

LARAMIE COUNTY CLERK BOARD OF COUNTY COMMISSIONERS AGENDA ITEM PROCESSING FORM

1. DATE OF PROPOSED ACTION: February 7, 2012

2. AGENDA ITEM: <input checked="" type="checkbox"/> Contracts/Agreements/Leases <input type="checkbox"/> Proclamations <input type="checkbox"/> Resolutions	<input type="checkbox"/> Appointments <input type="checkbox"/> Grants <input type="checkbox"/> Public Hearings/Rules & Reg's <input type="checkbox"/> Other	<input type="checkbox"/> Bids/Purchases <input type="checkbox"/> Land Use: Variances/Board App/Plats <input type="checkbox"/> Reports & Public Petitions	<input type="checkbox"/> Claims
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3. DEPARTMENT: Planning and Development

APPLICANT: Laramie County AGENT: Gary Kranse

4. DESCRIPTION:

Consideration of an agreement between Laramie County and SM Energy for the use of access and roads in the Archer Complex for oil production activity.

RECEIVED AND APPROVED AS
 TO FORM ONLY BY THE
 DEPUTY LARAMIE COUNTY
 ATTORNEY
[Signature] 2/11/2012

Amount _____ From _____

5. DOCUMENTATION: 3 Originals 4 Copies

2 originals to Planning 2-10-12

<u>Clerks Use Only:</u>	
<u>Commissioner</u>	<u>Signatures</u>
Humphrey _____	Co Attny _____
Woodhouse _____	Assist Co Attny _____
Thompson _____	Grants Manager _____
Action _____	Outside Agency _____

120207-22

LARAMIE COUNTY
ROAD USE AND ROAD ACCESS AGREEMENT

THIS AGREEMENT is made and entered into on this date by and between Laramie County, Wyoming hereinafter referred to as "County" and SM Energy Company, hereinafter referred to as "Operator".

WITNESSETH:

WHEREAS, the Operator is engaged generally in drilling and production of oil and gas wells.

WHEREAS, the Operator is planning to drill and produce wells in Section 30 & 31, Township 14 North, Range 64 West; and

WHEREAS, Operator desires to utilize specific access roads, both public and private as described on **Exhibits A and B and located on the Archer Complex Property** in Laramie County; and

WHEREAS, said operation and/or project may continue intermittently and indefinitely; and

WHEREAS, County agrees to allow Operator access as described in Exhibits A and B attached hereto until such time as the underlying property is prepared for development, including sale or lease; and

WHEREAS, Operator agrees to make certain improvements to the access and roads in order to utilize them effectively; and

WHEREAS, the Operator has obtained and filed all of the necessary permits with the respective County, State and Federal agencies; and

WHEREAS, the Operator has reported that as a result of the above described activities, traffic on the access and roads described on Exhibit A could be as many as 900 loads per year for the initial drilling operations (which includes about 200 loads of gravel to improve the Archer Ranch Subdivision roads) and then approximately 150 loads per year if the wells produce; and

WHEREAS, in the event that said loads are classified as over length or overweight, Operator or its Contractors shall apply for all required permits from Laramie County prior to using said access and roads shown in Exhibits A and B or for any publically dedicated road in Laramie County; and

WHEREAS, the County and the County residents are concerned about damage to the County Roads, culverts, cattle guards, and appurtenances and are also concerned about noise disturbance from trucks, dust creation, the safety of residents driving the road including use by the farmers, ranchers, tourists and sightseers, interference with wildlife, road maintenance and open range protection; and

WHEREAS, it is the desire of the County, the Operator and the residents of the area to work cooperatively.

NOW, THEREFORE, in and for the mutual promises and consideration as described herein, the Parties agree as follows:

1. The Operator agrees to provide for or pay for the posting of speed limits, stop signs and other control signs as necessary as determined by Laramie County. Operator will advise all trucking contractors that when on any portion of the Archer Complex property, they will travel no faster than 10

C. Williams

COPY OF RECORD

miles per hour. Operator will provide additional traffic control during peak use by Operator as directed by County or as deemed necessary for the safety of the general citizenry by the Operator.

2. The Operator agrees to hire trucking contractors who provide training and information emphasizing safety, speed limits, potential hazards, local traffic and wildlife, relative to the Roads hereon proposed for use, for all their employees and all contracted and subcontracted employees.

3. The Operator shall notify the County, in writing, a minimum of ten (10) working days in advance of the beginning of any of the above described operations so that the County can video the condition of the Roads proposed for use prior to Operator's use of said Roads. Operator agrees to make certain improvements to access and roads as more particularly described in Exhibit B, attached hereto.

4. The Operator shall certify to the County in writing the final completion date of all of the Operator's use of the above described access and roads. Upon receipt of such certification, the County will video the condition of the Roads within ten (10) working days to document any damages in order to assess repairs needed to return the Roads to their original condition, before operations began. For that portion of the access shown in Exhibit A that is not defined as a public road, Operator shall return said area to its condition before use by Operator, providing removal of the gravel surface and seeding of the area to control erosion. Operator shall remove all improvements constructed as per Exhibit B and return all underlying property to original condition.

5. The Operator agrees to keep equipment noise as low as possible while using the access and roads and to respect resident housing located in the above described area.

6. The Operator agrees to respect open range and the danger of livestock grazing along the County Roads, both with speed control and stopping as necessary along the County Roads.

7. The Operator agrees to provide dust control measures on the above described access and roads. Operator shall provide an erosion control plan that addresses dust mitigation to the satisfaction of the County.

8. The County Public Works Department will inspect the above described access and roads from time to time and shall report, in writing, necessary repairs and maintenance damages it believes caused by Operator to the Operator. The Operator hereby agrees to commence operations to repair said damage caused by it and provide such maintenance within three (3) days of notice. If the Operator disagrees it caused the damage and does not commence operations to make necessary repairs with three (3) days of written notice from the County, the County at its option may elect to make such repairs, and the Operator will be responsible for the cost of such repairs. These costs may include, but are not limited to materials, use of The County equipment, labor, and other related expenses. Operator may appeal the decision of the County Public Works Department to the County Commissioners and the appeal will be determined as set forth in Section 11 of this Agreement.

9. The Operator acknowledge that other companies may conduct industrial projects in the area which may require use of the same access or roads during the Operator's planned use of said access and roads. Should the County or the Operator become aware of another entities use of said Roads during the Term of this Agreement, the County or the Operator shall promptly notify the other. In the event one or more of those entities and the Operator utilize said access and roads concurrently during the Term of this Agreement, the County shall bill the Operator for the Operator's proportionate share of the costs for damages. Proportionate share shall be determined by the County in its sole discretion, based on its inspections and review of available information. Disagreements by operators as to proportionate share

shall be resolved before the County Commissioners using the process described in Section 11 of this agreement.

10. During Operator's use of the above described access and roads, the Operator may be subject to imposition of load restrictions by the County should damage occur to said Roads that endangers the public safety as a result of the Operator's activities on said access or Roads. Should the County conclude that such damage to said Roads requires immediate repair, the County may make such reasonable repairs and seek reimbursement from the Operator.

11. The County and the Operator agree they shall cooperate with each other regarding all matters necessary to carry out the full intent and purpose of this Agreement. If the parties are unable to agree on necessary repairs and maintenance, then the parties agree that the matter will be brought before the Laramie County Commissioners. The County Commissioners at the first regular meeting following notice of such disagreement will appoint a third party independent viewer. The third party independent viewer shall be a freeholder and elector of Laramie County, independent of the parties. The viewer shall be a person possessing the requisite knowledge and skills to evaluate the claims of the Operator and the County. Such persons may be, but are not limited to, civil engineers licensed to practice in the State of Wyoming. The third party independent viewer shall, within ten (10) days of appointment, make arrangements and provide notice to both the County and the Operator, setting a date and time for an on-site inspection of the damage in question and review of any information or data relevant to the issue. Following the on-site inspection, the third party independent viewer shall submit an assessment and damage estimate to the County Commissioners. At the next regular meeting, the County Commissioners shall review the third party independent viewer's assessment, estimate of damages and costs to be paid. All parties to this agreement may be heard in regard to the viewers determination. Upon completion of any hearing in regard to the viewers report, the Commission shall make a determination of the damages, necessary repairs and/or costs. In the event costs and/or repairs are determined to be appropriately assessed against the Operator by the Commissioners the Operator shall within ten (10) days of the County Commissioners' decision and/or certification of third party independent viewer's assessment and estimate, pay to the County the assessed estimate of damage costs or shall commence any repairs at a time to be determined by the Director of Laramie County Public Works. Any party aggrieved by the decision of the County Commissioners may appeal the matter to the District Court, First Judicial District as provided in the Wyoming Administrative Procedures Act.

12. The County may exclude the use of the access and roads shown in Exhibit A if development of the underlying property commences. County shall provide 30 days notice of said exclusion. County shall allow for alternate access along public roads upon execution of such exclusion. Operator shall be bound by the terms of this agreement for the use of any public road within the Archer Complex property.

13. Operator shall limit all vehicles over 20,000 GVW to the access and roads described in Exhibit A or as directed by Laramie County. Operator shall not allow any vehicle over 20,000 GVW to access the Archer Complex roads until and unless prior written authorization has been provided by Laramie County.

14. Operator shall, to the best of their ability, require and notify all contractors, sub-contractors, successors and assigns that overweight trucks are not permitted within the Archer Complex without the appropriate permitting. Operator further agrees that any contractor or sub-contractor that is found to violate this provision may be banned from using any roads or access within the Archer Complex. County may at any time, stop a loaded truck and request load receipts and or require any truck to be weighed on site to determine actual weight of the load.

Operator agrees to notify all contractors and sub-contractors to comply with this provision. Operator shall provide a list of all contractors and sub-contractors to the County within 48 hours of those parties utilizing said access or roads.

General Provisions.

A. Amendments. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by and between the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

B. Applicable Law. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this Agreement and over the parties, and the venue shall be the First District, Laramie County Wyoming.

C. Entirety of Agreement. This Agreement, consisting of four (4) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

D. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect.

E. Sovereign Immunity. The County does not waive its governmental immunity by entering into this Agreement, and specifically retains immunity and all defenses available to it under state law.

F. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in the Agreement shall operate only between the parties to this Agreement, and shall be solely to the benefits of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

G. Indemnification. The Operator shall indemnify, defend, and hold harmless the State, the County, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses, and liability, including reasonable costs and attorney fees, arising out of Operator's negligence, actions or its failure to perform any of Operator's duties and obligations hereunder,

H. Applicable Law and Venue. The parties mutually understand and agree this Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. The foregoing provisions of this paragraph are agreed by the parties to be a material inducement to Operator and to Laramie County in executing this Agreement. This provision is not intended nor shall it be construed to waive COUNTY's governmental immunity as provided in this Agreement.

H. Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance and removed. "Force Majeure" shall mean any fire, earthquake, flood, or other casualty or accident; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental agency; or any other act or condition beyond the reasonable control of a party hereto.

I. Invalidity. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this Agreement are fully severable.

J. Notices. All notices required and permitted under this Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

K. Compliance with Laws. CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

L. Assignability. Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party, which consent shall not be unreasonably withheld. In the event of such an assignment, the party assigning shall ensure and provide written confirmation executed by any assignee that the obligations contained in this Agreement are contractually transferred, in a manner satisfactory to COUNTY, to any successors or assigns. Failure to comply with this provision shall constitute breach of this agreement.

[This space intentionally left blank. Signatures on following page]

Signatures.

In witness whereof, the parties to this Agreement, through their duly authorized representatives, have executed this agreement on the days and dates set out below, and certify, that they have read understood and agreed to terms and conditions of this Agreement as set forth herein.

LARAMIE COUNTY, WYOMING

By: Gay Woodhouse
Gay Woodhouse, Chairman, Laramie County Commissioners

Date 2/8/12

ATTEST:

By: Debbie Lathrop
Debbie Lathrop, Laramie County Clerk

Date 2/8/12

SM ENERGY

By: Tim J. Keating
Tim J. Keating, Senior Landman

Date 1/30/2012

REVIEWED AND APPROVED AS TO FORM ONLY:

By: Mark T. Woss
Mark T. Woss, Laramie County Attorney

Date 2/1/2012

EXHIBIT "A" TO ROAD USE AND ROAD ACCESS AGREEMENT
LARAMIE COUNTY, WYOMING AND SM ENERGY COMPANY



SM ENERGY COMPANY
Laramie County,
Wyoming

Exhibit "A"

Cartography: AAS

Date: 1/24/2012

INTERSTATE 80
ROM VARIES

NW 1/4
SECTION 27

NOT PLATTED

NOT PLATTED

ARCHER PARKWAY

PRARIE CENTER CIRCLE

PROPERTY DESCRIPTION

CERTIFICATE OF SURVEYOR

State of Wyoming } ss.
County of Laramie }

I, Gary N. Grigsby, a Professional Engineer and Land Surveyor registered in the State of Wyoming do hereby certify that this Exhibit was prepared from the records and field notes of a survey conducted under my supervision during the month of January, 2012, and that all dimensions and other details are correct to the best of my knowledge and belief.

Gary N. Gingsby, Wyoming PE & PLS # 9283
January 24, 2012 (Job 110-1482-00)
For and on behalf of Western Research & Development, Ltd

W 1/4 CORNER
SECTION 27
FND REBAR WITH 2" ALUM CAF
STAMPED PELS #2613

BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF ARCHBIE CREEK, THE LAND BEING 50.00 FEET WIDE, THE CORNER OF SAID POINT BEARING N 89° 45' 31" E, A DISTANCE OF 107.12 FEET, THENCE SOUTHEAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF ARCHBIE CREEK, BEARING N 89° 45' 31" E, A DISTANCE OF 107.12 FEET, THENCE SOUTHEAST ALONG A RADIUS OF 200.40 FEET, A CENTRAL ANGLE OF 11° 49' 24" E, A CHORD BEARING OF S 83° 00' 14" E, A CHORD DISTANCE OF 41.15 FEET, THENCE SOUTHEAST ALONG A RADIUS OF 349.71 FEET, A CENTRAL ANGLE OF 41° 15 FEET, THENCE SOUTHEAST ALONG A RADIUS OF 100.00 FEET, BEING A CENTRAL ANGLE OF 65° 00' 00" E, A CHORD BEARING OF S 78° 45' 52" E, A CHORD DISTANCE OF 104.89 FEET, THENCE N 69° 57' 42" E, A DISTANCE OF 1,417.44 FEET, THENCE EAST ALONG A RADIUS OF 100.00 FEET, BEING A CENTRAL ANGLE OF 50° 00' 00" E, A CHORD BEARING OF N 0° 19' 53" E, A CHORD DISTANCE OF 80.71 FEET, THENCE S 88° 35' 56" E, A DISTANCE OF 332.65 FEET TO THE POINT OF TERMINUS, BEING ON THE WESTERLY RIGHT-OF-WAY OF ANOTHER RANCH, OR SHORTENED TO MEET AT ANGLE POINTS, AND TO TERMINATE AT SAID POINTS OF WAY, SAID POINT OF TERMINUS IS N 64° 38' 35" E, A DISTANCE OF 304.28 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 27; CONTAINING 1.9 ACRES MORE OR LESS, AND IS SUBJECT TO ANY AND ALL EASEMENTS, AND OTHER RIGHTS OF WAY THAT MAY HAVE BEEN LEGALLY ACQUIRED.

EASEMENT LOCATED IN THE NW ¼ SECTION 27, TOWNSHIP 14 N
RANGE 65 W., 6th PM, LARAMIE COUNTY, STATE OF WYOMING

EXHIBIT

OF

NE CORNER SECTION
FND REBAR WITH 2" /
STAMPED PELS #2611

23 Δ 22

1

LEGEND

SECTION LINE

EXISTING PROPERTY LINES

----- EASEMENT BOUNDARY

EXISTING EAST

SECTION TIES

SET 3/8" X 24" REBAR WITH 2" ALUMINUM CAP
STANDARD PRT C 02023"

FOUND MONUMENT AS NOTED

FOUND SECTION CORNER

FOUND SECTION 1/4 CORNER

(M) MEASURE DISTANCE

RECORD DISTANCE

WITH FOR COPIES

HIGHWAY MONUMENT

TEMPORARY POINT

Π

OF

ENT LOCATED IN THE NW ¼ SECTION

THE UNIVERSITY OF CHICAGO

100

100

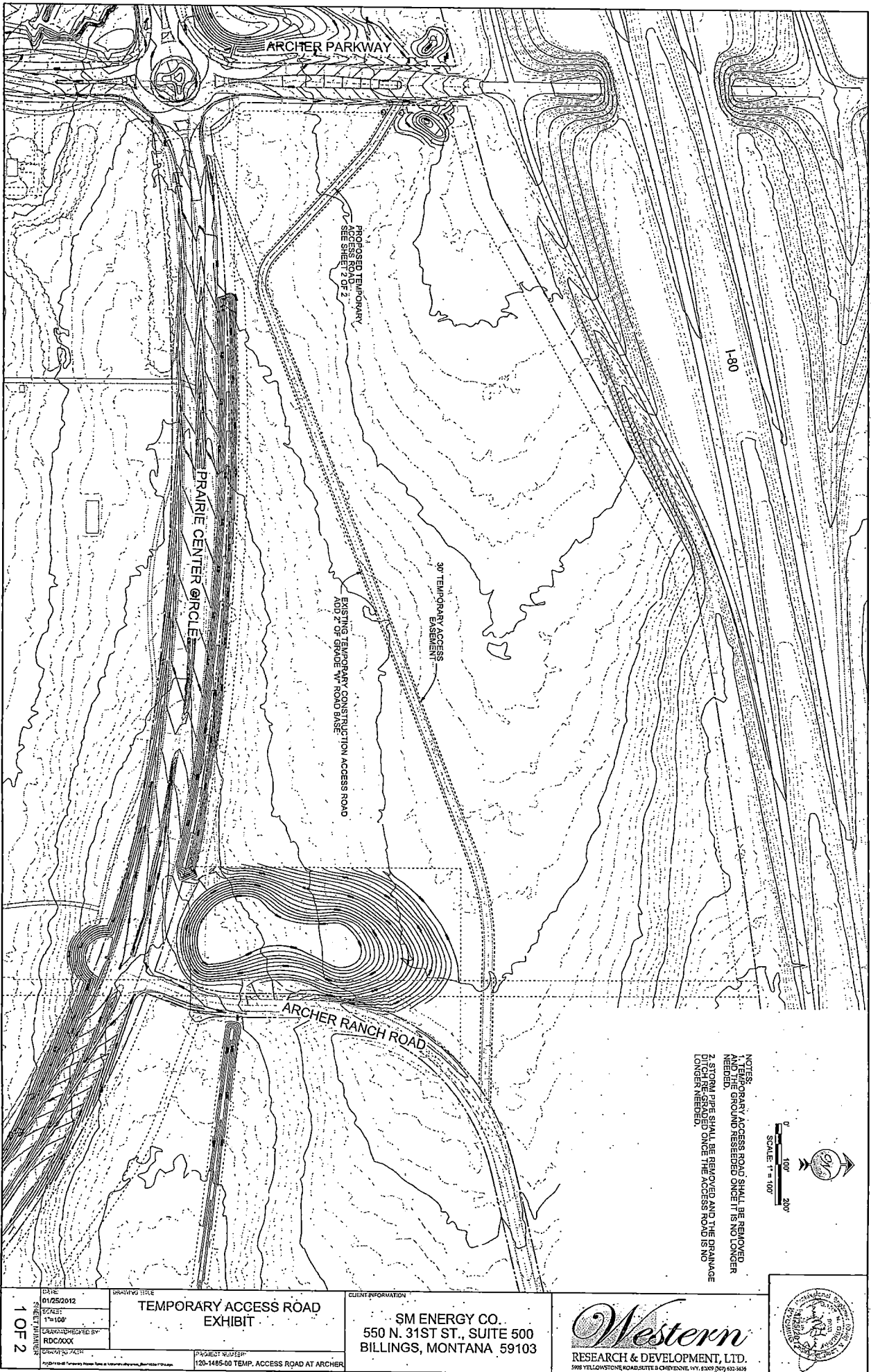
100

LARAMIE COUNTY
310W EST19TH ST., SUITE 400
CHEYENNE, WY. 82001

Western
RESEARCH & DEVELOPMENT, LTD.
5908 YELLOWSTONE ROAD, SUITE B CHEYENNE, WY, 82009 (307) 632-9654

10F1	DATE	24 JANUARY, 2012	EASEMENT LOCATED IN THE NW ¼ SECTION 27, T14N, R65W OF THE 6TH PM, LARAMIE COUNTY, WY
	SHEET NUMBER		
	SCALE	1"=200'	
	DRAWN/RECHECKED BY	WLH / DLS	
	UNLESS NOTED		
	PROJECT NUMBER		120-1687-00
	P13120-1485-00 Temporary Access Road at Archer Development, Resubdiv		120-1687-00

EXHIBIT 'B'



DATE: 01/25/2012 SHEET: 1 OF 2 DRAWN/DESIGNED BY: RDC/XXX CHECKED BY: [Signature]	PROJECT TITLE: TEMPORARY ACCESS ROAD EXHIBIT	CLIENT INFORMATION: SM ENERGY CO., 550 N. 31ST ST., SUITE 500 BILLINGS, MONTANA 59103	Western RESEARCH & DEVELOPMENT, LTD. 3905 YELLOWSTONE ROAD, SUITE 300, BILLINGS, MT 59103 (406) 327-6329
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EXHIBIT 'B'

