

**DEVELOPMENT FEE CREDIT AGREEMENT  
La Estancia**

This Street Facilities Development Fee Credit Agreement (“Agreement”) is made and entered into, by and between Riedel Holdings, L.L.C., an Arizona limited liability company, (“Owner”), and the City of Yuma, an Arizona municipal corporation (“City”).

**WHEREAS** the owner has developed a new single family subdivision, La Estancia, in the vicinity of the southeast corner of Avenue 8½E and 40<sup>th</sup> Street; and,

**WHEREAS** Owner was required to provide a full design of 40<sup>th</sup> Street from Avenue 8½E to Avenue 8¾ E alignment and to construct the south half of 40<sup>th</sup> Street; and,

**WHEREAS** the City of Yuma accepted the infrastructure and started a one year warranty on the subdivision and 40<sup>th</sup> Street effective May 10, 2021; and,

**WHEREAS** the Owner is requesting a Transportation Development Fee credit for the construction of the south half width of 40<sup>th</sup> street across their frontage; and,

**WHEREAS**, the City has adopted development fees for new development to cover a portion of the costs necessitated by new development for capital public facilities; and,

**WHEREAS** the City adopted revised Land Use Assumptions and the Infrastructure Improvement Plan prepared for the North Service Area (Resolution R2019-005) on February 27, 2019; and,

**WHEREAS** the City adopted revised City of Yuma North Service Area Development Fee Ordinance (O2019-019) on May 15, 2019; and,

**WHEREAS**, Chapter 157 of the Yuma City Code allows for the provision of development fee credits calculated as the lower of the amount of the category of development fees due, the costs assumed in the City’s Infrastructure Improvements Plan, or the actual verified costs of dedication or construction; and,

**WHEREAS** the construction of 40<sup>th</sup> Street from Avenue 8E to Avenue 10E is listed in the FY 2021 to FY 2025 Capital Improvement Program as a Potential Infrastructure Project (PIP), TMP-MT-3-2; and,

**WHEREAS** the construction of 40<sup>th</sup> Street is included in the transportation portion of the current Infrastructure Improvement Plan as an arterial street from Ave 8E to Ave 10E on page 53; and,

**WHEREAS** the construction of the 40<sup>th</sup> Street Improvements provides benefits to the City and its residents, as a necessary transportation corridor.

**NOW THEREFORE**, in consideration of the above recitals, the Parties agree as follows:

1. **Incorporation of Recitals.** The Owner and City agree the recitals set forth above are true and accurate and incorporated by reference.
2. **Development Agreement.** This Agreement is a development agreement within the meaning of Arizona Revised Statutes § 9-500.05.
3. **Term.** This Agreement commences upon the date of beginning construction of the construction of the 40<sup>th</sup> Street Improvements described below (the “Effective Date”), and terminates on the 5<sup>th</sup> anniversary of the execution of the Agreement or at a time when all available Streets Facilities Development Fee Credits have been credited to the La Estancia subdivision being developed by Owner, whichever occurs first.
4. **40<sup>th</sup> Street Improvements.** Owner has provided a full design of 40<sup>th</sup> street from Avenue 8½ E to Avenue 8¾ E alignment, and constructed the South half of that portion of 40<sup>th</sup> Street.
5. **Development Fee Credits.** Pursuant to §157-02(C)(2)(c)(1) of the Yuma City Code, the Owner shall receive Streets Facilities Development Fee credits in the amount of \$862 Transportation Development Fees per home x 179 homes = \$154,298.00 representing the amount of the development fee due.
6. **Default.** If any Party defaults (the “Defaulting Party”) with respect to any of such party’s obligations hereunder, the other Party (the “Non-Defaulting Party”) shall be entitled to give written notice in the manner prescribed in Section 8 to the Defaulting Party. The notice shall state the nature of the default claimed and make demand that such default be corrected. The Defaulting Party shall then have (i) twenty (20) days from the date of such notice within which to correct such default if it can be reasonably corrected by the payment of money, or (ii) sixty (60) days from the date of such notice to cure the default if action other than payment of money is required. If any such non-monetary default cannot be reasonably cured within sixty (60) days, then a longer period may be agreed to in writing if signed by both parties.
7. **Remedies.** If any default is not cured within the applicable time set forth in Section 6 above, the Non-Defaulting Party shall have all remedies available to it at law or in equity, subject to the limitations set forth herein. Owner or City, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including but not limited to suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided that claims for damages shall be limited to actual damages as of the time of entry of judgment. The Parties waive any right to seek consequential, punitive, multiple, exemplary or any damages other than actual damages. This Section shall not limit any other rights, remedies, or causes of action that either Party may have at law or in equity.
8. **Notices.** All notices, demands or other communications must be in writing and are deemed delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

CITY:  
City Administrator  
One City Plaza  
Yuma, AZ 85366-3014

OWNER:  
Riedel Holdings L.L.C.  
P.O. Box 1649  
San Luis, Arizona 85349

If any party changes address, they must give written notice to the other parties. Notice of change of address is deemed effective 5 days after mailing by the party changing address.

9. **Successor and Assigns.** This Agreement is not assignable unless all Parties mutually consent in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
10. **Waiver.** No waiver of any provisions of this Agreement shall be binding upon either party unless in writing signed by all Parties.
11. **Governing Law, Venue and Damages.** The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The Parties must institute and maintain any legal actions or other judicial proceedings arising from this Agreement in Yuma County Superior Court and not elsewhere.
12. **Severability.** If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.
13. **Attorney Fees and Costs.** If either Party brings an action or proceeding for failure to observe any of terms or provisions of this Agreement, the prevailing Party may recover, as part of the action or proceeding, all reasonable costs, expenses, and attorney fees, as determined by the Court and not by a jury.
14. **Integration.** This Agreement contains the entire agreement between the Parties, and no oral or written statements, promises, or inducements made by either Party or its agents not contained or specifically referred to in this Agreement shall be valid or binding. By signing below, both Parties agree that any and all claims for Development Fee refunds, reimbursements, and Development Fee Credits shall be satisfied in accordance with the terms of this Agreement. All modifications to this Agreement must be in writing, and signed by the Parties.
15. **Construction.** The terms and provisions of this Agreement represent the results of negotiations between the parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.
16. **Authority to Execute.** The parties signing below represent and warrant that they have the requisite Authority to bind the entities on whose behalf they are signing, and that all appropriate resolutions authorizing this Agreement have been passed by the appropriate entity.

17. **Conflicts.** Notice is hereby given of the applicability of A.R.S. § 38-511.

18. **Recordation.** Pursuant to A.R.S. § 9-500.05, the City shall record a copy of this Agreement no later than ten (10) days from date of entering into this Agreement.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

City of Yuma

Riedel Holdings L.L.C., an Arizona Limited Liability Company.

By: \_\_\_\_\_  
Philip A. Rodriguez  
City Administrator

By: Nieves G. Riedel Living Trust dated  
October 17, 2019, Member

By: \_\_\_\_\_  
Nieves G. Riedel, Trustee

Attested:

By: \_\_\_\_\_  
Lynda L. Bushong  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
Richard W. Files  
City Attorney

**ACKNOWLEDGEMENTS**

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ of \_\_\_\_\_, 2021 by Nieves G. Riedel, Trustee of the Nieves G. Riedel Living Trust dated October 17, 2019, member of Riedel Holdings L.L.C., an Arizona Limited Liability Company, on behalf of the company.

In witness whereof, I have set my hand and official seal

My commission expires: \_\_\_\_\_ By: \_\_\_\_\_  
Notary Public