

## RESOLUTION NO. 2019-082

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH SONIC TELECOM, LLC FOR INSTALLATION AND MAINTENANCE OF FACILITIES WITHIN THE PUBLIC RIGHT OF WAY

**WHEREAS**, Sonic Telecom LLC is an internet and phone service provider with headquarters in Santa Rosa, California, that provides fiber service throughout parts of the Bay Area; and

**WHEREAS**, Sonic Telecom LLC proposes to install approximately 20,700 linear feet of fiber and 86 new vaults to serve properties with fiber service near the Priority Development Area; and

**WHEREAS**, the proposed License Agreement sets forth the construction requirements and imposes relocation requirements for the proposed telecommunication facilities in event of conflict with public infrastructure; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby authorize the City Manager to enter into a License Agreement with Sonic Telecom LLC in substantially similar form to Exhibit A, subject to minor modifications by the City Manager and approved by the City Attorney; and

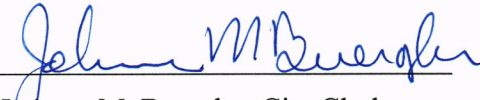
**BE IT FURTHER RESOLVED** that the City Manager and/or his designee is authorized to take all actions necessary to implement the License Agreement including securing and holding deposits as outlined in the License Agreement.

**DULY AND REGULARLY ADOPTED** this 9<sup>th</sup> day of July 2019.

**CITY OF ROHNERT PARK**

  
\_\_\_\_\_  
Gina Belforte, Mayor

**ATTEST:**

  
\_\_\_\_\_  
JoAnne M. Buerger, City Clerk



Attachment: Exhibit A

ADAMS: Aye MACKENZIE: Absent STAFFORD: Absent CALLINAN: Aye BELFORTE: Aye  
AYES: ( 3 ) NOES: ( 0 ) ABSENT: ( 2 ) ABSTAIN: ( 0 )

## TELECOMMUNICATIONS FACILITIES LICENSE AGREEMENT

**THIS TELECOMMUNICATIONS FACILITIES LICENSE AGREEMENT** ("License"), effective as of the latter of the signature dates below (the "**Effective Date**"), is by and between **THE CITY OF ROHNERT PARK**, a municipal corporation ("**City**"), and **Sonic Telecom, LLC**, a California LLC ("**Licensee**") (each, a party, and together, the parties).

WHEREAS, Licensee desires to use a portion of the City owned or controlled property in connection with its state and federally licensed communications business, and the City desires to grant to Licensee the non-exclusive right to use a portion of City owned or controlled property in accordance with this License.

### NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**1. Premises.** City owns or controls certain rights of way located within the City of Rohnert Park, Sonoma County, California, (hereafter, the "**City Property**") described in **Exhibit 1** hereto. Subject to the following terms and conditions, the City licenses to Licensee that portion of the City Property described and depicted in **Exhibit 2** hereto (hereafter, the "**Premises**") as further defined and for the uses described in Paragraph 3 (Use and Construction Requirements) below.

### **2. Grant of License**

- a. Subject to the terms and conditions hereinafter set forth, and in consideration of the duties, covenants and obligations of Licensee hereunder, the City hereby grants unto Licensee, a non-exclusive license (the "License") for the installation, operation, maintenance, replacement and repair of Licensee's facilities consisting of certain conduit, fiber optic cable, vaults, handholes, and supporting equipment, placed underground within City Property and Public Easements designated in Exhibit 1 and Exhibit 2 ("**Licensee Facilities**"). The Premises is the portion of City Property where Licensee has the right to construct and install the Licensee Facilities. As a part of this License, the City grants to Licensee the non-exclusive right for ingress and egress on foot or motor vehicle. The Premises and Licensee Facilities are depicted in their entirety in the attached Exhibit 2 and made a part hereof. Licensee shall use the Licensee Facilities only for the purposes described herein and on Exhibit 2, for which it must receive all necessary governmental approvals prior to such use. Licensee agrees that Licensee's Facilities shall be considered Licensee's personal property. No other rights are granted herein. Licensee represents and warrants to City that Licensee has conducted a reasonably diligent investigation on the condition of the Premises and suitability of Premises for Licensee's intended use. Licensee agrees that neither City nor any of its employees or agents have made, and City disclaims, any representations or warranties, express or implied, with respect to the physical or environmental condition of the Premises for Licensee's intended use. No Licensee Facilities other than that listed above and contained within Exhibit 2 may be constructed, installed, or otherwise placed within City Property or the Premises without the prior written approval of the City. This grant is made subject and subordinate to the prior and continuing right and obligation of the City to use all of the City Property described herein in the performance of its duties and there is reserved unto the City the right to construct, reconstruct, maintain, repair, and use existing and future streets, sidewalks, gutters, and other facilities, and appurtenances including pipeline, sewer, and

communication facilities in, upon, over, under, across, and along said City Property. Licensee accepts this grant with full cognizance of the potential presence of existing subterranean facilities belonging to City, and acknowledges that Licensee's construction and installation costs may increase by reason thereof.

- b. Nothing in this License shall be construed to prevent the City from altering, improving, repairing, or maintaining the City Property or the Premises. The City (as determined in its sole discretion) may require Licensee, at Licensee's sole cost and expense and at no expense to the City, to remove or relocate the Licensee Facilities or a portion thereof, in order to accommodate such activities of the City. In the event of the need by the City (as determined in its sole discretion) to require removal or relocation, Licensee may propose alternative locations for the Licensee Facilities, or portions thereof, for the City's review, approval, or disapproval. The City shall not be liable for any form of damages to Licensee as a result of such removal or relocation (including without limitation, consequential damages or lost profits sustained by Licensee).
- c. The City hereby reserves every right and power provided by law, and nothing in this agreement shall be deemed a waiver of the City's legislative or police power. Licensee, by its execution of this License, agrees to be bound thereby and to comply with any lawful requirements of the City in its exercise of such rights or power. Neither the grant of this License nor any provision hereof shall constitute a waiver of or bar to the exercise of any lawful governmental power of the City. The reserved rights include the right to use and allow other users to conduct other activities within the Property.

### **3. Use and Construction Requirements.**

- a. The City authorizes Licensee to prepare, execute and file all required applications to obtain government approvals for the operation of the Licensee Facilities under this License and agrees to reasonably assist Licensee with such applications. Licensee has the right to obtain a title report from a title insurance company of its choice and to have the City Property surveyed by a surveyor of Licensee's choice at Licensee's expense. Licensee may also perform and obtain, at Licensee's sole cost and expense (and after conferring with the City regarding any invasive testing to ensure it does not cause damage), soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the City Property, necessary to determine if the Licensee's use of the Premises will be compatible with Licensee's engineering specifications, system, design, or operations.
- b. Cost of Equipment and Installation - Licensee shall be responsible for all direct and indirect costs (including labor, materials, and overhead) for designing, purchasing, and installing its Licensee Facilities in accordance with Exhibit 2. Licensee shall further be responsible for and bear all costs of obtaining all permits and licenses required in connection with the construction, installation and operation of the Licensee Facilities and Licensee shall satisfy any conditions or mitigation measures required in connection therewith. Licensee shall timely pay all labor, materials, and all professional services related to Licensee's construction, installation, and operation of the Licensee Facilities.

- c. The Premises shall be used by Licensee exclusively for the provision of communications services pursuant to the laws, statutes, rules, regulations and orders of the Federal Communications Commission ("FCC") and/or the California Public Utilities Commission ("CPUC") now or later in effect and subject to the terms and conditions of this License.
- d. Licensee shall use the Premises in compliance with all applicable laws, statutes, standards, building restrictions, zoning laws, ordinances, rules, regulations, and orders of any local and state agencies now or later in effect. Licensee agrees that, at no time during the term of this License will it use or permit the use of its Licensee Facilities in ways that are inconsistent with this Paragraph 3 (Use and Construction Requirements) of this License.
- e. Licensee shall not sublet all or any part of the Premises or allow it to be physically occupied, or used by any person or entity other than Licensee. This provisions shall not be interpreted to prohibit the sale, resale, leasing, or grant of indefeasible rights of use of services or excess capacity in the Licensee Facilities provided that such sale, resale, leasing, or grant of indefeasible rights of use does not require alteration or modification to the Licensee Facilities once constructed.
- f. Licensee acknowledges that the City may elect to enter into agreements with other telecommunications operators, and that Licensee may be required to cooperate with such operators. It is the intent of the City to consolidate and coordinate all such telecommunications facilities at the City Property in a logical manner in order to maximize use of space and minimize the impact (visual and otherwise) of telecommunications equipment. Licensee acknowledges that it has no exclusive rights for operating the Licensee Facilities on the City Property and that the City shall have the right to enter into leases, licenses, permits, and agreements with other telecommunications operators after the Effective Date of this Agreement provided such other parties do not interfere with the operations of Licensee pursuant to the terms of this Agreement. Any compensation generated by other telecommunications operators on the subject City Property shall belong solely to the City as compensation due to the additional impact from an increase in the amount of equipment on the City Property. Licensee agrees to reasonably cooperate with the other telecommunications operators and the City to coordinate efficient location of equipment and to promptly resolve any interference issues that may arise due to the presence of multiple operators. Licensee shall not materially alter the nature of its use, or otherwise unreasonably interfere with the operations of any other telecommunications operators on the City Property.
- g. Prior to the commencement of any construction, Licensee shall (at its sole cost and expense) submit to the City working drawings, plans, and specifications detailing the location, numbers and width of conduit and cabling, vaults and handholes specifically describing the proposed construction, installation and work. No work shall commence until the City has approved same in writing, which approval shall not be unreasonably withheld. The approved plans shall become Exhibit 2 to this License. Notwithstanding the foregoing, the City shall have the right not to approve such plans if they are not satisfactory to the City in both fitness and appearance. Notwithstanding any other provision, the City shall not bear any liability with respect to the design, construction, or operation of the Licensee Facilities. Any changes to



the approved plans (Exhibit 2) by Licensee must be re-submitted to the City for its re-approval. Approval or disapproval and required changes shall be delivered to Licensee within thirty (30) working days after the receipt of such revised plans from Licensee. In no event shall City's approval of such plans be deemed a representation that they comply with applicable laws, ordinances, or rules and regulations or will not cause interference with transportation or traffic flow operations or other communication systems, such responsibility being solely Licensee's.

- h. Licensee agrees that all construction and installation work shall be performed and diligently pursued to completion in a skillful, neat, responsible, and workmanlike manner only by qualified and properly trained persons and appropriately licensed contractors using generally accepted construction standards consistent with such reasonable requirements as shall be imposed by the City. Licensee shall label the Licensee Facilities to allow for easy identification; label information shall include Licensee's name and contact information.
- i. Licensee shall be responsible for the coordination of its Licensee Facilities installation work to avoid any interference with or damage to existing streets, sidewalks, gutters, utilities, sewer or storm drain infrastructure, other City structures, or any City or other municipal transit operations. The absence of markers or monuments indicating the presence of any subterranean facilities, whether belonging to City or otherwise, does not constitute a warranty or representation that none exist. Licensee shall be the City's point of contact and shall manage all of its contractors and subcontractors and City shall not have an obligation to interact with any other party with respect to Licensee's construction or operation of the Licensee Facilities. No less than ten (10) calendar days before commencing installation of City approved Licensee Facilities on any City Property, Licensee shall (1) provide City a proposed installation schedule and (2) provide City a list of names of contractors who will perform the installation work.
- j. During construction, installation, and all other times, Licensee must abide by all City and California Department of Transportation regulations, including but not limited to, construction hours, waste management, noise abatement, and traffic management ordinances and regulations. Licensee shall keep work areas and the Property clean of debris and trash at all times. City will not pay or void any citations or reimburse Licensee for traffic citations or fines.
- k. Utilities - Licensee shall furnish, in its sole cost and expense, any and all utilities or services necessary or appropriate for Licensee's use of the Premises, including but not limited to any power feed required to install or operate the Licensee Facilities. Licensee may install one or more utility meters at the Premises, and shall be solely responsible for all utilities required for Licensee's use of the Premises. Licensee and City agree that City shall not be held liable for any damages sustained by Licensee resulting from Licensee's use of utilities.
- l. Licensee understands and agrees that the public safety, proper functioning of storm, sewer, utility and other telecommunication systems and the aesthetic qualities of the City Property and Premises are of critical importance to the City. Licensee agrees that the specifications and plans it will provide shall be of sufficient specificity to demonstrate these concerns are properly addressed, and Licensee

shall conduct actual installation of the Licensee Facilities in accordance with those specifications.

- m. Licensee shall repair any damage to the City Property where such damage is caused by Licensee, any of its agents, representatives, employees, contractors, or subcontractors, as a result of the installation, construction, operation, maintenance, and repair of the Licensee Facilities, at its sole cost, as soon as possible, but in no event more than ten (10) days from the date Licensee first receives notice of such damage, except those repairs which require more than ten (10) working days to repair as long as Licensee has commenced the repairs within such period and thereafter diligently pursues the repair to completion. All repairs shall be performed to the reasonable satisfaction of the City. If Licensee fails to repair any such damage, City may, in its sole discretion, re-grade, re-surface, refinish, or otherwise repair such damage and Licensee shall reimburse City for all costs and expenses incurred in such repair.
- n. Except during construction pursuant to a City-approved traffic control plan or during emergency restoration activities with prior notice and approval by the City, Licensee shall not, in City's sole and reasonable judgment, impede access to or in any way obstruct, interfere with or hinder the use of any City property, including without limitation, land, water tanks and other municipal water transmission facilities, City streets, traffic signals, storm or sewer systems or light poles, loading docks (if applicable), the sidewalks and access in, around and through the City Property or any entrance ways thereto. If any other foregoing occurs, Licensee shall take corrective action as soon as possible, and shall use best efforts to correct same within two (2) hours after Licensee's receipt of notice by the City.
- o. No Licensee Facilities are to be constructed on or placed on top of or interfere with the operation of any water lines or electric lines, storm drains or sewer systems, or any other utilities or telecommunication systems on or in City Property. In the event City discovers Licensee has placed any Licensee Facilities in such a way that damages or interferes with such systems, Licensee agrees to move the subject equipment away from said systems and repair any damage at Licensee's sole cost and expense as soon as reasonably possible after Licensee's receipt of written notice from the City. In the event Licensee has to relocate the Licensee Facilities off of an existing underground utility or water line, City will require enough space to be able to access such facilities using a back hoe or similar equipment.
- p. Licensee shall install and maintain monuments and or markers in form and size satisfactory to City warning of the presence of the Licensee Facilities (and any unmarked facilities of others discovered by Licensee during construction) at Licensee's sole cost and expense. Each vault or handhole cover shall be marked with Licensee's name to be easily identified.
- q. Licensee shall not remove or alter any City equipment or infrastructure, storm drain sewer systems, or other City property without the express written permission of the City in advance of any work by Licensee. The City may in its sole discretion repair or replace any City equipment, storm drain or sewer facilities, or other City property damaged by Licensee's installation or removal of the Licensee Facilities, and Licensee shall reimburse the City its costs for such repair and replacement within thirty (30) days from the City's written request.

- r. Licensee acknowledges and agrees that the installation and maintenance of Licensee Facilities on the City Property poses a risk of severe injury or death to persons who are not properly trained and equipped to work on such improvements. Licensee shall require all contractors, subcontractors, or other persons performing installation, maintenance and other work related to the Licensee Facilities to be appropriately trained and licensed. Licensee shall ensure that said persons observe any required safety requirements established by the CPUC and Cal-OSHA, including street right of way safety requirements and training.
- s. Licensee understands and agrees that the proper functioning of streets, sidewalks gutters, sewer and storm drain systems, telecommunication systems, and other utilities and the aesthetic characteristics of the City Property are of significant importance to the City and agrees to ensure that the installed Licensee Facilities shall match the aesthetic features of the City Property and not affect the proper functioning of sewer and storm drain systems, telecommunication systems, and other utilities.
- t. City's Control of City Property/Emergencies. The City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to all or any part of the City Property for any purposes including but not limited to maintenance and improvement of municipal services, utilities, City compliance with mandatory regulations or voluntary controls or guidelines. In performing such work, the City shall make good faith efforts to give Licensee prior notice of such work and shall make reasonable efforts not to disrupt Licensee's normal use of the Licensee Facilities. The making of any such alterations, additions, repairs, deletions, or improvements shall in no event entitle Licensee to any damages, or to perform each of its other covenants or obligations established in this Agreement. In the event of an emergency, the City's work and needs shall take precedence over any operations of Licensee on City's Property. The parties shall notify each other of any emergency situation (or other matters as more particularly described in Paragraph w below) related to the City Property at the emergency phone numbers listed below:

City or its vendor – Department of Public Safety: 707-584-2611

Licensee – Sonic 24/7/365 Operations Center: (877) 706-5662, or by email at [noc@sonic.com](mailto:noc@sonic.com)

- u. Licensee will be responsible for repair and/or replacement of any Licensee Facilities that are damaged or destroyed in any manner, including without limitation, by third parties, acts of nature (including fires, explosions, earthquakes, drought, tidal waves and floods), or war or terrorism. City shall bear no liability with respect to any damage to the Licensee Facilities under this Agreement.
- v. Whenever Licensee performs any work, including any installation, maintenance, repair, or construction or any other work or activities by Licensee on or in the Property or Premises, Licensee agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all of its contractors, sub-contractors, employees, or other representatives. Licensee is solely responsible for obtaining owner permission for any work not on the City's property.

- w. Licensee shall at all times retain personnel to be on call and available to the City by telephone, to supervise all activities within and upon the Premises and operation of the Licensee Facilities and who shall be authorized to represent and act for Licensee in matters pertaining to daily operations and emergencies and all other matters affecting this License. Licensee shall meet with City and other users or service providers from time to time as requested by the City to coordinate and plan construction or any other matters pertaining to this License.
- x. Traffic Control – Licensee shall have the sole responsibility and liability for traffic control for work performed by Licensee or its contractors. Licensee shall submit a traffic control plan to the City at least three (3) weeks prior to any work taking place under this License, which shall include a plan covering motor vehicles, bicyclists, and pedestrians. Licensee shall not begin any work until the traffic plan is approved by the City. An approved traffic control plan shall be maintained on site during all phases of construction; the City may cause Licensee to cease construction work until the traffic control plan is provided. Licensee shall notify all adjacent or affected residents or businesses at least 48 hours in advance of any street, sidewalk or other closures and make suitable arrangements to have all vehicles routed to a satisfactory location outside the closed area. The City will make no payment toward traffic control. Any costs or fees related thereto shall be Licensee's sole responsibility.
- y. Security Deposit – Prior to construction, Licensee shall deposit with City the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) to be held as a security deposit (the "Security Deposit"). Said Security Deposit shall be held by City as security for the faithful performance by Licensee of the terms, covenants, and conditions of this License, until one year from the inspection and acceptance by the City of the construction of the Licensee Facilities. If Licensee defaults under this License, which default is not cured by Licensee, then City, in addition to its other remedies, may use, apply, or retain all of this Security Deposit to compensate for any loss, damage, or expense incurred by City by reason of Licensee's uncured default. This section shall not be construed to eliminate or reduce the Licensee's obligation to repair any damage to the public right of way resulting from installation of the Licensee Facilities. To ensure the adequacy of this Security Deposit, Licensee shall ensure that during its construction activities for the Licensee Facilities, Licensee shall not cause more than 80 linear feet of open trenching or potholing to exist on City Property at any given time, unless approved by the City in writing.

**4. Term.** This License is binding and in effect upon full execution by City and Licensee. The initial term of this License ("**Initial Term**") shall be twenty (20) years commencing upon the Effective Date of this License. This License shall automatically be extended for successive twenty (20) year Renewal Terms unless Licensee notifies City in writing of Licensee's intention not to extend this License at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term and any Renewal Terms are collectively referred to herein as the "**Term**".

**5. Title; Access.**

- a. Title to Licensee Facilities installed or placed on the Premises by Licensee shall be held by Licensee. Licensee has the right to remove all Licensee Facilities at its sole expense on or before the expiration or termination of this License. Unless otherwise



stated in writing by the City, all Licensee Facilities must be removed in their entirety as described under Paragraph 8 of this License.

- b. City shall provide access to Licensee, Licensee's employees, agents, contractors and subcontractors to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Licensee. City represents and warrants that it has full rights to ingress to and egress to and from the Premises. City hereby grants non-exclusive access rights (access pathways) to Licensee as depicted on Exhibit 2, to the extent required to construct, maintain, install and operate Licensee Facilities on the Premises.
- c. Licensee has inspected the Premises and accepts the same "AS-IS, WHERE IS," and agrees that City is under no obligation to perform any work or provide any materials to prepare the Premises for Licensee.

**6. Interference with Communications.** At all times during the term of this License, Licensee agrees to use equipment that will not cause interference with City's equipment, including the City of Rohnert Park Police and Fire Department networks or other pre-existing telecommunication licensee's/lessee's equipment on or in the City Property. If any interference to the use or enjoyment of the City Property by the City, residents, occupants, or prior telecommunication licensees or lessees, results, directly or indirectly, from the operation of any of the Licensee Facilities, Licensee shall have a forty-eight (48) hour cure period, after written notice from City, within which to eliminate such interference. In any event, Licensee agrees to cease operations (except for intermittent testing) as soon as possible until the interference has been corrected to the satisfaction of City. Any future lease, license, or other agreement entered into by the City shall be conditioned upon the contracting party not interfering with the operation of Licensee's Facilities. Licensee shall lawfully operate within their licensed authority in compliance with all applicable laws, including all non-interference rules of the FCC.

**7. Taxes.** Licensee shall pay all taxes assessed against Licensee Facilities. Pursuant to California Revenue and Taxation Code section 107.6, Licensee is notified that the property interest acquired by Licensee in the Premises under this License may be subject to property taxation as a possessory interest in real property, and Licensee may be subject to the payments of property taxes levied on that interest. In the event City's real property taxes increase as a result of Licensee's use of the Premises, Licensee shall reimburse such tax increase to City within thirty (30) days of receipt of written notice and reasonable evidence thereof.

**8. Termination.** This License may be terminated on sixty (60) days prior written notice as follows:

- a. By either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that if such default is curable, but not curable within such sixty (60) day period, then within such period of time as is reasonably necessary to accomplish such cure (in order to avail itself of this time period in excess of sixty (60) days, the defaulting party must send to the other party, within the sixty (60) day period, a written plan to cure the default, which is reasonably acceptable to the other party, and the defaulting party diligently commences and continues performance of such cure to completion according to the written plan). Delay in

curing a default will be excused if due to causes beyond the reasonable control of a party.

- b. By City in the event of a redevelopment of its property, or if a re-design of its streets, sidewalks, sewer systems or other services or obligations of the City necessitates the removal of the Licensee Facilities or a portion thereof from the Premises. In such an event, the City will give Licensee a minimum of one (1) year prior written notice, and shall cooperate with any Licensee attempt to relocate its Licensee Facilities to other locations on or in rights of way owned by the City.
- c. By City if Licensee does not obtain or maintain licenses, permits, or other approvals necessary to the construction or operation of Licensee Facilities;
- d. By Licensee, prior to the commencement of construction, if Licensee is unable to occupy or utilize the Premises due to the ruling or directive of the FCC or other governmental or regulatory agency; or
- e. By Licensee, prior to the commencement of any construction, in the event Licensee determines, in its sole discretion, due to the title report results or survey results, that the condition of the City Property or Premises is unsatisfactory, Licensee will have the right to terminate this License upon written notice to the City.
- f. By Licensee upon one (1) year prior written notice after the completion of five (5) years from the Effective Date (Initial Term) of this License, if Licensee determines that the Premises are not appropriate for its operations for economic, environmental, or technological reasons.

Upon termination, Licensee, at its sole cost and expense, shall remove the Licensee Facilities and any related electric utilities, regrade said areas and re-pave streets, sidewalks, gutters, and storm drains and re-plant vegetation returning the Premises to City in the condition in which it existed upon original execution hereof, reasonable wear and tear excepted, within thirty (30) days after the termination of this License. Licensee shall repair any damage to the City Property caused by such removal within ten (10) days of discovery or the receipt of written notice by City of same. If Licensee does not repair said damage within such ten (10) day period, the City may repair said damage to restore said property to the condition it was in upon original execution hereof, reasonable wear and tear excepted. Licensee shall promptly reimburse City for the reasonable cost thereof, plus an administrative fee of fifteen percent (15%) of such cost, within thirty (30) days after receipt of invoice. The provisions of this Paragraph shall survive the expiration or earlier termination of this License. In lieu of such removal, and with the consent of Licensee, the City may elect to transfer title and ownership of the Licensee Facilities to the City, at no cost to the City.

**9. Destruction of Premises.** If the Premises or City Property is destroyed or damaged, through no fault of Licensee, so as in Licensee's judgment to hinder its effective use of the Premises, Licensee may elect to terminate this License as of the date of the damage or destruction by so notifying City no more than forty-five (45) days following the date of damage or destruction. Licensee shall have the right to remove the Licensee Facilities in their entirety pursuant to Paragraph 8 of this License.

**10. Condemnation.** If a condemning authority takes all of the City Property, or a portion which in Licensee's opinion is sufficient to render the Premises unsuitable for Licensee's

use, then this License shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding, each party shall be entitled to make a claim against the condemning authority for just compensation (which for Licensee shall include the value of Licensee Facilities, moving expenses, business dislocation expenses and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

#### **11. Insurance.**

Licensee shall maintain in full force and effect the types and amounts of insurance specified in **Exhibit 4**.

#### **12. Successors and assigns.**

- a. Licensee may assign this License, without City's prior written consent, to any subsidiary, parent company, or any entity which is the owner of a controlling interest in Licensee, provided that no such assignment shall serve to release Licensee from its duties and obligations hereunder. Licensee shall have no other right to assign its interest in this License without City's prior written approval. City shall have the right to freely transfer and assign, in whole or in part, all of its rights and obligations hereunder in the City Property and no further liability or obligation shall thereafter accrue against City hereunder.
- b. Licensee shall not have the right to permit other communications providers to occupy any space in any equipment enclosure installed by Licensee or anywhere else in or on the Premises.

#### **13. Environmental indemnification; Hazardous Materials.**

- a. Use of Hazardous Materials. Except for back-up batteries and generators, Licensee shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Premises or City Property by Licensee or Licensee's agents, employees, or contractors (collectively "**Licensee Parties**").
- b. Notice of Release or Investigation. If, during the Term, either party becomes aware of (a) any actual or threatened release of any Hazardous Material on, under, or about the Premises or City Property, or (b) any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of Hazardous Material on, under, or about the Premises or City Property, such party shall give the other party written notice of the release or investigation within ten (10) business days after learning of it and shall simultaneously furnish to the other party copies of any claims, notices of violation, reports, or other writings received by such party that concern the release or investigation.
- c. Indemnification. Licensee shall defend, indemnify and hold harmless the City and its elected and appointed officers, officials, employees, agents and representatives (collectively "**Indemnitees**") from and against any and all liabilities, losses, damages, fines, deficiencies, penalties, claims, demands, suits, actions, causes of action, legal or administrative proceedings, judgments, costs and expenses (including without limitation reasonable attorneys' fees and expenses, court costs,

expert witness fees and post judgment collection costs) (all of the foregoing, collectively "**Claims**") resulting or arising from or in connection with a release of any Hazardous Material in or about the Premises or City Property or the violation of any Environmental Law by Licensee, or its agents, assignees, or contractors. This indemnification includes: (i) losses attributable to diminution in the value of the Premises or the City Property, (ii) loss or restriction of use of rentable space on the City Property, (iii) adverse effect on the marketing of any space on the City Property; and (iv) all other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including, and notwithstanding Paragraph 15, below, consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation. The provisions of this Paragraph shall survive the expiration or earlier termination of this License.

- d. Remediation Obligations. If the presence of any Hazardous Material brought onto the Premises or City Property by Licensee or Licensee's employees, agents, or contractors results in contamination of the Premises or City Property, Licensee shall promptly take all necessary actions to remove or remediate such Hazardous Materials, whether or not they are present at concentrations exceeding state or federal maximum concentration or action levels, or any governmental agency has issued a cleanup order, at Licensee's sole expense, to reasonably return the Premises and the City Property to the condition that existed before the introduction of such Hazardous Material. Licensee shall first obtain City's reasonable consent, not to be unreasonably withheld, conditioned or delayed, to the proposed removal or remedial action. This provision does not limit the indemnification obligation set forth in Paragraph 13(C) above.
- e. Definition of Hazardous Material. As used in this License, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any government authority having jurisdiction over the Premises or City Property. Hazardous Material includes: (a) any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code sections 9601-9675); (b) "hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code sections 6901-6992k); (c) any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect); (d) petroleum products; (e) radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code sections 2011-2297g-4; (f) asbestos in any form or condition; and (g) polychlorinated biphenyls ("PCBs") and substances or compounds containing PCBs.
- f. Definition of Environmental Laws. As used in this License, the term "Environmental Laws" means all federal, state and local laws, ordinances, regulations, rules, orders and directives pertaining to Hazardous Materials, including, without limitation, the



laws, statutes, and regulations cited in the preceding Paragraph 13(e), as any of the foregoing may be amended from time to time.

**14. Indemnity.** To the fullest extent permitted by law, Licensee shall defend, indemnify and hold City and City's elected and appointed officers, officials, employees, agents and representatives (collectively, "**Indemnitees**") harmless from and against any and all Claims of any nature arising out of or relating directly or indirectly to this License or the Premises and Licensee Facilities (including without limitation, Claims for or relating to loss of or damage to property, injury or death of any person, and economic losses and consequential or resulting damage of any kind), including any Claim arising from or in connection with or in any way attributable to: (i) the use or occupancy, or manner of use or occupancy of the Premises or the City Property by Licensee or its employees, agents, contractors, (ii) any act, error, omission or negligence of Licensee Parties in, on or about the Premises or City Property, (iii) any alterations, construction, activity, work, or thing done, omitted, permitted, allowed or suffered by Licensee or Licensee Parties in, at, or about the Premises or the City Property, or arising out of the installation, modification, or removal of the Licensee Facilities by the Licensee or Licensee Parties, or (iv) any breach or default in performance of any obligation on Licensee's part in the performance of any covenant or agreement to be performed under this License, except to the extent caused by the sole negligence or willful misconduct of City. The provisions of this Paragraph shall not be construed or interpreted as in any way restricting, limiting or modifying Licensee's insurance obligations under this License and are independent of such obligations. Licensee's compliance with the insurance requirements set forth in this License shall not in any way restrict, limit or modify Licensee's indemnification obligations hereunder. The provisions of this Paragraph shall survive the expiration or earlier termination of this License.

**15. Waiver of Incidental and Consequential Damages.** Notwithstanding any other provision of this Agreement, in no event shall City be liable to Licensee for consequential damages, or loss of or interference with Licensee's business, including without limitation lost profits. Licensee's use of the Premises shall be at Licensee's sole risk, without any obligation on the City's part to improve, repair or maintain the same.

**16. Attorney's fees; Litigation costs.** If any action at law or in equity is brought to recover any sums under this License, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this License, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to reasonable attorney's fees, costs and other expenses, in addition to any other relief to which such party may be entitled. A prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

Whenever a provision is made in this License for the payment of attorney's fees, such fees shall be payable whether the legal services are rendered by a salaried employee for the party or by independent counsel and shall include such fees as are incurred in connection with any pretrial proceeding, trial, or appeal of the action.

Any award of damages following judicial remedy or arbitration as a result of the breach of this License or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

**17. Liens.** Licensee shall be responsible for the satisfaction or payment for any provider of work, labor, material, or services claiming by, through, or under Licensee. Licensee shall also indemnify, hold harmless, and defend City against any such liens, including the reasonable fees of City's attorneys. Such liens shall be discharged by Licensee within thirty (30) days after notice of filing thereof by bonding, payment, or otherwise, provided that Licensee may contest, in good faith and by appropriate proceedings, any such liens. Licensee accepts this License subject and subordinate to any mortgage, deed of trust, or other lien presently existing or hereafter arising upon the City Property or Premises and to any renewals, modifications, consolidations, refinancing, and extensions thereof. The provisions of this paragraph are hereby declared self-operative and shall survive termination of this License, and no further instrument shall be required to effect such subordination of this License.

**18. Miscellaneous.**

- a. **Severability.** If any provision of the License is invalid or unenforceable with respect to any party, the remainder of this License or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this License shall be valid and enforceable to the fullest extent permitted by law.
- b. **Counterparts.** This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- c. **Notices.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight mail, postage prepaid, to be effective when properly sent and received, refused or returned undelivered, to the addresses of the respective parties as set forth below:

Notice to the City shall be to the following:

City of Rohnert Park  
Attn: City Manager  
130 Avram Avenue  
Rohnert Park, CA 94928

With CC to:

Burke, Williams, & Sorenson, LLP  
Attn: City Attorney  
1901 Harrison Street, Suite 900  
Oakland, CA 94612

Notice to Licensee shall be to the following:

Sonic Telecom, LLC  
Attn: General Counsel  
2260 Apollo Way  
Santa Rosa, CA 95407

with CC to:

Sonic.net, LLC  
Attn: Dane Jasper  
2260 Apollo Way  
Santa Rosa, CA 95407

City or Licensee may from time to time designate any other address for this purpose by written notice to the other party.

- d. Choice of Law. This License shall be governed under the laws of the State of California and applicable Federal law.
- e. Survival of Terms. Terms and conditions of this License which by their sense and context survive the termination, cancellation or expiration of this License will so survive.
- f. Recorded Memorandum of License. Upon request, the City may require that a Memorandum of License be recorded. Costs related to recording shall be paid for by Licensee.
- g. Entire Agreement. The terms of this License (including the Exhibits, all of which are hereby incorporated by reference) are intended by the parties as the final expression of their agreement with respect to such terms. The parties further intend that this License constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any proceeding, involving this License. The language in all parts of this License will in all cases be construed as a whole and in accordance with its fair meaning and not construed for or against either party.
- h. **Amendments and Modifications.** No amendments, modification or supplements, including those by custom, usage of trade, or course of dealing, of any provisions of this License shall be binding on any of the parties unless it is in writing and signed by the parties in interest at the time of the modification. No oral order, objection, claim, or notice by either party to the other shall affect or modify any of the terms or obligations contained in the License.
- i. **Jurisdiction.** Any action by any party to this License shall be brought in the appropriate court of competent jurisdiction within the County of Sonoma, State of California, notwithstanding any other provision of law which may provide that such action may be brought in some other location.
- j. **Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this License by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of the License thereafter.
- k. **Force Majeure.** Neither party hereto shall be liable to the other for any failure of performance under this License due to causes beyond its control, including, but not limited to: acts of God; adverse weather conditions; material or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor;

lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions; national emergencies; insurrections; riots, wars; or third-party labor disputes, lock-outs, work stoppages or other labor difficulties; provided however, that such time period shall be extended for only the actual amount of time such party is so delayed. A condition shall be deemed to be beyond the reasonable control of a party when such condition would affect any person similarly situated (such as a power outage) but shall not be deemed to be beyond the reasonable control of such party when peculiar to such party (such as financial inability or failure to order long lead time materials sufficiently in advance).

- l. **LIMITATION OF LIABILITY.** City and its agents shall not be held be personally liable for the performance of City's obligations under this License. The liability of City for any of City's obligations under this License shall be limited to City's interest in the City Property where the Licensee Facilities are located. Licensee's use of the Premises shall be at Licensee's sole risk, without any obligation on City's part to improve, repair or maintain the same.
- m. **Compliance with Laws.** Licensee shall comply with all applicable laws and regulations with respect to the use, construction and/or operation of the Licensee Facilities and Access Pathways.
- n. **Authority.** City and Licensee each covenant that persons executing this License on their behalf have full power and authority to execute this License.

IN WITNESS WHEREOF, Licensee has caused its duly authorized representative for and on its behalf to execute this License, and the City of Rohnert Park, a municipal corporation, has caused this License to be executed by its City Manager and attested to by its City Clerk under the authority of Resolution No. \_\_\_\_\_ - adopted by the City Council of the City of Rohnert Park on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and Licensee has so executed it.

LICENSEE: **SONIC TELECOM, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

CITY: **THE CITY OF ROHNERT PARK**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney



**ATTEST:**

---

City Clerk

## CITY ACKNOWLEDGMENT

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(insert name and title of the officer)

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## LICENSEE ACKNOWLEDGEMENT

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(insert name and title of the officer)

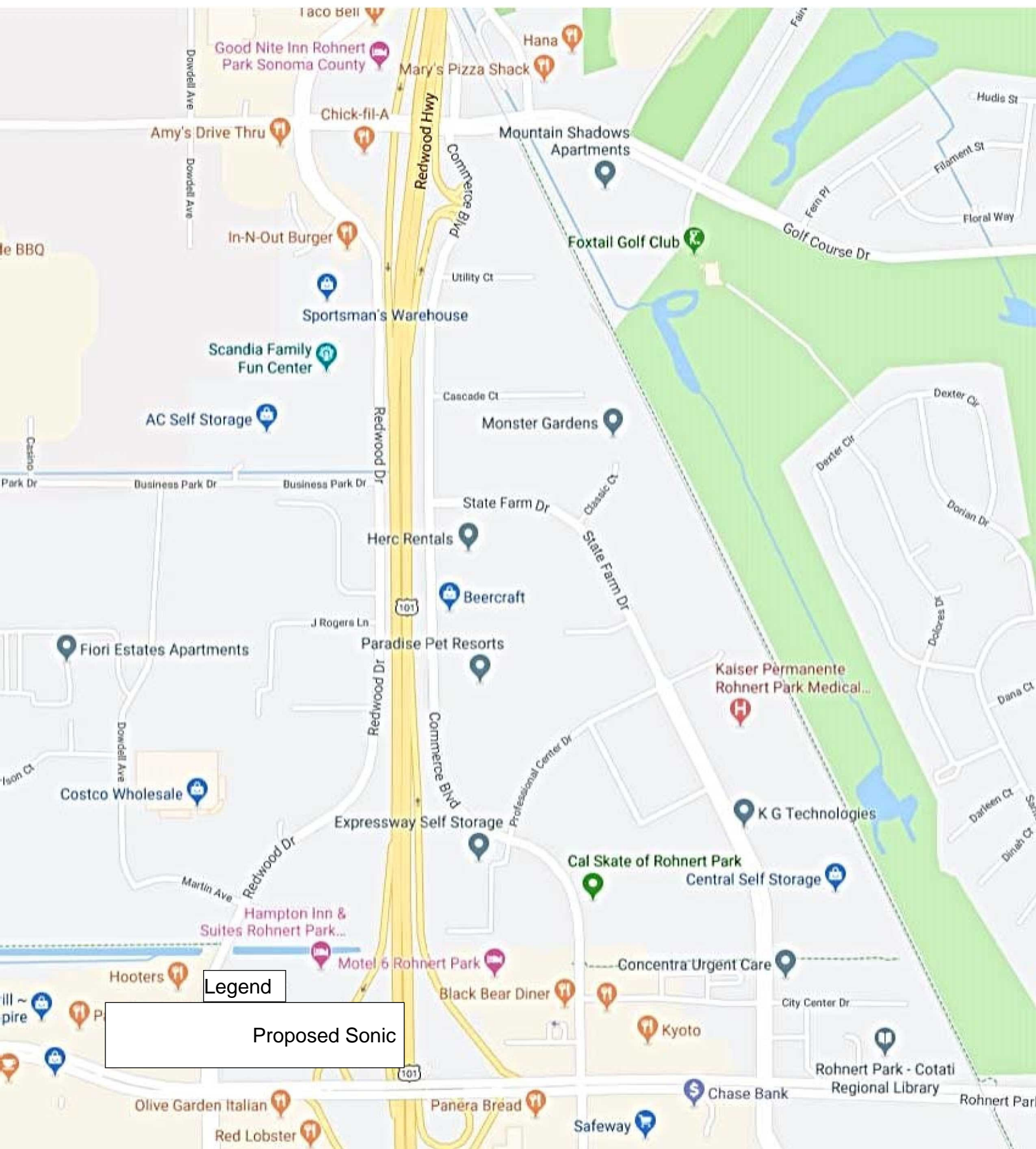
personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



Work Address: Tarsier Business Park, Rohnert Park, CA

- Work Description: Boring of approx. 20,700' & place 86 new vaults in the vicinity of Rohnert Park Expy, Commerce Blvd, & State Farm Dr.

# SONIC.

## VICINITY MAP



### BUILD

Bore Footage: ~20,700'  
 New Vaults: 0  
 New Vault(s): 86  
 New Pedestals: 0  
 Existing Pedestals: 0  
 Overpull Existing Conduit: ~0'

### LEGEND

Cover-Title #1  
 Symbology & Abbreviations #2  
 Construction Plans #2-28

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## TARSIER BUSINESS PARK

PROJ#: N/A

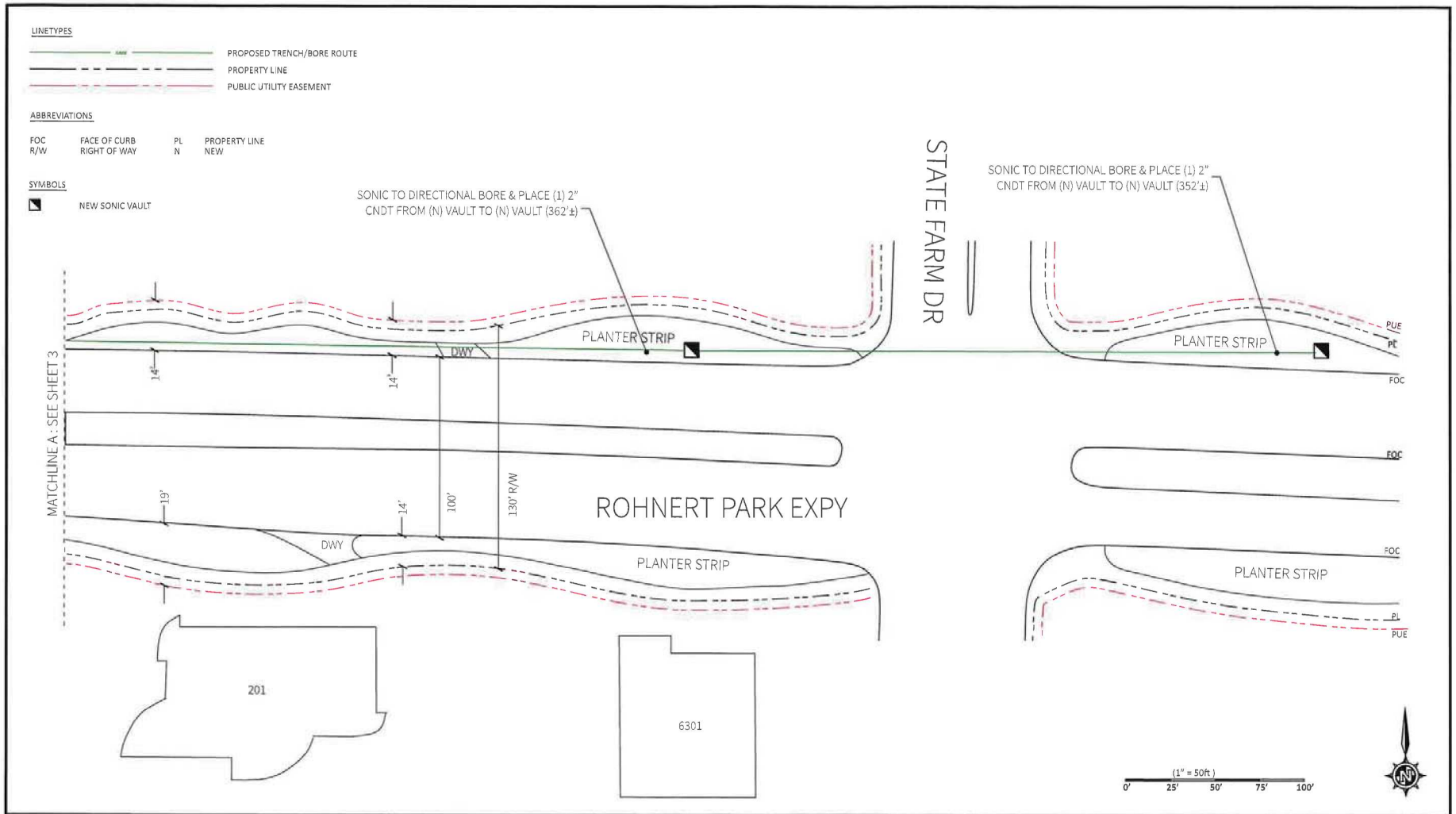
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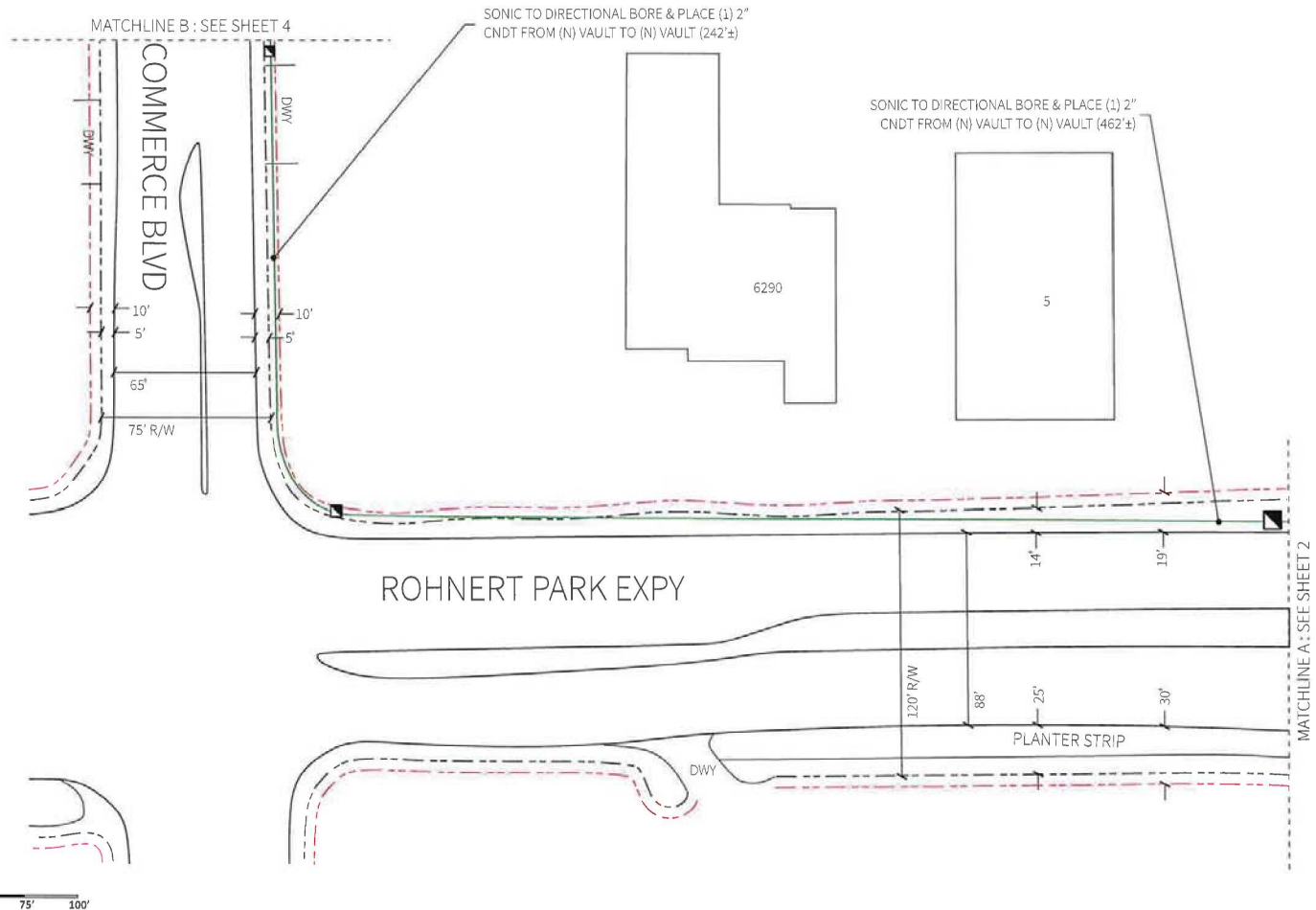
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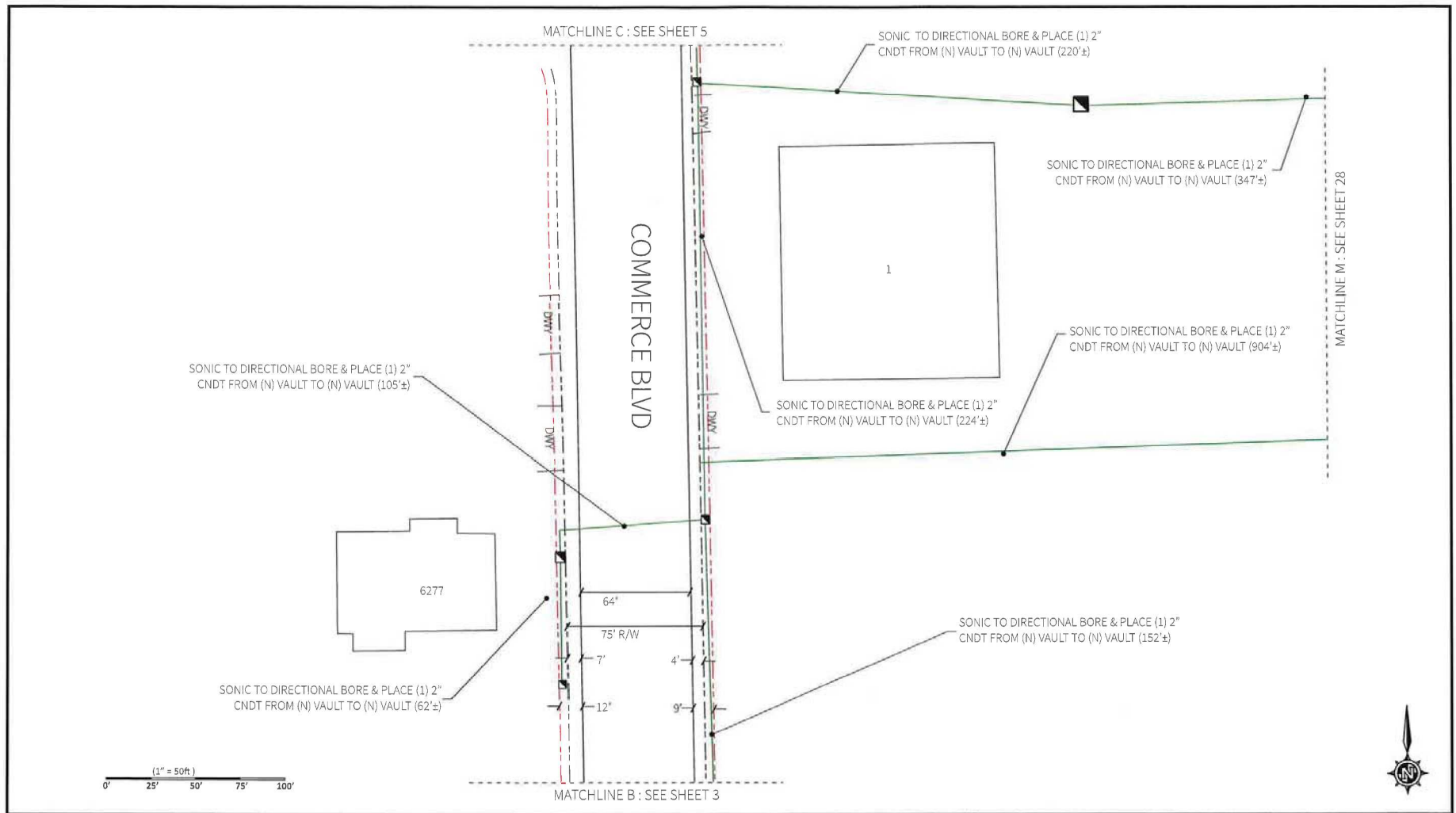
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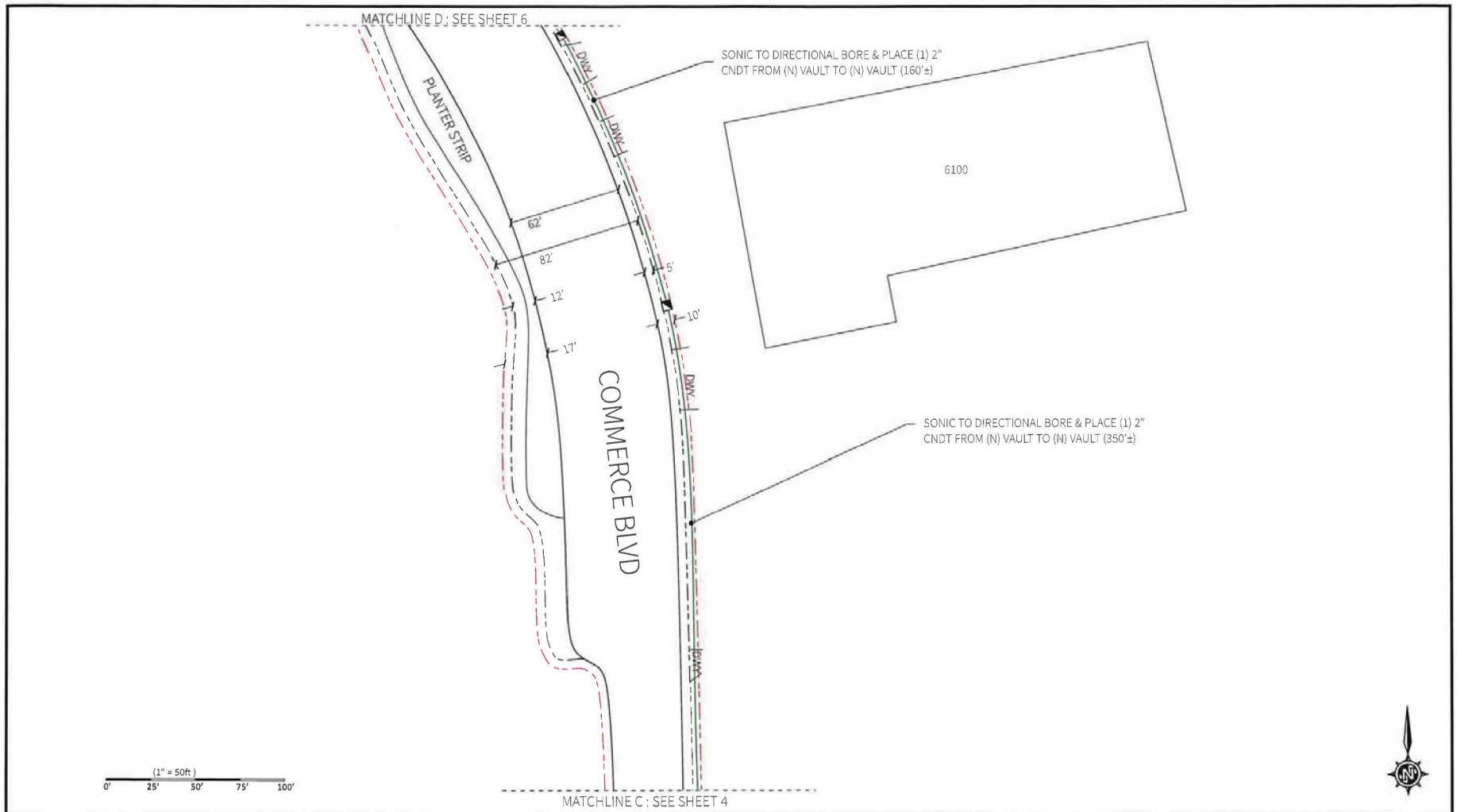
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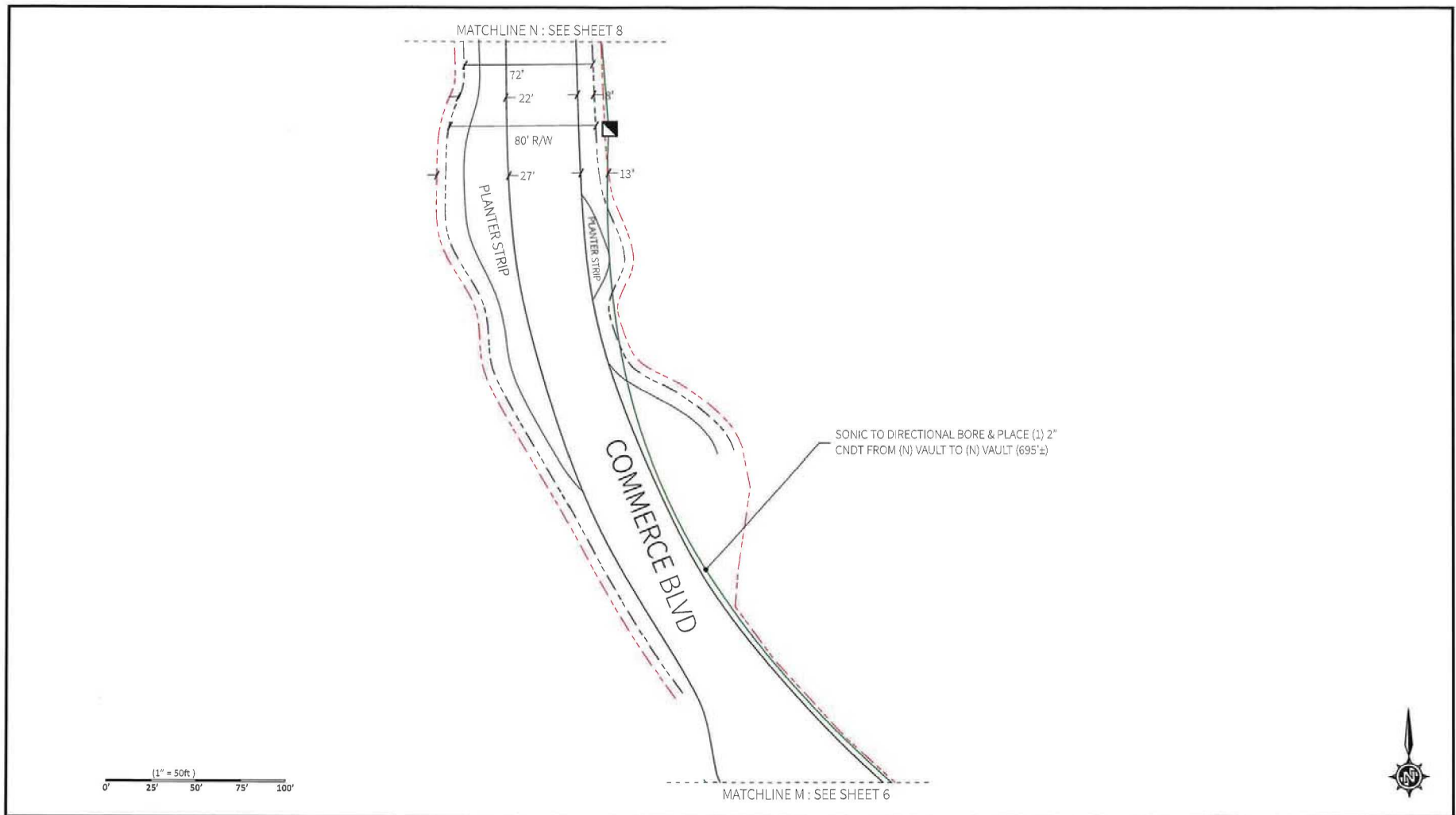
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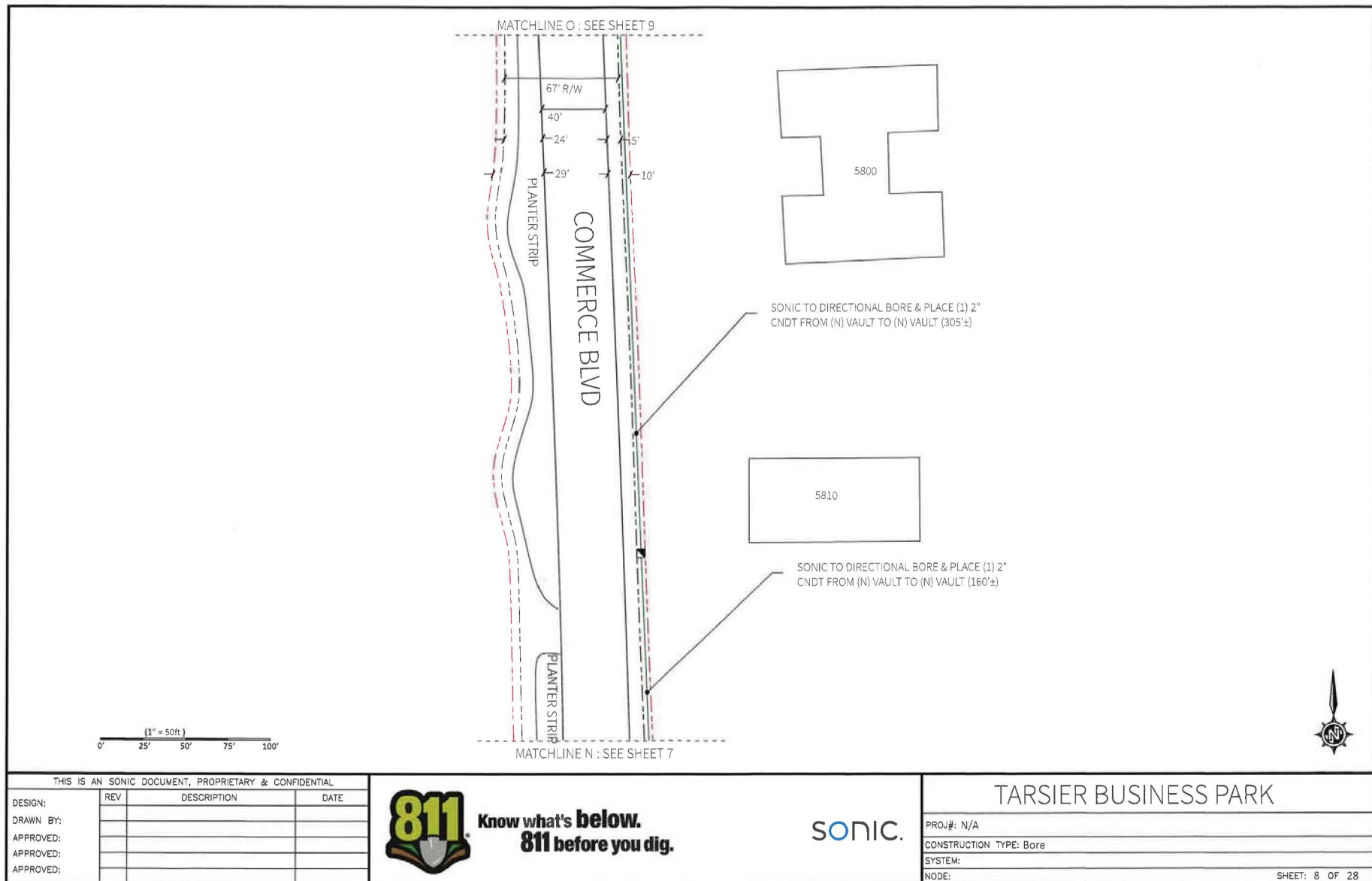
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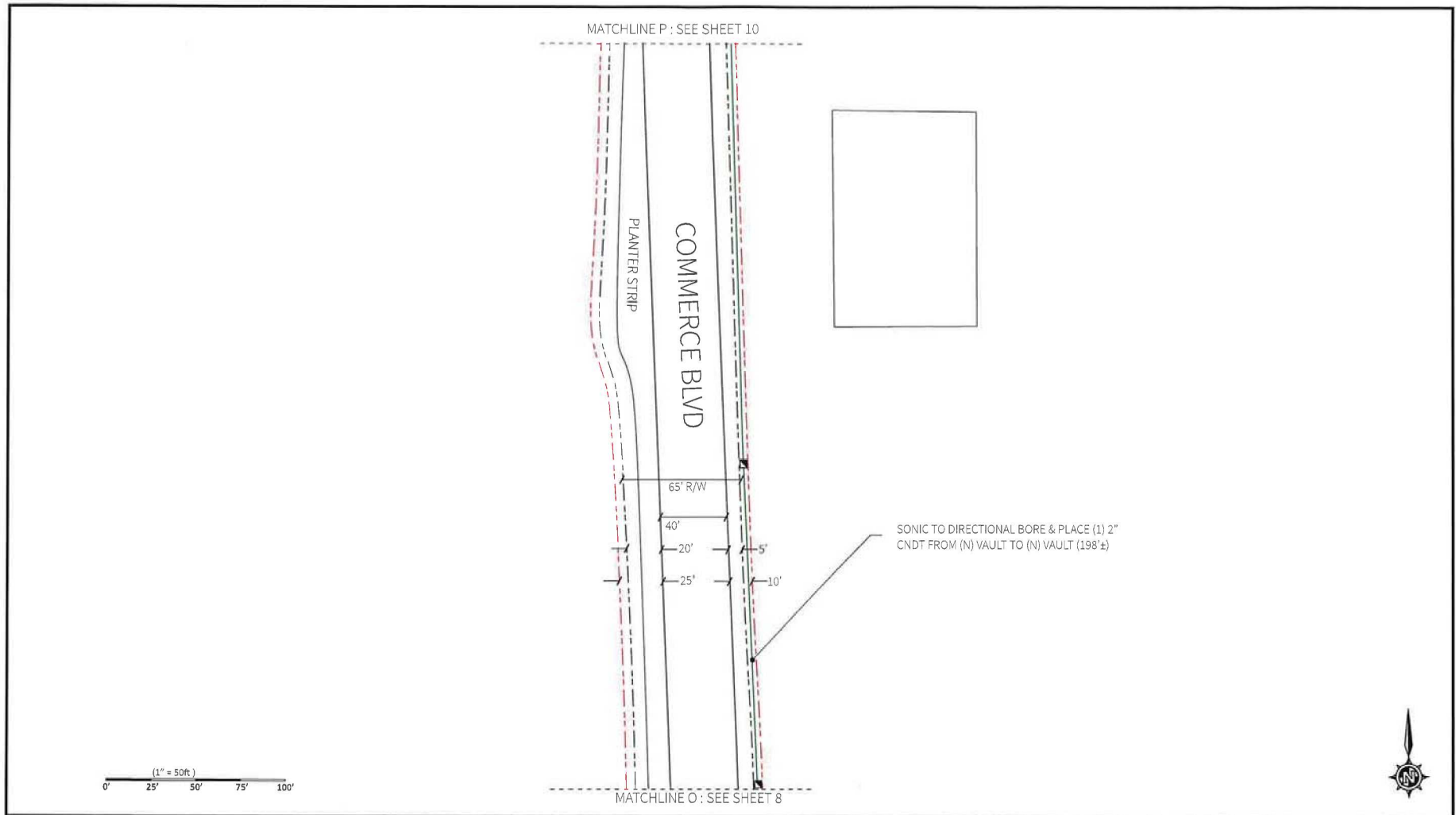
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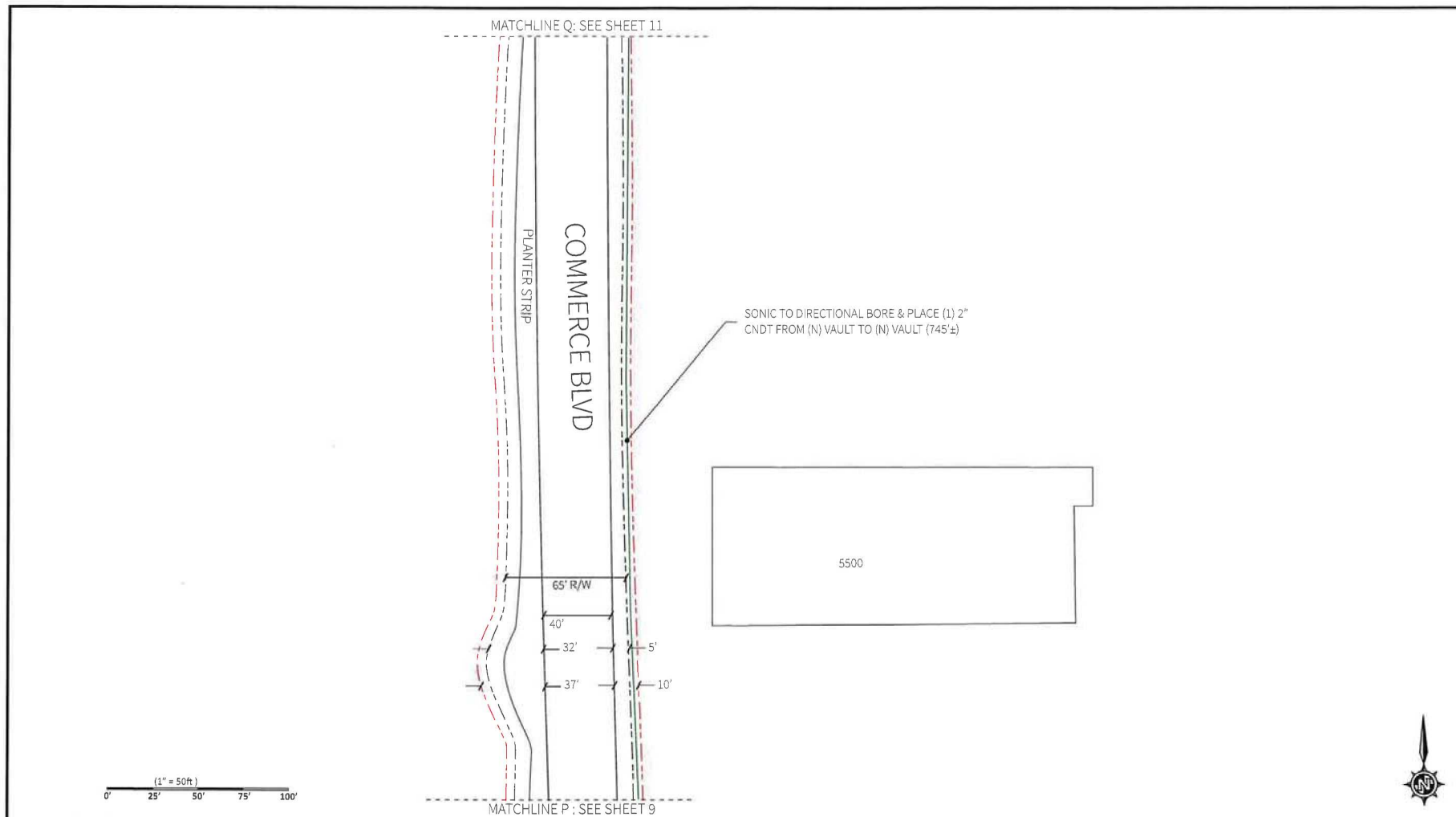
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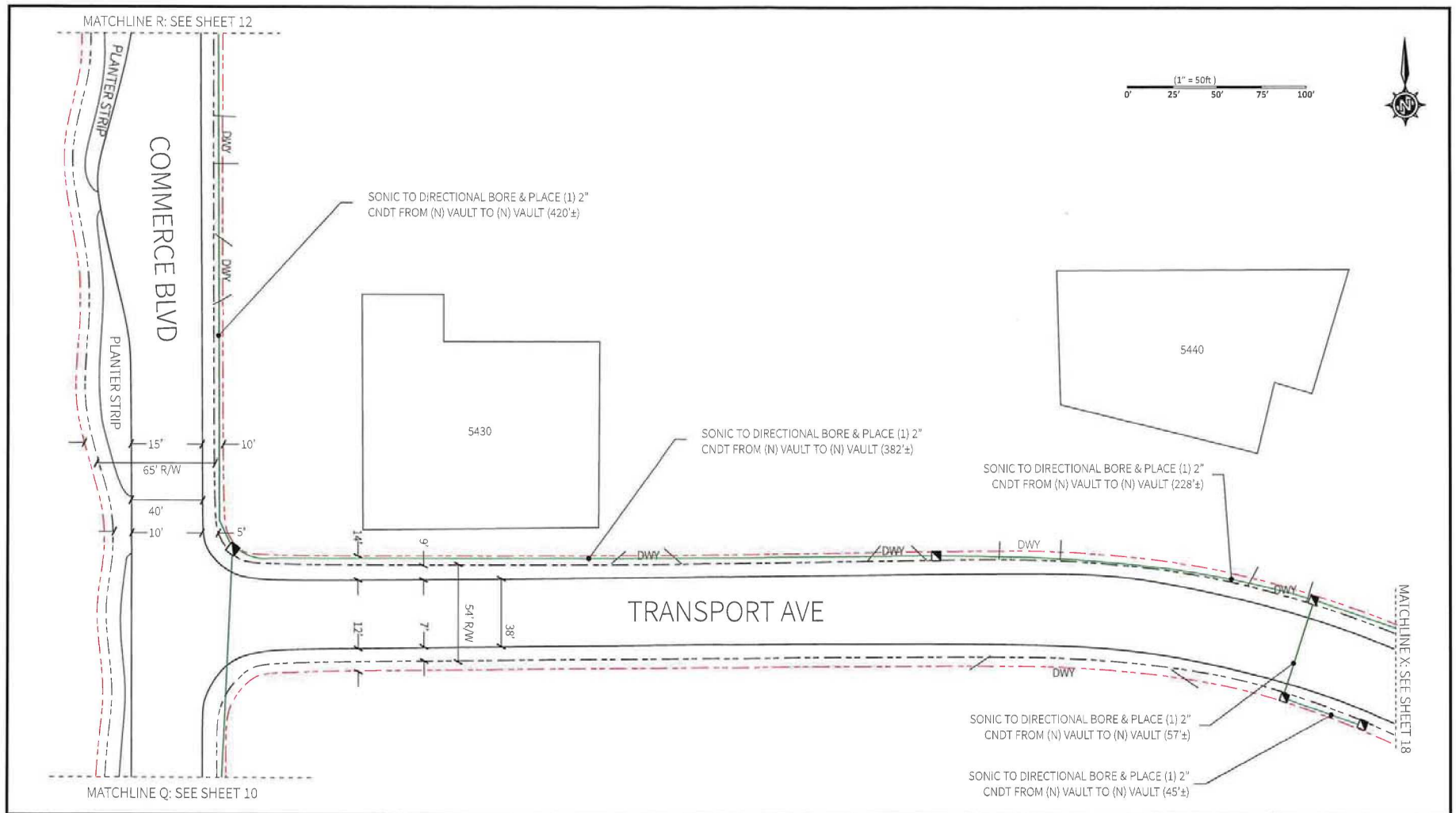
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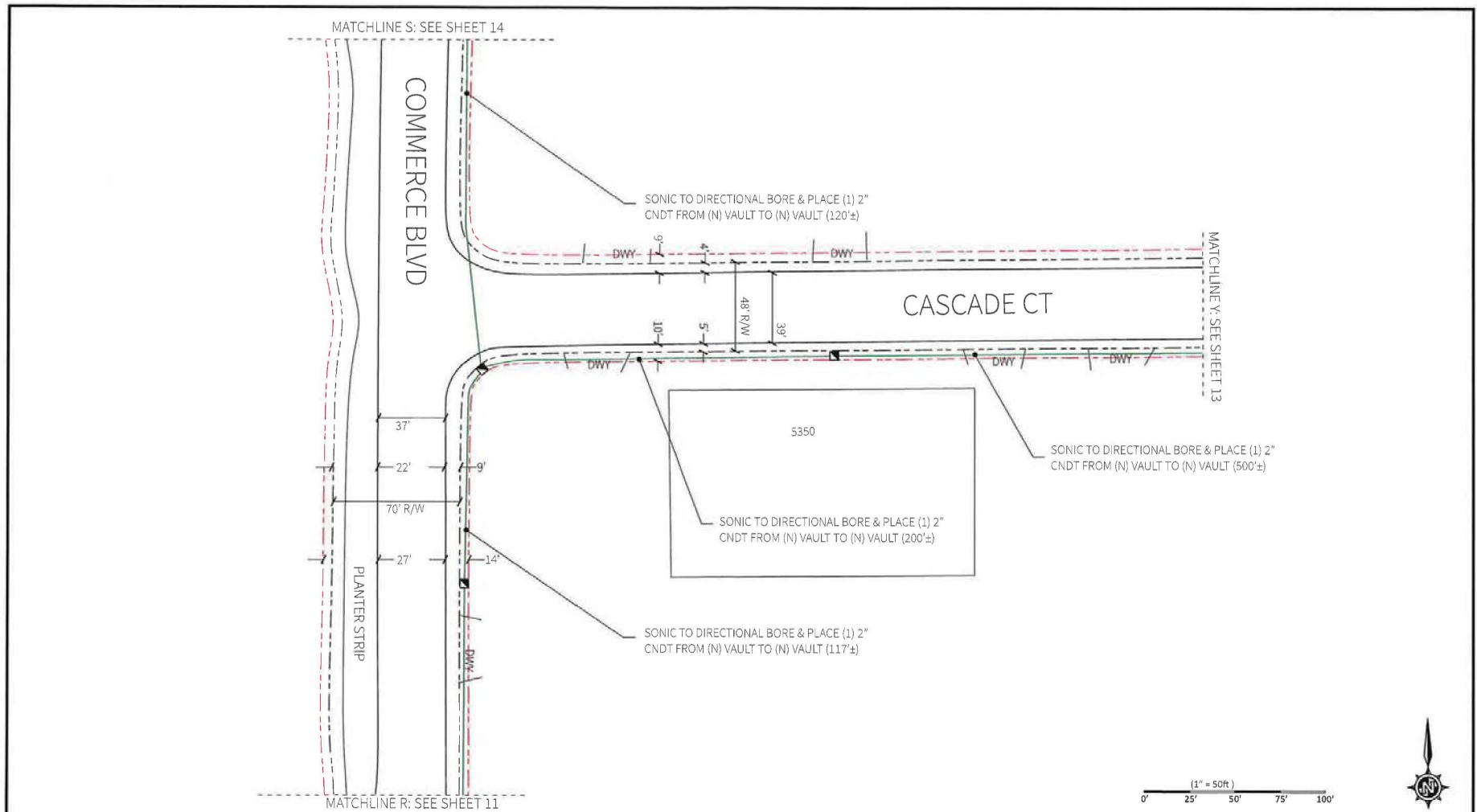


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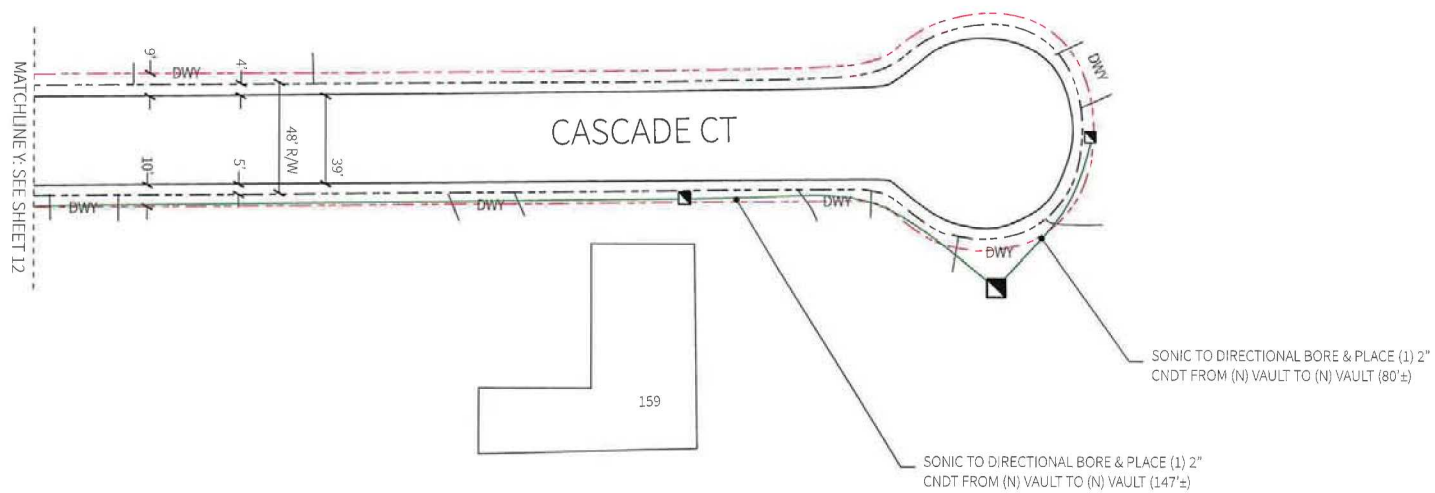


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(1" = 50ft)  
0' 25' 50' 75' 100'



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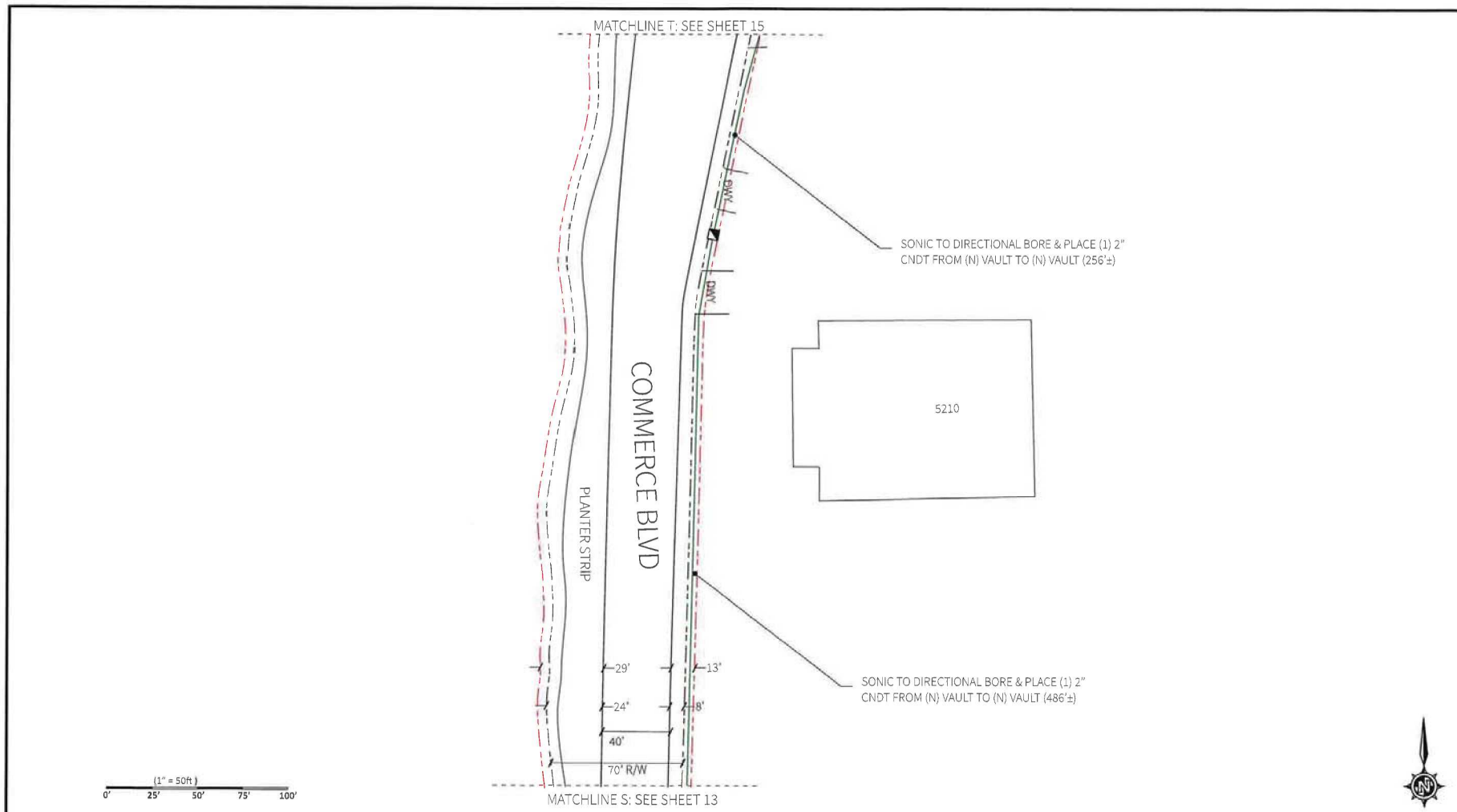
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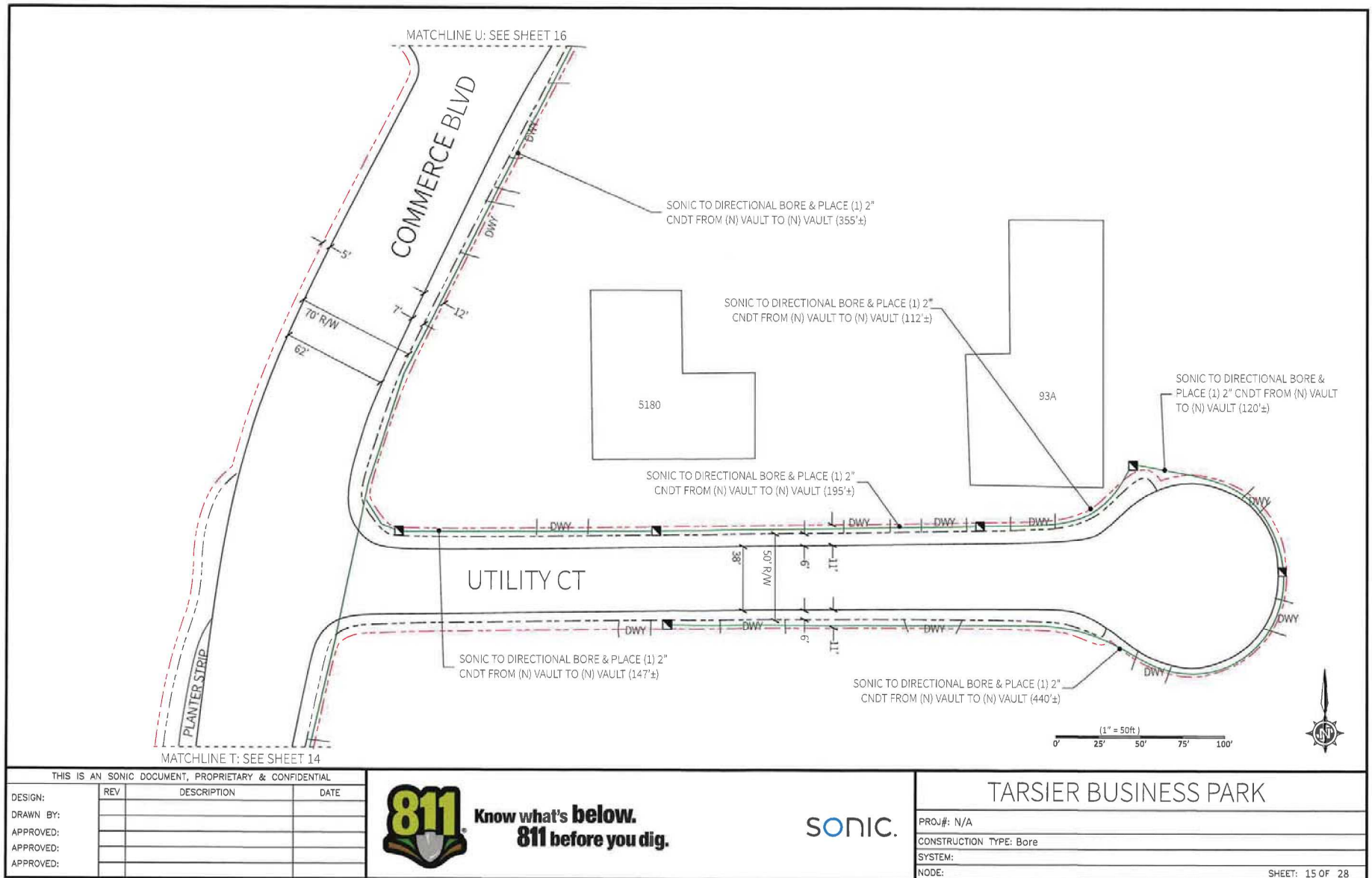


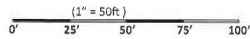
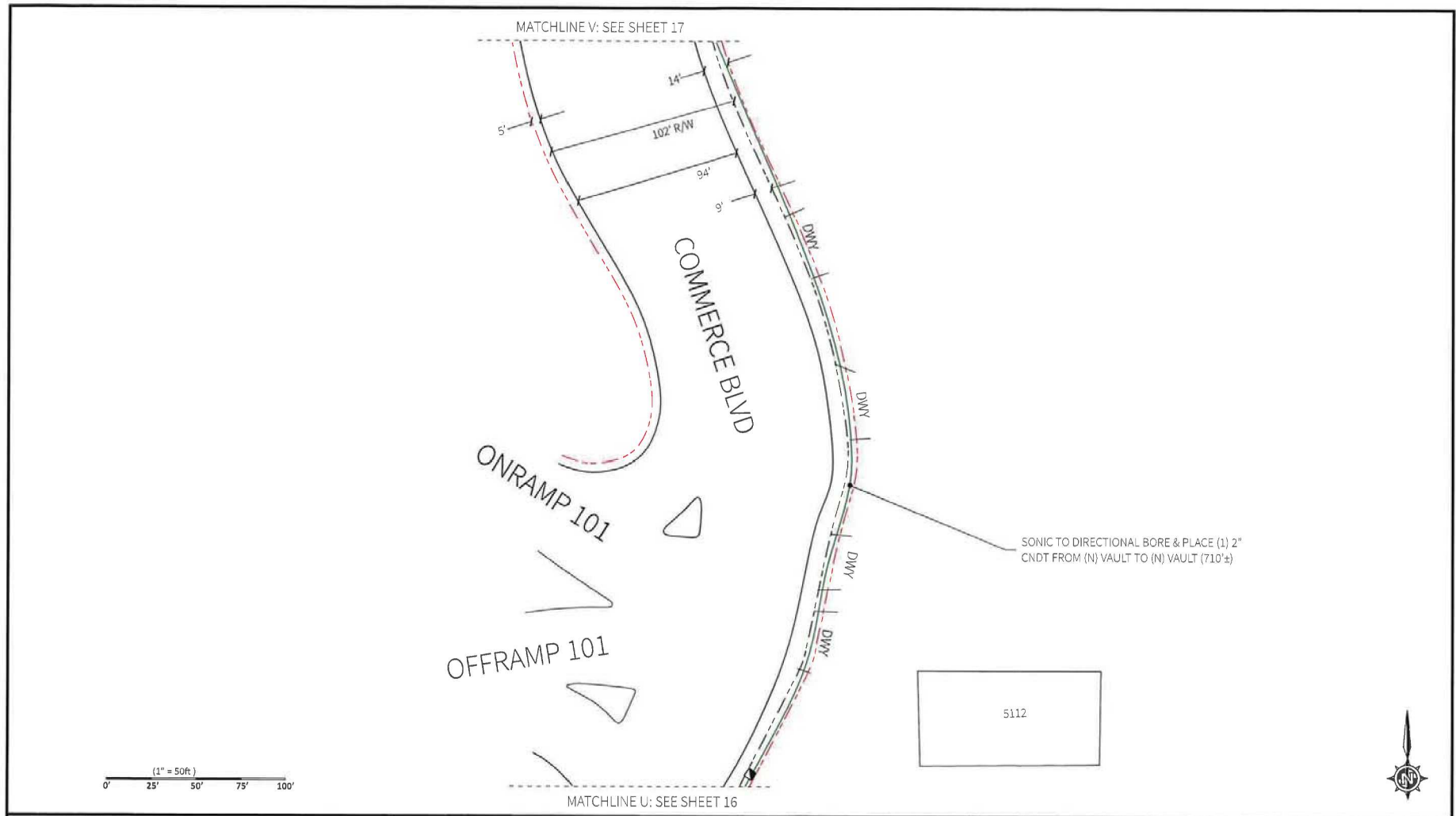
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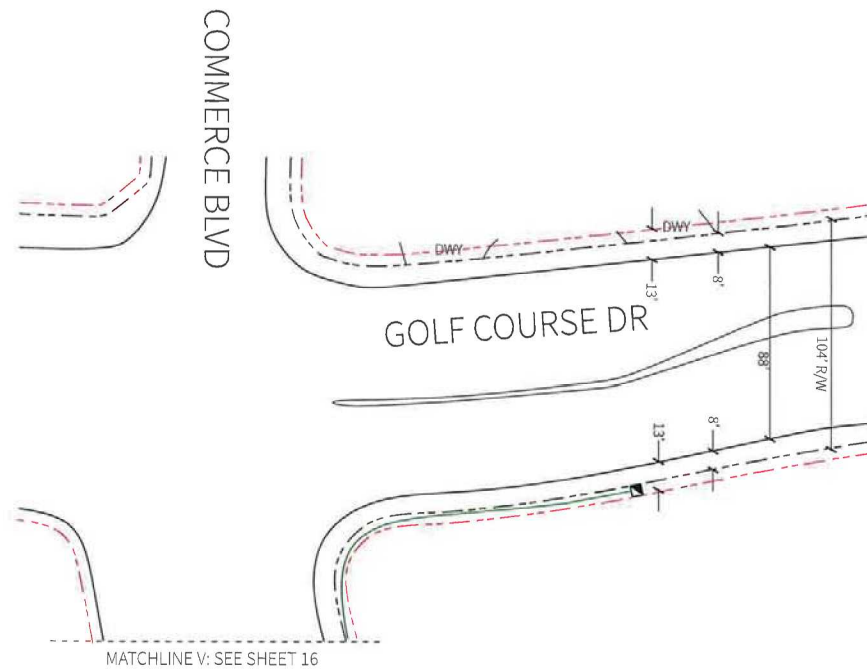
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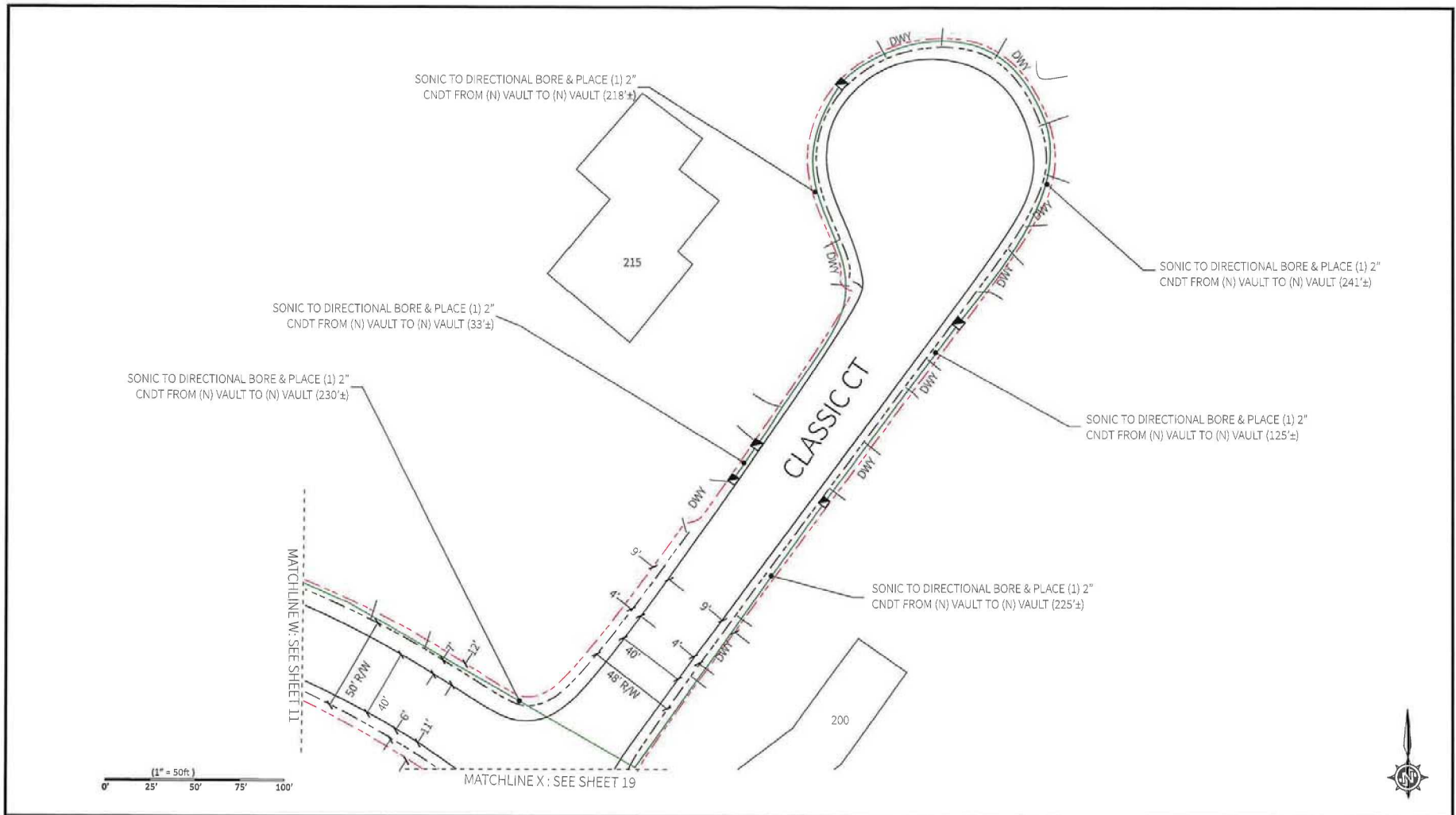
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SHEET: 17 OF 28



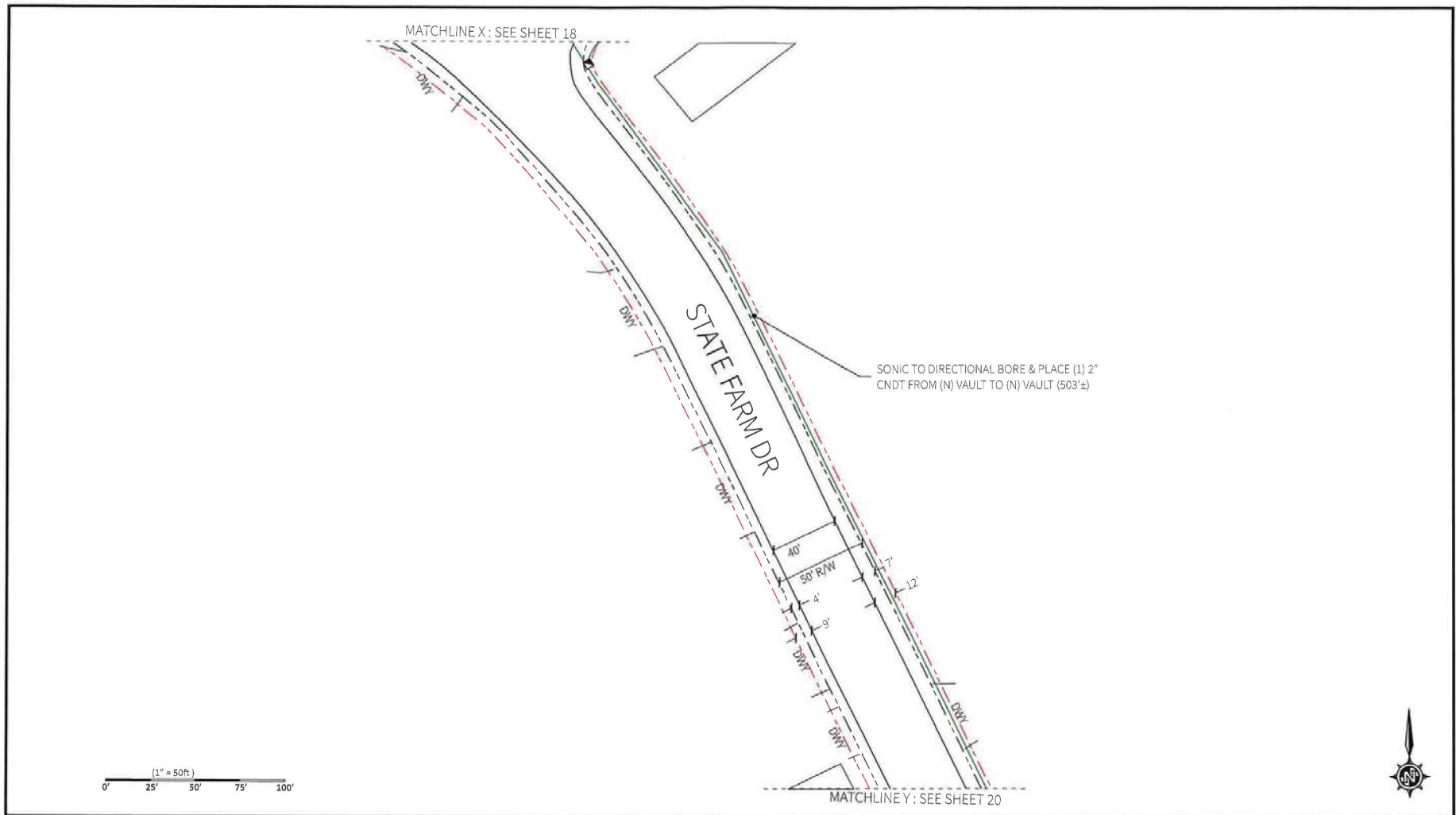
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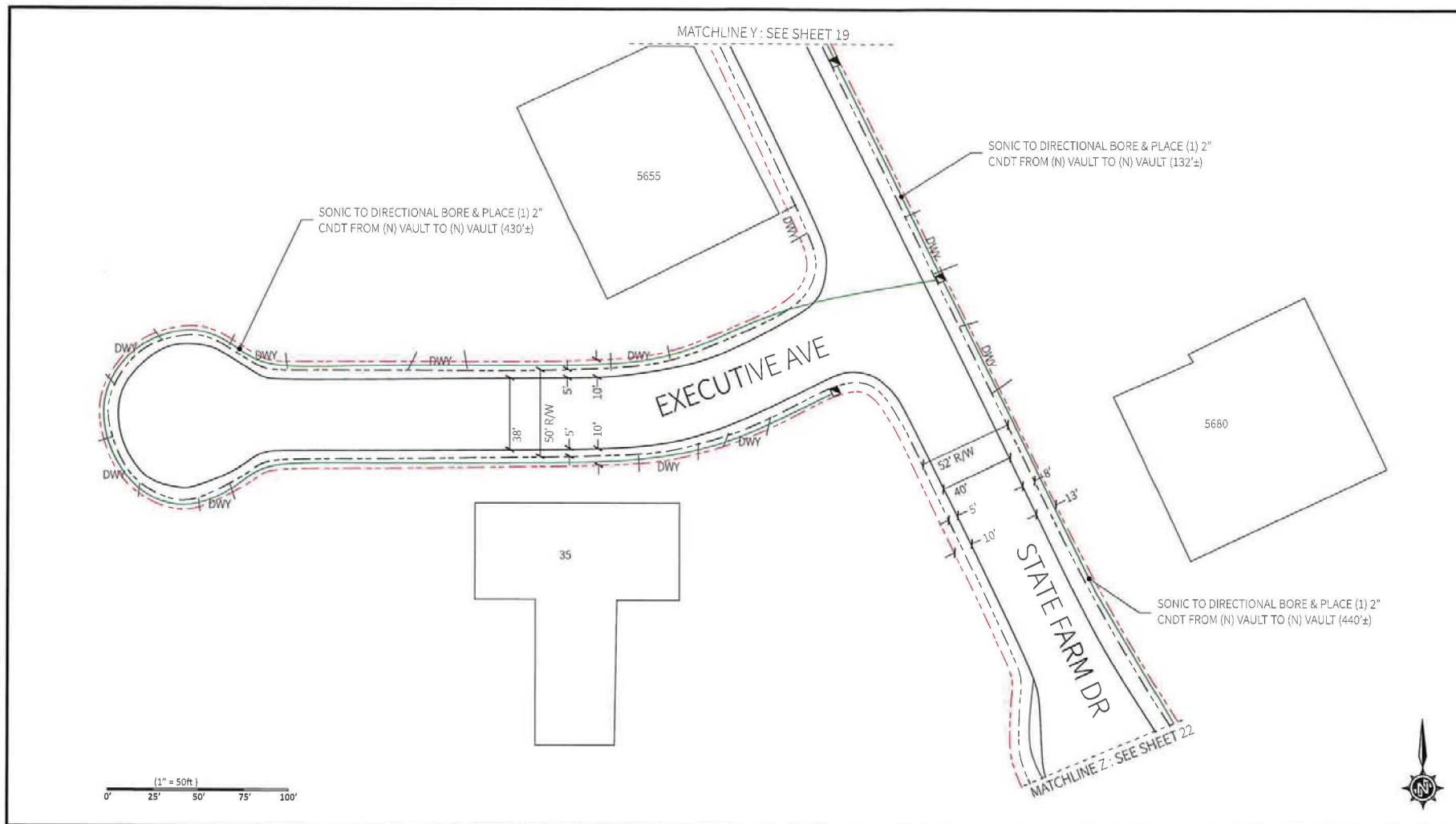
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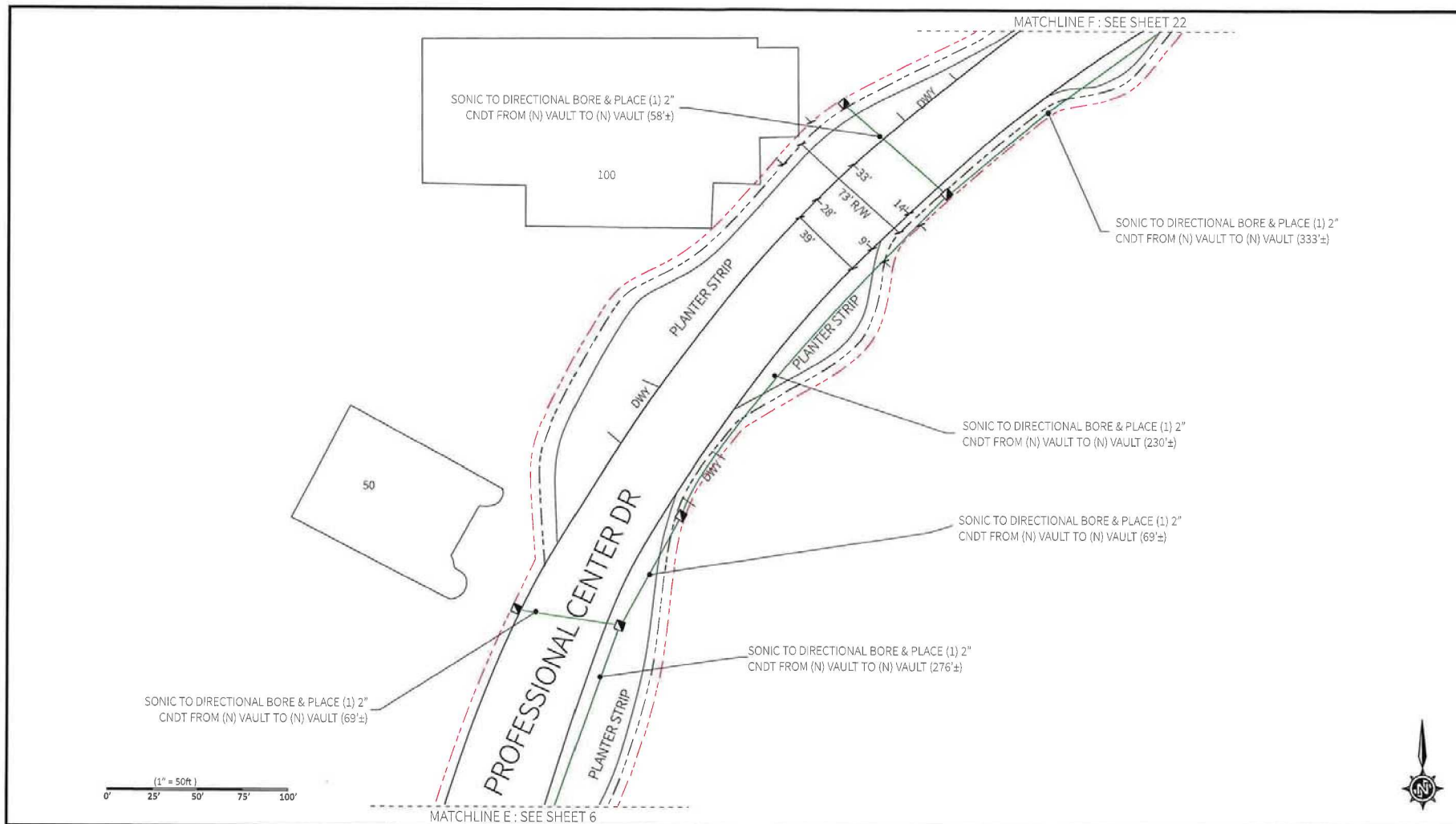
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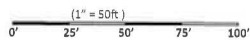
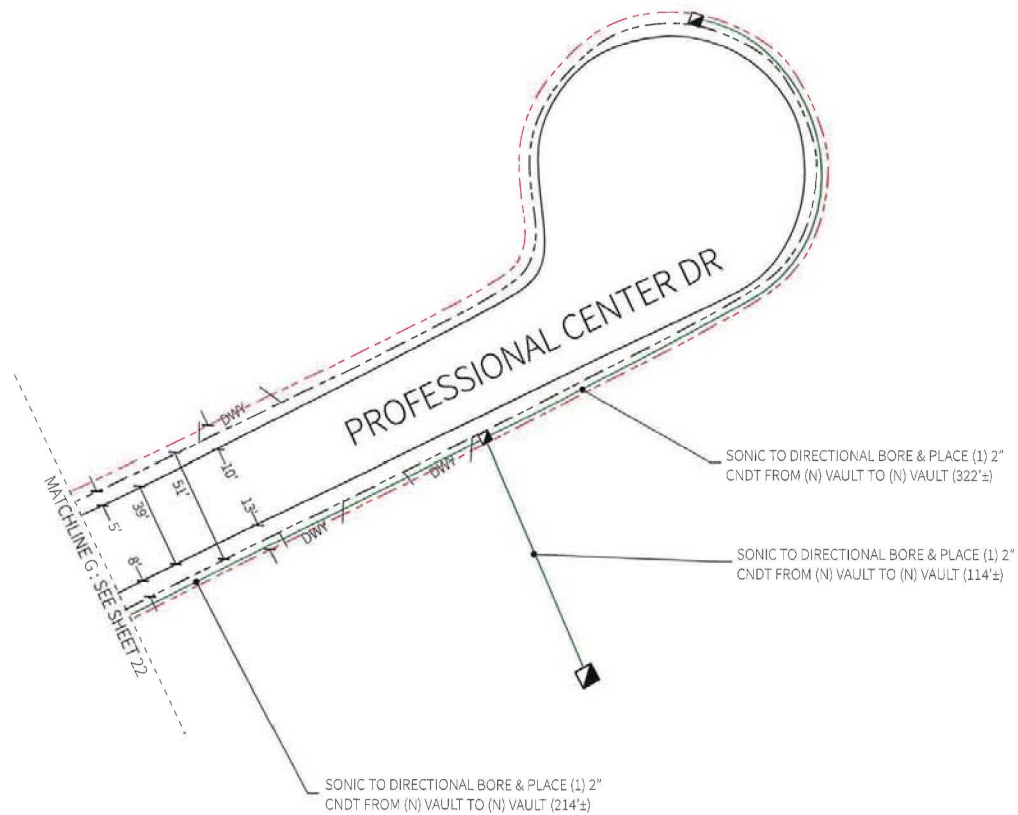
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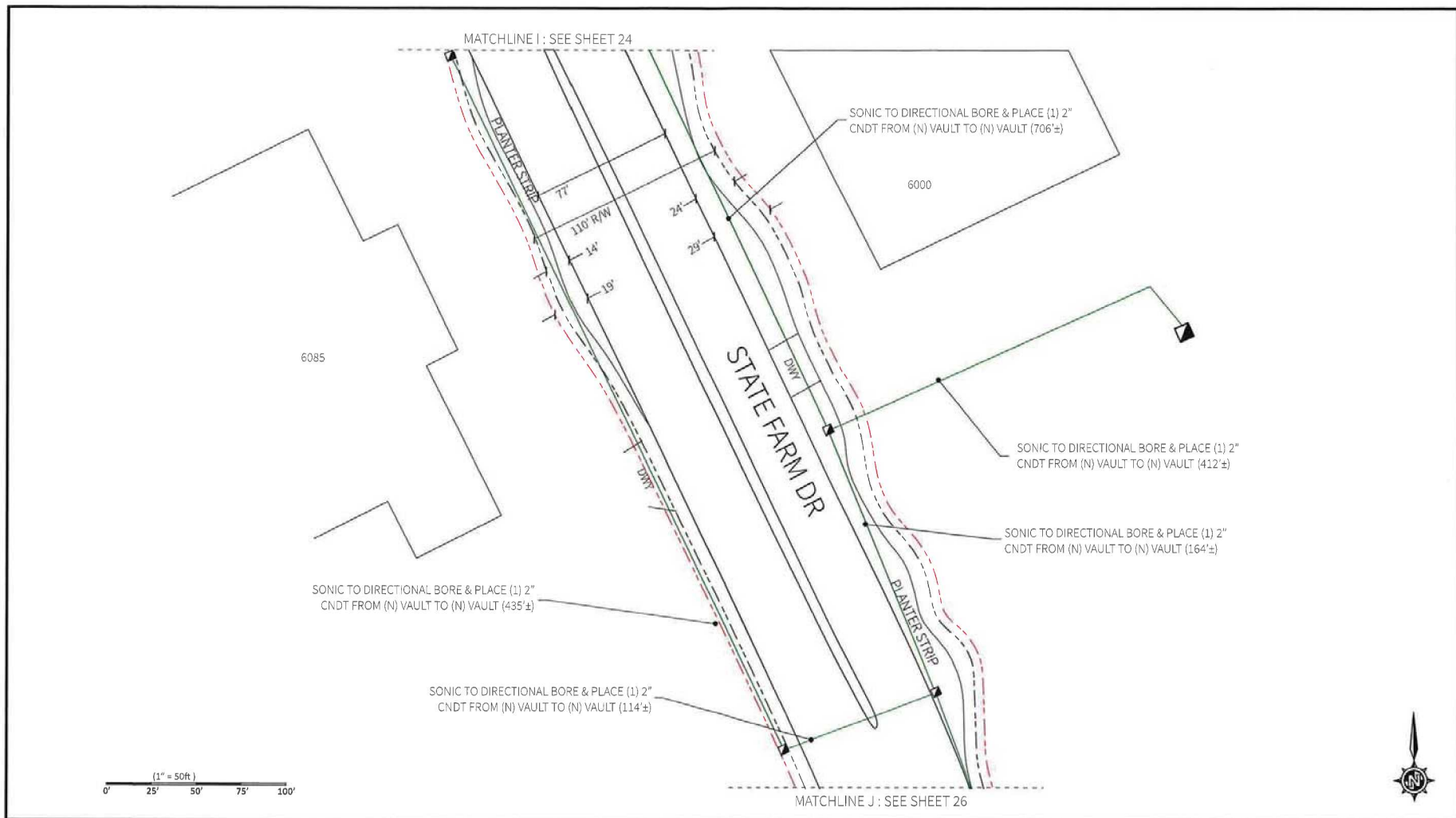
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NODE:

SHEET: 23 OF 28





(1" = 50ft)  
0' 25' 50' 75' 100'



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**Know what's below.  
811 before you dig.**

**SONIC.**

**TARSIER BUSINESS PARK**

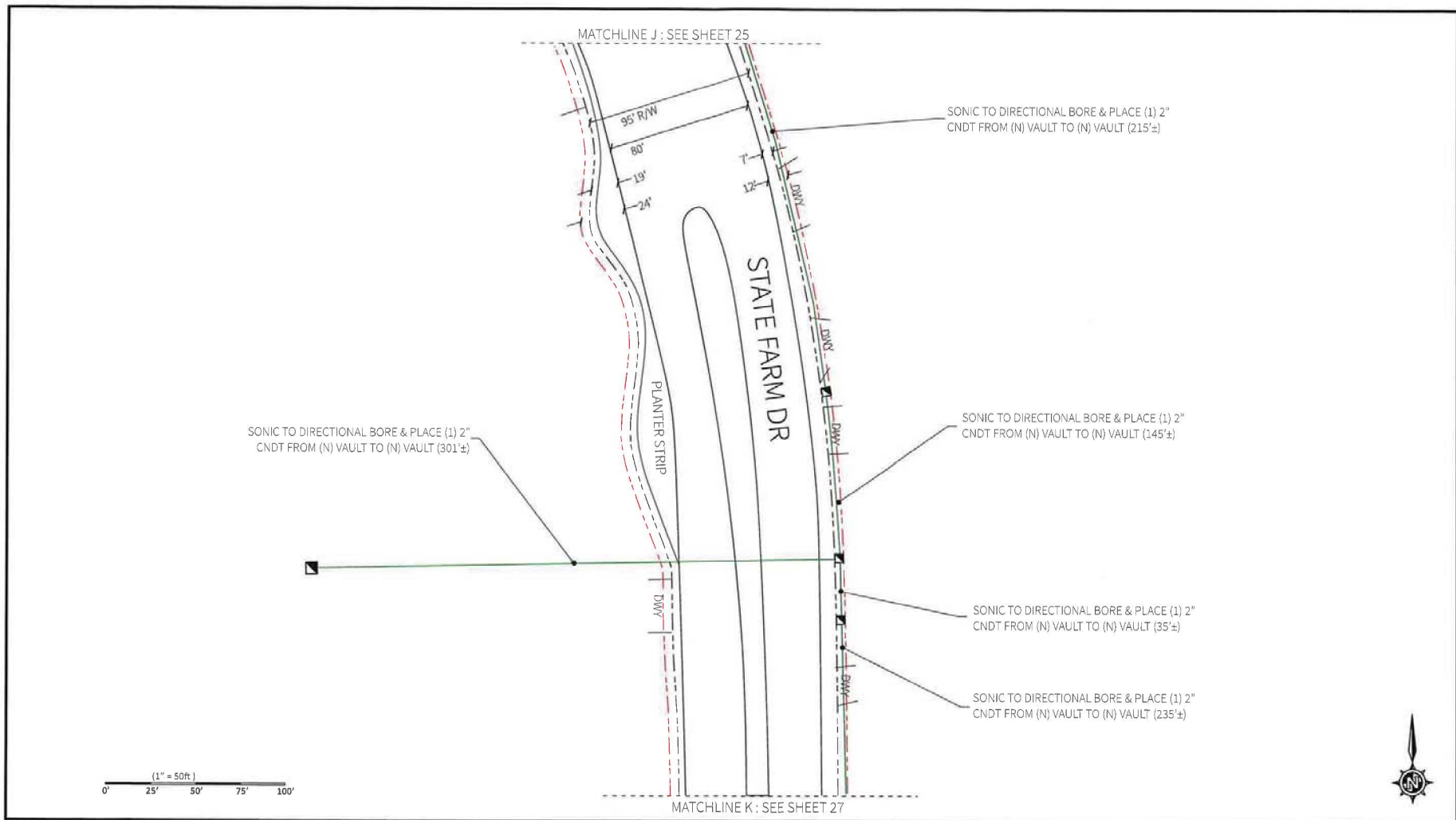
PROJ#: N/A

CONSTRUCTION TYPE: Bore

SYSTEM:

NODE:

SHEET: 25 OF 28



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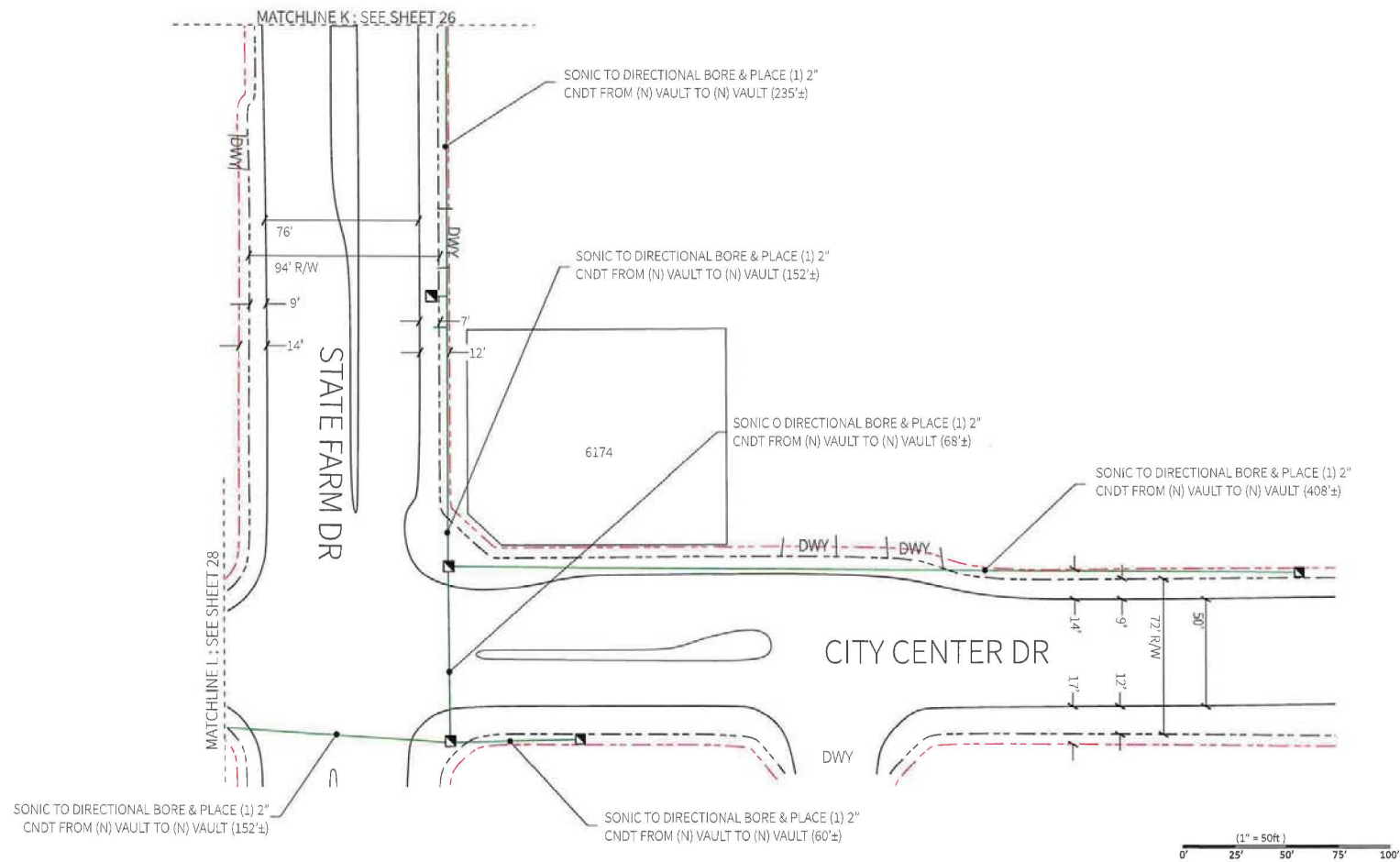
SONIC.

TARSIER BUSINESS PARK

PROJ#:	N/A
CONSTRUCTION TYPE:	Bore
SYSTEM:	
NODE:	

SHEET: 26 OF 28





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**TARSIER BUSINESS PARK**

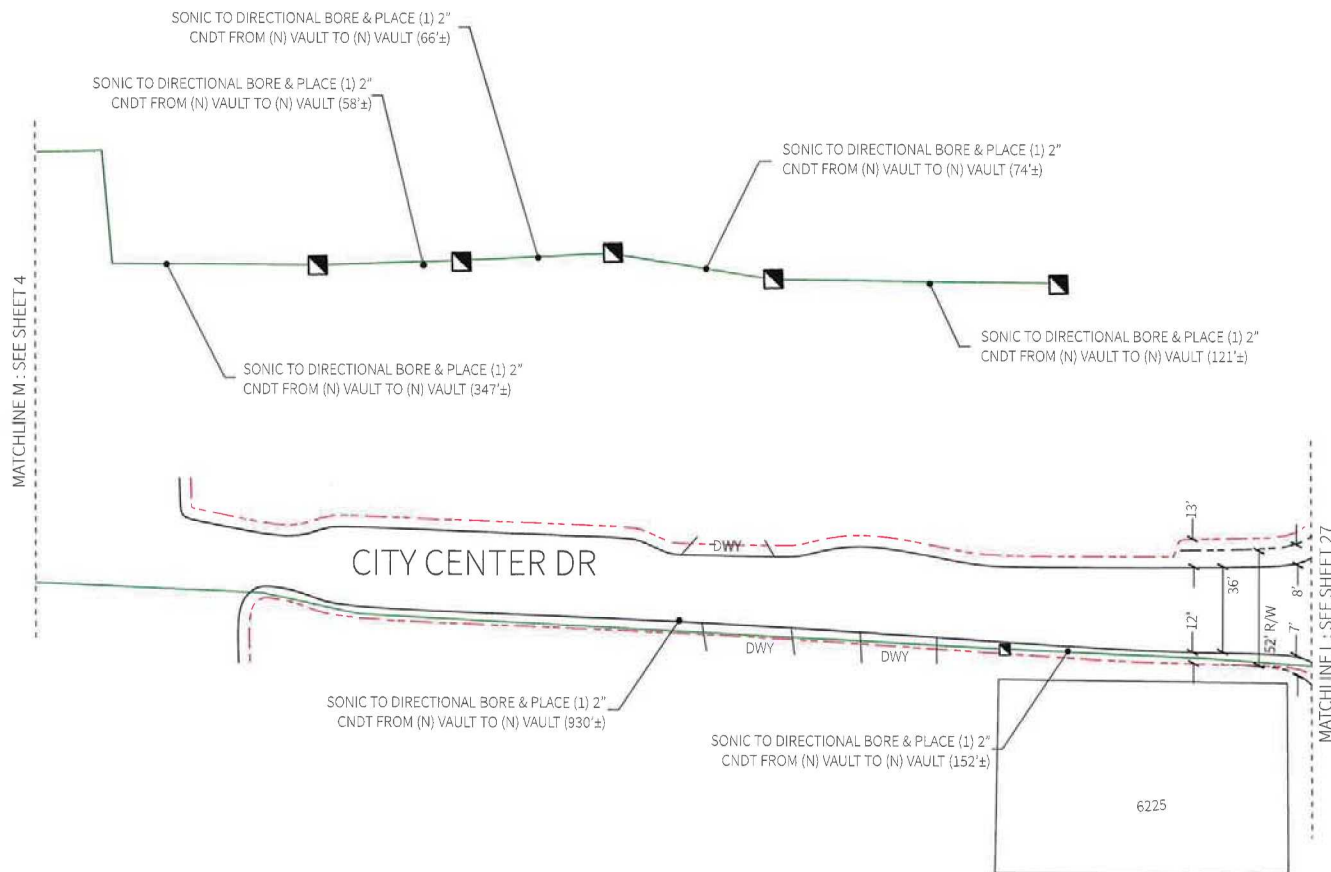
PROJ#: N/A

CONSTRUCTION TYPE: Bore

SYSTEM:

NODE:

SHEET: 27 OF 28



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## TARSIER BUSINESS PARK

PROJ#: N/A  
CONSTRUCTION TYPE: Bore  
SYSTEM:  
NODE:

SHEET: 28 OF 28

## EXHIBIT 4

### INSURANCE

Concurrently with the execution of this License, Licensee shall furnish City with fully completed and properly executed certificates of insurance for each type of coverage required. Licensee and its employees, contractors, sub-contractors, and other representatives (hereafter, "**Licensee's Agents**") shall procure and maintain for the duration of this License insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of any construction, installation, maintenance, other work, operations and any other activities related to this License. With respect to any General Liability, Errors & Omissions, Contractors Pollution Liability, and/or Asbestos Pollution Liability required herein, coverage shall be maintained during the Term and any extension Terms of this License. If Licensee, for any reason, fails to maintain insurance coverage which is required under this License, the failure shall be deemed a material breach and default of this License. The following requirements apply:

- i. General Liability. Licensee shall maintain in full force and effect commercial general liability insurance with limits of: Three Million Dollars (\$3,000,000) per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this agreement, or the general aggregate limit shall be twice the required occurrence limit.
- ii. Umbrella Liability. Licensee shall maintain in full force and effect umbrella liability limits of Five Million Dollars (\$5,000,000) each occurrence and in the aggregate. Permission is granted to Licensee to use any combination of primary and umbrella to meet the required limits.
- iii. Worker's Compensation and Employer's Liability Insurance. Licensee shall fully comply with the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect insurance insuring against any liability Licensee may have for worker's compensation. Licensee shall also maintain in full force and effect a policy of employees' liability insurance with limits of One Million Dollars (\$1,000,000) each accident or bodily injury.
- iv. Automobile. Licensee shall maintain in full force and effect commercial automobile liability insurance compliant with the following coverage requirements: Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Licensee or Licensee's Agents have no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- v. Pollution Insurance. Licensee shall maintain Contractors' Pollution Liability and/or Asbestos Pollution Liability (if project involves environmental hazards) insurance with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

vi. Errors and Omissions. Licensee shall maintain, or require its design professionals and subcontractors to maintain, Errors & Omissions insurance applicable to any activities related to this License, which shall be maintained with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

If Licensee and Licensee's Agents maintain broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the City. At the option of the City, Licensee and Licensee's Agents shall provide coverage to reduce or eliminate such self-insured retentions as respects the City and its elected and appointed officers, officials, employees, agents, representatives, and volunteers (hereafter, the "**City Agents**"); or Licensee and Licensee's Agents shall provide evidence satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

### ***Other Insurance Provisions***

The General Liability, Automobile Liability, Contractors Pollution Liability, and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:

**The City and City Agents are to be covered as additional insureds** with respect to liability arising out of any construction, installation, maintenance, other work, operations and any other activities related to this License performed by or on behalf of the Licensee Licensee's Agents including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Licensee and Licensee's Agents insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

For any claims related to this project, **the Licensee and Licensee's Agents insurance coverage shall be primary insurance** coverage at least as broad as ISO CG 20 01 04 13 as respects the City and City Agents. Any insurance or self-insurance maintained by the City and City Agents shall be excess of Licensee or Licensee's Agents insurance and shall not contribute with it.

Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 days prior notice to the City (except for nonpayment which shall require not less than ten (10) days' notice). To the extent Licensee's insurance company will not provide the notice of cancellation or non-renewal of the insurance policy required by this Exhibit, the Licensee shall

provide such notice to City in full conformance with the requirements of this Exhibit. In such event, Licensee and Licensee's Agents shall procure a new insurance policy with coverages that conform to the specifications required under this Exhibit 4 prior to any such insurance policy's being cancelled.

The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Licensee and Licensee's Agents pursuant to this Exhibit 4. This coverage may also be provided on the Licensee and Licensee's Agents Pollution Liability policy.

If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

- The retroactive date must be shown, and must be before the date of the contract or the beginning of any construction, work, maintenance and any related activities under this License.
- Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of any construction, work, maintenance and any related activities.
- Insurance must be maintained and evidence of insurance must be provided for during the entire Term and any renewal Terms of this License.
- A copy of the claims reporting requirements must be submitted to the City for review.
- Licensee shall continue to furnish certificates for five years beyond the License termination date, when Licensee has a claims-made form of insurance.
- If any construction, installation, maintenance, other work, operations and any other activities related to this License by Licensee or Licensee's Agents involve lead-based paint or asbestos identification / remediation, then Licensee's and Licensee's Agents' Pollution Liability shall not contain lead-based paint or asbestos exclusions. If any construction, installation, maintenance, other work, operations and any other activities related to this License by Licensee or Licensee's Agents involve mold identification / remediation, then Licensee or Licensee's Agents Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII if admitted in the State of California.

### ***Verification of Coverage***

License and Licensee's Agents shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before any construction, work,



maintenance and any related activities by Licensee or Licensee's Agents begin. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Licensee shall name City, and its elected officials, employees, representatives, volunteers, and agents as an additional insured on the liability policies. However, failure to obtain the required documents prior to the commencement of such activities shall not waive the License or Licensee's Agents' obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, and Licensee shall provide such copies at the demand of the City.

### ***Subcontractors***

Licensee shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that the City is an additional insured on insurance required from Licensee and Licensee's Agents. For CGL coverage Licensee and Licensee's Agents shall provide coverage with a format least as broad as CG 20 38 04 13. Licensee shall secure coverage for its contractors and subcontractors performing work hereunder as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein and with reasonable and prudent limits as established under this Exhibit 4.

### ***Waiver of Subrogation***

Licensee releases the City and its elected officials, employees, representatives, agents, and volunteers from any claims for damage to any person or to the Access Pathways, Premises or to the Licensee Facilities caused by, or that result from, risks insured against or required to be insured against under this License; provided that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby. Licensee shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the City and its elected officials, employees, representatives, agents, and volunteers in connection with any damage covered by any policy.

### ***Special Risks or Circumstances***

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.