

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57702
(605) 394-4140

**COVENANT AGREEMENT BETWEEN CITY OF RAPID CITY AND
HIGHWAY 16 PROPERTIES, LLC, CONCERNING ACCESS EASEMENT
RETAINED PURSUANT TO VACATION OF PUBLIC RIGHT OF WAY**

This Covenant Agreement ("the Agreement") is entered into this ____ day of _____, 2013, by and between the City of Rapid City, a municipal corporation organized under the laws of the state of South Dakota, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as "City," and Highway 16 Properties, LLC, 35 South 4th Street, Custer, SD 57730, hereinafter referred to as "Landowner."

WHEREAS, Highway 16 Properties, LLC, has filed an application for vacation of public right of way commonly known as the Highway 16 service road directly to the south and west of the intersection of Catron Boulevard and Highway 16; and

WHEREAS, Highway 16 Properties, LLC filed this application for vacation of right of way to permit it to develop property it owns in Sections 26 and 27, Township 1 North, Range 7 East of the Black Hills Meridian in Rapid City, Pennington County, South Dakota ("the Property"); and

WHEREAS, the public right of way to be vacated connects the service road running north/south along Highway 16 to Catron Boulevard; and

WHEREAS, the public right of way to be vacated connects the service road along Highway 16 that is south of Catron Boulevard to the service road along Highway 16 that is north of Catron Boulevard; and

WHEREAS, Highway 16 Properties, LLC intends at a future date to dedicate public right of way in connection with that development that will connect the Highway 16 service road to Catron Boulevard; and

WHEREAS, the City has an interest in maintaining consistent public access between the Highway 16 service road and Catron Boulevard until such time as Highway 16 Properties, LLC, its successors or assigns dedicates public right of way.

NOW THEREFORE in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. The parties agree that this Agreement concerns the Property, legally described as follows:

A portion of Lot One (1) of TLC Subdivision and the adjacent portion of Vacated Lot H1 of the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of Lot Twenty-seven (27), and a portion of Lot Two (2) of Connector Subdivision and vacated Lot H3 in Section Twenty-six (26), and adjacent vacated section line right of way in Sections Twenty-six (26) and Twenty-seven (27), all in Township One North (T1N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota.

2. Landowner's Obligations.

Landowner agrees to dedicate an access easement across the Property to the City's benefit and file it with the Register of Deeds. A copy of the access easement is attached as Exhibit A.

Landowner, its successors, and assigns agree that as part of the development of the Property it will construct alternative access connecting Catron Boulevard and the Highway 16 service road in a manner that is acceptable to the City. Landowner, its successors, and assigns agree to dedicate this alternative access as a public right of way pursuant to city ordinance and state law once the alternative access has been accepted and approved by the City.

Landowner agrees that neither Landowner nor its successors and assigns will interfere in any way with the access easement discussed above. Landowner agrees that the City, its designees, and the public may utilize the access easement without limit until such time as alternative access connecting Catron Boulevard and the Highway 16 service road is constructed by the Landowner, accepted and approved by the City, and properly dedicated as public right of way pursuant to city ordinance and state law.

3. City's Obligations.

City agrees to approve Landowner's application to vacate part of the public right of way commonly known as the Highway 16 service road which intersects the Property.

City agrees that it will vacate the access easement at Landowner's request, so long as the following has occurred: 1) Landowner, its successors, or its assigns have constructed alternative access between Catron Boulevard and the Highway 16 service road; 2) the City has accepted and approved the alternative access; and 3) the public right of way has been properly dedicated.

4. This Agreement will be effective when it has been signed by all of the parties.
5. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written. No other writings or negotiations are part of this document. This Agreement may only be amended by a written document duly executed by all parties.
6. The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit for the State of South Dakota, located in Rapid City and Pennington County.
7. Time is of the essence of this Agreement.
8. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
9. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.
10. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
11. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.
12. This Agreement is intended solely for the benefit of the parties hereto along with their heirs, assigns and successors in interest and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
13. Landowner warrants that it has the power to enter into this Agreement, and the officer signing for it has full power and authority to do so.
14. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

Dated this ____ day of _____, 2013.

City of Rapid City:

Mayor

ATTEST:

Finance Officer

(SEAL)

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this the ____ day of _____, 2013, before me, the undersigned officers, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Memorandum of Understanding for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

(SEAL)

Notary Public, South Dakota
My Commission Expires: _____

Dated this 7 day of January, 2013.

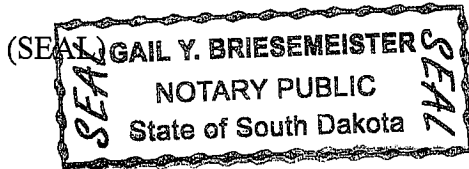
HIGHWAY 16 PROPERTIES, LLC

[Signature]
By PATRICK MUSTOS
Its MEMBER

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this the 7th day of January, 2013, before me the undersigned officer, personally appeared Patrick Mustos, who acknowledged himself to be member of Highway 16 Properties, LLC., and as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of Highway 16 Properties, LLC, as member.

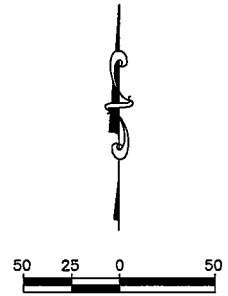
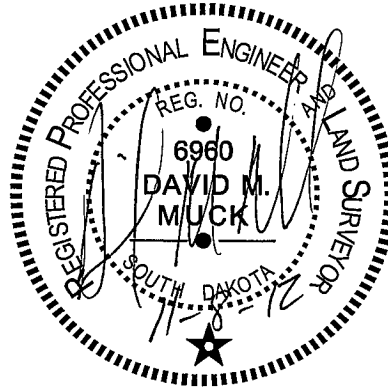
IN WITNESS WHEREOF I hereunto set my hand and official seal.



Gail Y. Briesemeister
Notary Public, South Dakota
My Commission Expires: My Commission Expires
March 31, 2018

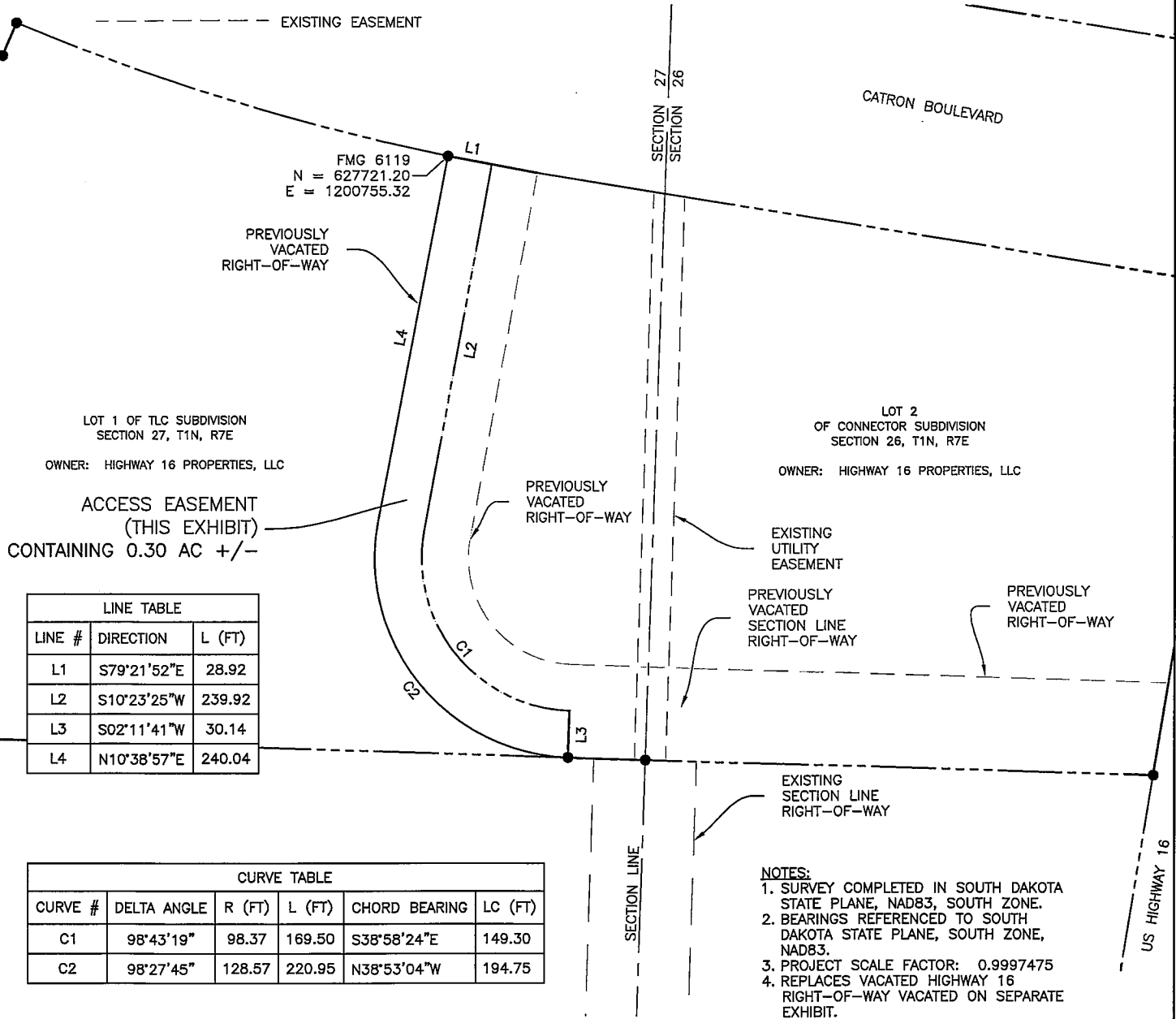
ACCESS EASEMENT
LOT 1 OF TLC SUBDIVISION
AND THE ADJACENT PORTION OF VACATED LOT H1
OF THE SE1/4NE1/4 ALL LOCATED IN
SECTION 27, T1N, R7E OF THE BHM
RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

OWNER: HIGHWAY 16 PROPERTIES, LLC



LEGEND

- FOUND MONUMENT
- ACCESS EASEMENT
- PROPERTY LINE
- - - EXISTING EASEMENT



FMG 6119
 N = 627721.20
 E = 1200755.32

LOT 1 OF TLC SUBDIVISION
 SECTION 27, T1N, R7E

OWNER: HIGHWAY 16 PROPERTIES, LLC

ACCESS EASEMENT
 (THIS EXHIBIT)
 CONTAINING 0.30 AC +/-

LOT 2
 OF CONNECTOR SUBDIVISION
 SECTION 26, T1N, R7E

OWNER: HIGHWAY 16 PROPERTIES, LLC

LINE TABLE		
LINE #	DIRECTION	L (FT)
L1	S79°21'52"E	28.92
L2	S10°23'25"W	239.92
L3	S02°11'41"W	30.14
L4	N10°38'57"E	240.04

CURVE TABLE					
CURVE #	DELTA ANGLE	R (FT)	L (FT)	CHORD BEARING	LC (FT)
C1	98°43'19"	98.37	169.50	S38°58'24"E	149.30
C2	98°27'45"	128.57	220.95	N38°53'04"W	194.75

NOTES:

1. SURVEY COMPLETED IN SOUTH DAKOTA STATE PLANE, NAD83, SOUTH ZONE.
2. BEARINGS REFERENCED TO SOUTH DAKOTA STATE PLANE, SOUTH ZONE, NAD83.
3. PROJECT SCALE FACTOR: 0.9997475
4. REPLACES VACATED HIGHWAY 16 RIGHT-OF-WAY VACATED ON SEPARATE EXHIBIT.

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11-8-12



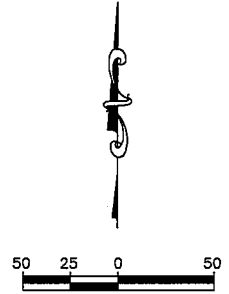
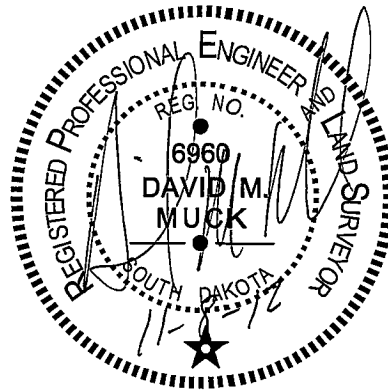
EXHIBIT A

PROJECT NO.
 J12-124
 FIGURE NO.
 1 OF 1

ACCESS EASEMENT

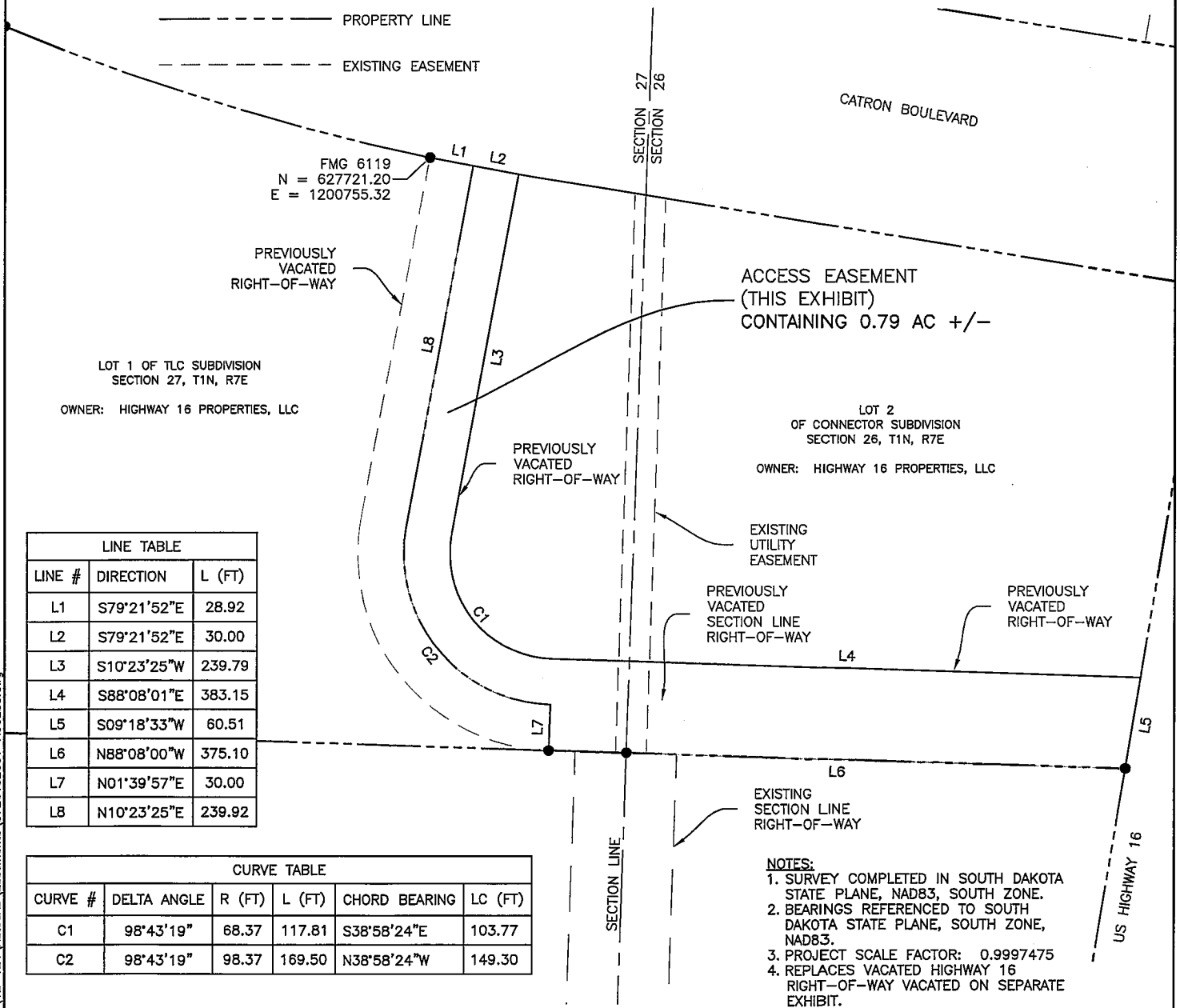
LOT 2 OF CONNECTOR SUBDIVISION AND VACATED LOT H3 IN SECTION 26, T1N, R7E; AND A PORTION OF ADJACENT VACATED LOT H1 OF THE SE1/4NE1/4 OF SECTION 27, T1N, R7E; AND ADJACENT VACATED SECTION LINE RIGHT OF WAY IN SECTIONS 26 AND 27, T1N, R7E OF THE BHM, RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

OWNER: HIGHWAY 16 PROPERTIES, LLC



LEGEND

- FOUND MONUMENT
- ACCESS EASEMENT
- PROPERTY LINE
- - - EXISTING EASEMENT



FMG 6119
N = 627721.20
E = 1200755.32

LOT 1 OF TLC SUBDIVISION
SECTION 27, T1N, R7E

OWNER: HIGHWAY 16 PROPERTIES, LLC

ACCESS EASEMENT
(THIS EXHIBIT)
CONTAINING 0.79 AC +/-

LOT 2
OF CONNECTOR SUBDIVISION
SECTION 26, T1N, R7E

OWNER: HIGHWAY 16 PROPERTIES, LLC

LINE TABLE		
LINE #	DIRECTION	L (FT)
L1	S79°21'52"E	28.92
L2	S79°21'52"E	30.00
L3	S10°23'25"W	239.79
L4	S88°08'01"E	383.15
L5	S09°18'33"W	60.51
L6	N88°08'00"W	375.10
L7	N01°39'57"E	30.00
L8	N10°23'25"E	239.92

CURVE TABLE					
CURVE #	DELTA ANGLE	R (FT)	L (FT)	CHORD BEARING	LC (FT)
C1	98°43'19"	68.37	117.81	S38°58'24"E	103.77
C2	98°43'19"	98.37	169.50	N38°58'24"W	149.30

NOTES:

1. SURVEY COMPLETED IN SOUTH DAKOTA STATE PLANE, NAD83, SOUTH ZONE.
2. BEARINGS REFERENCED TO SOUTH DAKOTA STATE PLANE, SOUTH ZONE, NAD83.
3. PROJECT SCALE FACTOR: 0.9997475
4. REPLACES VACATED HIGHWAY 16 RIGHT-OF-WAY VACATED ON SEPARATE EXHIBIT.

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Ferber Engineering Company, Inc.
Civil Engineering • Water Resources • Transportation • Land Surveying • GIS
729 East Watertown St, Rapid City, SD 57701 • Phone: (605) 343-3311

EXHIBIT A

PROJECT NO.
J12-124
FIGURE NO.
1 OF 1