

When recorded return to:

City of Yuma

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### ROADWAY EASEMENT AGREEMENT

**THIS ROADWAY EASEMENT AGREEMENT** (the "**Agreement**") is entered into as of the \_\_\_\_\_ of \_\_\_\_\_, 2021, by and between **YUMA ELEMENTARY SCHOOL DISTRICT NO. 1**, a political subdivision of the State of Arizona ("**Grantor**") and the **CITY OF YUMA, ARIZONA**, an Arizona municipal corporation ("**Grantee**").

### WITNESSETH

**WHEREAS**, Grantor is the owner of that certain tract or parcel of land in Yuma County, Arizona, legally described on Exhibit A attached hereto and made a part hereof (the "**Easement Area**"); and

**WHEREAS**, Grantee has requested from Grantor and Grantor is desirous of granting to Grantee for the public, an easement for purposes of (a) pedestrian and vehicular access, ingress and egress, (b) grading or otherwise placing, constructing, installing, maintaining and repairing public roadway improvements consistent with the use of the Easement Area (as defined below) for pedestrian and vehicular access, ingress and egress, and (c) installation, use, maintenance and repair of utilities provided by one or more utility providers, including but not limited to utility lines for water, sewer, electrical, telecommunications, gas, storm drainage and such other public utility services as Grantee reasonably deems necessary, in, on, over, under, through and across the Easement Area; and

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant to Grantee, for the public, an perpetual, non-exclusive easement for purposes of (a) pedestrian and vehicular access, ingress and egress, (b) grading or otherwise placing, constructing, installing, maintaining and repairing roadway improvements consistent with the use of the Easement Area for pedestrian and vehicular access, ingress and egress, and (c) installation, use, maintenance and repair of utilities provided by one or more utility providers, including but not limited to utility lines for water, sewer, electrical, telecommunications, gas, storm drainage and such other public utility services as Grantee reasonably deems necessary, in, on, over, under, through and across the Easement Area with the following conditions:

1. **Easement.** Grantor hereby grants to Grantee, for the public, a perpetual non-exclusive easement (the "**Easement**") for purposes of (a) pedestrian and vehicular access, ingress and egress, (b) grading or otherwise placing, constructing, installing, maintaining and repairing roadway improvements consistent with the use of the Easement Area for pedestrian

and vehicular access, ingress and egress (the "**Roadway Improvements**"), and (c) installation, use, maintenance and repair of utilities provided by one or more utility providers, including but not limited to utility lines for water, sewer, electrical, telecommunications, gas, storm drainage and such other public utility services as Grantee reasonably deems necessary, in, on, over, under, through and across the Easement Area.

2. **Use.** Grantee, through its officers, employees and agents, shall have the right to enter upon the Easement Area in such a manner and at such times from the date hereof as may be reasonably necessary for the purpose of constructing, installing, repairing, replacing and maintaining thereon the Roadway Improvements and any necessary appurtenances, including such repairs, replacements and removals as may be from time to time required.

3. **Improvements.** Any improvements constructed within the Easement Area shall be constructed in a good and workmanlike manner and in compliance with all applicable codes, ordinances and regulations. Grantor hereby agrees not to block in any way, restrict or impede access to or from, or full use of, the Easement Area by Grantee; or convey to a third party any easement, or other interest or right of use of the Easement Area, that would unreasonably impair or limit the Easement rights granted herein. Grantor hereby agrees that in the event of any encroachment upon the Easement or Easement Area and/or the Roadway Improvements, Grantee shall have the right to require removal of such encroachment, and same shall be accomplished within a reasonable period of time by Grantor, at Grantor's expense. Failure of Grantee to so exercise its right to require removal of any such encroachment shall neither constitute waiver of this right, nor preclude other remedies available to the Grantee.

4. **Temporary Construction Easement Area.** Grantor hereby grants to Grantee the use of such additional area immediately adjacent to said Easement Area (the "**Temporary Construction Easement Area**") as shall be reasonably required for installation, repair, construction, operation and/or maintenance of the Roadway Improvements within said Easement Area. Said Temporary Construction Easement Area shall be used periodically only for the length of time necessary to complete construction, repair or maintenance of the Roadway Improvements within the Easement Area.

5. **Runs with the Land.** The Easement is for the benefit of Grantee and burdens the Easement Area. The rights and obligations of this Agreement shall run with the land. The acceptance by any person or entity of any interest in the Easement Area, or any portion thereof, constitutes an agreement by such person or entity to perform all obligations imposed hereby and not to use, occupy or allow any use or occupancy of its property in a manner that would violate or breach any of the provisions of this Agreement.

6. **Successors and Assigns.** This Agreement and each of the terms, provisions, conditions and covenants herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors, agents, designees or assigns. No third party shall be entitled to enforce any term, covenant or condition of this Agreement, or have any rights hereunder.

7. **Not a Partnership.** No term of this Agreement shall be deemed to create a partnership between Grantor or Grantee or their respective tenants or occupants, nor shall this Agreement cause any of them to be considered joint venturers.

8. **Hazardous Materials.** Neither the City nor its contractors, employees, suppliers or other agents shall bring or store or permit the release of any hazardous materials

on the Easement Area. As used herein the term "hazardous materials" shall mean all materials and substances subject to any environmental laws as of the date of this Easement, including, without limitation, (i) any element, compound, mixture, solution, or substance which is now or hereafter designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. ("CERCLA") or any regulations promulgated under CERCLA, and (ii) any hazardous waste, toxic pollutant, hazardous air pollutant, imminently hazardous chemical substance or mixture, hazardous materials, gasoline, diesel fuel or other petroleum hydrocarbons, asbestos and asbestos containing materials in any form whether friable or non-friable, radon gas, polychlorinated biphenyl, and mold or any additional element or compound contained in the list of hazardous substances now or hereafter adopted by the United States Environmental Protection Agency. During the term of this Easement, the City and its contractors shall, at the City's sole cost, comply with all federal, state or local law, statute, rule, ordinance, order, regulation or other legal requirement concerning public health, safety or the environment and the City's use of the Easement Area, including but not limited to all applicable stormwater runoff and dust control requirements and regulations. In the event the City or any of its contractors, employees, suppliers or other agents bring or store or permit the release of any hazardous materials on the Easement Area during the term of this Easement, the City shall, at its sole cost and expense, cause the remediation thereof in accordance with applicable federal, state or local law, statute, rule, ordinance, order or regulation, which obligation of the City shall survive the expiration of the term of this easement.

9. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and all prior and contemporaneous representations and understandings, written or oral, are hereby superseded and merged into this Agreement. This Agreement may only be amended by a recorded document executed by the parties to this Agreement or their successors of record.

10. **Validity of Easement Unaffected by Breach.** The breach of this Easement shall not entitle any party to rescind or otherwise terminate its obligations hereunder or the rights and easements created hereunder.

11. **Headings.** The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

12. **Remedies; Attorneys' Fees and Costs.** In addition to any other remedies available herein or at law or in equity, the parties shall have the right to maintain an action at law for actual damages sustained as a result of the breach of this Agreement (but specifically excluding exemplary, punitive, or consequential damages) and/or to enjoin or otherwise restrain any such breach, or continuing breaches thereafter. All costs and expenses incurred by the non-breaching party to seek damages from, or equitable relief against, a defaulting party as a result of breaches of this Agreement, together with the non-breaching party's reasonable attorneys' fees, expert witness fees, costs of tests and analyses, deposition and trial transcript costs and costs of court shall be assessed against, and paid by, the defaulting party.

13. **Waiver.** No waiver of, acquiescence in, or consent to any breach of any term, covenant or condition of this Agreement shall be construed as a waiver of or acquiescence in, or consent to any other, further or succeeding breach of the same or any other term, covenant or condition.

14. **Severability**. If any term or provision of this Agreement shall, to any extent be invalid or unenforceable under applicable law, then the remaining terms and provisions of this Agreement shall not be affected thereby, and each of such remaining terms and provisions shall be valid and enforced to the extent permitted by law

15. **Governing Law**. This Agreement shall be recorded in the office of the County Recorder of Yuma County, Arizona. The Easement shall be construed, governed and enforced in accordance with the laws of the State of Arizona

16. **Counterparts**. This Agreement may be executed in any number of counterparts, all such counterparts will be deemed to constitute one and the same instrument, and each such counterpart will be deemed an original hereof. For purposes of recording, the signature and acknowledgment page(s) may be detached from one or more counterparts and reattached to a single duplicate original of this Agreement.

**EXECUTION PAGES FOLLOW**

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

GRANTOR:

**YUMA ELEMENTARY SCHOOL DISTRICT NO. 1**,  
a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF ARIZONA  
COUNTY OF YUMA

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Yuma Elementary School District No. 1, a political subdivision of the State of Arizona, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he/she signed this Roadway Easement Agreement, consisting of \_\_\_\_\_ pages, including this page and all exhibits, on behalf of the District.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public in and for the State of Arizona

[SIGNATURES CONTINUE ON NEXT PAGE]

**GRANTEE**

**CITY OF YUMA, ARIZONA**, an Arizona municipal corporation

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_

STATE OF ARIZONA  
COUNTY OF YUMA

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared \_\_\_\_\_, \_\_\_\_\_ of the CITY OF YUMA, ARIZONA, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he/she signed this Roadway Easement Agreement, consisting of \_\_\_\_\_ pages, including this page and all exhibits, on behalf of the CITY.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public in and for the State of Arizona

**EXHIBIT A**  
Legal Description of Easement Area



**EXHIBIT "A"**

**LEGAL DESCRIPTION  
FOR  
APN 197-01-007  
RIGHT-OF-WAY  
CITY OF YUMA**

That portion of the Northeast Quarter of the Southeast Quarter of Section 1, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

COMMENCING at the brass in hand hole stamped "LS 25069" found at the East Quarter Corner of said Section 1, from which the Bureau of Land Management (BLM) brass cap in hand hole found at the Center of said Section 1 bears South 89 degrees 56 minutes 51 seconds West a distance of 2,647.65 feet, said line being the North line of said Southeast Quarter, and said line being the basis of bearing;

Thence along the East line of said Southeast Quarter, South 00 degrees 12 minutes 59 seconds East a distance of 48.91 feet to a point;

Thence South 89 degrees 47 minutes 01 second West a distance of 33.00 feet to a point on the corner of the existing west right-of-way line of Avenue 10 E and the existing south right-of-way line of 28<sup>th</sup> Street, said point also being the POINT OF BEGINNING;

Thence along said west right-of-way, South 00 degrees 12 minutes 59 seconds East a distance of 594.42 feet to a point;

Thence South 89 degrees 47 minutes 01 seconds West a distance of 18.00 feet to a point on a line parallel with and 51.00 feet distant from said East line of the Southeast Quarter;

Thence along said parallel line, North 00 degrees 12 minutes 59 second West a distance of 594.48 feet to a point on said south right-of-way line of 28<sup>th</sup> Street;

Thence along said south right-of-way line, North 89 degrees 56 minutes 51 seconds East a distance of 18.00 feet to the POINT OF BEGINNING.

Containing an area of 10,700 SQUARE FEET or 0.246 ACRES, more or less

**See attached Exhibit "B"**



12/1/2020

SHEET 1 OF 3

850.013B

P:\800\850013B - North Frontage Road and Avenue 10E  
Reconstruction\ID\_PRODUCTION\Survey\S05\_Legal Descriptions\197-01-007\197-01-007  
ROW.docx



**EXHIBIT B**  
Depiction of the Easement Area

# EXHIBIT "B"

RIGHT-OF-WAY  
197-01-007  
CITY OF YUMA

FOUND BLM BCHH  
CENTER OF SEC 1  
T9S, R22W

28TH ST

S 89°56'51" W 2,647.65

FOUND BCHH STAMPED LS 25069  
E 1/4 COR. SEC 1, T9S, R22W

APN 197-01-007  
YUMA ELEMENTARY  
SCHOOL DIST. #1

P.O.B

L5

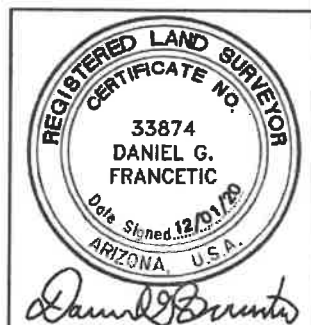
L3

ROW  
10,700 SF  
0.246 AC

L4

AVE 10 E.

SCALE: N.T.S.



## LEGEND

 RIGHT-OF-WAY

## BASIS OF BEARING

THE NORTH LINE OF THE SOUTHEAST  
QUARTER OF SECTION 1  
BEARING S89°56'51"W



**Entellus™**

3033 N. 44th Street, Suite 250  
Phoenix, AZ 85018  
Tel 602.244.2566  
Fax 602.244.8947  
Website www.entellus.com

## CITY OF YUMA

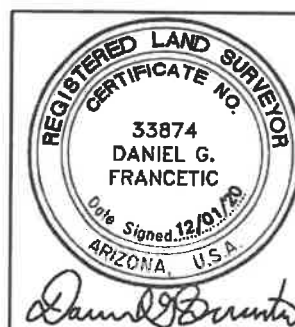
APN 197-01-007  
SECTION 1, T9S, R22W

## RIGHT-OF-WAY

DATE: 12/01/20 REV'D:  
DRAWN BY: JME|CHK'D: DGF|PG: 2 OF 3  
FILE: 197-01-007\_TCE.DWG

**APN 197-01-007**

LINE	BEARING	DISTANCE
L1	S 00°12'59" E	48.91'
L2	S 89°47'01" W	33.00'
L3	S 00°12'59" E	594.42'
L4	S 89°47'01" W	18.00'
L5	N 00°12'59" W	594.48'
L6	N 89°56'51" E	18.00'



**LEGEND**



RIGHT-OF-WAY

**BASIS OF BEARING**

THE NORTH LINE OF THE SOUTHEAST  
QUARTER OF SECTION 1  
BEARING S89°56'51"W



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**CITY OF YUMA**

APN 197-01-007

SECTION 1, T9S, R22W

**TEMPORARY CONSTRUCTION  
EASEMENT**

DATE: 12/01/20 REV'D:

DRAWN BY: EAW CHK'D: DGF PG: 3 OF 3

FILE: 197-01-007\_TCE.DWG