



**BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS**

Award Contract Grant

Requested Board Meeting Date: September 19, 2017

* = Mandatory, information must be provided

or Procurement Director Award

***Contractor/Vendor Name/Grantor (DBA):**

Freeport Minerals Corporation

***Project Title/Description:**

License Agreement between Pima County and Freeport Minerals Corporation

***Purpose:**

The purpose is to allow Pima County and Tucson Recycling Waste Services (contractor) employees to enter Freeport Minerals Corporation's property and excavate daily and final landfill cover material (when it closes) to be used at Pima County's Ajo Landfill located in Ajo, AZ.

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

***Program Goals/Predicted Outcomes:**

The Pima County Ajo Landfill will have access to landfill cover material which will help to achieve compliance with environmental regulations.

***Public Benefit:**

Pima County residents of Ajo, AZ, will benefit from obtaining landfill cover at a reduced cost. Having adequate landfill cover is required by law and will reduce the number of birds and rodents attracted to the trash that would not be covered at the landfill. This will allow the Ajo Landfill to comply with environmental regulations required in their permit with the state of Arizona.

***Metrics Available to Measure Performance:**

The number of loads that are necessary to cover the trash received at the Ajo Landfill for that day will be the determining factor to measure completion of the project.

***Retroactive:**

No

TO: COB 8-23-17 (1)
Vers.: 1
PSS.: 11

Procure Dept 08/23/17 PM 01:42

Contract / Award Information

Document Type: CT Department Code: DE Contract Number (i.e.,15-123): 18*36

Effective Date: 9/19/2017 Termination Date: 12/31/2042 Prior Contract Number (Synergen/CMS): None

Expense Amount: \$* \$12,500.00 Revenue Amount: \$ _____

*Funding Source(s) required: General Fund

Funding from General Fund? Yes No If Yes \$ 500.00 annually % _____

Contract is fully or partially funded with Federal Funds? Yes No

*Is the Contract to a vendor or subrecipient? No

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e.,15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

Expense or Revenue Increase Decrease Amount This Amendment: \$ _____

Is there revenue included? Yes No If Yes \$ _____

*Funding Source(s) required: _____

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e.,15-123): _____

Effective Date: _____ Termination Date: _____ Amendment Number: _____

Match Amount: \$ _____ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? _____

Contact: Ursula Nelson

Department: Environmental Quality Telephone: 724-7454

Department Director Signature/Date: Ursula Nelson 8/16/17

Deputy County Administrator Signature/Date: [Signature] 8/18/17

County Administrator Signature/Date: [Signature] 8/21/17
(Required for Board Agenda/Addendum Items)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made by and between FREEPORT MINERALS CORPORATION, a Delaware corporation, ("Grantor"), and PIMA COUNTY, an Arizona political subdivision ("Grantee").

Subject to the terms and conditions set forth herein and for good and valuable consideration, the parties hereto state, confirm and agree as follows:

AGREEMENT

1. Grant of Access and License.

Grantor hereby grants to Grantee and to Grantee's employees, vendors, and contractors a non-exclusive license (the "License") to enter on the property depicted on Exhibit "A" attached hereto (the "License Property") and made a part hereof for the purposes of excavation of landfill cover material from the License Property (the "Purposes") for five hundred dollars (\$500.00) per year payable to Grantor.

2. No Implied Rights; No Representations or Warranties.

Notwithstanding anything herein to the contrary with respect to the License Property, Grantor makes no representations or warranties, express or implied, including warranties of title, and Grantee agrees to accept and use the License Property in "AS IS" condition and to bear all risks associated with the License Property. Grantee is entering into this Agreement and shall use the License Property based on Grantee's inspection and investigation of all matters pertaining thereto and not in reliance on any representation, warranty or agreement of Grantor. Grantee agrees that the License is subject and subordinate to all existing easements, rights-of-way and other rights, including, without limitation, all matters of record and all matters that can be disclosed by a physical inspection and survey of the License Property.

3. Duties and Obligations of Grantee.

Grantee shall exercise reasonable care in its use of the License Property and shall, at the expense of Grantee, regularly inspect, maintain, repair and keep those portions of the License Property that Licensee actually uses in a good, safe, clean and workmanlike condition. Grantee shall comply with all laws, rules and regulations, now in force and hereafter enacted, including, without limitation, all environmental, safety and health related laws and regulations, in connection with its use of the License Property. Grantor shall have no duty or obligation to inspect or maintain the License Property. Grantee shall repair and replace, at its expense, any present or future street, roadway, improvement, structure, building, fence, gate, landscaping or vegetation that is disturbed, destroyed or damaged as a result of Grantee's construction, maintenance, protection, repair, replacement or removal on the License Property. Specifically, Grantee shall comply with the following obligations, the breach of any of which constitutes default as outlined in Section 13:

- A. Grantee agrees to limit its excavation and removal of material from the License Property to two thousand (2,000) cubic yards of material per calendar year from the Commencement date through calendar year 2041. In calendar year 2042, Grantee shall be entitled to excavate and remove up to, but not exceeding One Hundred Ten Thousand (110,000) cubic yards of material. All material removed from the License Property shall be solely utilized as cover material for the existing landfill on Grantee's adjoining property and shall not be utilized in any other manner or place.
- B. Grantee acknowledges that the limit of One Hundred Ten Thousand (110,000) cubic yards of excavated and removed material during calendar year 2042 is for the express purposes of capping the landfill on Grantee's adjoining property to the License Property during closure of said Landfill. Grantee shall notify Grantor, not less than 365 calendar days prior to said closure, if said closure is earlier than calendar year 2042.
- C. Proper care shall be taken to ensure that all side slopes created by any excavation not result in a slope greater than 4:1 not to exceed ten feet below ground level.
- D. Grantee agrees to construct and maintain in good condition a four strand fence of at least four feet in height on the unexcavated ground surrounding the excavation on the License Property and will provide appropriate alternating signage in English and Spanish stating No Trespassing and Warning Open Trench.

4. Term.

The "Term" of this License commences on the day it is signed by Grantor and Grantee (the "Commencement Date"), and terminates on the 31st day of December, 2042 or at such earlier time as herein provided (the "Termination Date"). Grantee shall be entitled to possession of the License Property on the Commencement Date.

5. Early Termination.

Grantor may terminate the Agreement immediately upon Grantee's failure to cure a default as provided in Section 13 herein.

6. No Liens.

Grantee shall at all times keep and maintain the License Property free and clear of any and all liens, claims, demands, obligations, liabilities and causes of action arising out of or in any manner relating to any work, including maintenance and repair work, performed on the License Property for or on behalf of Grantee or arising out of the use of or presence on the License Property by Grantee and its contractors, vendors, guests, invitees, agents and employees. If any demand, claim, lien or cause of action is filed, asserted or made on, against or with respect to the License Property as a result of any of such work or use, Grantee shall cause such lien, demand, claim or cause of action to be dismissed, released, and discharged therefrom no later than ten (10) days thereafter or commence proceedings to dismiss, release and discharge within ten (10) days and diligently pursue such proceedings until completed.

7. Indemnification and Release.

Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. Nothing in this Section 7 shall modify any other terms and conditions of this Agreement including, but limited not limited to: (i) that Grantee shall take the License Property in "AS IS" condition and bear all risks associated with the License and the condition of the License Property; and (ii) that Grantor shall have no duty or obligation to inspect or maintain the License Property in a condition suitable to the Purposes.

8. Environmental Issues.

A. Grantee shall, in its use of the Licensed Property, comply, and shall cause all of its employees, agents, representatives, contractors, invitees and other third parties to comply, with all federal, state and local laws, statutes, rules, ordinances, codes and regulations relating to environmental protection, public health and safety, nuisance or menace, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and its state and local counterparts presently in effect or amended or promulgated in the future (collectively, "Environmental Laws"). Grantee agrees to assume and perform any duties and obligations under any Environmental Laws relating to the generation, management, and disposal of any substance, material, pollutant, contaminant, or waste that Grantee generates at the License Property.

B. Grantee expressly warrants, represents and agrees that it will take all reasonable measures to ensure that no Hazardous Substances (as hereinafter defined) will be released or disposed of on, under, or about the License Property either by Grantee or any of its employees, agents, representatives, contractors, invitees or other third parties. "Hazardous Substances" shall mean any substance, material, pollutant, contaminant, or waste, whether solid, gaseous or liquid, that is infectious, toxic, hazardous, explosive, corrosive, flammable or radioactive, and that is regulated, defined, listed or included in any Environmental Law, including, but not limited to, asbestos, petroleum, or petroleum additive substances, polychlorinated biphenyls, urea formaldehyde, or waste tires.

C. Grantee shall not, and shall cause all of its employees, agents, contractors, and invitees and other third parties to agree not to, bring onto the License Property any Hazardous Substances without the prior written consent of Grantor, and further agrees not to generate, handle, use, store or treat any Hazardous Substances on the License Property. Notwithstanding the foregoing, Grantor agrees that Hazardous Substances which are necessary in connection with the operation of the Grantee's construction activities shall be allowed on the License Property with the express written consent of Grantor as long as Grantee complies with all applicable Environmental Laws.

D. Nothing in this Agreement or in this Section 8 shall indemnify Grantor or relieve Grantor from its liability or responsibility, if any, related solely to its use of the License Property. Nor shall Grantee indemnify Grantor or its predecessors or successors in interest for any environmental issues related solely to the possession or use of Hazardous Substances on the License Property prior to the date of this Agreement. Nor shall Grantee indemnify Grantor or its predecessors or successors in interest for any environmental issues related to the possession or use of any Hazardous Substances on the License Property to which Grantor has granted prior written consent. Grantee agrees to remediate the License Property for any alleged violations of Environmental Laws if such alleged violations arise out of or in connection with Grantee's possession or use of Hazardous Substances on the License Property without Grantor's prior written consent.

E. Grantee agrees that throughout the term of the License, it shall obtain and maintain any required variances (under A.R.S. § 49-763.01), or amendments to its landfill plan (under 40 C.F.R. § 258.21(b), A.R.S. § 49-762.06, and the Arizona Department of Environmental Quality's guidance regarding changes to landfill cover), to legally authorize the use of all material that Grantee excavates from the License Property as daily cover and final landfill capping material. Before using material that Grantee excavates from the License Property as landfill cover, Grantee shall provide Grantor with a copy of the variance(s) or amendment(s) that legally authorize Grantee to use the material for that purpose.

9. Environmental Notification.

Grantee and its employees, agents, representatives, contractors, invitees and other third parties shall promptly notify Grantor: (i) upon becoming aware of any release or threatened release of a Hazardous Substance under, on, from or about the License Property; (ii) of any proceeding, inquiry or notice from any federal, state or local body, commission, council, board or authority ("Governmental Authority") or others with respect to the use or presence of any Hazardous Substances on the License Property, or the migration thereof to or from other property; and (iii) of all claims made or threatened by any third party against the License Property relating to loss or injury from any Hazardous Substance.

10. Insurance.

Grantee is self-insured pursuant to A.R.S. § 41-621.

11. Not a Public Dedication.

Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of Grantor's property to the general public or for any public purpose whatsoever, and this Agreement shall be strictly limited to and for the purposes expressed herein.

12. No Assignment.

Grantee shall have no right to make any assignment of its rights, benefits or obligations hereunder and any such assignment shall be null and void and shall result in the immediate termination of this Agreement unless such assignment is prior approved by Grantor. Any such assignment with

prior approval of Grantor shall require the assignee to be obligated by the terms and conditions of this Agreement. Grantee and Grantor intend that this Agreement "touches and concerns" the License Property and is intended to run with the land that is the License Property.

13. Default.

In the event Grantee breaches any of the terms, conditions or agreements herein contained and such breach is not cured to the reasonable satisfaction of Grantor within thirty (30) days after notification thereof to Grantee, Grantor shall have the right to terminate this Agreement effective immediately and, in addition thereto, take such legal action as Grantor shall determine, including the right to seek damages and/or specific performance and injunctive relief hereunder, provided that if any such cure will take more than thirty (30) days to complete and Grantee commences such cure within the thirty (30) day period and completes the cure within a commercially reasonable time, Grantee will be considered to be in compliance with this section.

14. Fees and Costs.

If either party to this Agreement shall institute suit against the other to enforce its rights under this Agreement or to seek damages by reason of a breach of this Agreement and obtain a valid judgment against the other, the prevailing party shall be entitled to receive all its costs and attorneys' fees incurred, such attorneys' fees to be fixed by the judge of the court of the applicable jurisdiction, sitting without a jury.

15. Time of Essence.

Time is of the essence of this Agreement.

16. Governing Law.

This Agreement shall be governed by the laws of the State of Arizona. Any court action to be brought pursuant to this Agreement must be filed in an appropriate court in Pima County, Arizona.

17. Complete Agreement.

This Agreement constitutes the entire understanding between the parties with respect to the subject matter and replaces all other prior or contemporaneous premises, agreements and understandings. This Agreement may not be modified except by written agreement or amendment signed by both Grantor and Grantee, except as provided herein.

18. Notices.

Any notice, demand, request, consent, approval or other communication which any parties required to or desires to give or make to the other party shall be in writing and shall be given by delivery in person, by telecopy or by postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

If to Grantor:

Freeport Minerals Corporation
333 N. Central Ave.
Phoenix, Arizona 85004
Attention: Land & Water Department

If to Grantee:

Pima County
Department of Environmental Quality
33 N. Stone Ave., Suite 700
Tucson, AZ 85701
Attention: Director

19. Rights Reserved by Grantor.

Grantor and its agents, employees, tenants, contractors, invitees, licensees, and representatives (collectively "Grantor's Permittees") shall have the right to use and occupy the License Property for any and all purposes, including, without limitation, ingress and egress, the operation, maintenance, construction, relocation, repair and replacement of utilities, and the placement of any structures upon and within the License Property, and the extraction of rock and minerals from the License Property or from adjacent or subjacent lands provided that such activities do not hinder, conflict or cause detriment to Grantee's facilities, create a safety hazard or otherwise unreasonably interfere with Grantee's use of the License Property.

20. Termination of Grantor's Liability.

Grantor shall not be liable for any matter occurring or obligation arising hereunder after conveyance and assignment of all its rights, title and interest in and to the License Property and upon any such conveyance or assignment of the Licensed Property, this License shall be terminated, unless otherwise agreed to by Grantor.

21. Termination of License.

Upon termination of this Agreement, including a termination following a breach hereunder, Grantee shall immediately remove any under and above ground equipment that Grantee has used or installed upon the License Property at the sole expense of Grantee, without damage or destruction to the License Property, and shall return the License Property to substantially the same condition as existed prior to Grantee's entry upon and use of the License Property except for any excavation of material that Grantee has made pursuant to this License. If, upon the termination of this Agreement, Grantee fails to remove such under and above ground equipment that Grantee is required to remove, or fails to repair damage caused by such removal, Grantor shall have the right to remove such under and above ground equipment, wires, property and appurtenances and repair such damage and collect upon demand from Grantee all costs incurred in such removal or repair.

Grantor may, in its sole discretion, determine that Grantee need not restore the License Property to its prior condition upon termination of this Agreement or at any time thereafter. In such case, a duly authorized president or vice-president of Grantor shall notify Grantee of such determination in writing within five (5) days before the termination of the Agreement.

22. No Partnership.

The relationship of the parties is that of Grantor and Grantee under the subject License, and it is expressly understood and agreed that Grantor and Grantee do not in any way or for any purpose become partners or joint venturers.

23. Severability.

Each covenant, condition and provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any covenant, condition or provision of this Agreement shall be held to be void or invalid, the same shall not affect the remainder hereof which shall be effective as though the void or invalid covenant, condition or provision had not been contained herein.

24. Cancellation.

Grantee may cancel this Agreement within three (3) years of execution pursuant to the provisions of A.R.S. §38-511.

25. Arbitration.

In the event of a dispute between the parties to this Agreement, it is agreed to use arbitration to resolve the dispute, but only to the extent required by A.R.S. §§12-133 and 12-1518.

26. Non-Discrimination.

The parties agree to be bound by applicable State and Federal law governing Equal Employment Opportunity, Non-Discrimination and Disabilities, including Executive Order No. 2009-09.

27. Appropriations.

This Agreement shall be subject to available funding, and nothing in this Agreement shall bind Grantee to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement.

28. Authority.

Grantee represents and warrants to Grantor that Grantee has the statutory power and authority to bind itself to the terms of this Agreement and that all such power and authority has been properly delegated to the contracting officer executing this Agreement on behalf of Grantee.

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

Accepted and approved

FREEPORT MINERALS CORPORATION, a Delaware corporation

WRCobb
William E. Cobb, VP Environmental Services
& Sustainable Development

07/24/2017
Date

STATE OF ARIZONA)
 Maricopa) ss.
County of ~~Pima~~)

ACKNOWLEDGED before me this 24th day of July, 2017,
by William E. Cobb, as V.P. of Freeport Minerals Corporation, a Delaware
Corporation, on behalf of the Corporation.

Sandra G. Skinner
Notary Public

My Commission Expires: July 22, 2018



PIMA COUNTY, a political subdivision of the State of Arizona

Chair, Board of Supervisors


Date

ATTEST:

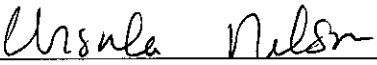
Julie Castaneda, Clerk of Board

Date


APPROVED AS TO CONTENT:



Neil J. Konigsberg, Manager, Real Property Services



Ursula Nelson, Director

 8/18/17

Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:

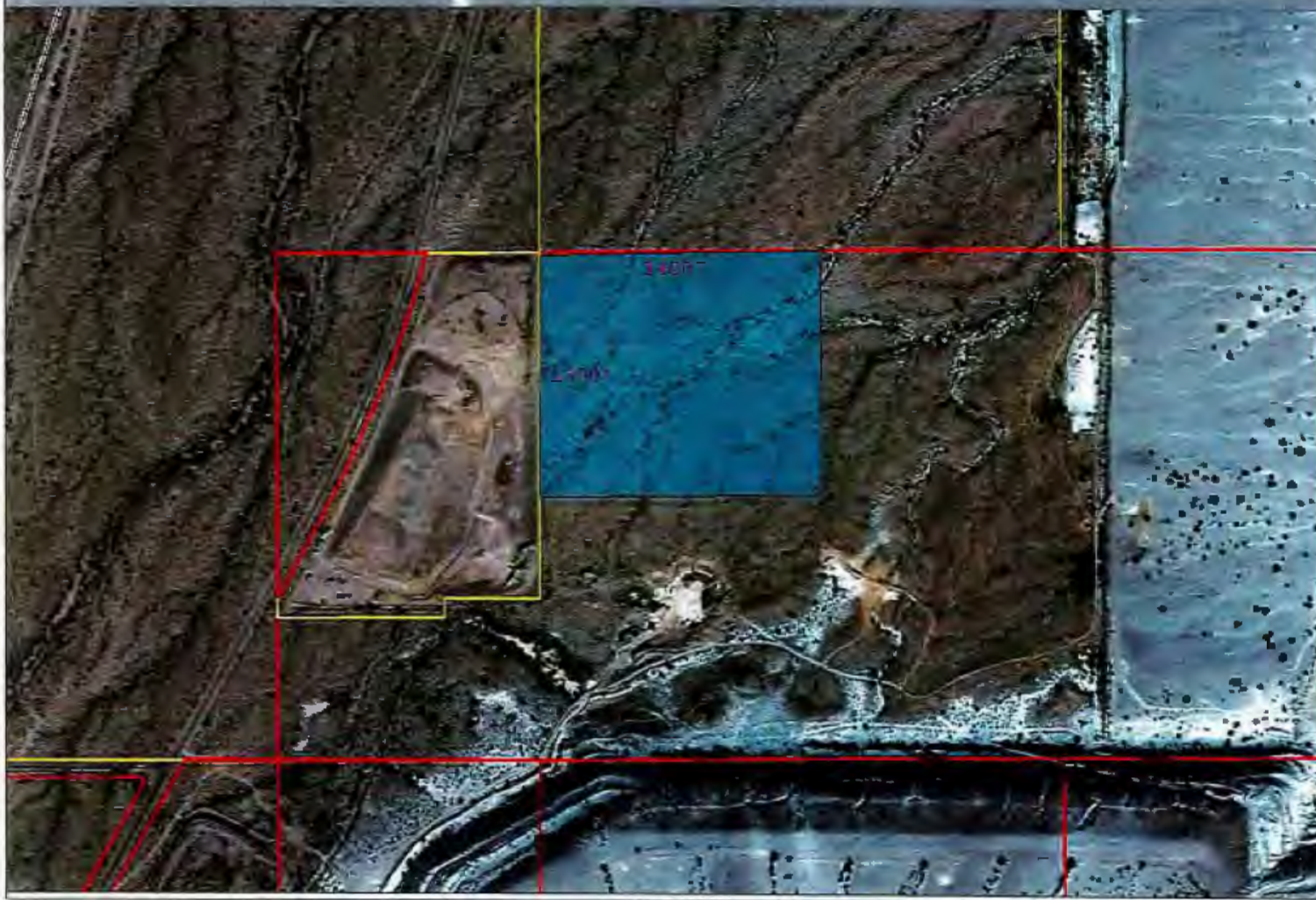


Charles Wesschoff, Deputy County Attorney

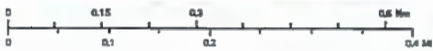
EXHIBIT "A"
LICENSE PROPERTY



Exhibit A - License Property (Blue Shaded Area) 1,300 ft. by 1,400 ft.



- Railways
- ⊞ Power Poles
- ⊞ Communication Poles
- ⊞ Natural Gas Meters
- ⊞ Manholes
- Power Lines
- Communication Lines
- Natural Gas Lines
- FiberOptics Lines
- Water Lines
- Sewer Lines
- Buildings
- Rivers
- ⋯ Right of Way (ROW)
- ⋯ Easements
- FeeLands**
- ⋯ FCX
- Others



Enterprise GIS Team
Tuesday, December 27, 2016
Copyright: