



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: August 17, 2020

* = Mandatory, information must be provided

or Procurement Director Award ☐

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

Cyprus Climax Metals Company a Delaware corporation

***Project Title/Description:**

Acquisition Agreement - Acq-0924

***Purpose:**

Acquire property in fee for the for a future Sahuarita Farms Regional sewer facility

***Procurement Method:**

EXEMPT PURSUANT TO PIMA COUNTY CODE 11.04.020

***Program Goals/Predicted Outcomes:**

To provide sewer service to a developing area.

***Public Benefit:**

ADDED SEWER SERVICE

***Metrics Available to Measure Performance:**

Pima County will acquire 50 acres not to exceed total funding amount of \$414,000 which includes the appraised value of \$405,000 and up to \$9,000 in closing costs.

***Retroactive:**

No

ATTACHMENT: LOCATION MAP

To: CCB. 8.4.20
Ver. - 1
085- 32 (1)

Contract / Award Information

Document Type: CT Department Code: PW Contract Number (i.e.,15-123): 21*107
Commencement Date: 8/17/2020 Termination Date: 8/16/2021 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount: \$* 414,000.00 ☐ Revenue Amount: \$ _____

***Funding Source(s) required:** WW Operations

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

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

If Yes, is the Contract to a vendor or subrecipient? _____

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 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e.,15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement 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): _____
Commencement 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: Gena Cox-Dorman

Department: Real Property Services

Telephone: 520-724-6307

Department Director Signature/Date: _____

Deputy County Administrator Signature/Date: _____

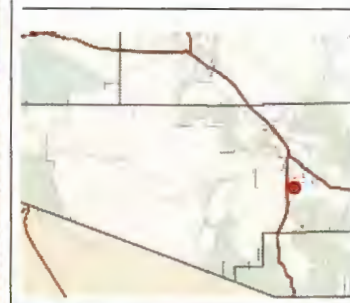
County Administrator Signature/Date: _____

(Required for Board Agenda/Addendum Items)

Location Map

Legend

☐ Parcels



303-09-0160

2,000.0 0 1,000.00

Feet



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map are subject to Pima County's ITD GIS disclaimer and use restrictions.

6/30/2020



ACQUISITION AGREEMENT

1. **Defined Terms.** The following terms will be used as defined terms in this Acquisition Agreement and have the meaning set forth below ("**Agreement**"):

- 1.1. Seller: Cyprus Climax Metals Company, a Delaware corporation
- 1.2. Buyer or County: Pima County, a political subdivision of the State of Arizona
- 1.3. Purchase Price: the sum of Four Hundred Five Thousand Dollars (\$405,000.00)
- 1.4. Buyer's Maximum Costs: the sum of (i) Buyer's share of Closing Costs, and (ii) Buyer's share of Prorations, which combined shall not exceed Nine Thousand Dollars (\$9,000.00)
- 1.5. Title Company: Pioneer Title Agency, 7445 North Oracle Road, Ste. 101, Tucson, AZ 85704.
- 1.6. Effective Date: the date Seller and Buyer have approved and accepted this Agreement by affixing their signatures. The date Buyer executes this Agreement is the date this Agreement is signed by the Chairman of the Pima County Board of Supervisors.
- 1.7. Property: the real property described in **Exhibit A** and depicted in **Exhibit A-1**, together with all improvements thereon and all water rights associated with the Property, if any.

1.8. Removed Exception: item #9 on **Exhibit B**.

1.9. Seller's Address: Cyprus Climax Metals Company, Attn: Freeport-McMoRan Land & Water 333 N. Central Ave Phoenix, AZ 85004-2189.

1.10. Buyer's Address: Manager, Pima County Real Property Services, 201 N Stone Ave, 6th Flr, Tucson, AZ 85701-1207; E-mail: gena.cox-dorman@pima.gov

1.11. Seller's Knowledge: the current actual knowledge of Daniel J. Dempsey, Property Manager, Freeport-McMoRan Inc., without any obligation to inquire or investigate.

2. **Parties; Effective Date.** This Agreement is entered into between Seller and Buyer, and shall be effective on the Effective Date. Seller and Buyer are collectively referred to herein as the "**Parties**," and individually as a "**Party**."

3. **Background and Purpose.**

3.1. Buyer desires to purchase the Property for the construction of a wastewater treatment facility (the "**Facility**").

3.2. Seller desires that Buyer acquire the Property from Seller, in consideration of the terms, covenants and conditions in this Agreement.

4. **Purchase of Property; Right of Entry.** Buyer agrees to acquire from Seller, and Seller agrees to convey to Buyer, in consideration of the Purchase Price, the following real property interests:

4.1. Seller's fee interest in the Property; and

4.2. The right for Buyer, its agents and contractors, to enter upon the Property prior to closing to inspect the Property and to conduct other non-ground-disturbing activities, provided that such activities do not unduly disturb Seller's or its tenant's use of the Property.

5. **Access to Property.**

5.1. The Property is located east of S. Nogales Highway and a Union Pacific Railroad ("**UPR**") right of way.

5.2. Buyer intends to acquire public access to the Property from S. Nogales Highway, across the UPR right of way, and across the private property located between the UPR right of way and the Property (the "**Public Access**"). Seller makes no representation or warranty whatsoever regarding the existence of any right of ingress or egress to or from the Property.

5.3. The Public Access to be acquired and constructed by the County will be approximately fifty (50) feet in width, based on the intent to accommodate two paved travel lanes and dirt shoulders.

5.4. In the event that Seller desires that the Public Access is greater than fifty (50) feet, Buyer will use its best efforts to accommodate the request provided that Seller will be responsible for all additional costs for the Public Access resulting from the increased size of the right of way, including but not limited to acquisition, design and construction costs.

6. **Reclaimed Water**

6.1. "Reclaimed Water" is defined in Arizona Revised Statutes §49-201(32), as water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility. For purposes of this Agreement, "Reclaimed Water" means water that has been treated or processed by the Facility. The term Reclaimed Water does not mean that the water has been permitted as reclaimed water.

6.2. Reclaimed Water will be a byproduct of the Facility. The Facility will produce Reclaimed Water that may be appropriate for various purposes including industrial and mining uses, groundwater recharge, and to sustain or improve wildlife habitats.

6.3. In the event that Buyer makes the Reclaimed Water commercially available for purchase, other than pursuant to an Intergovernmental Agreement with another government entity, Seller will have an option to acquire such amount of Reclaimed Water

as Buyer has made available for purchase (the "Option"). The Option is subject to the following terms and conditions:

6.3.1. County will provide written notice to Seller in the event that County makes the Reclaimed Water commercially available for purchase (the "Option Notice"). The Option Notice shall contain the amount and price of Reclaimed Water commercially available for purchase, and any other applicable terms and conditions.

6.3.2. Seller may exercise the Option by giving written notice to County of its exercise of the Option within thirty (60) days of the Option Notice, at which date the Option shall expire as to the Reclaimed Water that was in the Option Notice.

7. **Seller's Covenants and Warranties**

7.1. Leases. Seller represents that the only lease of the Property is the Lease to the Arizona Center for Nature Conservancy ("Tenant"). Prior to Closing, Seller, Buyer and Tenant will execute the Agreement attached hereto as **Exhibit F**.

7.2. Wells and Water Rights. Seller has disclosed water rights as specifically identified on **Exhibit C** attached. Seller and Buyer agree to cooperate in assigning and transferring to Buyer effective upon Closing, any and all wells or water rights certificated or claimed appurtenant to the Property including any claims to surface water rights.

7.3. Underground Improvements. **To Seller's Knowledge**, all underground improvements, including but not limited to septic systems and irrigation systems, are disclosed on **Exhibit D or in Buyer's Phase I Environmental Site Assessment by AZTEC Engineering Group, Inc., dated June 16, 2020.**

8. **Closing Costs and Prorations.**

8.1. Closing Costs. The closing costs ("**Closing Costs**") will be paid as follows:

8.1.1. All escrow fees shall be paid by Buyer. Recording fees, if any, be paid by Buyer.

8.1.2. Buyer will pay for a Standard Owner's Title Insurance Policy

for the Property, in the amount of the Purchase Price, any specific endorsements to the Standard Owner's Title Insurance Policy, and any Extended Owners Title Policy desired by Buyer.

8.1.3. Buyer will pay for any necessary Releases.

8.1.4. Buyer will pay other Closing Costs related to the Closing.

8.2. Prorations. Property taxes, rents, and annual payment of assessments with interest, if any (collectively "**Prorations**") will be prorated as of the date of Closing.

8.3. Partial Take. If Seller's entire owned parcel (the "Larger Parcel") encompasses and is larger than the Property, then the proration of taxes will be for the portion of taxes assessed against the Larger Parcel that is attributable to the Property. Seller will pay in full the property tax and any unpaid assessments on the Larger Parcel for the calendar year in which the Closing occurs, before becoming delinquent. Seller will hold Buyer harmless from any damages resulting from Seller's failure to pay all such amounts due.

8.4. Buyer's Total Costs. Buyer's total costs at Closing shall not exceed Buyer's Maximum Cost, provided, however, that Buyer may unilaterally increase Buyer's Maximum Cost by written notice from Buyer to Seller prior to Closing.

9. **Escrow and Title.**

9.1. Escrow. Title Company will act as escrow agent. This Agreement will constitute escrow instructions in connection with the escrow established with Title Company under this Agreement (the "**Escrow**"). Title Company will make reasonably suitable arrangements with either Party, upon that Party's request, to have the Party execute any of the documents to be executed by that Party as provided in this Agreement at the office of Title Company that is most convenient for Buyer.

9.2. Title Commitment. Escrow Agent will distribute to the Parties a Commitment for Standard Owner's Title Insurance (the "**Commitment**") together with complete and legible copies of all documents that will remain as exceptions to Buyer's policy of title insurance.

9.3. Amended Commitment. In the event Title Company should issue an Amended Commitment for Title Insurance which discloses an exception(s) not previously disclosed, Buyer shall have fifteen (15) days after the receipt of the Amended Commitment and the new Exceptions (the "**Disapproval Period**") within which to notify Seller and the Escrow Agent in writing of Buyer's disapproval of any new exceptions shown thereon (the "**Disapproval Notice**"). In the event of such disapproval, Seller shall have ten (10) days from receipt of the Disapproval Notice in which to notify Buyer in writing whether Seller intends to eliminate each of the disapproved Exceptions prior to the Closing (the "**Notice Period**"). If Seller fails to notify Buyer of its intent with respect to the disapproved items within that time or if Seller elects not to cure all disapproved items, Buyer may terminate this Agreement and the Escrow will be canceled. If the Amended Commitment is issued less than fifteen (15) days prior to the date of the Closing, then the date of the Closing is extended until the end of the Disapproval Period and the Notice Period, if applicable.

9.4. Title Policy is Condition to Closing. Buyer's obligation to Close is contingent upon Title Company being prepared to issue a Standard Owner's Title Insurance Policy for the Fee Property, in the amount of the Purchase Price, subject only to the exceptions on **Exhibit B** other than the Removed Exception, and the standard printed exceptions in the policy; provided, however, that notwithstanding **Exhibit B**, all monetary liens and encumbrances on the Fee Property will be removed before Closing, unless this Agreement expressly provides for the prorating of any such lien or encumbrance.

10. **Closing.**

10.1. Closing Date. The Closing of the sale of the Property to Buyer (the "**Closing**") will take place at the office of Title Company on or before one hundred twenty (120) days after the Effective Date, provided however, that Buyer may extend the Closing until thirty (30) days after receipt of all necessary releases or consents from Lienholders. Notwithstanding the foregoing, this Agreement will terminate if closing has not occurred within one year after execution by Buyer.

10.2. Deliveries by Buyer at Closing. At Closing, Buyer shall deliver to Seller through Escrow the following:

10.2.1. The Purchase Price, which will be paid in full at Closing payable to Title Company by Buyer's check; and

10.2.2. Such additional documents as Seller or Escrow Agent may reasonably require to effectuate the purchase.

10.3. Deliveries by Seller at Closing. At Closing, Seller deliver to Buyer through Escrow the following:

10.3.1. An executed Warranty Deed in the form of **Exhibit E**;

10.3.2. One or more assignments of all the water rights and well registrations certificated or claimed in which Seller has an interest and appurtenant to the Property, if any, and all certificated or claimed Grandfathered Type 2 water rights, if any;

10.3.3. A Standard Owner's Title Insurance Policy for the Property, in the amount of the Purchase Price, subject only to the exceptions on **Exhibit B** other than the Removed Exceptions, and the standard printed exceptions in the policy; provided, however, that notwithstanding **Exhibit B**, all monetary liens and encumbrances on the Property will be removed before Closing, unless this Agreement expressly provides for the prorating of any such lien or encumbrance; and

10.3.4. Such additional documents as Buyer or Escrow Agent may reasonably require to effectuate the Purchase.

10.4. Delivery of Possession. Seller shall deliver possession of the Property to Buyer at Closing.

10.5. Security Interests. Monies payable under this Agreement may be due holders (the "Lienholders") of certain notes secured by mortgages or deeds of trust, up to and including the total amount of unpaid principal, interest and penalty on the notes, if any, and will, upon demand by the Lienholders, be paid to the Lienholders. Seller shall obtain from the Lienholders releases for any fee transfer.

11. **Seller's Covenants.**

11.1. No Personal Property. No personal property is being transferred pursuant to this Agreement. Seller represents that as of closing, to Seller's Knowledge, there will be no personal property located on the Property.

11.2. No Salvage. Seller shall not salvage or remove any fixtures, improvements, or vegetation from the Property, but this does not prohibit Seller from removing personal property prior to the Closing. In addition, prior to Closing, the Property will not be materially degraded or otherwise materially changed in any aspect by Seller.

11.3. Risk of Loss for Damage to Improvements. Seller bears the risk of loss or damage to the Property prior to Closing. After Closing, the risk of loss or damage to the Property rests with Buyer.

11.4. Government Approvals. Seller and Buyer shall cooperate in obtaining all government approvals required to close the sale of the Property, if any.

11.5. Use of Property by Seller. Seller shall, prior to the Closing, use the Property on a basis substantially comparable to Seller's historical use thereof. Seller shall maintain the Property in substantially the same condition as it is presently in, ordinary wear and tear excepted, and without liens or encumbrances that Seller will be able to cause to be released before the Closing.

11.6. No Encumbrances. Seller shall not encumber the Property with any lien that Seller will be unable to cause to be released before Closing, and Seller shall not be entitled to sell or exchange all or any portion of the Property before Closing without the prior written approval of Buyer; provided, however, that any such sale will be conditioned upon a written assumption by Buyer thereof of the obligations of Seller under this Agreement, and there will be no novation of Seller with respect to its obligations under this Agreement. From and after the Effective Date through the Closing, Seller will not enter into, execute or record any covenant, deed restriction, or any other encumbrance against the Property. The recording of any such covenant, deed restriction, or other encumbrance, is a material breach of this Agreement and entitles Buyer to terminate this Agreement.

11.7. Reports. Seller shall make available to Buyer all documents relating to the Property that it has in its possession regarding the Property, including any and all surveys,

information regarding wells and water rights, and environmental reports.

12. **Environmental.**

12.1. Environmental Representations. To Seller's Knowledge, no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used or are located on the Property or within any surface or subsurface waters thereof by Seller; that no underground tanks have been located on the Property by Seller; that the Property is in compliance with all Federal, state and local environmental laws, regulations and ordinances; and that no legal action of any kind has been commenced or threatened with respect to the Property.

12.2. Environmental Inspection Rights.

12.2.1. From and after the Effective Date, Seller shall permit Buyer to conduct such assessment of the Property as the Buyer deems necessary to determine the environmental condition of the Property, provided that such activities do not unduly disturb Seller's or Tenant's use of the Property.

12.2.2. If any environmental inspection recommends further testing or inspection, the Parties hereby agree to extend the date of Closing to at least thirty (30) days after the report for such additional testing or inspection is completed on behalf of Buyer, but not later than an additional one hundred eighty (180) day extension.

12.2.3. If any environmental inspection reveals the presence of contamination or the need to conduct an environmental cleanup, Buyer shall provide written notice to Seller, prior to Closing, of any items disapproved by Buyer as a result of Buyer's inspection (the "**Objection Notice**"). If Buyer sends an Objection Notice, Seller may, within five (5) business days of receipt of the Objection Notice, notify Buyer if Seller is willing to cure any of the items to which Buyer objected (the "**Cure Notice**"). If Seller elects not to send Buyer a Cure Notice or if Seller's Cure Notice is not acceptable to Buyer, then Buyer may elect to terminate this Agreement, in which case the Agreement will be terminated and of no further force and effect.

13. **Broker's Commission.** No broker or finder has been used and Buyer owes no brokerage or finders fees related to this Agreement. Seller has sole responsibility to pay all brokerage or finders fees to any agent employed.

14. **Default, Remedies, and Conditions Precedent.** In the event either Party defaults under this Agreement, the other Party shall be entitled to pursue all rights and remedies available at law or in equity, including specific performance. To the extent a Party seeks damages, the recovery is limited to actual damages (including any losses or penalties suffered by Buyer as a result of any violation of federal arbitration provisions caused by a wrongful failure of Seller to perform). Neither Party is entitled to exemplary, punitive, special, indirect or consequential damages.

15. **Exhibits.** The following Exhibits are fully incorporated herein as if set forth at length. To the extent that any Exhibits to this Agreement are not available at the execution thereof, they will be added by the Parties prior to Closing and will be in form and substance reasonably satisfactory to the Parties.

| | |
|---------------------------|--|
| <u>Exhibit A</u> | Description of Property |
| <u>Exhibit A-1</u> | Depiction Showing Property |
| <u>Exhibit B</u> | Permitted Exceptions for Property |
| <u>Exhibit C</u> | Seller Disclosure of Water Rights |
| <u>Exhibit D</u> | Seller Disclosure of Underground Improvements |
| <u>Exhibit E</u> | Form of Deed for Property |
| <u>Exhibit F</u> | Agreement |

16. **Miscellaneous Provisions.** The following miscellaneous provisions apply to this Agreement:

16.1. Notices.

16.1.1. *Writing.* All notices required or permitted to be given hereunder must be in writing and mailed by first class, registered, certified or overnight mail, return receipt requested, postage prepaid, or transmitted by electronic mail, facsimile, or hand delivered, addressed to Seller's address or Buyer's address.

16.1.2. *Receipt.* If mailed, all such notices, demands, requests, or other communications are deemed received upon the expiration of seventy-two (72) hours after deposit in the U.S. mail as aforesaid. Notice served personally or by electronic mail or facsimile is deemed served upon delivery thereof to the addressee. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given is deemed to be receipt of the notice, demand or request sent. Any party entitled to notices hereunder may from time to time designate to the other parties, in

writing and given in accordance with this Section, a different address for service of notice.

16.2. Governing Law. This Agreement is subject to, and interpreted by and in accordance with, the laws of the State of Arizona. Any action to be brought under this Agreement must be filed and maintained in a court in Pima County, Arizona.

16.3. Entire Agreement. This Agreement is the entire Agreement of the Parties respecting the subject matter hereof. There are no other agreements, representations or warranties, whether oral or written, respecting the subject matter hereof.

16.4. Interpretation. This Agreement, and all the provisions of this Agreement, is deemed drafted by all of the Parties. This Agreement will not be interpreted strictly for or against any Party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.

16.5. No Representations. Each Party has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon that Party's own knowledge and investigation. Neither Party has relied upon any representation or warranty of any other Party except any such representations or warranties as are expressly set forth herein.

16.6. Signing Authority. Each of the persons signing below on behalf of a Party represents and warrants that the signer has full requisite power and authority to execute and deliver this Agreement on behalf of the Party for whom the signer signs and to bind such Party to the terms and conditions of this Agreement.

16.7. Counterparts. This Agreement may be executed in counterparts, each of which is effective as an original. This Agreement becomes effective only when all of the Parties have executed the original or counterpart hereof. This Agreement may be executed and delivered by a facsimile transmission or email of a counterpart signature page hereof.

16.8. Attorney's Fees and Costs. In any action brought by a Party to enforce the obligations of any other Party, the prevailing Party is entitled to collect from the opposing Party to such action such Party's reasonable litigation costs and attorney's fees and expenses, including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation in addition to all other relief, all of which will be set by a judge and not by a jury, to which the prevailing Party may be entitled.

Buyer's Approval and Acceptance:

COUNTY: PIMA COUNTY, a political subdivision of the State of Arizona:

Chairman, Board of Supervisors


Date

ATTEST:

Julie Castaneda, Clerk of Board

Date

APPROVED AS TO CONTENT:



Neil J. Konigsberg, Manager, Real Property Services

 8/3/2020

Carmine DeBonis, Deputy County Administrator, Public Works

APPROVED AS TO FORM:



Kell Olson, Deputy County Attorney

28 February 2020

EXHIBIT "A"
LEGAL DESCRIPTION

A portion of the North half of Section 32, Township 16 South, Range 14 East, Gila & Salt River Meridian, Pima County, Arizona, being a portion of Parcel No. 4 as described in Sequence Number 20163270493, recorded in the office of the Pima County Recorder, Arizona, more particularly described as follows:

BEGINNING at the west quarter corner of said Section 32, a 3 ¼" ACP stamped "PE5955 ¼ 31-32" to which the northwest corner of said Section 32, a 3 ¼" ACP stamped "LS 4149 30-29-31-32" bears North 00°23'01" West a distance of 2647.18 feet;

THENCE along the west line of said Section 32, North 00°23'01" West a distance of 1440.00 feet;

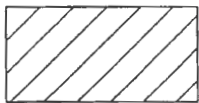
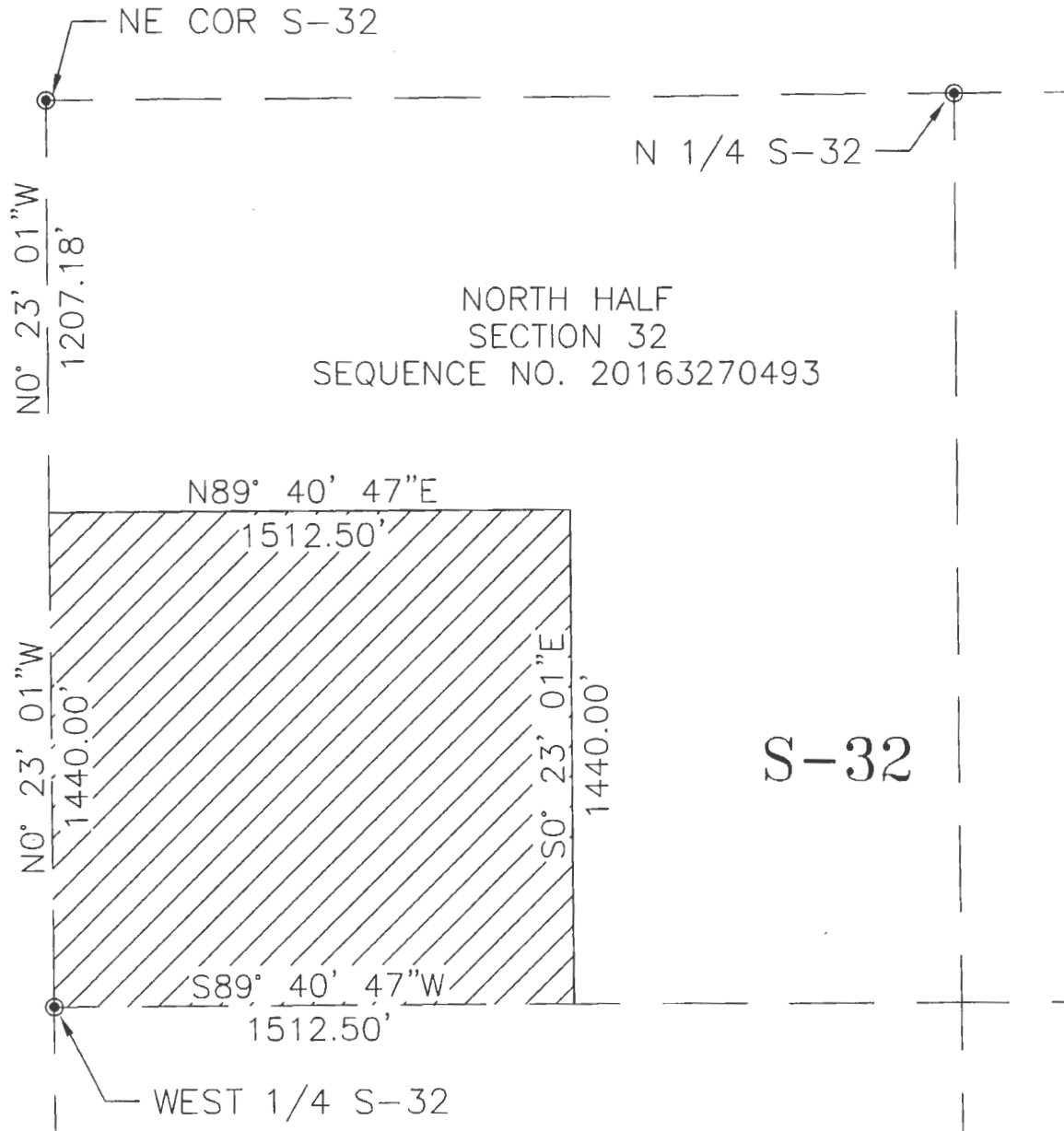
THENCE along a line 1440.00 feet north of and parallel with the south line of the north half of said Section 32, North 89°40'47" East a distance of 1512.50 feet;

THENCE along a line 1520.50 feet east of and parallel with the west line of said Section 32 South 00°23'01" East a distance of 1440.00 feet to a point on the south line of said north half;

THENCE along said south line South 89°40'47" West a distance of 1512.50 feet to said west quarter corner and the **POINT OF BEGINNING**.



DEPICTION OF EXHIBIT "A"1



AREA = 50.00 ACRES ±



PIMA COUNTY SURVEY

A PORTION OF A PARCEL RECORDED IN SEQUENCE NO. 20163270493,
LOCATED IN SECTION 32, TOWNSHIP 16 SOUTH, RANGE 14 EAST,
GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA

Scale: 1" = 500'

Date: 28 February 2020

Drawn By: AJI

Sheet 2 of 2

EXHIBIT "B"

Exceptions

Escrow: 504-217306

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I— Requirements are met.
2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
3. Any facts, rights, interests or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
4. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
6. (a) Unpatented claims; (b) reservations or exceptions in patents or in acts authorizing the issuance thereof; (c) water rights, claims or title to water; whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
7. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
8. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching to the subsequent effective date hereof but prior to the date the proposed Insured acquires of records for value the estate or interest or mortgage thereon covered by this Public. (Note: The above Exceptions Nos. 2 through 8, inclusive, will be eliminated from any A.L.T.A. Extended Coverage Policy, A.L.T.A. Homeowner's Policy, A.L.T.A. Expanded Coverage Residential Loan Policy and any short form versions thereof.
9. TAXES for the second half 2019, a lien, not yet due.
10. ANY ACTION by the County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.
11. WATER RIGHTS, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records. This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.

12. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
13. LIABILITIES AND OBLIGATIONS imposed upon said land by its inclusion within any legally formed districts.
14. Established and/or existing roads, highways, rights-of-way or easements.
15. PLAT recorded in Book 1, Page 8 of Road Maps, purporting to show a county roadway.
AND THEREAFTER Partial Abandonment recorded as Book 4 of Road Maps, Page 46 and as Book 13 of Road Maps, Page 85.
16. Easement(s) for utility lines and rights incident thereto as set forth in Docket 64 of Deeds at page 460 and 466.
17. Easement(s) for the electric transmission line and rights incident thereto as set forth in Docket 217 at page 352.
18. Easement(s) for electric transmission line and rights incident thereto as set forth in Docket 2137 at page 106.
19. Easement(s) for gas line and rights incident thereto as set forth in Docket 2209 at page 474.
20. Easement(s) for electric lines and rights incident thereto as set forth in Docket 5353 at page 282.
21. Terms, conditions, restrictions, easements, liabilities and/or obligations as set forth in Easement Agreement recorded in Docket 5328 at page _PAGEONLY_ and 465, In Docket 7701 at page 1167 and Amendment recorded in Sequence No.20153430524.
22. RIGHT OF ENTRY dated January 24, 1985 from Cyprus Pima Mining Company, grantor, to the City of Tucson, Grantee as disclosed by Special Warranty Deed recorded in Docket 8118 at page 1297
23. Unrecorded Lease under the terms and conditions contained therein, made by Cyprus Climax Metals Company, a Delaware corporation, Lessor and Arizona Center for Nature Conservation, an Arizona non-profit corporation, Lessee, dated July 31, 2018, Term 50 years, as disclosed by Memorandum of Lease, recorded August 28, 2018, as Sequence No. 20182400550.
24. Terms, conditions, restrictions, easements, liabilities and/or obligations as set forth in Sahuarita Ordinance No. 2000- 10 recorded in Docket 11406 at page 349.
25. Terms, conditions, restrictions, easements, liabilities and/or obligations as set forth in Resolution No. 2011-31 recorded as Sequence No. 20110490644.
26. RIGHTS OF PARTIES IN POSSESSION on month to month tenancy or under written but unrecorded leases.
27. THE LACK OF A RIGHT OF ACCESS to and from said land.

EXHIBIT "C"

Seller Questionnaire Re Wells & Water Rights

Seller Name:

Cyprus Climax Metals Company, a Delaware corporation

Tax Parcel Number(s) Portion of 303-09-0160

Date: June 25, 2020

As part of the proposed acquisition of the above-referenced parcel(s), Pima County may also be acquiring some or all of Seller's wells, groundwater and/or surface water rights. The purpose of this questionnaire is for Seller to disclose all information of which Seller is or may be aware, pertaining to Seller's interest in wells and water rights, as well as the current status of those wells and water rights. Each of the questions set forth below should be carefully answered, to the best of Seller's knowledge and information, *by supplying the information requested in the grid which follows each section*. If more space is needed to answer, clarify, or explain one or more questions, please use additional sheets.

A. QUESTIONS PERTAINING TO WELLS.

(1.) List *all* wells situated on the subject property and list the tax parcel number of the property on which each well is situated. *None to our knowledge*

2.) For each well listed in question #1 above, list the corresponding Well Registration Number assigned by the Arizona Department of Water Resources ("ADWR").

(3.) For each well listed in question #1 above, list that well's current operational status, for example, "fully operational", "no longer in use", "capped" or "legally abandoned". Please note that "legally abandoned" means that all procedures required under ADWR regulations have been followed to have the well declared legally abandoned.

(4.) For each well listed in question #1 above, list the main purpose for which each such well is currently utilized (For example, "domestic", "irrigation", "industrial" "mining", etc.). Please note that the term "irrigation" means the application of water to 2 or more acres for plants or crops which will be used for sale or for human or animal consumption.

EXHIBIT "C"

(5.) For each well listed in question #1 above, state whether a Statement of Claimant ("SOC") has been filed in the Gila River Adjudication (Yes or No).

| | Location by Tax Parcel Number | ADWR Registration Number | Current Operational Status | Principal Use of Well | SOC Filed (Y/N) | SOC # If Applicable |
|---------|--|--------------------------------|----------------------------------|-----------------------------|-----------------------|------------------------|
| Well #1 | | | | | | |
| Well #2 | | | | | | |
| Well #3 | | | | | | |
| Well #4 | | | | | | |
| Well #5 | | | | | | |
| Well #6 | | | | | | |
| Well #7 | | | | | | |

B. QUESTIONS PERTAINING TO CERTIFICATED GROUNDWATER RIGHTS.

(5.a) Does the property have a grandfathered irrigation groundwater right ("GIR")?
(Yes/No). If no, skip to Question #6. No

(5.b) If yes,

EXHIBIT "C"

1. Identify each GIR appurtenant to the subject property by listing its corresponding Certificate of Grandfathered Groundwater Irrigation Right number assigned by ADWR, *none*
2. List the tax parcel number(s) of the property (ies) which may be irrigated under each such GIR,
3. List the maximum number of acres permitted to be irrigated under each such GIR,
4. List the well or wells with which each such GIR is associated. Use the ADWR Well Registration numbers above to identify the associated well(s),
5. Is the GIR is currently in use (Y or N)?
6. Are any of your GIR's leased to a third party? (Y/N). If yes, give the name and address of the lessee and identify the GIR by ADWR Certification #, and please provide a copy of each such lease.

| | ADWR Certificate Number | Tax Parcel Number(s) | Irrigated Acreage | Associated Well by Registration # | Is Right Currently in Use? (Y or N) |
|--------|-------------------------------|-------------------------|----------------------|--|--|
| GIR #1 | | | | | |
| GIR #2 | | | | | |
| GIR #3 | | | | | |
| GIR #4 | | | | | |
| GIR #5 | | | | | |

EXHIBIT "C"

| | | | | | |
|---------------|--|--|--|--|--|
| GIR #6 | | | | | |
| GIR #7 | | | | | |

(6.a) Does the property have a grandfathered Type 1 non-irrigation groundwater right ("Type I Right") (Yes/No)? If no skip to Question #7. *Yes (part of one)*

(6.b) If yes, *only 50 acres of this Type 1 right are appurtenant*

- 1. List all Type I Rights appurtenant to the subject property by listing its corresponding Certificate of Grandfathered Type I Groundwater Non-Irrigation Right number assigned to each such right by ADWR.**
- 2. Indicate the use or uses to which each Type I Right is currently being put.**
- 3. Identify the well with which each Type I Right is associated by its ADWR well registration number.**
- 4. Identify the parcel number of the parcel to which each Type I Right is appurtenant.**

| | ADWR Certificate Number | Current Use of TIR | Associated Well by Well Registration # | Appurtenant Parcel # |
|---------------|---|---------------------------|---|--|
| TIR #1 | <i>58-100316.0020 (only a 50 ac. portion)</i> | <i>inactive</i> | <i>none are on property being sold</i> | <i>303-09-016</i> XXXXXX |
| TIR #2 | | | | |
| TIR #3 | | | | |
| TIR #4 | | | | |

EXHIBIT "C"

| | | | | |
|-------------------|--|--|--|--|
| TIR #5 | | | | |
|-------------------|--|--|--|--|

(6.c) Are any of your Type I rights leased to a third party? (Y/N) If yes, give the name and address of the lessee and identify the leased Right by ADWR Certification #, and please provide a copy of each such lease. *No*

(7.a) Does the property have a Type II non-irrigation groundwater right ("Type II Right")? (Yes/No). If no skip to Question #8. *No*

(7.b) If yes,

- 1. List each Type II Right by listing its corresponding Certificate of Grandfathered Type II Groundwater Non-Irrigation Right number assigned by ADWR.**
- 2. List the use to which each Type II Right is currently being put.**
- 3. List the ADWR Well Registration Number of the well to which each Type II Right is currently associated.**
- 4. Are any of your Type II Rights leased to a third party? (Y/N) If yes, give the name and address of the lessee and identify the leased Type II Right by ADWR Certification #.**

| | ADWR Certificate Number | Current Use to Which Type II is Being Put | Associated Well by Well Registration # |
|-------------------|--|--|---|
| Type II #1 | | | |

EXHIBIT "C"

| | | | |
|------------|--|--|--|
| Type II #2 | | | |
| Type II #3 | | | |
| Type II #4 | | | |

C. QUESTIONS PERTAINING TO SURFACE WATER RIGHTS.

(8.a.) Does the property have a surface water right (Yes/No)? If no, skip to Question #9.

(8.b) If yes, **No**

1. List each surface water right ("SWR") associated with the subject property by listing its corresponding Certificate of Surface Water Right number assigned by ADWR.
2. List the purpose, if any, for which each SWR is currently being utilized. (For example, domestic, stock watering, irrigation, mining, in stream flow, other).
3. For each SWR, state whether a Statement of Claimant has been filed in the Gila River Adjudication (Yes or No).
4. Are any of your SWRs leased to a third party? (Y/N) If yes, give the name and address of the lessee and identify the leased SWR by ADWR Certification #, and please provide a copy of each such lease.

| | ADWR Certificate Number | Current Use to Which SWR is Being Put | Statement of Claimant Filed? (Yes or No) | SOC # If Applicable |
|--|-------------------------------|---|---|------------------------|
| | | | | |

EXHIBIT "C"

| | | | | |
|---------------|--|--|--|--|
| SWR #1 | | | | |
| SWR #2 | | | | |
| SWR #3 | | | | |
| SWR #4 | | | | |
| SWR #5 | | | | |
| SWR #6 | | | | |

D. QUESTIONS PERTAINING TO WELL SHARE AGREEMENTS.

9. Are any of the parcels subject to a well share agreement? If so, please list the parcel on which the well sits and whether or not it is owned by you. No

10. Please provide the County a copy of the Well Share Agreement.

EXHIBIT "D"

Owner Disclosure of Underground Improvements in Right of Way

Owner's Name: Cyprus Climax Metals Company, a Delaware corporation

Tax Parcel Number(s): Portion of 303-09-0160

Date: June 25, 2020

The purpose of this questionnaire is for Owner to disclose all information of which Owner is aware, pertaining to the location of septic tanks, septic or leach fields, alternative waste disposal systems, or other improvements in the right of way being acquired which may be impacted by the County's proposed construction project. If more space is needed to answer one or more questions, please attach additional sheets or maps as needed.

1. Is there a septic tank, septic or leach field, or alternative waste disposal system located in the right of way to be acquired?

Yes _____ No X If NO, skip to question #2

Describe septic facility: _____

Location: _____

Is the septic tank/field still in use? Yes _____ No _____

If Yes, Owner and County agree to the following arrangement concerning the facility:

2. Are you aware of any irrigation or other improvements in the right of way which may impact construction? Yes X No _____ If YES, please explain.

Concrete lined irrigation ditches

EXHIBIT E

When Recorded, Please Return to:

Pima County Real Property Services
201 North Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

Exempt from Affidavit of Value per A.R.S. § 11-1134(A)(3).

Special Warranty Deed

For the consideration of Ten Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Cyprus Climax Metals Company, a Delaware corporation the "Grantor" herein, does hereby convey to Pima County, a political subdivision of the State of Arizona, the "Grantee" herein, the following real property (the "Property") situated in Pima County, Arizona, together with all wells, water rights and mineral rights in which Grantor has an interest and appurtenant thereto:

As described in **Exhibit A** attached hereto.

Subject to all matters of record.

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

Grantor

Date

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me the ____ day of _____, 20__ by _____.

Notary Public

My Commission Expires: _____

Page 1 of 1

| | | | |
|--|------------|-----------------------|-----------------------------|
| EXEMPTION: A.R.S. §11-1134.A.3. | | Board of Supervisors: | Right of Way [] Parcel [] |
| Agent: gcd | File #:924 | Activity #: | P [x] De [] Do [] E [] |

304-28-2540

AGREEMENT

This AGREEMENT ("**Agreement**") is made and entered effective as of May __, 2020 ("**Effective Date**"), by and between **CYPRUS CLIMAX METALS COMPANY**, a Delaware corporation ("**Cyprus**"), the **ARIZONA CENTER FOR NATURE CONSERVATION**, an Arizona non-profit corporation ("**Zoo**") and, **PIMA COUNTY**, a political subdivision of the State of Arizona ("**County**") (and together with Cyprus and the Zoo, the "**Parties**").

RECITALS

A. Cyprus and the Zoo previously entered into that certain Lease effective as of July 31, 2018 ("**Lease**"), whereby Cyprus leases to the Zoo approximately one thousand one hundred twenty (1,120) acres of real property located in Pima County, Arizona and identified as Pima County Tax Parcel ID Numbers: 303-19-002C, 303-09-0160, 303-09-017A, and 303-09-017B ("**Cyprus Property**").

B. The County desires to purchase from Cyprus approximately 50 acres of the Cyprus Property for construction of a new wastewater treatment plant ("**WWTP Parcel**") that will produce reclaimed water suitable for certain uses including the support of wildlife habitat ("**Reclaimed Water**").

C. The Lease provides that Cyprus may withdraw portions of the Cyprus Property from the Lease provided certain conditions are met, including that Cyprus provides the Zoo twelve (12) month's prior notice (*see* Lease, par. 16).

D. The County has proposed a purchase agreement providing for the transfer from Cyprus to the County of the WWTP Parcel within 120 days ("**Purchase Agreement**").

E. Cyprus and the County desire to enter into the Purchase Agreement and transfer the WWTP Parcel within 120 days. Cyprus, the County and the Zoo recognize there is a 12 month notice provision in the Lease. To facilitate the transfer of the WWTP Parcel to the County pursuant to the Purchase Agreement, the Zoo: 1) agrees to waive the twelve month advance notice requirement of the Lease, and 2) agrees to enter into an amendment to the Lease reflecting the sale of the WWTP Parcel to the County (including any associated water rights).

F. The County intends to acquire public access to the WWTP Property from S. Nogales Highway, across the UPR right of way, and across the private property located between the UPR right of way and the WWTP Property (the "**Public Access**"). The Public Access to be acquired and constructed by the County will be approximately fifty (50) feet in width, based on the intent to accommodate two paved travel lanes and dirt shoulders. In the event that the Zoo desires that the Public Access be greater than fifty (50) feet, the County will use its best efforts to accommodate the request provided that the Zoo will be responsible for all additional costs for the Public Access resulting from the increased size of the right of way, including but not limited to acquisition, design and construction costs.

EXHIBIT F

G. The Zoo is agreeable to waiving the twelve months advance notice requirement of the Lease, and agreeing to an amendment to the Lease reflecting the sale of the WWTP Parcel to the County (along with any associated water rights), provided the County agrees to provide the Zoo with Reclaimed Water for use on the Cyprus Property subject to the Lease (as amended as provided herein).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Zoo agrees to enter into an Amendment of its Lease with Cyprus providing for the waiver of the twelve months advance notice requirement of the Lease, and the amendment of the premises subject to the Lease reflecting the sale of the WWTP Parcel to the County (along with any associated water rights).

2. The County agrees to enter into an agreement with the Zoo to provide Reclaimed Water to Zoo for use on the Cyprus Property subject to the Lease (as amended as provided herein), on terms and conditions acceptable to Zoo and County. The Zoo's right to acquire reclaimed water shall take priority over any right to such reclaimed water acquired by Cyprus.

3. This Amendment may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Signature pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document. Electronic and scanned signature pages will be acceptable and shall be conclusive evidence of execution.

4. Each Party signing this Amendment represents and warrants to the other Party that as to the person signing this Amendment on such Party's behalf, such person has authority to bind the Party in regards to this Amendment.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

CYPRUS CLIMAX METALS COMPANY,
a Delaware corporation

By: _____

Name: _____

Title: _____

ARIZONA CENTER FOR NATURE CONSERVATION,
an Arizona Non-Profit Corporation

By: _____

Name: Norberto J. (Bert) Castro

Title: President & CEO

PIMA COUNTY, a political subdivision of the State
of Arizona

By: _____

Name: _____

Title: _____

Chairman, Board of Supervisors Date _____

ATTEST: _____

Julie Castaneda, Clerk of Board Date _____

APPROVED AS TO CONTENT:

Neil J. Konigsberg, Manager, Real Property
Services

Carmine DeBonis, Deputy County Administrator,
Public Works

APPROVED AS TO FORM:

Kell Olson, Deputy County Attorney

AGREEMENT

This AGREEMENT ("**Agreement**") is made and entered effective as of June __, 2020 ("**Effective Date**"). by and between **CYPRUS CLIMAX METALS COMPANY**, a Delaware corporation ("**Cyprus**"), the **ARIZONA CENTER FOR NATURE CONSERVATION**, an Arizona non-profit corporation ("**Zoo**") and, **PIMA COUNTY**, a political subdivision of the State of Arizona ("**County**") (and together with Cyprus and the Zoo, the "**Parties**").

RECITALS

A. Cyprus and the Zoo previously entered into that certain Lease effective as of July 31, 2018 ("**Lease**"), whereby Cyprus leases to the Zoo approximately one thousand one hundred twenty (1,120) acres of real property located in Pima County, Arizona and identified as Pima County Tax Parcel ID Numbers: 303-19-002C, 303-09-0160, 303-09-017A, and 303-09-017B ("**Cyprus Property**").

B. The County desires to purchase from Cyprus approximately 50 acres of the Cyprus Property for construction of a new wastewater treatment plant ("**WWTP Parcel**") that will produce reclaimed water suitable for certain uses including the support of wildlife habitat ("**Reclaimed Water**").

C. The Lease provides that Cyprus may withdraw portions of the Cyprus Property from the Lease provided certain conditions are met, including that Cyprus provides the Zoo twelve (12) month's prior notice (*see* Lease, par. 16).

D. The County has proposed a purchase agreement providing for the transfer from Cyprus to the County of the WWTP Parcel within 120 days ("**Purchase Agreement**").

E. Cyprus and the County desire to enter into the Purchase Agreement and transfer the WWTP Parcel within 120 days. Cyprus, the County and the Zoo recognize there is a 12 month notice provision in the Lease. To facilitate the transfer of the WWTP Parcel to the County pursuant to the Purchase Agreement, the Zoo: 1) agrees to waive the twelve month advance notice requirement of the Lease, and 2) agrees to enter into an amendment to the Lease reflecting the sale of the WWTP Parcel to the County (including any associated water rights).

F. The County intends to acquire public access to the WWTP Property from S. Nogales Highway, across the Union Pacific Railroad (UPR) right of way, and across the private property located between the UPR right of way and the WWTP Property (the "**Public Access**"). The Public Access to be acquired and constructed by the County will be approximately fifty (50) feet in width, based on the intent to accommodate two paved travel lanes and dirt shoulders. In the event that the Zoo desires that the Public Access be greater than fifty (50) feet, the County will use its best efforts to accommodate the request provided that the Zoo will be responsible for all additional costs for the Public Access resulting from the increased size of the right of way, including but not limited to acquisition, design and construction costs.

G. The Zoo is agreeable to waiving the twelve months advance notice requirement of the Lease, and agreeing to an amendment to the Lease reflecting the sale of the WWTP Parcel to the County (along with any associated water rights), provided the County agrees to provide the Zoo with Reclaimed Water for use on the Cyprus Property subject to the Lease (as amended as provided herein).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Zoo agrees to enter into an Amendment of its Lease with Cyprus providing for the waiver of the twelve months advance notice requirement of the Lease, and the amendment of the premises subject to the Lease reflecting the sale of the WWTP Parcel to the County (along with any associated water rights).
2. The County agrees to enter into an agreement with the Zoo to provide Reclaimed Water to Zoo for use on the Cyprus Property subject to the Lease (as amended as provided herein), on terms and conditions acceptable to Zoo and County. The Zoo's right to acquire reclaimed water shall take priority over any right to such reclaimed water acquired by Cyprus.
3. This Amendment may be executed in any number of counterparts, each of which will be an original, but all of which will constitute one and the same instrument. Signature pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document. Electronic and scanned signature pages will be acceptable and shall be conclusive evidence of execution.
4. Each Party signing this Amendment represents and warrants to the other Party that as to the person signing this Amendment on such Party's behalf, such person has authority to bind the Party in regards to this Amendment.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

CYPRUS CLIMAX METALS COMPANY,
a Delaware Corporation

By: 

Name:

FRANCIS McALLISTER

Title:

VP

ARIZONA CENTER FOR NATURE CONSERVATION,
an Arizona Non-Profit Corporation

By: 

Name: Norberto J. (Bert) Castro

Title: President & CEO

PIMA COUNTY, a political subdivision of the State
of Arizona

By: _____

Name: _____

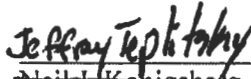
Title: _____

Chairman, Board of Supervisors Date _____


ATTEST: _____

Julie Castaneda, Clerk of Board Date _____

APPROVED AS TO CONTENT:




Neil J. Konigsberg, Manager, Real Property
Services



Carmine DeBonis, Deputy County Administrator,
Public Works

8/3/2020

APPROVED AS TO FORM:



Kell Olson, Deputy County Attorney