

**DEPARTMENT OF THE AIR FORCE
AIR COMBAT COMMAND
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA (EAFB)**

CONSENT TO CROSS NUMBER: USAF-ACC-FXBM-14-2-0535

CONSENT TO CROSS A U.S. GOVERNMENT EASEMENT FOR USE BY

**THE CITY OF RAPID CITY
TO POTHOLE A WATERLINE EASEMENT**

KNOW ALL MEN BY THESE PRESENTS:

That the consent of the **UNITED STATES OF AMERICA** is hereby granted to the **CITY OF RAPID CITY**, an incorporated city organized and doing business under the laws of the State of South Dakota, with its principal office for this project being at the Engineering Division, 300 6th Street, Rapid City SD 57701-2724, hereinafter designated as "**Grantee**", only for potholing at the stated location to locate the depth of the Ellsworth Air Force Base (EAFB) sixteen inch (16-inch) waterline. Potholing will let Grantee find out if the proposed fifteen inch (15-inch) proposed sanitary sewer main installation will work. The given consent shall be in effect for six (6) weeks from the date of the **City of Rapid City Mayor's** Signature. If results are favorable the **CITY OF RAPID CITY** will apply for a final Consent to Cross the Ellsworth Air Force Base 16-inch waterline fifty-foot (50-foot) easement. Easement crossing is located 25 feet west of Dyess Avenue right-of-way and 1430 feet north of Seger Drive right-of-way in the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) of Section 20, T2N, R8E for the City of Rapid City Dyess Avenue Sanitary Sewer Main extension, as depicted on attached drawings (Exhibit A), hereinafter referred to as "structures", across and over the lands where the United States of America has acquired a perpetual and assignable right-of-way and easement by the stated grantor on the date shown, designated as the following acquisition tract:

<u>TRACT NO:</u>	<u>NAME OF GRANTOR:</u>	<u>DATE ACQUIRED:</u>
D-408E-1	Clarence G. & Irene Montgomery	5 Dec. 1955

The right-of-way for said structures for the purpose of this consent is specifically identified in the attached drawings for the purpose of potholing the Ellsworth AFB 16-inch waterline depth in order to complete the design of the City of Rapid City 15-inch sanitary sewer main. The Ellsworth AFB permanent water line easement is a strip of land 50.00 feet in width situated in the Southeast Quarter of Section Twenty (20), Township Two (2) North, Range Eight (8) East of the Black Hills Meridian, Pennington County, South Dakota, and lying 25.00 feet on each side of the following described center line: Beginning at a point on the East line of the West Half of said Section 20, said point being North 68°48'04" East for a distance of 2,839.60 feet from the Southwest corner of said Section 20; thence North 81°01'15" East for a distance of 2,260.57 feet; thence North 81°02'00" East for a distance of 439.84 feet to a point on the East section line of said Section 20, said point being South 0°01'00" East, 1,213.72 feet from the East Quarter corner of said Section 20. The tract of land herein described contains 3.10 acres more or less.

This consent is granted subject to the following conditions:

1. The City of Rapid City or their contractor will use a vacuum machine to pot hole and locate the EAFB 16-inch waterline before any digging commences. The elevation of the waterline shall be measured and results submitted to EAFB before construction plans are finalized.

Potholing or Vacuum Excavation is a nondestructive, cost effective and accurate process used to safely locate underground utilities and typically used for, utility potholing and vertical excavation. Vacuum technology works by using high pressure water and/or high volume air to penetrate, expand, and break up the soil which is removed by a vacuum machine through a suction hose and deposited into a debris tank on the truck. Once the dirt slurry mixture is removed, the exact location of the utility is exposed. The location of the exposed utility is measured and mapped. Then the hole is backfilled and compacted. Quality backfilling is critical.

EAFB shall be given a five (5) day notice prior to potholing and shall be offered the opportunity to verify the process.

If the EAFB 16-inch waterline or easement is damaged, the Air Force may revoke this consent, in its sole discretion, and may immediately begin repairs to the waterline or easement as the Air Force deems necessary, with or without prior notification to the Grantee. The Air Force will notify the Grantee as soon as practicable about the damage or intent to make repairs. The cost of any repairs must be paid by the Grantee within 15 days of written notification. These remedies are not exclusive and may be in addition to any other remedies allowed by law.

2. It is understood that this consent is effective only insofar as to the property rights of the United States are concerned in the land to be occupied, and that it does not relieve the Grantee from the necessity of obtaining grants from the owners of the fee and/or other interests herein.

3. The proposed construction authorized herein shall not be commenced until appropriate rights have been obtained by the Grantee from the record owners and encumbrances of the fee title to the lands involved.

4. The exercise of the privileges hereby consented to shall be without cost or expense to the Department of the Air Force, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter referred to as "Installation Commander", and subject to such regulations as may be prescribed by the said officer, from time to time.

5. The Grantee shall supervise and maintain the said structures and cause them to be inspected at reasonable intervals, and shall immediately repair any damage found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said structures or the making of any repairs thereto, the premises shall be restored immediately by the Grantee, at the Grantee's own expense, to the same condition as that in which they existed prior to the commencement of such work, to the satisfaction of said officer.

6. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to the satisfaction of the said officer, or in lieu of such repair or replacement, the Grantee shall, if so

required by the said officer and at his option, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason or damage to or destruction of Government property.

7. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Grantee, or for damages to the property or injuries to the person of the Grantee, or the persons of Grantee's officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of one arising from governmental activities on or in the vicinity of the said premises, and the Grantee shall hold the United States harmless from any and all such claims.

8. This consent is effective only as to the following rights of the United States in the lands herein above described: "The estate taken for said public uses is (a) "perpetual and assignable easement and right of way in, under, on, over and across 3.10 acres of land, more or less, described as Tract D-408E-1 etc., for the location, construction, operation, and maintenance of a water pipe line."

9. The United States shall in no case be liable for any damage or injuries to the construction here authorized which may be caused by any action of the Government, under the rights obtained in its easement, either hidden or known, or that may result from future operations undertaken by the Government and no claim or right to compensation shall accrue from such damage or injury, and if further operations of the United States require the alteration or removal of the structure herein authorized, the Grantee shall, upon due notice from the Installation Commander, alter or remove said structure without expense to the Government and subject to the supervision and approval of the officer having jurisdiction over the property and no claim for damages shall be made against the United States on account of such alterations or removal.

10. The construction and/or maintenance and use of said structures incident to the exercise of the privileges hereby granted shall be in such a manner as not to conflict with the rights of the government, nor to interfere with the operations by the Government under such rights, nor to endanger lives and safety of the public.

11. This consent may be terminated by the Installation Commander upon reasonable notice to the Grantee if the Installation Commander shall determine that installation to which consent is hereby granted interferes with the use of said land or any part thereof by the United States, and this consent may be annulled and forfeited by the declaration of the Installation Commander for failure to comply with any and all of the provisions and conditions of this consent, or for nonuse for a period of two years, or for abandonment.

12. Upon the relinquishment, termination, revocation, forfeiture or annulment of the consent herein granted, the Grantee shall vacate the premises, remove all property of the Grantee therefrom, and restore the premises to a condition satisfactory to the officers having immediate jurisdiction over the property. If the Grantee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Installation Commander, the said property shall either become the property of the United States without compensation therefore, or the Installation Commander may cause it to be removed and the premises to be so restored at the expense of the Grantee, and no claim for damages against the United States, or expense of the

Grantee, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account of such removal and restoration.

13. The terms and conditions of this consent shall extend to and be binding upon the heirs, successors and assigns of the Grantee.

14. The Grantee within the limits of his respective legal powers shall comply with all Federal, interstate, state and/or local governmental regulations, conditions or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

15. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify the said officer, and the site and the material shall be protected by the Grantee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the Installation Commander.

16. An Environmental Baseline Survey (EBS) has been waived. The EBS waiver along with the AF Form 813 categorical exclusion for environmental impact analysis, is shown on Exhibit C attached hereto and made a part hereof.

17. Structure crossings are restricted to the established and coordinate points of intersection. A utility sign shall be placed at each point of intersection with the Government right-of-way.

18. The Grantee shall contact the Installation Real Estate Officer, 28th Civil Engineer Squadron/CEACR, 2125 Scott Drive, Ellsworth Air Force Base, South Dakota 57706; telephone number (605) 385-4804, a minimum of five (5) days prior to any excavation, construction, or maintenance within the Government easement area. All correspondence relating to this Consent shall be addressed to the above address.

19. Except as otherwise specifically provided, any reference herein to "Installation Commander" or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees and their duly authorized representatives.

This consent is not subject to Title 10, United States Code, Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2014.

UNITED STATES AIR FORCE

KEVIN B. KENNEDY, Colonel, USAF
Commander, 28th Bomb Wing

The above Consent Number USAF-ACC-FXBM-14-2-0535 together with all its conditions and provisions thereof, is hereby accepted this _____ day of _____ 2014.

ATTEST:

CITY OF RAPID CITY

PAULINE SUMPTION, Finance Officer

SAM KOOIKER, Mayor

(SEAL)

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

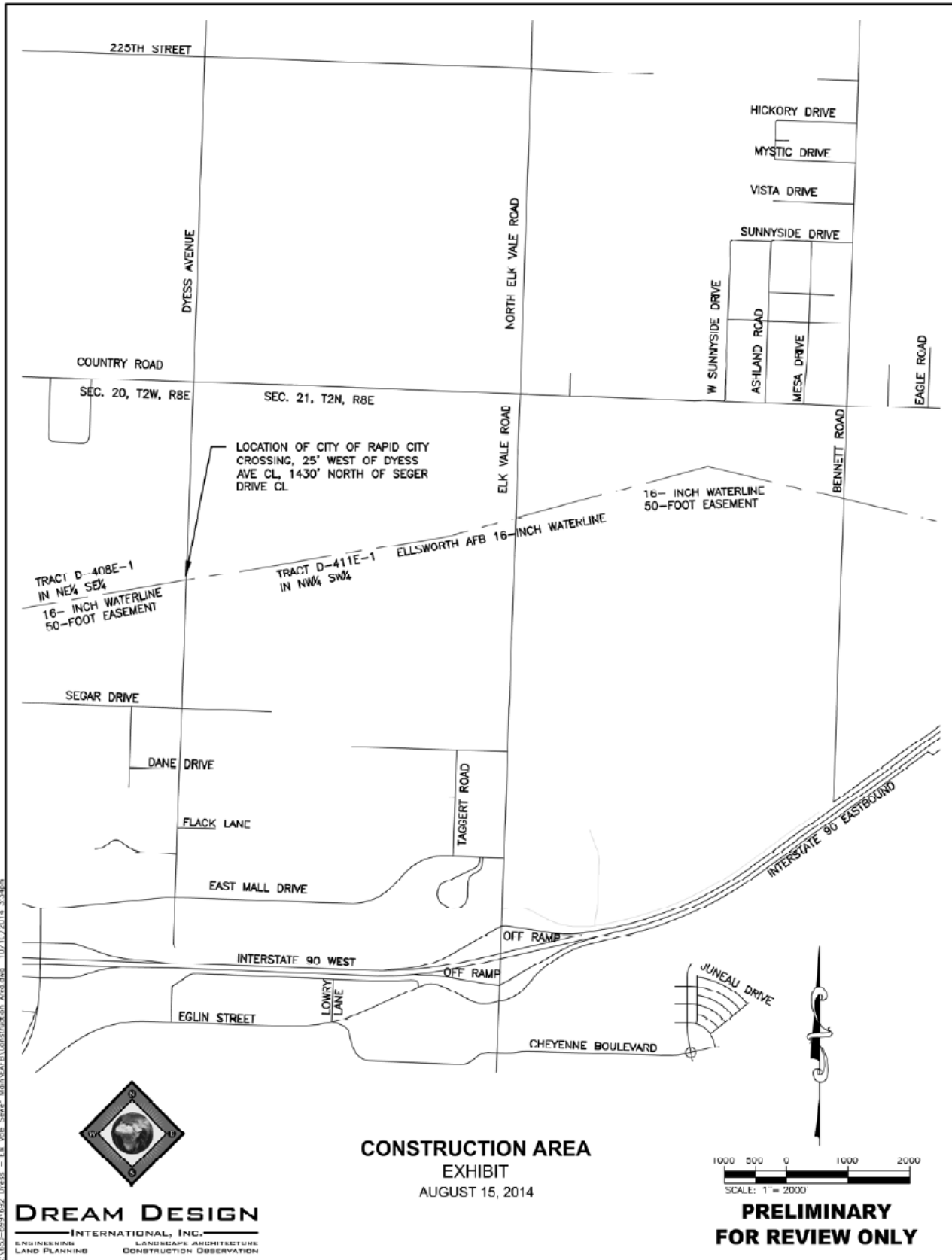
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Attorney

10-22-14

Date

EXHIBIT A - Page 2 – Dream Design Construction area design drawing.



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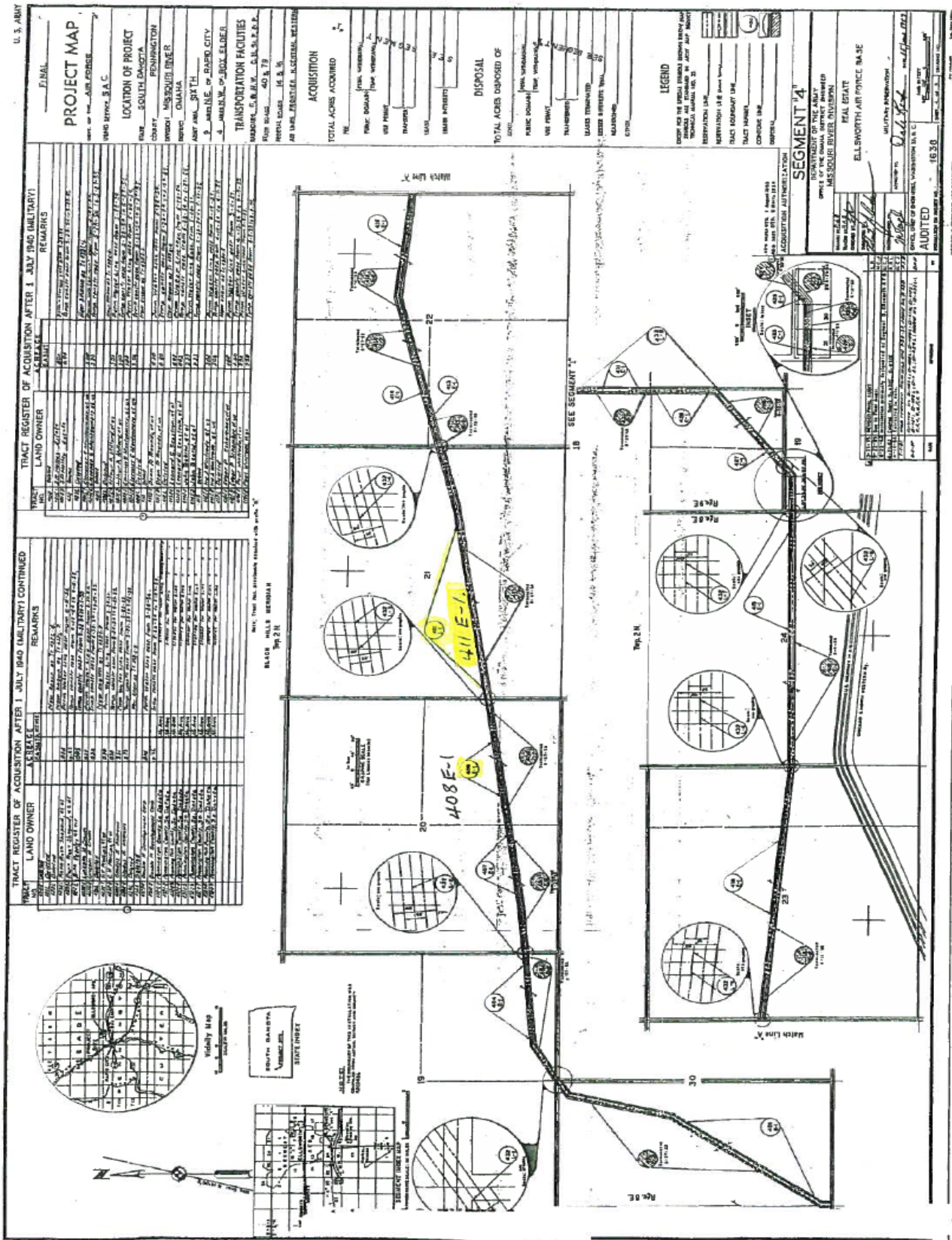
DREAM DESIGN
INTERNATIONAL, INC.
ENGINEERING LAND PLANNING LANDSCAPE ARCHITECTURE
CONSTRUCTION OBSERVATION

CONSTRUCTION AREA
EXHIBIT
AUGUST 15, 2014

1000 500 0 1000 2000
SCALE: 1" = 2000'

PRELIMINARY
FOR REVIEW ONLY

EXHIBIT A - Page 3 - Tract 408E-1 -- Waterline drawing from Corps of Engineers.



E-12-50-M