

LICENSE AGREEMENT

THIS LICENSE ("License"), executed this _____ day of _____, 2019, by and between the Southern Water Supply Project Water Activity Enterprise, a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution, organized pursuant to C.R.S. § 37-45.1-101 *et seq.*, owned by the Northern Colorado Water Conservancy District, and whose address is 220 Water Avenue, Berthoud, Colorado 80513, telephone number 970-532-7700, ("Licensor") is granted to the Town of Erie, a Colorado municipal corporation, whose address is 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 ("Licensee") (each a "Party" and collectively, the "Parties").

RECITALS

A. Licensor owns or holds certain easements on a parcel of real property in Erie, Colorado, as shown on **Exhibit A**, attached hereto and made a part hereof by this reference (the "Property").

B. The Southern Water Supply Pipeline and related facilities (the "Pipeline") are located on the Property. Licensor owns the Pipeline.

C. Licensee desires to install a pedestrian crossing and related appurtenances at the northwest corner and drainage riprap at the southeast corner of the intersection of Vista Parkway and County Line Road in Erie, Colorado ("Licensed Facilities") on the Property and desires to obtain permission therefor from Licensor.

NOW, THEREFORE, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Licensor hereby grants to Licensee, its successors and permitted assigns, with respect to such title and interest as Licensor may have in the Property, and upon the terms and conditions hereinafter stated, the permission and right to construct, and to perpetually operate, maintain, repair and replace the Licensed Facilities on the Property. Such installation and construction shall be located as shown on **Exhibit B**, attached hereto and incorporated herein. Licensee shall not construct or maintain any additional structures, roadways, wet utilities, or dry utilities on the Property without first obtaining an additional license for said structures from the Licensor.

2. Licensor intends to use the Property for all purposes in connection with the operation of the Pipeline, and the rights herein granted to Licensee for the use of the Property are subject to the rights of Licensor to use the Property for such purposes as described in Licensor's easement deeds, which rights Licensor hereby expressly reserves. Licensor reserves the right of

its officers, agents, employees, licensees, and permittees at all proper times and places freely to have ingress to, passage over, and egress from all of the Property for the purpose of exercising, enforcing, and protecting the rights reserved herein.

3. Licensee shall move at its own expense the Licensed Facilities from the Property or any part thereof or move the same to a different location on the Property as requested by Licensor, if the Licensed Facilities should unreasonably endanger or interfere with the construction, operation, maintenance, repair or replacement of Licensor's facilities as now or hereafter constructed. Licensor shall provide a reasonable acceptable location on or near the Property.

4. Licensor reserves the right to grant to others the use of the Property for any purposes whatsoever, provided that the same shall not unreasonably interfere with the Licensed Facilities.

5. Licensee shall not do or permit to be done any blasting or explosions above, underneath or near the Pipeline without first having received prior written permission from Licensor. Any blasting shall be done in the presence of a representative of Licensor and in accordance with directions such representative may give for the protection or safety of the Pipeline.

6. Conditions of Approval

a. Licensee shall construct the Licensed Facilities in accordance with the plans attached hereto as Exhibit B. Licensor's approval of plans and specifications for the Licensed Facilities shall not relieve Licensee of its sole responsibility to ensure the design and location of the Licensed Facilities will not interfere with Licensor's enjoyment of the Property. The Licensed Facilities shall be constructed in accordance with such approved plans and specifications. If plans are altered in any way, Licensor will need to review and approve any changes prior to construction.

b. The locations of the Pipeline shown on Exhibit A or any other map, plan, or specification provided by Licensor are approximate. Licensee must call Colorado 811 at least 48 hours in advance of any locate request or any construction activities on the Property.

c. Licensor shall have the right to inspect all facilities constructed or installed pursuant to this License. The instructions of the Licensor's representative relating to the safety of the Pipeline will be followed by Licensee, its agents, contractors and employees.

d. Any damage done to the Pipeline during the above construction shall be immediately repaired at the expense of Licensee, and all portions of the Property disturbed by the construction of the Licensed Facilities shall be restored to its condition prior to this License taking effect. After initial construction of the Licensed Facilities and

thereafter, in the event of resettling, Licensee shall restore the surface of the Property by grading and compacting any irregularities left after construction.

e. Upon completion, Licensee shall notify Licensor of completion of the Licensed Facilities and shall fix a date within 14 days thereafter upon which representatives of Licensor and Licensee shall jointly inspect the Licensed Facilities. Licensee shall make any corrections necessary to bring the work within the requirements of this License. Licensee shall be responsible for the correction of any defects or failures of Licensor's facilities due to faulty design or materials or poor workmanship of the Licensed Facilities. Upon completion and acceptance, Licensor shall issue notice of approval, and Licensee shall provide a set of "as built" for Licensor's files. Following Licensor's issuance of the notice of approval, Licensee shall not make any modifications to the Licensed Facilities without obtaining the prior written approval of Licensor.

7. The provisions of paragraph 6 shall also apply to any other work involving the construction, maintenance, reconstruction or relocation of the Licensed Facilities on the Property.

8. Licensee shall pay the cost of replacing and resetting any section corners, quarter corners, ownership monuments, right-of-way markers, test stations, pipeline markers, other pipeline appurtenances and reference points necessitated by the construction, operation, maintenance, repair or removal of the Licensed Facilities. A statement for the total costs properly chargeable to Licensee hereunder will be forwarded to the Licensee, and the same shall be paid to Licensor within thirty (30) days after the billing date. If payment has not been received by Licensor within said thirty (30) days of the billing date, this License shall immediately terminate.

9. Licensee shall operate, maintain and repair the Licensed Facility so that the Licensed Facility does not adversely affect the operation of the Pipeline. If the Licensed Facility does adversely affect the Pipeline, Licensor may give notice requiring immediate repair or maintenance of the Licensed Facility to eliminate such adverse effect. If Licensee should fail to take such action requested by Licensor, Licensor may take such action at the expense of the Licensee.

10. Licensee may not grant any other easement or license on or about the Property that in any way interferes with or threatens to interfere with Licensor's use of the Property or any operation, maintenance, use or administration of the Pipeline.

11. Licensee shall not cause nor permit to be caused by any of its contractors, agents or employees, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), pollutants or contaminants, as defined by CERCLA, or hazardous wastes, as defined by the Resource Conservation and Recovery Act ("RCRA"), including, but not limited to asbestos, polychlorinated biphenyls ("PCBs") and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by the Clean Water Act, and any amendments thereto, to be dumped, spilled, released, permanently stored, or

deposited on, over, or beneath the Property. Any hazardous, toxic or flammable substances used by Licensee or its agents, representatives, or independent contractors in the construction, operation, maintenance, repair or replacement of the Licensed Facilities shall be utilized in a lawful manner and in compliance with all federal, state and local requirements relating to protection of health or the environment. Upon completion of such activities, unused portions of any such hazardous, toxic or flammable substances shall be removed from the Property by Licensee.

12. Each party assumes responsibility for the actions and/or omissions of its agents and its employees in the performance or failure to perform under this Agreement. By agreeing to this provision, neither party waives nor intends to waive the limitations on liability which are provided to each party under the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S.

13. Licensors shall use care not to damage the Licensed Facilities in the maintenance, relocation or reconstruction of the Pipeline and, except in the case of an emergency, shall give reasonable advance notice to Licensee of any of its activities in the immediate vicinity of the Licensed Facilities. Licensee understands and acknowledges that normal repair, reconstruction, and maintenance of the Pipeline on the Property includes, among other things, pipeline locating, operations of valves and appurtenances, cathodic protection checks, and excavation during emergency situations. Licensee shall have sole responsibility for assuring that the design and location of the Licensed Facilities are adequate to protect the Licensed Facilities from the foregoing activities.

14. Licensee acknowledges that Licensors may install an additional pipeline or pipelines on the Property in the future. Licensee agrees to pay for any additional design or construction costs Licensors incur due to Licensed Facilities during the design, planning, or installation of such additional pipelines on the Property, including, but not limited to, costs to comply with trenchless crossing requirements, temporary or permanent relocation of the Licensed Facilities and any appurtenances, and so on.

15. Notwithstanding any other provisions of this License, Licensors shall not be responsible for any loss or damages to property arising from this License, including, but not limited to, damages to growing crops, animals, and machinery; or injury to Licensee or its associates, officers, agents, employees, or any others who are on the premises; or for damages or interference caused by natural phenomena.

16. A copy of this License shall be on the job site at all times of active installation of the Licensed Facilities.

17. Licensors shall furnish Licensee with information regarding the terms of Licensors' interests in the Property as necessary for Licensee to plan its installation of the Licensed Facilities.

18. This License is subject to termination following 180 days' prior written notice if Licenser determines that the License unreasonably interferes with Licenser's use of the Property and that such interference cannot be remedied by modification or relocation of the Licensed Facility. The License shall also terminate upon abandonment of the use of the Licensed Facilities. Licensee shall not acquire a vested right to maintain and use the Licensed Facilities as a result of Licenser's continued acquiescence in the maintenance and use of the Licensed Facilities. Upon termination of this License for any reason, if required by Licenser, Licensee shall remove the Licensed Facilities from the Property and restore the Property to the Property's condition prior to this License taking effect. If Licensee should fail to remove the Licensed Facilities and restore the Property after Licenser's request, Licenser may remove the same; dispose of all removed materials and equipment as Licenser, in its sole discretion, deems reasonable; and restore the Property at the expense of Licensee.

19. If Licensee constructs or maintains the Licensed Facilities in any manner that is not in accordance with the designs and specifications approved by Licensee, Licenser may terminate this License.

20. Licensee shall hire a licensed and certified contractor to construct the Licensed Facilities and shall require said contractor to provide and keep in full force and effect during the construction of the Licensed Facilities, and require of its contractors or subcontractors, i) a builder's risk policy in the amount of at least \$1,000,000 per occurrence and the aggregate, ii) commercial general liability insurance, including contractual liability coverage and completed operations coverage, in the amount of at least \$1,000,000 per occurrence and in the aggregate, iii) automobile liability coverage in the amount of at least \$1,000,000 per occurrence and in the aggregate, iv) excess liability coverage in the amount of at least \$1,000,000 per occurrence and in the aggregate, v) pollution liability coverage in the amount of at least \$1,000,000 per occurrence and in the aggregate, vi) umbrella or excess liability coverage for the policies required herein in the amount of \$1,000,000 per occurrence and in the aggregate, and vii) worker's compensation coverage in the amounts prescribed by Colorado law covering all employees entering upon the Property. Said policies shall include a waiver of subrogation and shall, except for the worker's compensation policy, name the Licenser as an additional insured under said policy. The completed operations coverage shall extend for a minimum of three years after project completion. Licensee shall provide Licenser with certificates of insurance from its contractor showing that the required coverage is in effect prior to beginning construction of the Licensed Facilities.

21. This License is issued subject to any prior licenses, easements, or leases granted by the Licenser on the Property for improvements of other parties.

22. This License shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

23. This agreement shall be recorded with the Boulder County Clerk and Recorder.

24. This License shall not be assigned by either Party to another party without the prior written approval of the other Party.

25. Both Parties intend to preserve their rights under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as amended, and nothing in this License shall constitute a waiver, in whole or in part, of the governmental immunities, rights, or protections provided to either Party by the Colorado Governmental Immunity Act, or any successor or similar statutes of the State of Colorado.

26. All communication or correspondence regarding this License or the Licensed Facilities shall be directed to:

Real Estate Management Department
Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, CO 80513

27. Additional conditions:

- A. Licensee will provide a legal survey of the proposed Licensed Facilities prior to the start of construction.
- B. Backfill/Compaction Requirements – Licensee shall provide and place all backfill materials necessary to bring the site to the approved grade. Backfill requirements for the crossing utility shall extend across the entire Property. Pipeline crossings shall be as shown in **Exhibit C**, attached hereto and incorporated herein.
- C. The Pipeline and all other buried lines within the Property shall be marked at the point of entrance into, and exit from, the Property on both sides with the appropriate signs identifying their location.
- D. Licensor shall be notified 48 hours prior to construction or excavation starting within the Pipeline Easement.
- E. If any utilities must cross the Pipeline, they must be laid with minimum clearance of eighteen (18) inches above or below the Pipeline. The Licensor will determine whether the utility crossing the Pipeline is to be installed over or under the Pipeline. The depth of the utility crossing the Pipeline is to be maintained for the full distance across the Property, and the crossing is to be made as nearly as possible at a right angle to the Pipeline.
- F. The use of explosives will not be permitted within the Property. Any use of explosives in the general area of the Property or Pipelines will be conducted in

a manner so as to avoid any damage to the Pipelines and any appurtenant facilities.

- G. Licensee shall bear sole responsibility for installation of any and all signage related to the Licensed Facilities required by federal, state or local rules and regulations.
- H. All portions of the Property that are disturbed by the construction of the Licensed Facilities shall be restored to their condition as existed prior to this License taking effect, and all fencing and other facilities appurtenant to Property shall be replaced to a condition equal to the condition of such facilities and appurtenances prior to this License taking effect.
- I. Licensee has been fully advised by Licensor that the Pipeline is subject to cathodic protection. Licensor shall not be liable for stray current or interfering signals induced in the Licensed Facilities as a result of the normal operation of Licensor's cathodic protection system.
- J. Licensee shall bear the sole obligation of obtaining from the fee title owner of the Property or other owner of a proprietary interest in the Property, such authority or rights as the Licensee may need in addition to the rights provided in this License for the Licensed Facility.

28. Notwithstanding any provision of this agreement to the contrary, consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Licensee not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, this License has been executed the day and year first above written.

**SOUTHERN WATER SUPPLY PROJECT
WATER ACTIVITY ENTERPRISE**


Bradley D. Wind, General Manager

ATTEST:


Karen Rademacher, P.E. Director of Administration

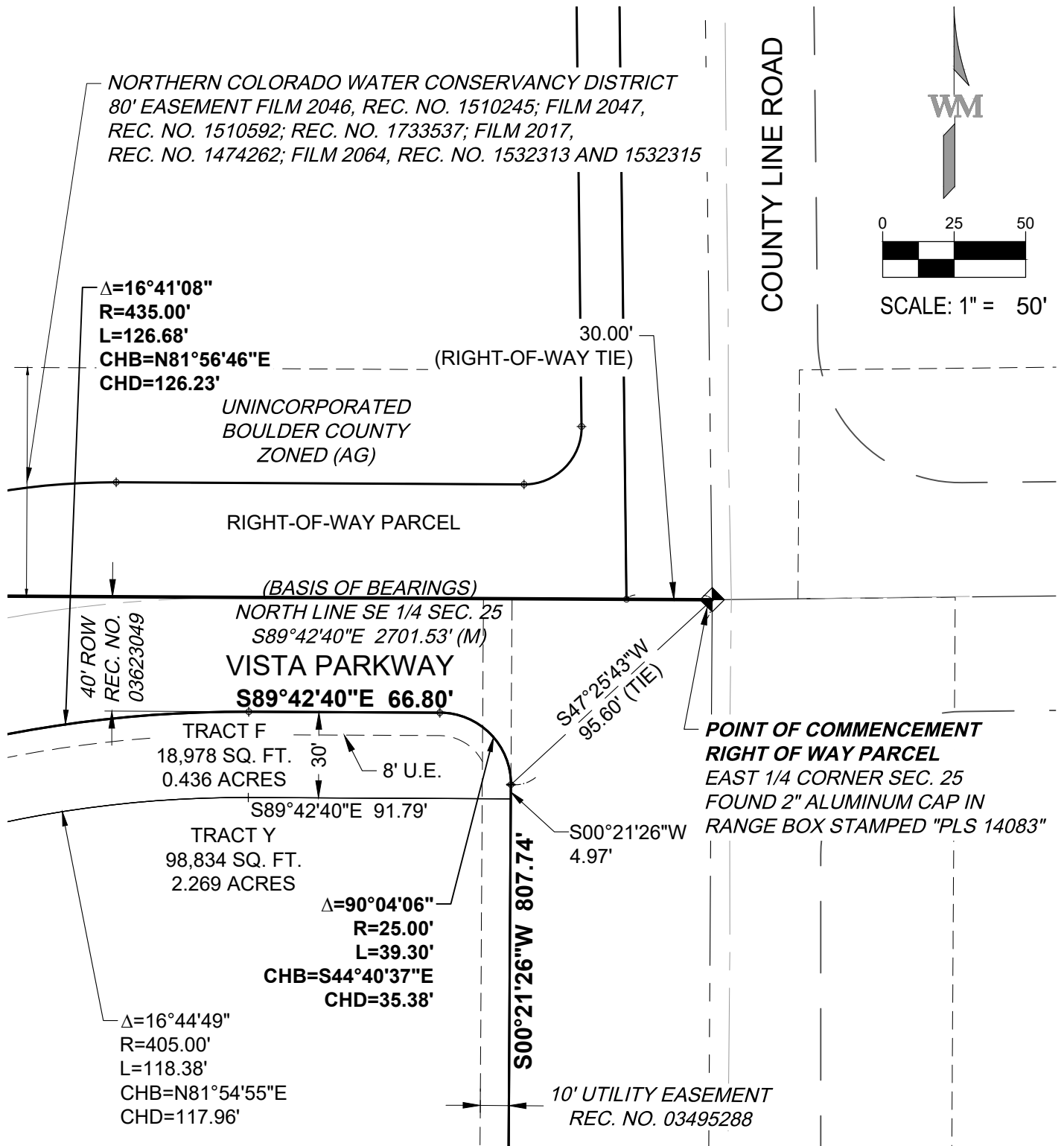
TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

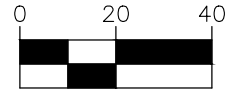
Joanne Salser, Deputy Town Clerk

EXHIBIT A



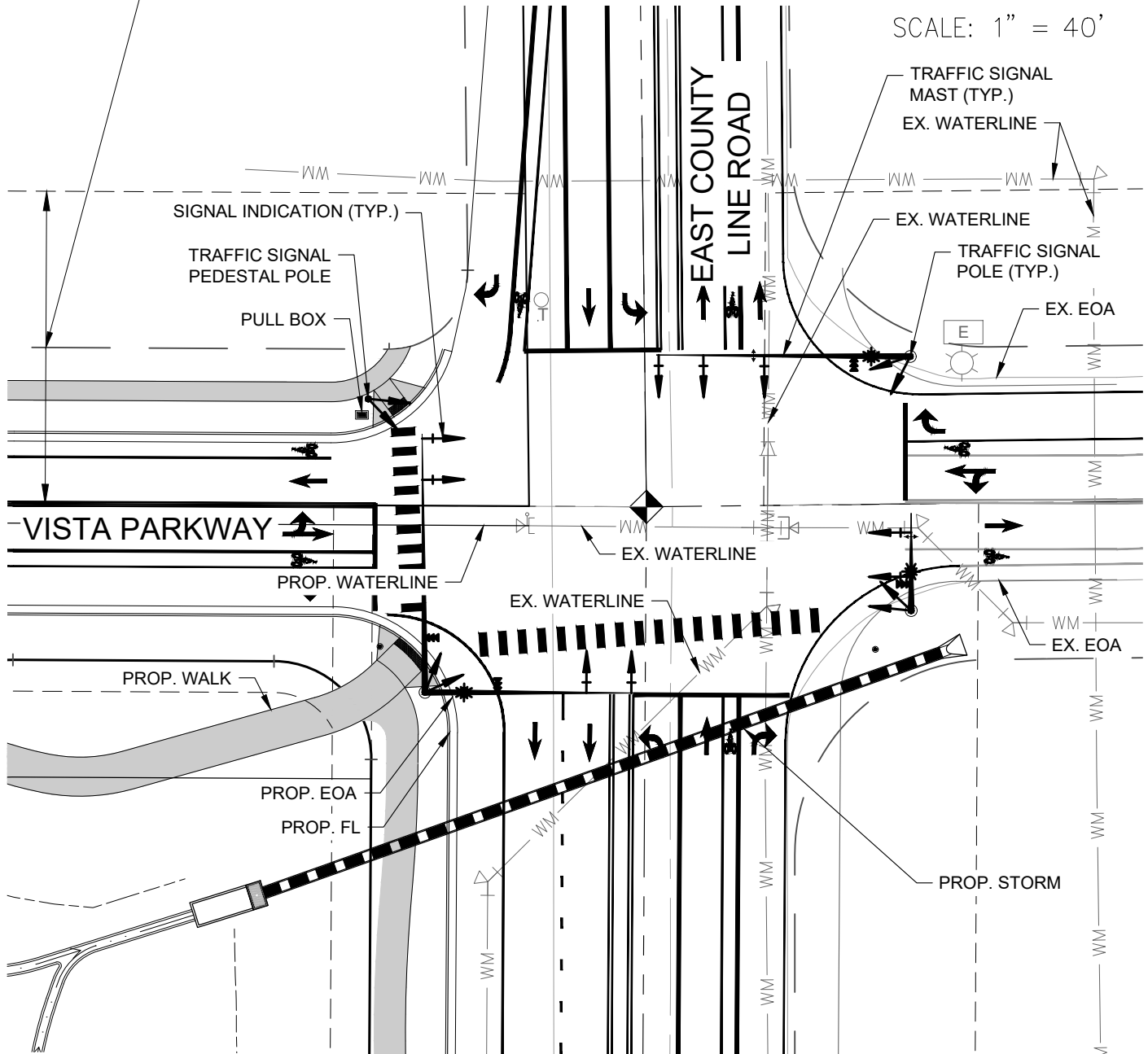
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|--|------------------------------------|-----------|-------------------|-----------------|
| <div>990 south broadway suite 230 denver, co 80209 p 303.561.3333 waremalcomb.com</div> <div><div><div>WM</div><div>WARE MALCOMB</div></div><div>CIVIL ENGINEERING & SURVEYING</div></div> | PROJECT NAME: COMPASS FILING NO. 4 | | | SHEET 01 |
| | JOB NO.: 15075-1 | | DATE : 01/15/2020 | |
| | DRAWN: SL | PA/PM: GB | SCALE: 50 | |
| | | | | |

EXHIBIT B



SCALE: 1" = 40'

NORTHERN COLORADO WATER CONSERVANCY DISTRICT
80' EASEMENT FILM 2046, REC. NO. 1510245; FILM 2047,
REC. NO. 1510592; REC. NO. 1733537; FILM 2017,
REC. NO. 1474262; FILM 2064, REC. NO. 1532313 AND 1532315



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waremalcomb.com



CIVIL ENGINEERING & SURVEYING

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DRAWN: SL

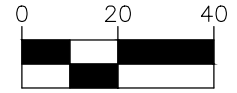
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SCALE: 40

SHEET

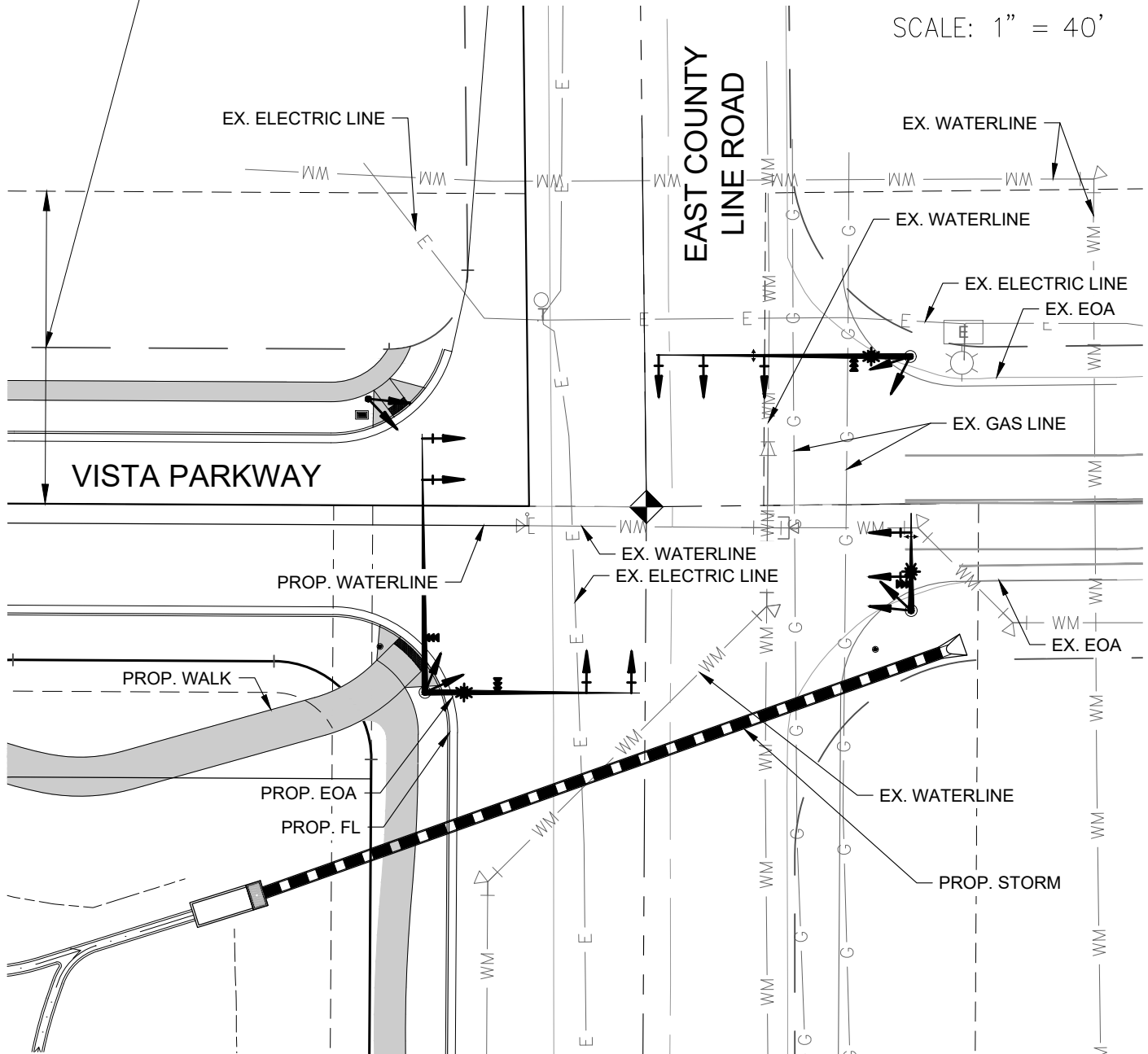
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EXHIBIT C



SCALE: 1" = 40'

NORTHERN COLORADO WATER CONSERVANCY DISTRICT
80' EASEMENT FILM 2046, REC. NO. 1510245; FILM 2047,
REC. NO. 1510592; REC. NO. 1733537; FILM 2017,
REC. NO. 1474262; FILM 2064, REC. NO. 1532313 AND 1532315



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SHEET

01