



Contract Number: CTN. PW- 15 * 113
Effective Date: 4-7-15
Term Date: 4-7-16
Cost: ✓
Revenue: ✓
Total: NTE:
Action: 1-1-16
Renewal By:
Term: 4-7-16
Reviewed by: VR

BOARD OF DIRECTORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: April 7, 2015

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

Pima County ("County") has negotiated a Pedestrian Easement Agreement (the "Agreement") with Freeport-McMoRan Sierrita, Inc., a Delaware corporation ("Freeport"), pursuant to which Freeport has agreed to convey to County, by donation, a Permanent, Non-Exclusive, Non-Motorized Recreational Trail Easement (the "Easement"), 10 feet in width, over and upon Freeport-owned Tax Parcel 304-19-002E, which parcel is located to the West of the Santa Cruz River in Green Valley, Arizona. The total Easement Area, which is legally described and depicted on Exhibits A and B to the Agreement, will cover approximately 0.0458 acres. The County will utilize the Easement Area specifically as a critical piece of the Juan Bautista De Anza Trail.

STAFF RECOMMENDATION(S): *Staff recommends that the BOS approve and execute the Pedestrian Easement Agreement with Freeport for the donation of a Trail Easement covering 0.0458 acres of open space over and upon Freeport-owned Parcel No. 304-19-002E, and approve and execute the form of Pedestrian Easement Agreement submitted herewith.*

Ver. - 1
Vendor - 1
Pgs. - 11

To: COB- 3.25.15 (2)

PIMA COUNTY COST: \$0.00 and/or REVENUE TO PIMA COUNTY: \$ -0-

FUNDING SOURCE(S): _____

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

☐

YES

☒

NO

Board of Supervisors District:

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All

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IMPACT:

IF APPROVED: County will have added a crucial connection to its planned Juan Bautista De Anza Trail by donation rather than purchase.

IF DENIED: County will have failed to avail itself of a valuable donation of an Easement necessary for connecting the planned portions of the Juan Bautista De Anza Trail.

DEPARTMENT NAME: Real Property Services

CONTACT PERSON: Michael D. Stofko TELEPHONE NO.: 520-724-6667

**Pima County Department of
Real Estate Services
Public Works Center
201 North Stone Avenue, 6th Floor
Tucson, Arizona 85701**

reasonable time, and to trim, prune, or remove any trees or shrubs located within or outside the limits of the Easement Property that in the judgment of Grantee may interfere with the use of said Easement. Notwithstanding the immediately foregoing, Grantor hereby reserves unto itself, for its benefit and the benefit of its successors and assigns, all mineral rights and groundwater rights associated with the Easement Property located forty (40) feet or more below the surface of the Easement Property, including but not limited to the right to access and mine such minerals and access and pump such groundwater. In addition, Grantor hereby reserves unto itself, for its benefit and the benefit of its successors and assigns, a perpetual easement and privilege to run with and bind the Easement Property to include the right to release and discharge dust, sand, tailings, dirt, noises and vibrations from mines, dumps, and other facilities located on lands now or hereafter owned by the Grantor, its successors and assigns adjacent to or in the vicinity of the Easement Property, and to allow and permit such dust, sand, tailings, dirt, noises, vibrations to be carried over and across the Easement Property, either by wind, water, air currents or otherwise, without incurring any liability for or on account of any damage or injury to Grantee's interest in the Easement Property or to any vegetation, facilities, improvements, property, or persons located thereon, including the Easement.

2. No Implied Rights; No Representations or Warranties.

Notwithstanding anything herein to the contrary with respect to the Easement and the Easement Property, Grantor makes no representations or warranties, express or implied, including representations as to the accuracy or completeness of the information shown on the Exhibits attached hereto, and Grantee agrees to accept and use the Easement Property in "AS IS" "WHERE IS" condition and to bear all risks associated with the Easement and the condition of the Easement Property. Grantee is entering into this Agreement and shall use the Easement 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 Easement is subject 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 Easement Property.

3. Duties and Obligations of Grantee.

Grantee shall exercise reasonable care in its use of the Easement Property and shall, at the expense of Grantee, regularly inspect, maintain, repair and keep the Easement Property, in a good, safe, clean and workmanlike condition. Grantee shall comply with all applicable 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 Easement and Easement 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 or repair, of the Easement Property.

4. No Liens.

Grantee shall at all times keep and maintain the Easement 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 construction and installation of the Easement and maintenance and repair work, performed on the Easement Property for or on behalf of Grantee or arising out of the Permitted Use of the Easement Property by Grantee and its 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 Easement 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.

5. Indemnification and Release.

To the fullest extent allowable by law, Grantee, and Grantee's individual assigns that access and use the Easement Property, agree to indemnify, defend, protect and hold Grantor, its successors and assigns, officers, directors, employees, partners, representatives and agents, and the Grantor's Property harmless from, of, for and against any and all liabilities, claims, damages, demands, obligations, expenses, costs, including attorneys' fees and court costs, and causes of action resulting from, arising out of or relating to:

- a) the use, construction, maintenance, operation and repair of the Easement or the Easement Property by Grantee and its guests, invitees, agents, contractors and employees;
- b) any equipment, lines, facilities, or other property placed or maintained on the Easement Property by or for Grantee; and/or
- c) any of Grantee's operations or activities which may result in damage or loss to other property, real and personal, including, without limitation, under- and above ground utilities and facilities, owned by Grantor located near or adjacent to the Easement Property.

Grantee, and Grantee's individual assigns that access the Easement Property, hereby release and forever discharge Grantor, its successors and assigns, officers, directors, employees, partners, representatives and agents, of and from any and all liabilities, claims, obligations, causes of action, costs and expenses arising out of or relating to any manner based upon or related to Grantee's use of the Easement Property. Grantee's obligations under this Paragraph survive the termination of this Agreement.

6. Environmental Issues.

To the fullest extent allowable by law, Grantee shall comply, and shall cause all of its employees, agents, representatives, contractors, invitees and other third parties to comply, with all applicable federal, state and local laws, statutes, rules, ordinances, codes and regulations applicable to the Easement Property at any time, relating to environmental protection, public health and safety, nuisance or menace, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601-et seq., and its state and local counterparts presently in effect or amended or promulgated in the future (collectively, "Environmental Laws"). Grantee expressly warrants, represents and agrees that no Hazardous Substances (as hereinafter defined) will be released or disposed of on, under, or about the Easement 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. 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 Easement 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 Easement Property.

To the fullest extent allowable by law, Grantee shall indemnify, defend, protect and hold Grantor, its past, present and future corporate parents, subsidiaries and affiliates, and each of their past, present and future officers, directors, shareholders, employees and agents, and each of their respective successors and assigns (collectively, "Indemnitees"), harmless from and against any and all losses, damages, liabilities, claims, lawsuits, agency orders, attorneys' fees, costs, expenses, fines, penalties or response costs, including any claims asserted under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601-~~et seq.~~, and its state and local counterparts, asserted against any Indemnitee by any entity or individual, arising out of or in connection with the use of the Easement Property, or for the breach of any covenant contained in Section 6 of this Agreement. The agreements contained in this Section 6 shall survive the expiration of any portion of this Agreement.

7. Environmental Notification.

Grantee and its employees, agents, representatives, contractors, invitees and other third parties shall promptly notify Grantor upon becoming aware of: (i) any release or threatened release of a Hazardous Substance under, on, from or about the Easement Property; (ii) 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 Easement Property, or the migration thereof to or from other property; and (iii) all claims made or threatened by any third party against the Easement Property relating to loss or injury from any Hazardous Substance.

8. Insurance.

Grantee, at its expense, shall obtain and maintain during the term of this Agreement the insurance coverage described on **Exhibit "C"** attached hereto, which shall name Grantor as an additional insured. A written certification of such insurance shall be provided to Grantor prior to Grantee's entry on to the Premises, and notice of any policy change or material change shall be given to Grantor thirty (30) days prior to said change. Grantor reserves the right to amend Exhibit "C" from time-to-time, but not more often more than once every twelve (12) months during the Term of this Agreement with thirty (30) days prior written notice to Grantee whereupon Grantor may cause an amendment of this Agreement specifying the requirements of amended **Exhibit "C"** to be recorded in the Official Records of Pima County, Arizona. Grantee may satisfy the requirements of this Section 8 through a program of self-insurance.

9. 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 previously approved in writing by Grantor. Any such assignment shall require the assignee to be obligated by the terms and conditions of this Agreement and shall not release Grantee of its liabilities and obligations under this Agreement.

10. 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 attorneys' fees, witness fees (including expert witness fees) and other litigation-related expenses incurred, with the attorneys' fees to be fixed by the judge of the court of the applicable jurisdiction, sitting without a jury.

11. Time of Essence.

Time is of the essence of this Agreement.

12. Governing Law.

This Agreement shall be governed by the laws of the State of Arizona. Any action, claim, dispute or litigation arising under this Agreement shall be brought and maintained in the Superior Court of Arizona in and for the County of Pima.

13. Notices.

Any notice, demand, request, consent, approval or other communication which any party is 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 Grantee:

**Pima County Real Property Services
201 North Stone Avenue, 6th Floor
Tucson, AZ 85701**

If to Grantor:

**Freeport-McMoRan Sierrita Inc.
c/o Freeport-McMoRan Corporation
Attn: Land & Water Department
333 North Central Avenue
Phoenix, AZ 85004**

14. 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

Easement Property for any and all purposes, including, without limitation, ingress and egress, the operation, maintenance, construction, relocation, repair of any other utilities on the Easement Property, and the placement of any structures upon and within the Easement Property, provided that such other utility easements and structures constructed by Grantor and Grantor's Permittees 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 Easement Property.

Grantor reserves the right to require Grantee to relocate the Easement and/or appurtenant facilities to another area of Grantor's property selected by the mutual agreement of the parties. Grantor shall provide Grantee with thirty (30) days prior written notice of Grantor's desire to exercise this option. Upon completion of the relocation of the Easement and/or appurtenant facilities, Grantor shall reimburse Grantee for Grantee's reasonable costs incurred in relocation of the Easement and appurtenant facility.

15. 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 Easement Property.

16. Termination of Easement.

If Grantee or the public ceases to use the Easement Property for the Permitted Use for a continuous, uninterrupted period of one (1) year, all rights granted to Grantee hereunder shall automatically terminate without notice. Upon termination of this Agreement, Grantee shall, at Grantor's option, remove or abandon in place any under- and above ground Easement, at Grantee's sole expense, without damage or destruction to the Easement Property, and shall return the Easement Property to substantially the same condition as existed prior to Grantee's entry upon and use of the Easement Property.

17. No Dedication.

Nothing in this Agreement shall be construed to create a public dedication or conveyance to the public or to any governmental agency or to any third party or to give any party other than Grantee and its successors and assigns any rights hereunder. Notwithstanding the immediately foregoing, Grantor acknowledges and agrees that the Permitted Use includes the ability of the public to enter upon and use the Easement Property for non-motorized recreational purposes.

18. Counterparts.

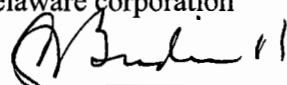
This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[SIGNATURE BLOCKS APPEAR ON NEXT PAGE.]

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

GRANTOR:

FREEPORT-MCMORAN SIERRITA
INC., a Delaware corporation

By: 
Its: Vice President and General Manager

GRANTEE:

PIMA COUNTY, a political subdivision
of the State of Arizona

Sharon Bronson, Chair
Pima County Board of Supervisors

ATTEST:

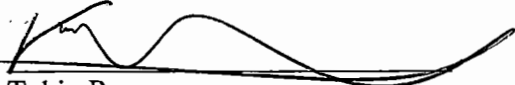
Robin Brigode, Clerk of the Board

APPROVED AS TO CONTENT:



Neil J. Konigsberg, Manager
Pima County Real Property Services

APPROVED AS TO FORM:



Tobin Rosen
Deputy County Attorney, Civil Division

STATE OF AZ }
COUNTY OF Pima } ss.

The foregoing Pedestrian Easement Agreement dated FEB 11, 2015 comprised of
____ pages from Freeport-McMoRan Sierrita Inc. as Grantor in favor of Pima County as Grantee
was acknowledged before me this 11 day of Feb, 2015, by
John Broderick, the VP / GM of Freeport-McMoRan
Sierrita Inc., a Delaware corporation, on behalf of the corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

B. Tison
Notary Public



STATE OF _____ }
COUNTY OF _____ } ss.

The foregoing Pedestrian Easement Agreement dated _____, 2015 comprised of
____ pages from Freeport-McMoRan Sierrita Inc. as Grantor in favor of Pima County as Grantee
was acknowledged before me this _____ day of _____, 2015, by
_____, the _____ of Pima County, a
political subdivision of the State of Arizona, on behalf thereof.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

EXHIBIT "A"
Legal Description

A portion of Pima County Tax Assessor Parcel Number 304-19-002E described as follows:



19 August 2014

EXHIBIT "A"
LEGAL DESCRIPTION

All that portion of Parcel "S" as described in Docket 7753 at Page 832 and shown as an excluded parcel on Green Valley Country Club Estates Lots 1 thru 154 and Blocks 1 thru 14, a subdivision plat recorded in Book 20 of Maps and Plats at Page 29, recorded in the office of the Pima County Recorder, Arizona, being located within a portion of the San Ignacio De La Canoa Land Grant, Pima County, Arizona, more particularly described as a 10.00 foot wide strip lying 5.00 feet on each side of the following described centerline:

COMMENCING at the southeast corner said Parcel "S", a found $\frac{1}{2}$ " rebar tagged "RLS29873", to which the southwest corner of said parcel, a found $\frac{1}{2}$ " rebar tagged "RLS29873", bears South $83^{\circ}55'09''$ West, (Basis of Bearing for this description), a distance of 380.80 feet:

THENCE along the south line of said parcel South $83^{\circ}55'09''$ West a distance of 108.84 feet to the **POINT OF BEGINNING** of said centerline;

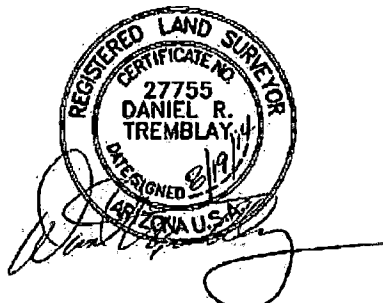
THENCE North $41^{\circ}15'28''$ East a distance of 34.89 feet;

THENCE North $10^{\circ}55'50''$ East a distance of 53.47 feet to the beginning of a tangent curve concave to the west having a radius of 49.59 feet and a central angle of $62^{\circ}18'26''$;

THENCE along the arc of said curve to the left a distance of 53.93 feet to a point of tangency;

THENCE North $51^{\circ}22'36''$ West a distance of 57.12 feet to a point on the north line of said Parcel "S" and the **POINT OF TERMINUS** of said centerline.

The sidelines of said centerline to be lengthened or shortened to intersect with said north and south lines of said Parcel "S".



Expires 31 March 2015

EXHIBIT "B"

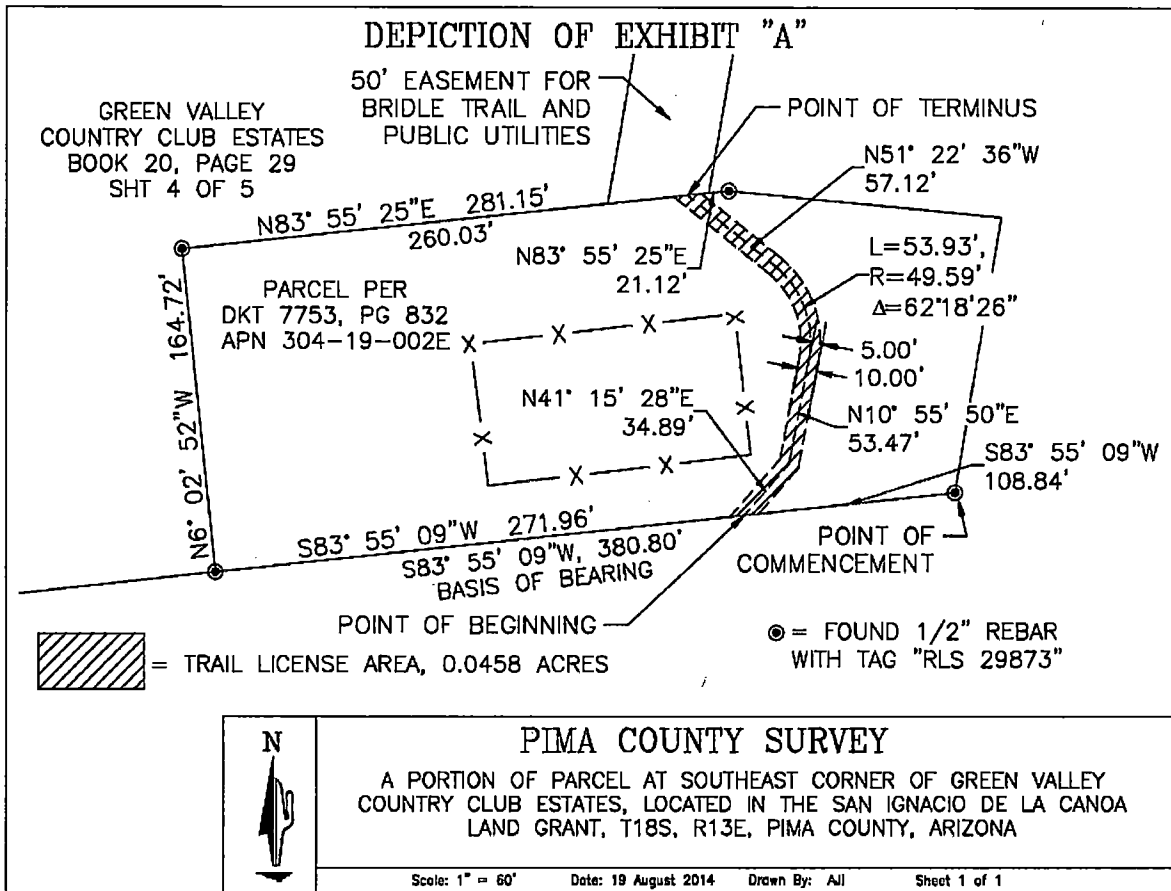


Exhibit "C"
(Insurance Requirements)

Grantee shall continuously maintain the following minimum insurance coverage during the term of the Easement Agreement and at any other time that Grantee or its agents, employees and contractors enter, or perform activities on the Easement Property:

1. Commercial general liability insurance coverage, (at least as broad as comprehensive general liability insurance coverage), with a broad form comprehensive general liability endorsement of single limits of no less than \$2,000,000.00 per occurrence, and aggregate limits of no less than \$2,000,000.00, for bodily injury, death, personal liability and property damage liability on a claims-made basis.
2. Automobile and liability insurance covering owned, non-owned, leased and hired vehicles with combined single limits of no less than \$1,000,000.00 per occurrence of bodily injury, death, and property damage liability on a claims-made basis.
3. Worker's compensation insurance in the statutory amounts for the State of Arizona and employer's liability insurance with limits of not less than the applicable State of Arizona statutory minimums or \$100,000/\$100,000/\$500,000, whichever is greater.

The insurance policies shall contain no exclusions or limitations with regard to explosion, collapse or underground hazard coverage. The insurance policies shall name Grantor as an additional insured. The policies shall state that Grantee's coverage is primary and that the inclusion of more than one insured shall not operate to impair the right of one insured against another insured and the coverage afforded shall apply as though separate policies had been issued to each insured. All the insurance policies shall contain an endorsement providing that written notice by certified mail, return receipt requested shall be given by the insurer to Grantor at least thirty days prior to termination, cancellation, non-renewal or modification or reduction of coverage of any policy. The insurance policies shall contain a cross-liability endorsement permitting recovery by one insured as against the other for the negligence of the other. All insurance policies shall contain a contractual liability endorsement covering Grantee's liability under this Agreement and all contracts entered into by Grantee to insure Grantee's indemnity obligations and other insurable provisions of this Agreement. The insurance policies shall contain no co-insurance provisions. Grantee shall require Grantee's insurance carrier to waive its right of subrogation as to Grantor.

As a public entity, Grantee may satisfy the insurance requirements of this Agreement through a program of self-insurance.