Texas.

Customer's Initials: \_\_\_\_\_

Owner's Initials: \_\_\_\_\_

23. **ENTIRE AGREEMENT; SEVERABILITY.** This Agreement and the Schedule(s) attached hereto, set forth all of the agreements of Owner and Customer for the lease/rental of each item of Equipment, and supersedes any and all prior understandings or agreements, both oral and/or written, between and among the parties respecting the Equipment. Except for taxes and insurance charges on Schedule A and/or Schedule B and/or Schedule C, as applicable, this Agreement and the attached Schedule(s) cannot be modified unless in a written statement signed by both parties. If any term, provision or agreement contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms, provisions and agreements shall in no way be affected, impaired or invalidated. The parties to this Agreement shall negotiate in good faith to agree on replacing any invalid, illegal, or unenforceable provision with a valid, legal, and enforceable provision which, in effect, shall, from an economic and legal perspective, most fairly approach the effect of such invalid, illegal, or unenforceable provision.
24. **ATTORNEY'S FEES.** In the event Owner engages an attorney to enforce any provision of this Agreement, Customer agrees to pay to Owner upon demand an amount equal to Owner's reasonable attorney's fees.

**NOTICE TO CUSTOMER**

- (1) **DO NOT** sign this Agreement before you read all six (6) pages of it or if it has any blank spaces to be completed.
- (2) You have the right to a completed copy of this Agreement,
- (3) Customer states that Customer has read this Agreement and Schedule(s) attached hereto and has been given a complete and fully executed copy thereof at the time this Agreement has been executed by both Customer and Owner.

**CUSTOMER:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Type or Print)

Title: \_\_\_\_\_  
(Type or Print)

Date: \_\_\_\_\_  
(Type or Print)

**OWNER:**

RUSH TRUCK LEASING, INC.

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Type or Print)

Title: \_\_\_\_\_  
(Type or Print)

Date: \_\_\_\_\_  
(Type or Print)

Customer's Initials: \_\_\_\_\_

Owner's Initials: \_\_\_\_\_

**SCHEDULE B  
LONG TERM EQUIPMENT LEASE  
(7 months or more)**

This Schedule B is made a part of the Master Lease/Rental Agreement dated \_\_\_\_\_ (the "Agreement"), between Rush Truck Leasing, Inc., a Delaware corporation ("Owner") and \_\_\_\_\_ ("Customer"). All capitalized terms not otherwise defined shall have the respective meanings set forth in the Agreement.

**EQUIPMENT DESCRIPTION:**

Agreement Number: \_\_\_\_\_  
Customer Number: \_\_\_\_\_  
Vehicle Unit Number: \_\_\_\_\_  
Commencement Date: \_\_\_\_\_  
Truck: \_\_\_\_\_  
Vehicle ID Number: \_\_\_\_\_  
Equipment Type: \_\_\_\_\_  
Equipment ID Number: \_\_\_\_\_

Insured Value \$000,000.00

**AMOUNT DUE AT DELIVERY:**

- 1) Security Deposit: \_\_\_\_\_
  - 2) Delivery Charges: \_\_\_\_\_
  - 3) Licensing & Fees: \_\_\_\_\_
  - 4) Other Charges: \_\_\_\_\_
  - 5) Sales Tax: 0% \_\_\_\_\_
- Total Due at Delivery: \_\_\_\_\_

(\*denotes non-taxable items)

**BASE PAYMENT: (Payable Monthly)**

- 1) Fixed Charge: \_\_\_\_\_
- 2) Licensing & Fees: \_\_\_\_\_
- 3) Other Charges: \_\_\_\_\_
- 4) Sales Tax: \_\_\_\_\_

Base Payment: \_\_\_\_\_

(\*denotes non-taxable items)

**RATE:**

The base lease payments and other amounts which Customer agrees to pay for the lease of the above-described items of Equipment are listed above. In addition, Customer agrees that it shall pay (a) all amounts set forth in the Lease, (b) all damages or losses not paid by insurance, including "lost time rental" based upon 75% of the base payment, until all repairs are complete and the unit is O.S.H.A. certified, and (c) multiple shift rates (the above base payment being based upon 8 hours per day for 40 hours per week for 4 weeks per month), as follows: double shifts of 16 hours per day shall be billed to Customer at one and one-half (1 1/2) times the base payment and triple shifts of 24 hours per day shall be billed to Customer at twice the base payment.

**MINIMUM TERM (in Months): Seven (7)**

The Term of the lease shall commence on the date an item of Equipment is delivered to Customer ("Commencement Date") and expire at the end of the term. Customer shall give Owner at least 24 hours notice for any pickup and deliveries. Pickup expenses shall be billed on the final base payment billing, and the term shall be considered ended at the end of the day the applicable item of Equipment arrives in Owner's lot.

For the purpose of this Schedule B, for any item of Equipment returned to Owner after the term expires, Customer shall be charged a daily rental rate *plus* "lost time rental" charges.

**PURCHASE OPTION:**

Customer's Initials: \_\_\_\_\_

Owner's Initials: \_\_\_\_\_

If Customer is not in default under the Agreement, Customer may purchase the above-described items of Equipment for the purchase price described below. Customer shall notify the Owner in writing at least sixty (60) days prior to the termination of the lease if Customer desires to purchase the above-described items of Equipment. Customer shall also pay Owner in cash, within (30) days after giving such notice, the full purchase price plus taxes or charges owed for the sale or for the transfer of title, plus all other amounts due to Owner under the Agreement. Owner shall deliver title to the Customer within fifteen (15) business days after receipt of the full cash payment for all of these items.

The purchase price shall be calculated as the Base Price less a portion of the monthly payment determined as follows:

The portion of each monthly payment deducted from the Base Price shall be calculated by multiplying the Applied Percentage listed below times the applicable monthly payment and then subtracting taxes, repairs and miscellaneous extra charges paid or payable by Owner.

Base Price: \$ \_\_\_\_\_

Applied percentage: \_\_\_\_\_

Mileage Rate Over Base Miles: \_\_\_\_\_

Base Miles Per Month: \_\_\_\_\_

During the term, Customer agrees to wash the Equipment on a regular basis, particularly when the Equipment is used on roads treated for ice. Customer is responsible for cleaning the Equipment prior to its return to Owner.

All payments from Customer under the Lease, including, without limitation, this Schedule B, are due on the earlier to occur of: (1) 10 working days after invoicing, or (2) return of the Equipment to Owner.

Customer shall be responsible for providing all necessary safety equipment for the safe operation of each item of Equipment. Customer shall be responsible for (1) maintaining fluids, (2) lubricant levels, (3) tire damage and (4) any and all damages to the Equipment. Customer shall perform monthly "B" truck service; Customer shall promptly mail shop service receipts for these services to Owner.

Signing this form indicates agreement that the terms and conditions on this Schedule B, and the terms and provisions of this Schedule B and the Lease take precedence over Customer's terms and conditions.

**CUSTOMER:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Type or Print)

Title: \_\_\_\_\_  
(Type or Print)

Date: \_\_\_\_\_  
(Type or Print)

**OWNER:**

Rush Truck Leasing, Inc.

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Type or Print)

Title: \_\_\_\_\_  
(Type or Print)

Date: \_\_\_\_\_  
(Type or Print)



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. D.

**Meeting Date:** 09/25/2023

**Department Head:** Jorge Perez, Assistant Director of Public Works, Public Works Department

**Submitted By:** Jorge Perez, Assistant Director of Public Works, Public Works Department

**Action Requested:** Motion

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#### ITEM:

Discussion and possible action on any and all matters regarding the engagement of James Davey and Associates, Inc. and budget transfer for the conceptual design of 6th Avenue and County 22nd Street. **(Eulogio Vera, Director of Public Works)**

#### SUMMARY:

The Department of Public Works has been tasked to provide a conceptual design (15% complete) for 6th Avenue (from Union Street to County 22nd Street), Public Works considered that an evaluation of future roadway intersections with County 22nd Street is also needed and was included to the scope of work. Public Works obtained a proposal from James Davey and Associates, Inc. for conceptual (15% complete) design plans and cost estimates for 6th Avenue (from County 22nd Street to Union Street) and for County 22nd Street (from West of 4th Avenue to Sidewinder Road) as phase one. As a second phase of the proposal, the engineer will prepare 30% complete plans for 6th Avenue only (not County 22nd Street), refining the conceptual design. The proposal cost came in at \$41,930.00.

Engineer's proposal falls within the department purchasing authority for professional services as described under the City Code Section 3.05.080, Professional Services. However, this project is not a budgeted item and staff is requesting council approval for a \$41,930.00 budget transfer from the Capital Outlay - CIP 255-210-90015.219 account to account 200-210-90010 Capital Outlay - Improvement Roads to cover the before mentioned design work.

#### RECOMMENDATION / SUGGESTED MOTION:

**I MOVE TO ENGAGE JAMES DAVEY AND ASSOCIATES, INC. FOR THE CONCEPTUAL DESIGN SERVICES OF 6TH AVENUE IN THE AMOUNT OF \$41,930.00 AND APPROVE THE BUDGET TRANSFER AS PRESENTED IN THIS AGENDA ITEM.**

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#### Fiscal Impact

<b>IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:</b>	Yes
<b>CITY/STATE/FEDERAL FUNDS:</b>	City
<b>TOTAL:</b>	\$41,930.00
<b>BUDGETED AMOUNT:</b>	No
<b>AVAILABLE AMOUNT TO TRANSFER:</b>	\$1,102,254.00

**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** Capital Outlay - CIP - Merrill  
Avenue Improvements /  
255-210-90015.219 /  
\$1,102,254.00

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

Staff is requesting council approval of budget transfer of \$41,930.00 from the Capital Outlay - CIP 255-210-90015.219 to account 200-210-90010 Capital Outlay - Improvement Roads in order to complete the conceptual design project.

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**Attachments**

JDA Proposal  
Agreement  
Budget Adjustment Form

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**Proposal for Engineering Services  
City of San Luis**

**Design Concept/15% Complete and 30-Percent Complete Design for  
6th Avenue - from County 22nd Street to Union Street  
and Design Concept/15% Complete Design for County 22nd Street from West of 4th Avenue to Sidewinder Road**

Prepared by: James Davey and Associates, Inc.

August 28, 2023

Item	Description	Project Engineer	Engineering Technician	Survey Crew	Comments	
<b><u>DESIGN PHASE SERVICES</u></b>						
1	Project Management	4				
2	Topographic Survey	4		20	Approximately 2 miles of Survey	
3	Prepare Survey Base Sheets	12 Sheets	10 Hrs/Sheet	12	108	40 Scale Sheets
4	Utility Coordination/Conflict Resolution, Submittals to Utilities	6				Visible Utilities and Record Drawings only.
5	Geotechnical Report					Not included at this stage (include in Final Design Documents)
6	Prepare Design Plans					
	Cover Sheet	1 Sheet	4 Hrs/Sheet		4	
	6th Avenue Roadway Plan and Profile Sheets (30% Complete Plans)	5 Sheets	15 Hrs/Sheet	30	45	Design Concept (15%) and 30% Complete Plans only. 40 Scale
	County 22nd Street Roadway Plan and Profile Sheets (15% Complete Plans Only)	7 Sheets	10 Hrs/Sheet	28	42	Design Concept (15%) Complete Plans only. Possible alternative alignment along Co. 22nd St. canals. Future intersection alternatives.
	General Sheets/Standard Details	1 Sheet	10 Hrs/Sheet	2	8	
	Canal/Drain Crossing Details	2 Sheets	14 Hrs/Sheet	8	20	For East Main and Main Drain Crossings and for Henry Lateral at Co. 22nd St. (30% Complete)
7	Submittal Review Meetings - Design Concept and 30% Complete	8				
8	Right-of-Way Determinations	8				Shown on Design Plans.
9	Cost Estimates	12				For Design Concept and 30-percent submittals
<b>Total Estimated Hours</b>		<b>122</b>	<b>227</b>	<b>20</b>		
<b>Hourly Rates</b>		<b>\$150</b>	<b>\$90</b>	<b>\$160</b>		
<b>Subtotals</b>		<b>\$18,300</b>	<b>\$20,430</b>	<b>\$3,200</b>		
<b>TOTAL FEE ESTIMATE - DESIGN PHASE</b>				<b>\$41,930</b>		

## **PROFESSIONAL ENGINEERING SERVICES AGREEMENT**

Professional Services Agreement (this “Agreement”) is effective the \_\_\_\_ day of September 2023, between the City of San Luis, Arizona, a municipal corporation of the State of Arizona (“CITY”), and James Davey and Associates, Inc., an Arizona professional limited liability company, authorized to do business in the State of Arizona (“ENGINEER”). ENGINEER and CITY may be referred to singularly as the “Party” and collectively as the “Parties.”

### **RECITALS**

The Parties entered into this Agreement based on the following facts, understanding and intentions of the Parties:

- A. CITY has determined that it is in the public interest to proceed with the work described below in Section One (the “Project”).
- B. CITY has determined that the Project involves the performance of professional and technical services of a temporary nature.
- C. CITY desires to engage ENGINEER, and ENGINEER agrees to render certain technical advice and professional services to CITY, as necessary.

**In consideration of the mutual covenants contained herein, the Parties agree as follows:**

### **SECTION ONE. DESCRIPTION OF PROJECT**

The Project described in the attached Exhibit 1, ENGINEER’s Proposal for Engineering Services of August 28, 2023, for conceptual (15% complete) design plans and cost estimate for 6th Avenue (from County 22nd Street to Union Street) and for County 22nd Street (from West of 4th Avenue to Sidewinder Road) as phase one. As a second phase, ENGINEER will prepare 30% complete plans for 6th Avenue only (not County 22nd Street), refining the conceptual design. Said exhibit is incorporated by reference as though fully set forth again in full.

James Davey and Associates, Inc., and City of San Luis  
Professional Engineering Services  
Design Concepts for 6<sup>th</sup> Avenue and County 22<sup>nd</sup> Street

**SECTION TWO.  
SCOPE OF WORK**

ENGINEER's scope of work is as described in Exhibit 1.

**SECTION THREE.  
ADDITIONAL SERVICES**

CITY and ENGINEER understand that it may be necessary, in conjunction with the Project, for ENGINEER to perform or secure the performance of services other than those set forth in the proposal. If the CITY requests additional services, ENGINEER shall advise CITY in writing of the need for additional services and the cost and estimated time to perform the additional services. ENGINEER shall not proceed to perform any such additional service until CITY has determined that such additional service is beyond the scope of the basic services to be provided by ENGINEER and has given its written authorization to proceed. Written approval for performance and compensation for additional services may be granted by the CITY's Director of Public Works or the San Luis City Manager. Except as stated in this paragraph, any additional service shall require a written amendment to this Agreement and shall be subject to all the provisions of this Agreement.

**SECTION FOUR.  
AUTHORITY OF THE PUBLIC WORKS DIRECTOR**

ENGINEER shall perform all necessary services provided under the Agreement and outlined in the proposal and shall do, perform, and carry out such work in a satisfactory and proper manner as determined by and to the satisfaction of the Director of Public Works. The Director of Public Works reserves the right to make changes, additions or deletions, to the scope of work as deemed to be necessary or advisable to implement and carry out the purposes of the Agreement. Any changes, additions or deletions to the scope work shall be subject to an approved and executed amendment to the Agreement. The Director of Public Works is authorized to execute the change orders on behalf of CITY.

**SECTION FIVE.  
RESPONSIBILITY OF ENGINEER**

By executing this Agreement, ENGINEER represents and states to CITY that it possesses or will arrange to secure from others all necessary professional capabilities, experience, resources and facilities necessary to provide to CITY the services contemplated under this Agreement.

James Davey and Associates, Inc., and City of San Luis  
Professional Engineering Services  
Design Concepts for 6<sup>th</sup> Avenue and County 22<sup>nd</sup> Street

ENGINEER further warrants that it will follow the current generally accepted practices of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the Project for which services are rendered under this Agreement.

**SECTION SIX.  
INDEPENDENT CONTRACTOR**

The Parties to this Agreement agree that ENGINEER, its employees, agents and subcontractors shall be independent contractors with regard to the providing of services under this Agreement and that ENGINEER's employees, agents and subcontractors shall not be considered to be employees or agents of CITY, for any purpose, whatsoever, and will not be entitled to any of the benefits CITY provides for its employees. Rights of the ENGINEER as independent contractor include, but are not limited to, control of the work, manner and methods of the work, and the right to contract with other employers.

Rights of the CITY include, but are not limited to, inspection and approval of the work and the right to contract with others to perform the work.

**SECTION SEVEN.  
MATERIALS AND EQUIPMENT**

ENGINEER shall furnish at its own expense all materials and equipment necessary to carry out the terms of this Agreement.

**SECTION EIGHT.  
DIGITAL FILES**

ENGINEER shall furnish copies of all deliverables in digital format. Files shall be compatible with the current versions used by CITY. CITY shall be the owner of the files and owner of all copyrights or other intellectual property rights thereto.

**SECTION NINE.  
EMPLOYMENT OF PERSONNEL**

ENGINEER shall provide experienced and qualified personnel to carry out the work to be performed by ENGINEER under this Agreement and shall be responsible for and in full control

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of the work of such personnel.

**SECTION TEN.  
TIME OF PERFORMANCE**

Subject to the provisions of this Agreement, ENGINEER agrees to perform the Project in accordance with the proposal. The services of ENGINEER are to be undertaken and completed in such a sequence as to assure their expeditious completion in light of the purpose of this Agreement. ENGINEER's anticipated period of performance following execution of this agreement will be 30 days for preparing conceptual (15% complete) design plans and cost estimate for 6th Avenue and for County 22nd Street. As a second phase, ENGINEER will prepare 30% complete plans for 6th Avenue only (not County 22nd Street), this second phase will take an additional 30 days to complete. Time is of the essence of this Agreement.

**SECTION ELEVEN.  
COMPENSATION**

Subject to the provisions of this Agreement, ENGINEER agrees to perform the work and services specified and outlined in the proposal for an amount not to exceed \$41,930, as delineated in the proposal at Exhibit 1, unless specifically authorized by a written amendment to this Agreement executed prior to the commencement of any additional work. ENGINEER shall prepare invoices in accordance with this Agreement and shall submit such invoices to CITY once a month covering the amount and value of the Project satisfactorily performed by ENGINEER up to the date of such invoice. No later than 45 days from the receipt of an invoice, CITY shall pay ENGINEER for work satisfactorily performed on a time and materials basis.

If the CITY wants the ENGINEER to travel outside of Yuma County, then it shall be handled as an additional service which shall require a written amendment to this Agreement and shall be subject to all the provisions of this Agreement.

**SECTION TWELVE.  
ASSIGNMENT**

ENGINEER shall not assign any duties, responsibilities or obligations under this Agreement without the prior written consent of CITY.

James Davey and Associates, Inc., and City of San Luis  
Professional Engineering Services  
Design Concepts for 6<sup>th</sup> Avenue and County 22<sup>nd</sup> Street

## **SECTION THIRTEEN. INDEMNIFICATION**

To the fullest extent permitted by law, ENGINEER agrees to indemnify, protect, defend and hold harmless CITY, its Mayor, Council Members, any and all of its officers, directors, officials, employees, agents, insurers, and indemnitors (“Indemnified Parties”) for, from and against any and all suits, claims, losses, liabilities, damages, costs, expenses and debt, including reasonable attorneys’ fees and costs incurred by the CITY which arise out of, attributable to or caused in whole or in part by acts or omissions of ENGINEER (or its officers, directors, shareholders, agents or employees) including but not limited to injuries to ENGINEER’s employees who may or may not be covered by workers’ compensation insurance; except, to the extent such suits, claims, losses, liabilities, damages, costs, expenses and debt result from acts or omission of the CITY or any Indemnified Parties. This indemnification provision shall apply to suits, claims, losses, liabilities, damages, costs, expenses and debt that are not otherwise covered by the CITY’s Liability Insurance provided for by the Arizona Municipal Risk Pool.

Notwithstanding the foregoing, but without limiting insurance coverage provided by Section 14 of this Agreement, ENGINEER, and its partners, agents and employees, shall not be liable to CITY, whether jointly severally or individually, in excess of the compensation paid by the City to the ENGINEER under any Agreement as a result of any act or omission not amounting to willful or intentional wrong. CITY hereby agrees that to the fullest extent permitted by law, but without limiting insurance coverage provided by Section 14 of this Agreement, ENGINEER shall not be liable to CITY for any special, indirect or consequential damages whatsoever, whether caused by ENGINEER’s negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever.

## **SECTION FOURTEEN. INSURANCE**

### **A. Insurance Requirements.**

Prior to the beginning and throughout the duration of the work, ENGINEER will maintain insurance in conformance with the requirements set forth below. ENGINEER will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth in this Section Fifteen, then such coverage shall be amended to do so. ENGINEER acknowledges that the insurance coverage and policy limits set forth in this Section Fifteen constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement, the following types and amounts of insurance:

Without in any way limiting ENGINEER’s liability pursuant to the indemnification described

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Professional Engineering Services  
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above, ENGINEER shall maintain, during the term of this Agreement, the following types and amounts of insurance:

Coverage Type

Commercial General Liability, including:

Coverage Amounts- Minimum Limits:

Premises and Operations  
Contractual Liability

\$1,000,000 Combined Single Limit, per occurrence and \$2,000,000 general aggregate

Personal-Injury Liability

Independent Contractors Liability

Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits.

Comprehensive Automobile Liability  
(including, owned, non-owned and hired autos)

\$1,000,000 Combined Single Limit, per Occurrence

If ENGINEER owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If ENGINEER or ENGINEER's employees use personal motor vehicles in any way on this Project, then ENGINEER shall obtain evidence of personal motor vehicle liability coverage for each such person.

Workers Compensation and Employer's Liability

Statutory \$1,000,000

Professional Liability

\$1,000,000 per claim and \$2,000,000 annual aggregate

Except for Workers Compensation and Professional Liability Insurance coverage, such insurance shall include additional endorsements naming CITY and its directors, officers, employees and agents as additional insured with respect to liabilities arising out of the performance of services under this Agreement. ENGINEER shall provide CITY with certificates of insurance documenting that the ENGINEER has obtained the above coverages. Such certifications shall include the required provisions and endorsements required by this Agreement. Such Certificates shall include a statement that insurance may not be canceled without 30 days' prior written notice to CITY by first class mail, postage prepaid, 10 days of notice in the event that cancellation is due to nonpayment of premium.

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B. Certificates of Insurance and Endorsements.

ENGINEER will provide the City with a certificate of insurance and endorsement naming CITY as an additional insured under General Liability and Auto Liability, if applicable. Such liability insurance maintained by ENGINEER shall be primary and non-contributory and any coverage maintained by CITY shall not be expected to contribute to any claims arising from the work under this Agreement. The ENGINEER shall provide these certificates to the CITY within 10 days of execution of this Agreement and prior to engaging any operation or activities set forth in this Agreement. The foregoing policies shall provide that no cancellation, major change in coverage, or expiration by the insurance company or the insured during the term of this Agreement shall occur without 30 days' written notice to CITY prior to the effective date of such cancellation or change in coverage.

**SECTION FIFTEEN.  
COMPLIANCE WITH LAWS AND REGULATIONS**

Services performed by ENGINEER pursuant to this Agreement shall be performed in accordance with full compliance to all applicable federal, state, and CITY laws and any rules or regulations promulgated under such laws including but not limited to the following Arizona required provisions:

A. Conflict of Interest

ENGINEER declares that he presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement. ENGINEER further declares that in the performance of this Agreement no subcontractor or person having such interest shall be employed. ENGINEER certifies that, if he hires any employee, no one who has or will have any financial interest in this Agreement is an officer or employee of CITY. The Parties agree that in the performance of the services under this Agreement ENGINEER shall at all times be deemed an independent contractor and not an agent or employee of CITY. Under Arizona law, rules and regulations, no member, official or employee of the CITY shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. §38-511.

B. Employment Eligibility

James Davey and Associates, Inc., and City of San Luis  
Professional Engineering Services  
Design Concepts for 6<sup>th</sup> Avenue and County 22<sup>nd</sup> Street

ENGINEER hereby warrants that it complies 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 this Agreement. CITY retains the legal right to inspect the papers of ENGINEER to ensure that ENGINEER complies with this warranty.

C. San Luis Business License

ENGINEER shall obtain and maintain a San Luis Business License.

**SECTION SIXTEEN.  
INSPECTION OF WORK**

CITY's representative or its designee shall at all times have the right to inspect the work, services or performance of ENGINEER. ENGINEER shall furnish all reasonable aid and assistance required by CITY for proper examination of the work or services. Such inspection shall not relieve ENGINEER of any obligation to perform such services in accordance with the law or this Agreement.

**SECTION SEVENTEEN.  
NO WAIVER**

ENGINEER agrees that any waiver by CITY of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by ENGINEER shall not be deemed to be a waiver of any term or condition of this Agreement.

**SECTION EIGHTEEN.  
ATTORNEYS' FEES; COURT VENUE**

Should either Party to this Agreement commence legal action against the other (including a formal judicial proceeding, mediation or arbitration), the case shall be handled in Yuma County, Arizona or United States District Court for the District of Arizona at the election of the plaintiff in such legal action. The Parties waive any right to object to such venue. 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. The Party prevailing in such action shall be entitled to reasonable attorneys' fees which shall be fixed by the judge, mediator

James Davey and Associates, Inc., and City of San Luis  
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or arbitrator hearing the case and such fees shall be included in the judgment, together with all costs.

**SECTION NINETEEN.  
NOTICES**

All notices to be given under this Agreement, or which may be given by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by means of prepaid service by:

- deposit in the United States Postal Service by certified mail, return receipt requested, and postage prepaid,
- personal delivery by process server or
- sent by a nationally recognized courier (e.g., Federal Express, UPS)

and addressed to the respective Parties as follows:

If for the CITY -                      City Manager  
    City of San Luis  
    P.O. Box 1170  
    San Luis, Arizona 85349 (by United States Postal Service)  
    1090 East Union Street (by personal process or courier)  
    San Luis, Arizona 85336

Copy to

City Attorney  
City of San Luis  
P.O. Box 1170  
San Luis, Arizona 85349

If to the ENGINEER-                      James Davey and Associates, Inc.  
    1025 W. 24<sup>th</sup> Street, Suite 2  
    Yuma, AZ 85364  
    Attention: James V. Davey, PE, RLS

or such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

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**SECTION TWENTY.  
TERMINATION**

Either Party may terminate this Agreement upon 30 days' written notice to the other Party. In the event of such termination, CITY shall pay ENGINEER for all services performed to the satisfaction of CITY to the date of receipt of notice of termination. An itemized statement of the work performed to the date of termination shall be submitted to CITY. In ascertaining the services actually rendered under this Agreement up to the date of termination, consideration shall be given to both completed work and work in the process of completion and to complete and incomplete documents whether delivered to CITY or in the possession of ENGINEER.

**SECTION TWENTY-ONE.  
OWNERSHIP OF DOCUMENTS**

Upon completion, termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of CITY and may be used, reused, or otherwise disposed of by CITY without the permission of ENGINEER.

When ENGINEER creates any copyrightable material or invents any patentable property under this Agreement, CITY shall retain a royalty-free, non-exclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize others to do the same.

**SECTION TWENTY-TWO.  
GOVERNING LAW AND SEVERABILITY**

This Agreement shall be administered and interpreted under the laws of Arizona. Jurisdiction of litigation arising from this Agreement shall be in Arizona. If any part of this Agreement is found to conflict with applicable laws, then such part shall be inoperative and void insofar as it conflicts with such laws, but the remainder of the Agreement shall continue to be in full force and effect.

**SECTION TWENTY-THREE.  
MISCELLANEOUS PROVISIONS**

A. Headings

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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 the provisions of this Agreement.

#### B. Authority

The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement.

#### C. No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement, and no person or entity not a Party shall have any right or cause of action under this Agreement.

#### D. No Agency Created

It is not intended by this Agreement to, and nothing contained in this Agreement shall create any agency, partnership, joint venture or other similar arrangement between the Parties.

#### E. No Personal Liability

No member, official or employee of the CITY shall be personally liable to ENGINEER, or any successor or assignee, (a) if any default occurs or breach by the CITY, (b) for any amount which may become due to the ENGINEER or its successor or assign, or (c) under any obligation of the CITY under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of ENGINEER under this Agreement shall be limited solely to the assets of ENGINEER and shall not extend to or be enforceable against: (i) the individual assets of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of ENGINEER; (ii) the shareholders, members or managers or constituent partners of ENGINEER; or (iii) officers of ENGINEER.

#### F. Survival

All representations and warranties of ENGINEER, ENGINEER's indemnity, hold harmless and defense obligations shall survive the expiration or earlier termination of the Agreement.

#### G. Time is of the Essence

Time is of the essence in this Agreement. the ENGINEER's anticipated period of performance following execution of this agreement will be 30 days for preparing conceptual (15% complete) design plans and cost estimate for 6th Avenue and for County 22nd Street. As a second phase, ENGINEER will prepare 30% complete plans for 6th Avenue only (not County 22nd Street), this

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second phase will take an additional 30 days to complete. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of the ENGINEER of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction.

#### H. Further Acts

Each of the Parties 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 Agreement.

#### I. Force Majeure

If ENGINEER or CITY are prevented or materially restricted from performing any of their obligations under this Agreement by an event of force majeure, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "force majeure" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by the exercise of reasonable diligence. Examples of "force majeure" include, but are not limited to, acts of God, fire, flood, explosions, strikes or labor disputes over which the affected Party has no control, sabotage, riots, civil commotion, acts of civil or military authority, wars, pandemic, either state or federally mandate health and safety matters or material changes in applicable business laws or regulations.

#### J. 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.

[Intentionally left blank, signature page follows]

James Davey and Associates, Inc., and City of San Luis  
Professional Engineering Services  
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**SECTION TWENTY-FOUR.  
ENTIRE AGREEMENT**

This Agreement, including its Exhibit, represents the entire understanding of CITY and ENGINEER as to those matters contained in this Agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing signed by both Parties.

The Parties have executed this Agreement in Yuma County, Arizona the \_\_\_\_ day of September, 2023, which is the day the last Party approved this Agreement.

**City of San Luis, Arizona**

\_\_\_\_\_  
Jenny Torres, Interim City Manager

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney

**James Davey and Associates, Inc.**

\_\_\_\_\_  
James V. Davey, PE, RLS

James Davey and Associates, Inc., and City of San Luis  
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## City of San Luis Budget Adjustment Form

**Reason for Budget Adjustment:** 6th Avenue & County 22<sup>nd</sup> Street Conceptual Design (15% complete).

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Account Number	Account Name	Approved /Amended Budget Fiscal 23/24	Budget to be revised (Add to)	Budget to be decreased (Taken from)	Amended Budget Total
255-210-90015.219	Capital Outlay – CIP Merrill Avenue	\$1,102,254.00		\$41,930.00	\$1,060,324.00
200-210-90010	Capital Outlay – Improvement Roads	\$1,342,219.00	\$41,930.00		\$1,384,149.00
			\$41,930.00	\$41,930.00	

Department Head \_\_\_\_\_ Date 9/5/2023

City Manager \_\_\_\_\_ Date \_\_\_\_\_

Finance Department \_\_\_\_\_ Date \_\_\_\_\_



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. E.

**Meeting Date:** 09/25/2023

**Department Head:** Sonia Cornelio, City Clerk, City Clerk's Office

**Submitted By:** Sonia Cornelio, City Clerk, City Clerk's Office

**Action Requested:** Motion  
Resolution

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#### ITEM:

Discussion and possible action on any and all matters regarding Resolution No. 2291. A resolution of the Mayor and City Council of the City of San Luis, Arizona, declaring that the City Council deems the granting of a franchise with Southwest Gas Corporation beneficial for the City of San Luis; ordering an election to be held on March 12, 2024, at which election there shall be submitted to the voters of the City of San Luis whether said franchise shall be granted to Southwest Gas Corporation. **(Melissa Lopez, Deputy City Clerk)**

#### SUMMARY:

The City of San Luis will hold a Special Election for the question on the ballot whether the Southwest Gas franchise will continue in San Luis. The election shall take place on Tuesday, March 12, 2024. Although publication of a Call of Election is optional, it has been customary to publish a Call of Election since it is a good way to inform the City of San Luis voters about the election.

Southwest Gas Corporation has had a franchise to construct, maintain, and operate a gas utility service within the city limits of San Luis since the year 2000. The current franchise agreement is expiring in 2024. Arizona's law requires that continuing the franchise be submitted to the voters.

#### RECOMMENDATION / SUGGESTED MOTION:

**I MOVE TO APPROVE AND ADOPT RESOLUTION NO. 2291.**

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#### Fiscal Impact

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** N/A

**CITY/STATE/FEDERAL FUNDS:** N/A

**TOTAL:** N/A

**BUDGETED AMOUNT:** N/A

**AVAILABLE AMOUNT TO TRANSFER:** N/A

**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A

**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**

There is no fiscal impact associated with this item.

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#### Attachments





# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**NO. 2291**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, DECLARING THAT THE CITY COUNCIL DEEMS THE GRANTING OF A FRANCHISE WITH SOUTHWEST GAS CORPORATION BENEFICIAL FOR THE CITY OF SAN LUIS; ORDERING AN ELECTION TO BE HELD ON MARCH 12, 2024, AT WHICH ELECTION THERE SHALL BE SUBMITTED TO THE VOTERS OF THE CITY OF SAN LUIS WHETHER SAID FRANCHISE SHALL BE GRANTED TO SOUTHWEST GAS CORPORATION.**

**WHEREAS**, Arizona Revised Statutes § 9-501 et seq. authorizes the City of San Luis to enter into Franchise Agreements with public utilities; and

**WHEREAS**, the City of San Luis has had a franchise with Southwest Gas Corporation since the year 2000, but the franchise agreement expires in 2024; and

**WHEREAS**, Southwest Gas Corporation desires to continue a franchise with the City of San Luis to construct, maintain, and operate a gas utility service within the city limits of the City of San Luis; and

**WHEREAS**, the City Council of the City of San Luis finds that granting a franchise to Southwest Gas Corporation to be beneficial for the City of San Luis for gas service to be provided; and

**WHEREAS**, to continue a franchise with Southwest Gas Corporation, Arizona law requires an election to submit to the electors of the City of San Luis the question of whether a franchise shall be granted.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AS FOLLOWS:**

**Section 1.** That the Mayor and City Council of the City of San Luis determine that granting a franchise to Southwest Gas Corporation benefits the City of San Luis.

**Section 2.** That this Resolution calls for an election and orders that it be held in the City of San Luis on Tuesday, March 12, 2024, to submit to the electors of the City of San Luis whether a franchise shall be granted to Southwest Gas Corporation.

**Section 3.** That the City of San Luis shall hold this franchise election under the provisions of the Arizona Constitution and laws of the State of Arizona and the San Luis City Code.

**Section 4.** That this Resolution shall be posted to give the voting public notice of the election and advise the public eligible to vote but not registered that the last date to register for the March 12, 2024, election is Monday, February 12, 2024.

**Section 5.** That this Resolution authorizes and directs the Offices of the City Clerk and City Attorney to take further actions required by law to conduct the election.

**PASSED, APPROVED, and ADOPTED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this \_\_\_\_\_ day of September 2023.

\_\_\_\_\_  
Nieves Riedel, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Melissa Lopez, Deputy City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney



## AGENDA ITEM REVIEW FORM

### Special City Council Meeting

3. F.

**Meeting Date:** 09/25/2023  
**Department Head:** Nigel Reynoso, Acting Chief of Police, Police Department  
**Submitted By:** Michelle Boucher, Police Administrator, Police Department  
**Action Requested:** Motion  
Ordinance

#### ITEM:

Discussion and possible action on any and all matters regarding Ordinance No. 445. An ordinance of the Mayor and City Council of the City of San Luis, Arizona, amending Chapter 6.05 Animal Control of the City of San Luis by adding provisions for definitions and licensing; providing for penalties; repealing any conflicting provisions; and providing for severability. **(Nigel Reynoso, Administrative Lieutenant)**

- A. Action on reading Ordinance No. 445 by title only
- B. Action on Ordinance No. 445

#### SUMMARY:

This is an amendment to the City Code, Chapter 6.05 Animal Control. This ordinance allows the City of San Luis to handle dog licensing for pet dogs within the city limits, rather than relying on Yuma County.

After proper notice, Resolution No. 2278 was originally presented to the City Council and approved on June 28, 2023, which set the fees for licensing dogs. An ordinance that amends the City Code and allows the city to license dogs and impose penalties on dog owners for not having a license is being presented by this Agenda Item. The public purpose for having a dog license is to be sure dogs are properly vaccinated against rabies. According to the CDC, rabies is a viral disease spread by bites and scratches from infected animals, and in humans, if not treated can cause disease in the brain and death.

(See <https://www.cdc.gov/rabies/index.html#:~:text=Rabies%20is%20a%20fatal%20but,raccoons%2C%20skunks%2C%20and%20foxes.>)

#### Fees

The license fees set in June are as follows:

#### **FIXED PETS**

1-year license \$15; 2-year \$26; and 3-year \$37

#### **NON-FIXED PETS**

1-year license \$30; 2-year \$55; 3-year \$75

#### **Summary of Ordinance No. 445 in this Agenda Item**

Assistant City Attorney Glenn Gimbut researched other Arizona cities' dog license codes and found these provisions to be standard and conform to local conditions.

- Dogs must be over three (3) months old to be vaccinated and licensed.
- Guide dogs for the blind or those non-profits that train dogs to be guide dogs for the blind shall be licensed but are exempt from paying a licensing fee.
- Dogs belonging to a law enforcement agency shall be licensed but are exempt from paying a licensing fee.
- The city will issue dog tags for the licensed dogs.
- Dog owners who fail to license their dogs or falsify the tags are guilty of a misdemeanor, and every day the violation continues is a separate misdemeanor.
- When the dog gets a new owner, the new owner must secure a transfer of the dog license.
- A dog without a tag is deemed to be unowned.
- A dog who has an owner, but is taken to the pound shall be vaccinated before being released to the owner. The owner shall bear the cost of the vaccination.
- Dog owners moving into the city who have a dog license from elsewhere may be licensed in San Luis with a vaccination certificate.
- Unfortunately, Arizona law does not allow the city to recognize vaccination certificates from Mexico.

#### **Effective**

The ordinance will become effective 30 days after City Council passes it.

#### **RECOMMENDATION / SUGGESTED MOTION:**

**A. I MOVE TO APPROVE THE READING OF ORDINANCE NO. 445 BY TITLE ONLY.  
(CITY CLERK TO READ ORDINANCE NO. 445 BY TITLE ONLY)**

**B. I MOVE TO APPROVE AND ADOPT ORDINANCE NO. 445 AS PRESENTED.**

**IS THERE FISCAL IMPACT ASSOCIATED WITH THIS ITEM:** No  
**CITY/STATE/FEDERAL FUNDS:** N/A  
**TOTAL:** N/A  
**BUDGETED AMOUNT:** N/A  
**AVAILABLE AMOUNT TO TRANSFER:** N/A  
**ACCT NAME & GL#/REMAINING BALANCE BEFORE PURCHASE:** N/A  
**FISCAL IMPACT STATEMENT (IF THIS IS A BUDGET TRANSFER, YOU MUST ATTACH THE BUDGET ADJUSTMENT FORM):**  
N/A

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**Attachments**

Ordinance No. 445

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# *Ordinance*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**NO. 445**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AMENDING CHAPTER 6.05 ANIMAL CONTROL OF THE CITY CODE BY ADDING PROVISIONS FOR DEFINITIONS AND LICENSING; PROVIDING FOR PENALTIES; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY. BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AS FOLLOWS:**

Section 1. That those certain documents entitled "2023 Amendment to Chapter 6.05 Animal Control", three copies of which are on file in the office of the City Clerk, are hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk.

Section 2. The City Code is hereby amended to add Sections 6.05.030 through 6.05.032 as set forth in that certain document entitled "2023 Amendment to Chapter 6.05 Animal Control", three copies of which are on file with the City Clerk, and which is hereby adopted by reference as though fully set forth again in full.

Section 3. Penalties. It shall be unlawful for any person, firm, or corporation to violate, or cause the violation of Section 6.05.031 as set forth in "2023 Amendment to Chapter 6.05 Animal Control" as adopted by this ordinance. Each separate day, or part thereof, that a violation continues is a separate offense. Any violation of or failure to do or perform any act required by Section 6.05.031 Licensing is a Class 2 misdemeanor as punishable by the Section 6.05.990 of the City Code.

Section 4. In the event of a conflict between the provisions of this Ordinance, and any other ordinance, code, resolution, order, regulation, or policy of the City of San Luis, the conflicting provisions are repealed, superseded, and replaced, and the provisions of this ordinance shall govern.

Section 5. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**PASSED AND ADOPTED** by the Mayor and Council of the City of San Luis, Arizona this \_\_\_\_ day of September 2023.

\_\_\_\_\_  
Nieves Riedel, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City Attorney

## **2023 AMENDMENT TO CHAPTER 6.05 ANIMAL CONTROL**

### **6.05.030 Definitions.**

Unless otherwise specifically defined, for the purposes of this Title, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**ABANDONMENT.** To desert, forsake or give up an animal without having secured another owner or custodian for the animal, or by failing to provide the elements of basic care (food, water and shelter).

**ALTERED.** A spayed female animal or a neutered male animal.

**ANIMAL.** Any mammal, bird, reptile or amphibian.

**AT LARGE.** A dog on or off the premises of the owner and not under the control of the owner, or other person acting for the owner, and the dog is not confined in a suitable enclosure. .

**CAT.** A member of the Felis catus family.

**COLLAR.** A band, chain, harness or suitable device worn around the neck of an animal to which a license may be affixed.

**CONSECUTIVE BUSINESS DAYS.** Monday through Friday are considered business days; business days do not include Saturdays, Sundays or city holidays even if the Animal Control Division is open during these days.

**CONTAMINATION.** Anything that is harmful to animals or livestock that could lead to illness or death.

**CRUEL MISTREATMENT.** To torture or otherwise inflict physical injury upon an animal or to kill an animal in a manner that causes suffering to such animal.

**CRUEL NEGLECT.** To fail to provide an animal with food, water, shelter or medical treatment required to maintain health.

**DOG.** A member of the Canis familiaris family.

**ENFORCEMENT OFFICER.** Any certified peace officer or any person delegated by the City Manager or his or her designee who is responsible for the enforcement of this Title and the regulations promulgated under this Title.

**FOOD.** A substance of sufficient quantity and nutritious value to maintain each animal in good health, provided at suitable intervals, but at least once daily or as otherwise prescribed by a licensed veterinarian, appropriate to the species.

**FOWL.** A bird of any kind, domesticated or wild, including poultry.

**HOUSEHOLD.** All individuals who share the same residence, whether related or unrelated.

**IMPOUND.** The act of taking or receiving into custody by the Enforcement Officer any animal for the purpose of confinement in an authorized impound facility in accordance with the provisions of this Title.

**IMPOUND FACILITY.** Any establishment authorized for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of the Enforcement Officer in the performance of his or her official duties.

**INTENTIONALLY.** With respect to a result or to the conduct described by a law defining an offense where a person's objective is to cause that result or to engage in that conduct.

**KENNEL.** An enclosed controlled area inaccessible to other animals, in which a person keeps, harbors or maintains dogs under controlled conditions.

**KNOWINGLY.** With respect to conduct or to a circumstance described by a law defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists; it does not require any knowledge of the unlawfulness of the act or omission.

**MANAGER.** A person duly authorized by the owner to conduct business, act as an agent or otherwise carry out the legal rights and duties of the owner.

**MEDICAL ATTENTION.** Recommended procedures used to treat a particular disease, injury, infestation or ailment an animal may have in order to heal, alleviate or lessen the effects of that condition, or to prevent the animal from experiencing pain and suffering; treatment may be administered by either a licensed veterinarian appropriate to the species or the person who has custody or control of such animal, depending on the severity of the condition and on the knowledge, skills and ability of the person providing the proper treatment.

**OWNER.** Any person exercising care, custody or control of any animal for more than 6 consecutive calendar days, or claiming any legal interest in that animal; indicators of ownership also include any license, permit, certificate, registration or other documentation establishing a legal interest in such animal.

**PERSON.** Any individual, corporation, partnership, association or other legal entity.

**PERSONAL DOG KENNEL.** Any location where more than 12 dogs are kept, owned or controlled by a person or entity for companionship, enjoyment of the species, or for training for field working or obedience trials or exhibition for organized shows.

**PERSONAL DOG KENNEL PERMIT.** City authorization provided under Chapter 6.15 allowing a personal dog kennel.

**PET SHOPS.** Any commercial establishment at which animals, fowl or cold-blooded species are kept for sale, groomed or treated for vermin.

**PROTRACTED SUFFERING.** Allowing an animal to continue suffering a painful condition.

**PUBLIC NUISANCE.** An odor or noise that interferes with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons; when investigating public nuisance allegations, the Enforcement Officer shall take into consideration all factors that support any such allegations, including but not limited to: distances in which the complaining parties live from the offensive premises, number of complaining witnesses, number of complaining parties residing on the street or in the vicinity of the offensive premises, duration that the conditions existed, prior history of similar complaints, and communications between the complainants and the offending party.

**RABIES QUARANTINE AREA.** Any area in which a state of emergency has been declared to exist due to the occurrence of rabies in animals in or adjacent to this area.

**RECKLESSLY.** With respect to a result or to a circumstance described by a law defining an offense, of which a person is aware and consciously disregards, a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who creates such a risk, but who is aware of such risk solely by reason of voluntary intoxication, also acts recklessly with respect to such risk.

**RESPONSIBLE PERSON.** Any person currently delegated by the owner to exercise care, custody or control of an animal.

**SHELTER.** A protection from the elements, either manmade or natural with regards to the geographical locations and the type of protection needed, located within an animal's enclosure, in order to allow the animal free choice to utilize such protection. Notwithstanding the previous sentence, shelter is not required for livestock.

**UNSANITARY PREMISES.** Those premises on which animals, livestock or fowl are kept in a manner that creates insect and rodent breeding, noxious or offensive odors, or any other condition that is offensive to the senses of a reasonable person.

**VACCINATION.** The administration of an anti-rabies vaccine to animals by a veterinarian, or an authorized impound facility by employees trained by a veterinarian licensed by the State of Arizona.

**VETERINARIAN.** Any veterinarian licensed to practice in Arizona or any veterinarian employed in Arizona by a governmental agency.

**VETERINARY HOSPITAL.** Any establishment operated by a veterinarian licensed to practice in Arizona that provides clinical facilities and houses animals or birds for dental, medical or surgical treatment; a veterinary hospital may have adjacent to it, or in conjunction with it, or as an integral part of it, pens, stalls, cages or kennels for quarantine, observation or boarding.

**WATER.** A transparent, odorless and tasteless liquid compound of hydrogen and oxygen, of ambient temperature in sufficient volume as needed to maintain normal hydration for an animal.

### **6.05.031 License requirements.**

A. All dogs kept, harbored or maintained in the city must be licensed if over three months of age. Dog licenses shall be issued by the city or its designated agents upon payment of license fees as prescribed in Section 6.05.32 of this code. Duration and expiration of licenses shall be determined by Council resolution. The owner shall state, at the time application is made for such license, his name and address, his telephone number, the name, breed, color and sex of each dog and cat owned or kept by him.

B. If the license is not obtained by the owner prior to the expiration date of the license, or within thirty days of the date of first possession of any dog, or of its becoming three months old, or within thirty days from the arrival of the dog in the city, the license payment shall be deemed delinquent and a penalty as provided in the fee schedule established pursuant to Section 6.05.32 of this code shall be paid.

C. A guide dog belonging to a blind person or to any bona fide nonprofit organization which is in the business of breeding, raising or training dogs that are to be used for guiding the blind shall not be required to pay a license fee. A dog belonging to a law enforcement agency shall not be required to pay a license fee.

D. Each dog licensed under the terms of this chapter shall receive, at the time of licensing, a tag on which shall be inscribed the name of the city, the number of license and the date in which it expires.

E. Any person who knowingly fails within fifteen days after written notification from the animal control officer to obtain a license for an animal required to be licensed, or counterfeits an official animal license or removes the license from the animal for the purpose of intentional and malicious mischief or places an animal license upon an animal unless the license was issued for that particular animal is guilty of a Class 2 misdemeanor as punishable by the Section 6.05.990 of the City Code. With respect to violations of this chapter which are continuous with respect to time, each day the violation continues shall be deemed a separate offense.

F. Whenever the ownership of a dog has been changed, the new owner shall secure a transfer of license to the owner.

G. Dogs, while being used for hunting or dogs while being exhibited at shows or dogs while engaged in races approved by the Arizona Racing Commission and dogs while being transported to and from such events, need not have the license tag affixed to the animal; provided, that the animals are properly vaccinated and licensed. The owner, handler or agent for owner shall be in physical possession of animal's license.

H. Any animal subject to licensing under this chapter found not to be wearing a license shall be deemed unowned.

### **6.05.32 Licenses and tags generally.**

(A) License fees, as by resolution of the City Council, shall be paid for each dog three months of age and older that is kept, possessed, harbored or maintained within the boundaries of the city for at least 30 days of each calendar year. The amount of fees

may differentiate between sterilized and unsterilized dogs. Said resolution may provide for penalties for any delinquency in payment of required license fees.

(B) Durable dog tags shall be provided by the city. Each dog licensed under the terms of this article shall receive, at the time of licensing, such a tag on which shall be inscribed the name of the city, the number of the license and the year of issue. All dog tags shall expire as provided by Council resolution. The tag shall be attached to a collar or harness that shall be worn by the dog while on public premises at all times, except as otherwise provided in this article. Whenever a dog tag is lost, a duplicate shall be issued upon application by the owner and a replacement fee, as established by resolution of the City Council, shall be charged.

(C) The enforcement officer may apprehend and impound any dog found without a current valid license tag.

#### **6.05.032 License—Vaccination requirements.**

(A) Before a license is issued for any dog, the owner must present a rabies vaccination certificate signed by a veterinarian, stating the owner's name and address, and giving the dog's description, date of vaccination and type, manufacturer and serial number of the vaccine, and the date re-vaccination is due. A duplicate of each rabies vaccination certificate issued shall be transmitted to the Enforcement Officer on or before the tenth day of the month following the month in which the dog was vaccinated. No dog shall be licensed unless it is vaccinated in accordance with the provisions of this article.

(B) A dog vaccinated in any other place prior to entry into the city may be licensed in the city, provided that, at the time of licensing, the owner of the dog presents a vaccination certificate, signed by a veterinarian licensed to practice in that place or a veterinarian employed by a governmental agency in that place, stating the owner's name and address, and giving the dog's description, date of vaccination and type, manufacturer and serial number of the vaccine used. The vaccination must be in conformity with the provisions of this article. Upon renewal of a license, the owner must present a vaccination certificate by a veterinarian or agency that is in conformance with Title 11, Article 6 of the Arizona Revised Statutes.

(C) If a dog is impounded and found to be unvaccinated, the enforcement officer will cause the dog to be vaccinated at the pound at a cost to be borne by the owner. The vaccination shall be performed by animal control personnel or other qualified personnel to whom animal control personnel have delegated such duty, and who shall then issue a certificate of vaccination. The vaccinated animal shall not be released until such time as all vaccination, care and impound fees are paid in full.