

When Recorded Return to:
City of Peoria
City Clerk's Office
8401 W. Monroe Street
Peoria, Arizona 85345

**WELL SITE DRILLING,
DESIGN, SERVICE, AND
CONSTRUCTION EXCHANGE AGREEMENT**

This is an Agreement for an exchange of property for construction and service of two well sites to be constructed, owned, and operated by the City ("**Agreement**") and is entered into this ____ day of _____, 2024 ("**Effective Date**"), by and between the City of Peoria, Maricopa County, an Arizona municipal corporation (the "**City**") and The Roman Catholic Church of the Diocese of Phoenix, an Arizona corporation sole (the "**Diocese**"). The City and Diocese may be individually referred to herein as "**Party**" or collectively as the "**Parties**".

RECITALS:

- A. Diocese is the owner of certain real property located in the vicinity of Lake Pleasant Parkway and the Loop 303 (Assessor Parcel Number: 201-02-008F) (the "**Parcel**") and preliminarily described on Exhibit A hereto.
- B. Diocese is holding the Parcel for the future development of a church campus and/or such additional improvements as the Diocese and/or its successors determines (the "**Project**").
- C. The siting of water supply wells within the City is constrained by well spacing requirements and the accessibility of water as affected by geological conditions.
- D. The City desires to obtain two well sites (the "**Property**" or the "**Well Site(s)**") and construct a municipal well on each Well Site to supplement the provision of water service to the area. The City has determined that the acquisition of the Well Sites will benefit the City in several ways including but not limited to allowing the City to provide water services to the area sooner than via any alternative, allowing the City to conduct preliminary tests on the aquifer without the expense of acquiring additional land, provide an alternative to CAP water in the area allowing for redundancy and potential emergency supply in the event of further CAP restrictions or other water shortage.
- E. Diocese desires to secure assured access to the potable water produced by these wells which will be available for use sooner than any alternative therefore accelerating the development of the Project.
- F. The Parties intend that pursuant to the terms of this Agreement, Diocese will provide Well Sites and easements (defined below) to the City and the City will design, construct, manage, and maintain a municipal well on each Well Site.

- G. City, in accordance with Article I, Section 3(1) of the Peoria City Charter, is authorized to exchange real property, and City’s Council has considered and approved the terms authorized by this Agreement and the direct consideration City will receive.

In consideration of the mutual promises and representations set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the City and Diocese agree as follows:

AGREEMENT:

1. **Incorporation of Recitals and Exhibits.** The Parties acknowledge that the Recital Paragraphs A through H inclusive (the “Recitals”) and Exhibits A-E inclusive are true and correct in all material respects and are incorporated into this Agreement as though fully set forth herein.
2. **Undertakings.** The Parties agree to the following “**Undertakings**”:
 - 2.1 **Diocese Undertakings.** Diocese agrees to undertake the following (the “**Diocese Undertakings**”):
 - 2.1.1 Within thirty (30) days of the Opening of Escrow, Diocese shall grant and present legal documentation for recordation to the City of the following:
 - 2.1.1.1 In fee that portion of the Property more particularly described on Exhibit "B" (“**Well Site #1**”);
 - 2.1.1.2 In fee that portion of the Property more particularly described on Exhibit "C" (“**Well Site #2**”);
 - 2.1.1.3 One water line easement more particularly described on Exhibit "D" (“**Easement #1**”); and,
 - 2.1.1.4 One roadway and public utility easement more particularly described on Exhibit "E" (“**Easement #2**”).
 - 2.2 **City Undertakings:** City agrees to undertake the following (the “**City Undertakings**”):
 - 2.2.1 Within thirty (30) days after the Close of Escrow, City at its sole cost and expense, shall initiate the process to:
 - 2.2.1.1 Design, drill, and construct one potable water well on Well Site #1;
 - 2.2.1.2 Design, drill, and construct one potable water well on Well Site #2;

- 2.2.1.3 Provide electrical conduit to the Property; and,
 - 2.2.1.4 Set aside a portion of each Well Site for the location of a transformer pad subject to APS input and regulations.
 - 2.2.2 Upon completion of the above City Undertakings and subject to all applicable laws, rules, regulations, orders, and directives, the City shall make available to the Diocese (and/or its any successor in interest to the Parcel or any portion thereof) for purchase, an assured water supply sufficient to serve the Project. Water provided to the Diocese will be metered and billed according to standard City policies and rates.
 - 2.3 Notwithstanding any other language in this agreement, all improvements on the Well Sites, constructed by the City, will be fully owned and operated by the City. The City will have full responsibility for and control of the improvements and the Diocese will have no right to access or use the improvements without written permission from the City.
3. Opening of Escrow and Close of Escrow. Escrow shall be opened when (i) one fully executed or counterparts of this Agreement executed by Diocese and City, respectively, have been delivered to Escrow Agent ("Opening of Escrow"). Escrow Agent shall advise Diocese and City, in writing, of the Opening of Escrow and the date thereof. Consummation of the purchase of the Property contemplated hereby (the "Close of Escrow" or "Closing Date") shall take place on or before the sixtieth (60th) day following Opening of Escrow (the "Closing Deadline"), and shall automatically terminate without any further notices, three (3) business days following the Closing Deadline unless otherwise extended as provided in this Agreement or by mutual agreement of the parties. At or before Close of Escrow, each party shall execute and deliver such documents and perform such acts as are provided for herein. All monies and documents required to be delivered under this Agreement shall be deposited in Escrow on or before 5:00 p.m. Arizona Time on the Closing Date.
4. Title Insurance; Conveyance of Title. The Property, including all rights and privileges appurtenant to or arising from the Property, shall be conveyed in fee simple absolute by Diocese to City upon Close of Escrow by Diocese's special warranty deed ("Deed") in the form attached hereto as Exhibit F, warranting title to the Property against all acts of Diocese subject to: (i) taxes not yet due and payable at Close of Escrow (subject to proration as hereinafter provided); (ii) reservations in patents from the United States or the State of Arizona; and (iii) any other matters disclosed by the preliminary title report (or any amended report) which are deemed waived or approved by City in accordance with Section 7. Escrow Agent shall commit to issue or cause to be issued a standard coverage ALTA owner's policy of title insurance for which City shall bear the cost. The easements shall be in the form attached hereto as Exhibits G and H.

5. Possession. Upon Close of Escrow, Diocese shall vacate the Property and deliver possession to City, and all risk of loss of, or damage to, the Property from any source shall, at that time, pass to and become the sole responsibility of City.
6. Closing; Fees, Taxes, and Assessments; Costs.
 - 6.1 At Close of Escrow, a Standard ALTA Owner's Policy of title insurance shall be issued by Escrow Agent through its authorized underwriter(s) insuring City's fee simple title to the Property, subject to the usual printed exceptions contained in such title insurance policies, those matters which appear as exceptions in the Commitment and which are not objected to or are waived in the manner described in Section 7, and any other matters approved in writing by City ("Title Policy"). The Premium for the Title Policy will in the amount determined by City. The cost of a standard Title Policy in the amount of the Purchase Price shall be borne by City. In the event City desires an ALTA Extended Policy and/or any endorsement to the Title Policy, or to increase the liability amount of the Title Policy, the additional cost shall be borne by City, including without limitation the cost for obtaining any necessary survey or updated survey (the "Survey").
 - 6.2 At Close of Escrow, the recording fees with respect to the Deed and any other documents to be recorded at Close of Escrow, and any escrow fees and charges shall be paid by City. All non-delinquent real property taxes and any other assessments to or charges against the Property shall be paid by Diocese prorated to Close of Escrow based upon the most recent assessments.
 - 6.3 At Close of Escrow, Diocese shall deliver a Non-Foreign Person Affidavit, and each and every document, agreement, and/or instruments contemplated under this Agreement or reasonably required by the Escrow Agent in connection with the Closing.
 - 6.4 At Close of Escrow, City shall deliver any escrow fees and charges, and any documents, agreements, and/or instrument contemplated under this Agreement or reasonably required by Escrow Agent in connection with the Close of Escrow.
7. City's Contingencies. City's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (which may be waived by City in a writing signed by City or its duly authorized agent):
 - 7.1 Status of Title. Escrow Agent, as soon as is reasonably possible after execution of this Agreement, shall provide City and Diocese with a preliminary report of the title to the Property (the "Commitment"), disclosing all matters of record and Escrow Agent's requirements for both closing the Escrow created by this Agreement and issuing the Title Policy described in Section 6 of this Agreement (the Commitment also shall be suitable to serve as the basis for issuance of an ALTA extended form coverage lender's title insurance policy). After such time as City receives the Commitment City shall have ten (10) business days after receipt of the Commitment (and the Survey, if applicable) to object in writing to any matter shown in the

Commitment or the Survey. If City fails to object within the ten (10) business days, the condition of title to the Property shall be deemed approved by City. In the event City does object in writing to any matter disclosed in the Commitment or the Survey, Diocese may, but shall not be required to attempt to remove such objection before Close of Escrow. If Diocese fails to notify City within five (5) business days after receipt of such objections that Diocese has elected to eliminate the objectionable matters prior to the Closing, such failure shall be deemed Diocese's election not to eliminate any such matter. If Diocese notified City in writing of its election not to eliminate any such objectionable matter or is deemed to have elected not to eliminate any such matter, City shall elect within five (5) business days after receipt of Diocese's notice (or, if applicable, five (5) business days after the date on which Diocese is deemed to have elected not to eliminate any such matter) to either: (i) cancel this Agreement; or (ii) proceed with this Agreement waiving any objections and taking title subject to such matters. Failure to give notice to Diocese of City's election shall constitute an election to waive the objection and proceed with this Agreement. If Diocese timely elects to eliminate a disapproved exception from the Commitment prior to the Closing, Diocese shall be obligated to do so by either causing such disapproved exception to be eliminated entirely from the Commitment or to be endorsed over in form and substance reasonably acceptable to City.

7.2 Environmental Contamination and Assessment of Property. Diocese represents and warrants that except as disclosed to City within five (5) days of Opening of Escrow, it does not possess any actual knowledge or information it has with regard to any current or historical environmental contamination of the Property. Notwithstanding Diocese's obligation to disclose, City shall have until the expiration of the Due Diligence Period to obtain a Phase I Environmental Assessment (the "Assessment"). If the Assessment indicates that a Phase II Environmental Assessment ("Phase II") is warranted, City will not be required to close the Escrow pending completion of the Phase II, and the Close of Escrow may be extended by sixty (60) days for City to obtain the Phase II. If the Phase II concludes contamination exists, City may elect to cancel this Agreement.

7.3 Investigation. City shall have thirty (30) days after Opening of Escrow (the "**Due Diligence Period**") to conduct such other tests and investigations, other than those described in Subsections 7.1 and 7.2 above, as City deems at its discretion to be material to its determination whether the Property is suitable for City's purposes. Upon prior reasonable notice to Diocese, Diocese shall permit access to the Property by City to inspect and perform any such tests during the Due Diligence Period. In the event City fails to notify Diocese by the conclusion of the Due Diligence Period that the Property or any part thereof is not suitable for its purposes, then City shall be deemed to have accepted the Property and waived any objections relating to matters within the scope of this Section 7.3. In the event City does so notify Diocese, however, Diocese shall have the option to either undertake to remediate such conditions to City's reasonable satisfaction or to terminate this Agreement, whereupon City and Diocese shall have no further obligations hereunder, other than liabilities or obligations explicitly stated to survive termination. City agrees to indemnify, defend, and hold harmless Diocese for, from, and against any and all

claims caused by City's exercise of the rights granted by this Section 7.3, including, without limitation, any claims relating to mechanics' or materialmen's liens as a result of City's activities pursuant to this Agreement.

7.4 City shall have the right to cancel this Agreement prior to expiration of the Due Diligence Period for any reason.

8. As a material inducement to the execution and delivery of this Agreement by Diocese, City does hereby acknowledge, represent, warrant and agree that Diocese is conveying the Property in an "AS IS" and "WHERE IS" condition as of the Close of Escrow, and that City is and will be relying strictly and solely upon its own inspections and examinations of the Property and the advice and counsel of its agents and officers. Except as specifically set forth in this Agreement, Diocese is not making and has not made any warranty or representation with respect to all or any part of the Property as an inducement to Buyer to enter into this Agreement and City shall assume the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the condition of the Property, including, without limitation, the presence of any hazardous substances in, on, under or about the Property, and City hereby expressly and unconditionally waives and releases Diocese, and its respective officers, directors, agents, and employees, and their respective successors, heirs, and assigns and each of them (individually and collectively, the "Released Parties") from any and all rights and claims with respect to the condition of the Property, except for Diocese's express representations and warranties herein and the performance of Seller's duties hereunder. City acknowledges and agrees that the foregoing waiver and release includes all rights and claims pertaining to the condition of the Property, whether heretofore or now existing or hereafter arising, or which could, might, or may be claimed to exist, of whatever kind or nature, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length, which in any way arise out of, or are connected with, or relate to, the condition of the Property.
9. Indemnification. Each Party shall indemnify and hold harmless the other Party, its directors, officers, employees, and agents, for, from and against all claims, demands, suits and costs including, but not limited to, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities, whether direct or indirect, and whether to any person including, but not limited to, employees of the Party, or to property, to which the other Party, its directors, officers, employees, or agents may be put or subject to by reason of (i) any act or omission by the respective Party, or any of its directors, officers, employees, agents, or invitees relating to the Party's actions under this Agreement by any person or entity, including but not limited to the Party and the party's employees, agents, contractors, or invitees; or (ii) any failure on the part of the other Party, or any of its directors, officers, employees, or agents to fulfill its obligations hereunder except to the extent that any loss, damage, expense, and liability is attributable to the negligent or willful acts and misconduct of the Party, its directors, officers, employees, and agents. The provisions of this Section 9 shall survive revocation and/or termination of this Agreement.

10. Relationship of the Parties. It is acknowledged and understood that the contractual relationship between the Parties is undertaken pursuant to this Agreement and nothing contained in this Agreement will create any partnership, joint venture or agency relationship between the City and Diocese. No term or provision of this Agreement is intended to, or will be, for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation will have any right or cause of action hereunder, whether as a third party beneficiary or otherwise, unless stated herein.
11. Term. Unless terminated sooner, this Agreement shall terminate when all of the Undertakings described in Section 2 have been completed; provided, however, that the provisions of Section 2.2.2 and 2.3 shall survive any termination of this Agreement following completion of the Undertakings. In the event that this Agreement is terminated prior to completion of the Undertakings, then neither Party shall have any further rights or obligations under this Agreement, except for any rights or obligations that specifically survive the termination of this Agreement. The Parties may agree in writing to terminate this Agreement at any time prior to any real estate interests being conveyed or dedicated to the City. The City may elect to terminate this Agreement at any time during the Due Diligence Period in its sole discretion due to the City's dissatisfaction with any aspect of the Well Sites.
12. Miscellaneous. The following additional provisions apply to this Agreement:
 - 12.1 Amendments and Interpretation. This Agreement may be amended or cancelled only by a formal writing executed by both Parties. The City's City Manager may exercise his or her administrative authority to correct scrivener's errors, administer, and approve amendments to this Agreement, without seeking additional approval from the City Council. The City Council authorizes its City Manager or the City Manager's designee to exercise his or her administrative authority to act under this Section 12.1, without seeking additional approval from the City Council.
 - 12.2 Severability. Upon mutual written agreement of the Parties, if any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.
 - 12.3 Further Instruments and Documents. Each Party hereto shall, promptly upon the request of the other Party, acknowledge and deliver to the other Party any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of the Agreement.
 - 12.4 Notices. Notices hereunder (each, a "**Notice**") shall be given in writing delivered to the other Party or other applicable person or entity, or mailed by registered or

certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight courier service that confirms delivery. With respect to the Parties, a Notice shall be addressed to a Party as follows:

To City:

Henry Darwin, City Manager
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

With a copy to:

Emily Jurmu, City Attorney
City's Counsel: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

To Diocese:

Buildings and Properties Department
The Roman Catholic Diocese of Phoenix
400 East Monroe St.
Phoenix, Arizona 85004

With a copy to:

Legal & Compliance Office
The Roman Catholic Diocese of Phoenix
400 East Monroe St.
Phoenix, Arizona 85004

Service of any Notice in accordance with the foregoing shall be deemed to be complete three (3) Working Days (excluding Friday, Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive.

- 12.5 Integration Clause; No Oral Modification. The Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other written or verbal agreements between the Parties with respect to the Well Sites and Easements. This Agreement may not be changed, modified, or rescinded, except in writing, signed by all parties hereto.
- 12.6 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. Parties have been represented by legal counsel, both Parties have participated in the drafting of this Agreement, and this Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against either Party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to

its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Diocese or City.

- 12.7 Section Headings. The section headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of the Agreement.
- 12.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 12.9 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to the Agreement nor have any right or cause of action hereunder, except that a successor to Diocese's interest to the Parcel or any portion thereof shall have all rights of Diocese as set forth in Section 2.2.2. Except as specifically provided herein, neither Party shall have liability to third parties for the other's acts of omissions, failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.
- 12.10 Days. If the last day of any time period stated in this Agreement or the date on which any obligations to be performed under this Agreement falls on a Friday, Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday.
- 12.11 Attorneys' Fees. If legal action is brought by a Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorney fees and costs as determined by the court or other decision maker.
- 12.12 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.
- 12.13 Venue & Jurisdiction. Legal actions regarding and related to this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Diocese agree to the exclusive jurisdiction of such courts. Claims by Diocese shall comply with time periods and all other requirements of City's claims procedures from time to time.
- 12.14 No Liability of City Officials. Notwithstanding any other language in the Agreement, no City Council Member, officer, director, trustee, partner, principal, member, employee, agent, affiliate, official, representative, agent, attorney, or employee of the City shall be personally liable to Diocese, or to any successor in interest to Diocese, in any way whatsoever including without limitation in the event of Default by the City, for any amount that may become due to Diocese or its successors, or with respect to any obligation of the City under the terms of the Agreement.

12.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

12.16 Time is of the Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

12.17 Arizona Law Provisions. To the extent required by Arizona State law:

12.17.1 No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement, that is prohibited by law. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

12.17.2 Diocese certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in § 35-393, Arizona Revised Statutes, of Israel.

12.17.3 To the extent applicable under A.R.S. § 41-4401, Diocese warrants compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with the e-verify requirements under A.R.S. § 23-214(A). The failure by Diocese to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

12.17.4 To the extent applicable under A.R.S. § 35-394, Diocese hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People’s Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China, and (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURES FOLLOW ON NEXT PAGES]**

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

CITY:

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Henry Darwin, City Manager

Date: _____

ATTEST:

Agnes Goodwine, City Clerk

Date: _____

APPROVED AS TO FORM:

Emily Jurmu, City Attorney

Date: _____

DIOCESE:

The Roman Catholic Church of the Diocese of Phoenix, an Arizona corporation sole

By: _____

Its:

Date: _____

STATE OF ARIZONA
County of Maricopa

On this _____ day of _____, 2024, before me personally appeared *****, *****, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be and acknowledged that he signed the above/attached document.

EXHIBIT A
Legal Description for the Property

EXHIBIT B

Legal Description of Well Site #1

EXHIBIT C

Legal Description of Well Site #2

EXHIBIT D

Legal Description of Easement #1

EXHIBIT E

Legal Description of Easement #2

EXHIBIT F

Special Warranty Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
The Roman Catholic Diocese of Phoenix
400 East Monroe Street
Phoenix, AZ 85004-2336
Attn: Legal and Compliance Office

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration,

THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF PHOENIX,
an Arizona corporate sole

does hereby convey to

CITY OF PEORIA, MARICOPA COUNTY, an Arizona municipal corporation

the following real property situated in Maricopa County, Arizona:

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, covenants, conditions and restrictions as may appear of record.

And the Grantor hereby binds itself and its successors to warrant and defend the title, against all acts of the Grantor herein, and no other, subject to the matters set forth.

DATED: _____

THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF PHOENIX,
an Arizona corporate sole

BY: _____

NOTARY ACKNOWLEDGMENT(S) TO SPECIAL WARRANTY DEED

STATE OF ARIZONA)
)§
County of Maricopa)

On this ____ day of _____, 2024, before me, the undersigned Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed within the Beneficiary Deed, and acknowledged to me that she executed the same for the purposes therein contained.

WITNESS my hand and official seal

Notary Public

EXHIBIT G

Form of Water Line Easement

EXHIBIT H

Form of Roadway and Public Utility Easement