18-C1915

CITY OF KENMORE – NORTHSHORE SCHOOL DISTRICT UTILITY RELOCATION AGREEMENT

FOR INCORPORATION OF NORTHSHORE SCHOOL DISTRICT'S FIBER UTILITY WORK INTO THE CITY OF KENMORE'S WEST SAMMAMISH RIVER BRIDGE PROJECT

THIS AGREEMENT is entered into between the City of Kenmore ("City") and the Northshore School District ("District"), both Washington municipal corporations, individually a "Party" and collectively the "Parties," pursuant to Chapter 39.34.080 RCW.

RECITALS:

A. The City is designing and will construct the West Sammamish Bridge Project in and adjacent to 68th Avenue NE ("Project"). The District's fiber system is in conflict with the Project and must be relocated. The District has requested the City to include the relocation of certain District fiber and appurtenances in the Project, at the cost of the District. The City has agreed to the District's request, provided that the inclusion of this relocation is pursuant to the terms and conditions of this Agreement.

B. It is in the mutual best interest of the Parties to coordinate and integrate the relocation of District fiber and appurtenances with the Project.

AGREEMENT:

The Parties agree as follows:

1. CITY PROJECT AND DISTRICT RELOCATION

The City is designing and will construct the Project. The City will include the removal and relocation of District fiber and appurtenances ("District Work") in the Project.

2. COORDINATION AND COOPERATION

The City and the District shall cooperate and coordinate the District Work pursuant to a process and schedule consistent with this Agreement and developed by the designated representatives of the Parties.

3. DESIGN AND CONSTRUCTION PROCEDURE

a. District Plans

The District shall prepare plans, specifications, standard details, cost estimates and a bid item schedule for the District Work ("District Plans"). The District Plans shall be prepared by a qualified engineer selected by the District, or if authorized by the City, the City's consulting engineer for the Project. The District Plans must include removal and relocation of the District fiber and disconnection and connection on intersected side streets. The District Work is described on **Exhibit A**, attached hereto and incorporated herein. The estimated cost of the District Work is stated on **Exhibit B**, attached hereto and incorporated herein. The designated representatives may approve written amendments to **Exhibits A and B**, which after approval, shall be deemed to be amendments to **Exhibits A and B** without physical attachment to this Agreement. Any District supplied materials shall meet the requirements of "Buy America". The Contract Documents for the Project are hereby incorporated into this agreement, including the 2018 WSDOT Standard Specifications.

b. <u>Competitive Bid and District Work</u>

The City shall call for bids for the Project. The City shall incorporate the District Plans for the District Work into the call for bids in a manner that will allow the identification of costs for the District Work.

c. <u>Project Contracting and Construction</u>

- (a) The City shall serve as the District's agent for the District Work. As the District's agent, the City shall generally manage and oversee the District Work in conjunction with the Project. The City will keep the District apprised of the progress of the District Work. The City shall have final decision-making authority, after consultation with the District, for all work of the Contractor for the Project. The District shall be responsible and pay for any and all excess costs incurred by the City as a direct result of District's failure to timely and properly inspect and test the District Work performed by the Project Contractor. Compaction requirements of the District will be incorporated with those of the City. The City's consulting engineer will perform compaction testing on behalf of the District, at the District's cost.
- (b) Once vault and conduit installation are completed by the City (as determined by the City), and accepted by the District, the City will issue

a Notice to Proceed to the District to commence installation of its conductors and equipment. The District shall complete installation of the conductors and equipment within fifteen (15) working days from the City's Notice to Proceed. The District shall notify the City in writing when the new underground system is energized. The City shall have the right to extend the time for completion to coordinate the activities of the various utilities and the Contractor.

- (c) The District will be responsible for system installation and wreck-out work associated with the installation. This work shall include, but not be limited to furnishing and installing all cables, conductors and electrical equipment for the conversion to underground; and for the removal of other equipment no longer needed, including utility poles if applicable.
- (d) Once transfer of facilities to the new underground system is complete, the District will remove all overhead systems within 5 working days.
- d. <u>Change Orders</u>

The City may approve change orders for the District Work; provided, that the City must obtain the District's prior consent to a change order if it would change the nature of the District Work, or would cause the contract price attributable to the changed District Work to increase by more than \$1,000.00 or attributable to the entire District Work to increase by more than two percent (2%). The District shall not unreasonably withhold its consent. If the District unreasonably withholds its consent, the District shall be responsible or pay for all liability or damages incurred by City due to the unreasonable withholding of consent. The City shall immediately provide the District with copies of all requests for and approved change orders related to the District Work.

e. Payments to Contractor

City shall make all payments to the Project contractor.

f. Final Acceptance

The City shall not accept the District Work pursuant to the Project contract until the District has accepted the District Work, which acceptance shall not be unreasonably withheld. After acceptance, the new fiber system shall become the property of District. The City shall assign all warranties related to the District Work to the District.

g. <u>Claims</u>

If any claims arise that are related to the District Work, the City shall handle and administer the claims in the same manner as it would handle any other claims under the Project. The District shall reimburse the City for all City costs associated with claims. The City shall immediately notify the District and keep it informed of the processing of any claim. The City shall request, and the District may provide, input regarding any proposed settlement of a claim. The City must obtain the District's approval in advance of any settlement or prosecution of a claim. If the District and City cannot agree as to the prosecution or settlement of a claim, the District may prosecute or defend the claim and the City will assign the claim to the District. The District agrees to pay all costs of prosecution or defense if a claim is assigned to the District, and to defend, indemnify and hold harmless the City from all claims, injuries, damages, losses, or suits, including attorneys' fees, which the City suffers from the District's prosecution or defense of the claim.

h. District Inspections

The District shall be responsible for all inspection and testing of the District Work. The City's consulting engineer will perform all inspections for the civil work related to the District Work (removals, trenching, restoration, conduit/vault placement, etc.) at the District's cost. The District shall perform any necessary supplemental inspections and shall perform and approve the final inspection. District field personnel will report to the City's resident engineer and will provide full-time observation during the District Work. If the District has issues or concerns with the Project Contractor, it must bring them to the immediate attention of the City's resident engineer. The District shall not direct the Project contractor to perform any work unless approved in advance by the City's resident engineer or noted on the approved District Plans. District field personnel shall complete all required documentation (Inspector's Daily Reports, Field Note records and any other forms) as required by the City or the District and per federal funding requirements, and submit them electronically via Sharepoint. The City's consulting engineer will provide Sharepoint training to the District as needed. The City's consulting engineer shall manage all construction documentation pursuant to a process and procedure determined by the Parties prior to commencement of construction of the Project.

4. PAYMENT

- a. The Parties shall be responsible for and bear the cost of their respective officers, officials, employees, agents, consultants and contractors, including consulting engineering costs, as well as incidental expenses, except as specifically provided otherwise in this Agreement.
- b. The District shall reimburse and pay the City for all actual costs incurred by the City, its officers, officials, employees, agents, consultant and contractors, including consulting engineers, who perform work or services related to the District Work, including but not limited to design, bid preparation, bidding, and mobilization, together with a proportional share of the Project's Schedule A bid item costs (consisting of traffic control, erosion control, utility coordinator), construction management, and compaction testing. If change orders for District Work exceed 25% of the original bid, the proportional share shall be adjusted to reflect the full change order increase.
- c. The City shall submit to the District monthly progress billings for the actual costs of the District Work. As part of the monthly progress billings, the City shall provide consultant invoices, contractor payment requests, and a monthly summary City staff expenses for all costs charged to the District. If requested by the District, the City will meet with the District to review and discuss any billing. The District shall pay the billing within forty five (45) days of receipt.

5. INDEMNIFICATION AND INSURANCE

- a. The City shall require the Project Contractor to obtain and keep in force during the term of the Project contract public liability and property damage insurance policies, consistent with City standard requirements for public works insurance policies. The City shall require the Project Contractor to name the District, its commissioners, officers, officials, employees, and agents as additional insureds on all such policies of insurance.
- b. The City shall require Project Contractor to defend, indemnify and hold the District, its officers, officials, employees, and agents harmless from any and all claims, injuries, damages, losses or suits, including attorneys' fees, arising out of or in connection with the Contractor's participation in the Project, consistent with City standard indemnification provisions for public works contracts.

> Each Party agrees to defend, indemnify, and hold the other Party, its C. officers, officials, employees, and agents harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in any way resulting from that Party's own negligent acts or omissions which may arise in connection with its performance under this Agreement. A Party will not be required to defend, indemnify or hold harmless the other Party if the claim, injury, damage, loss or suit is caused by the sole negligence of the other Party. Where such claims, injuries, damages, losses, or suits result from the concurrent negligence of the Parties, the indemnity provisions herein shall be valid and enforceable only to the extent of a Party's own negligence. Each of the Parties agrees that its obligations under this Section extend to any claim, injury, damage, loss or suit brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. The obligations of this Section shall survive termination of this Agreement.

6. DESIGNATED REPRESENTATIVES; NOTICES AND COMMUNICATIONS

The designated representatives of the Parties shall be the following employees, or their designees:

City of Kenmore John Vicente, Interim City Engineer 18120 68th Ave NE Kenmore, Washington 98028-2701 Northshore School District Jon Wiederspan, Network Operations Manager 3330 Monte Villa Pkwy Bothell, Washington 98021

All notices and other formal communications shall be mailed or delivered to the designated representatives. The Parties may change their respective designated representatives by written notification to one another.

7. OTHER PROVISIONS

a. This Agreement constitutes the entire and exclusive agreement between the Parties and supersedes all prior discussions. This Agreement may be amended only in writing, signed by both Parties.

- b. There are not third-party beneficiaries to this Agreement. No person or entity other than a Party to this Agreement shall have any rights under this Agreement or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.
- c. Waiver of any default or breach of this Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such through written agreement of both Parties.
- d. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion thereof, shall not affect the validity of the remaining provisions of this Agreement.
- e. This Agreement may be signed in counterparts, and, if so signed, shall be deemed one integrated document.
- f. This Agreement shall begin on the date of execution by both Parties and shall terminate after the City's acceptance of the District Work and upon final payment of all costs and resolution of all claims.
- g. Either Party may terminate this Agreement in the event that the other Party materially breaches this Agreement. The non-breaching Party shall give written notice of such termination and a description of the breach to the breaching Party no less than thirty (30) days prior to the effective date of termination. The breaching Party shall be given this thirty (30) days to cure its material breach. If the breaching Party fails to cure within thirty (30) days, the Agreement is immediately terminated. Upon termination, the Parties shall cooperate in closing out this Agreement.

CITY OF KENMORE

1/17/2019

Approved as to form:

City Attorney

HORE SCHOOL DISTRICT NORTHS

Superintendent

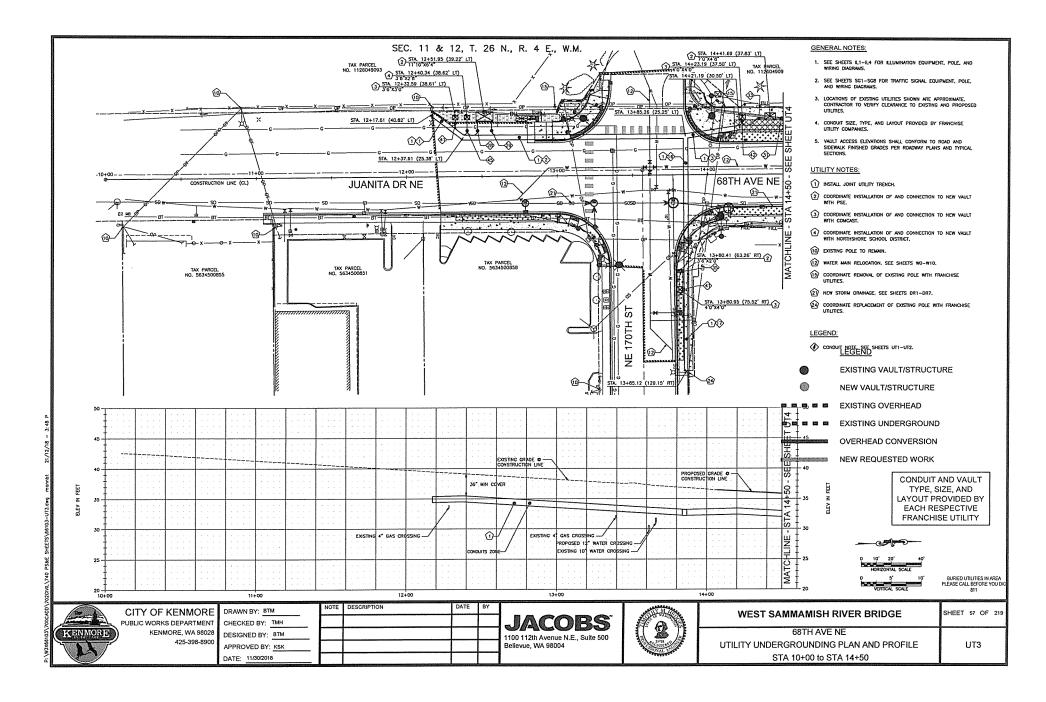
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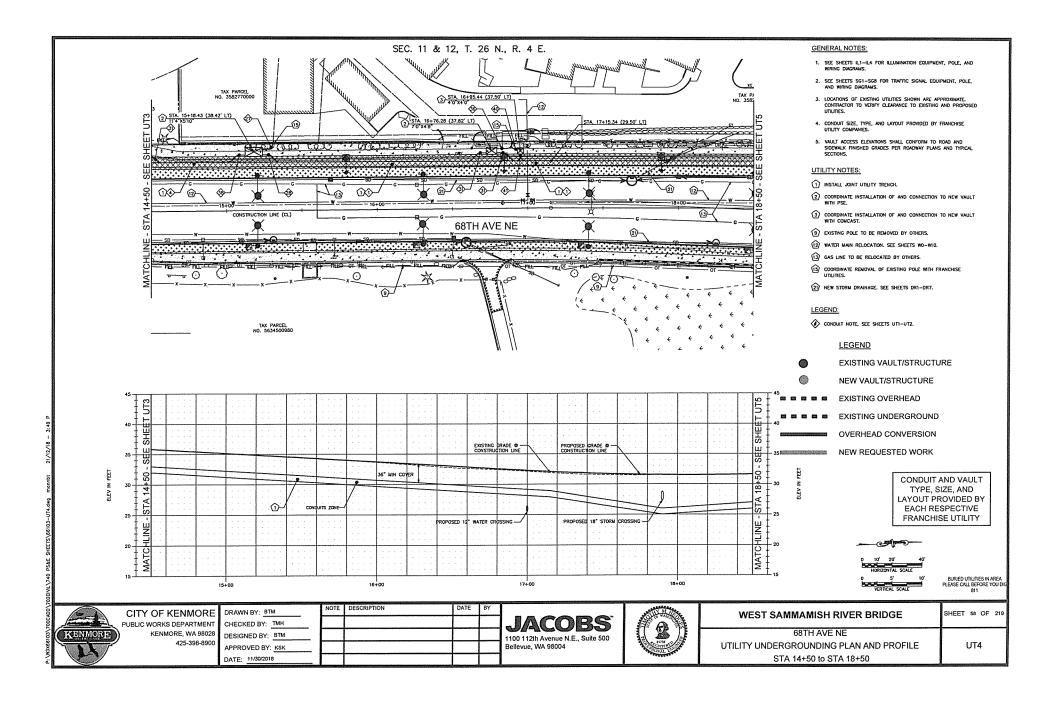
District General Counsel

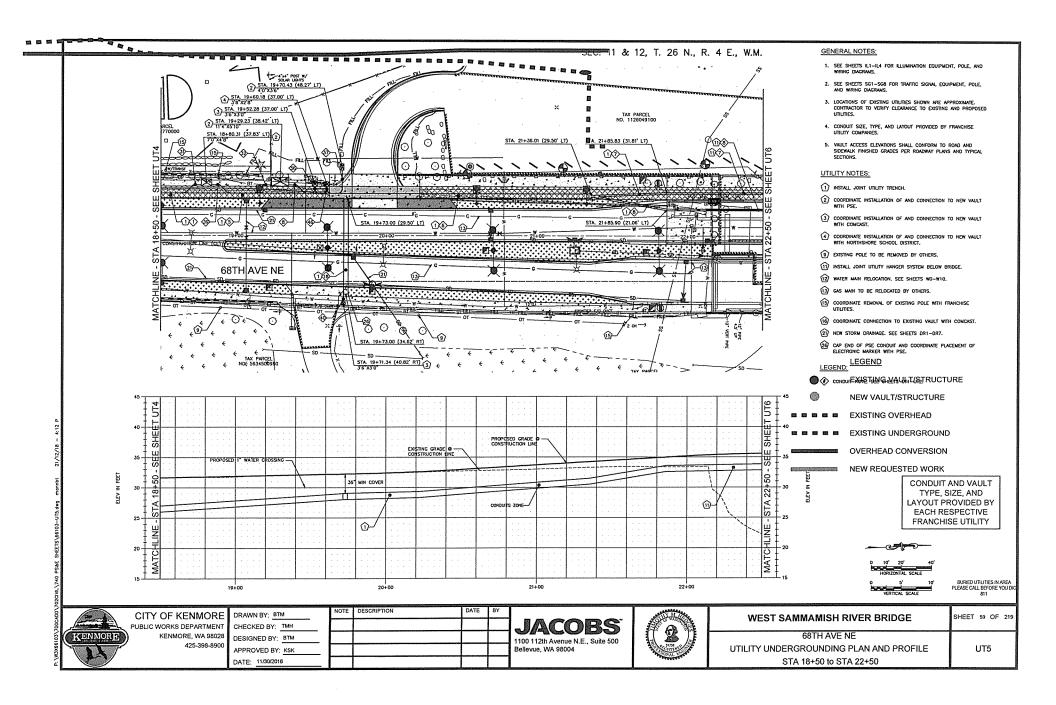
EXHIBIT A DISTRICT WORK

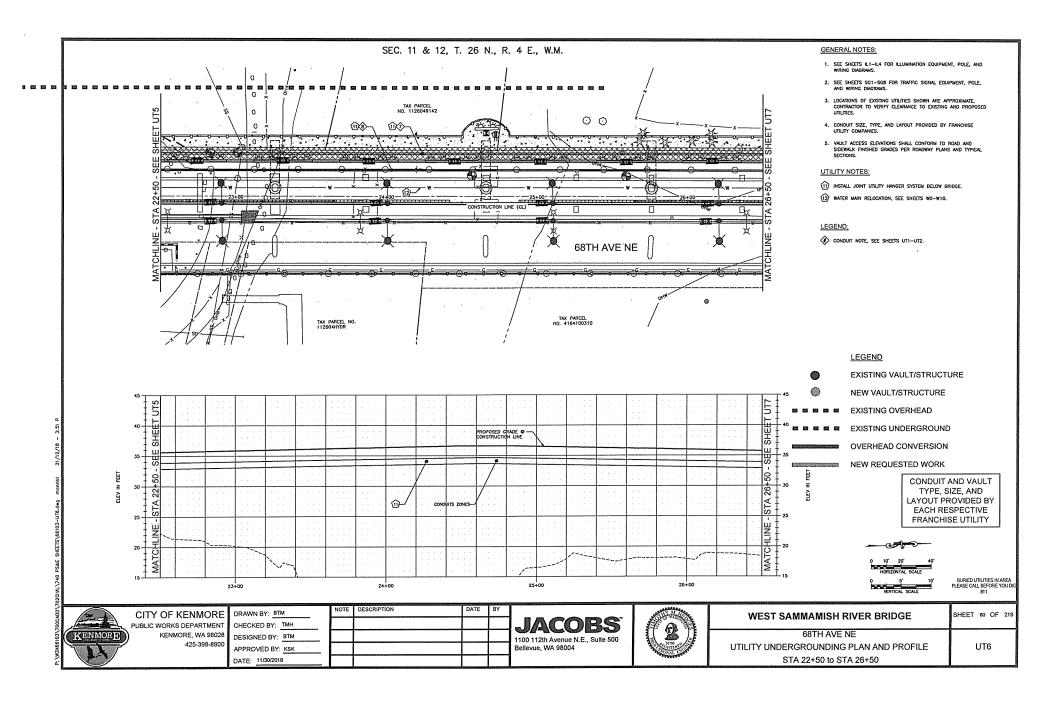
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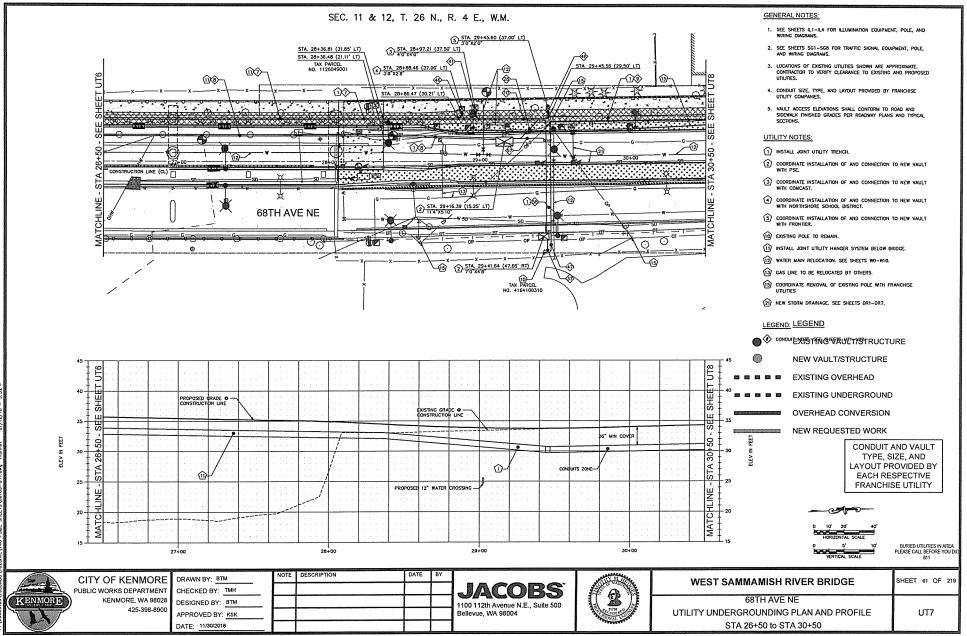


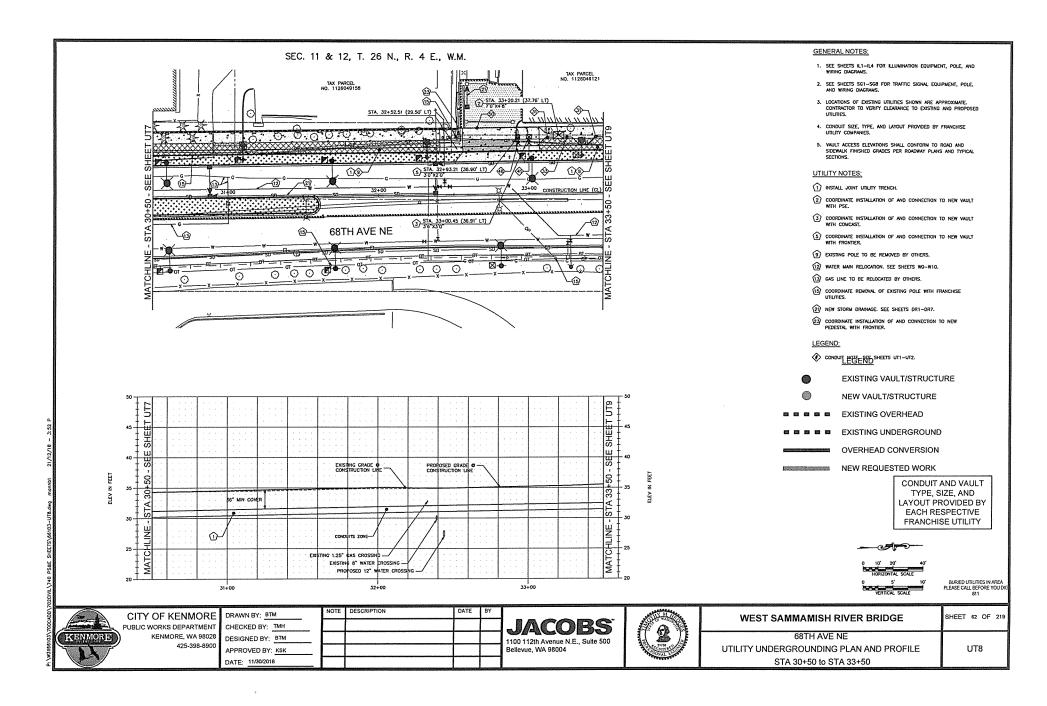


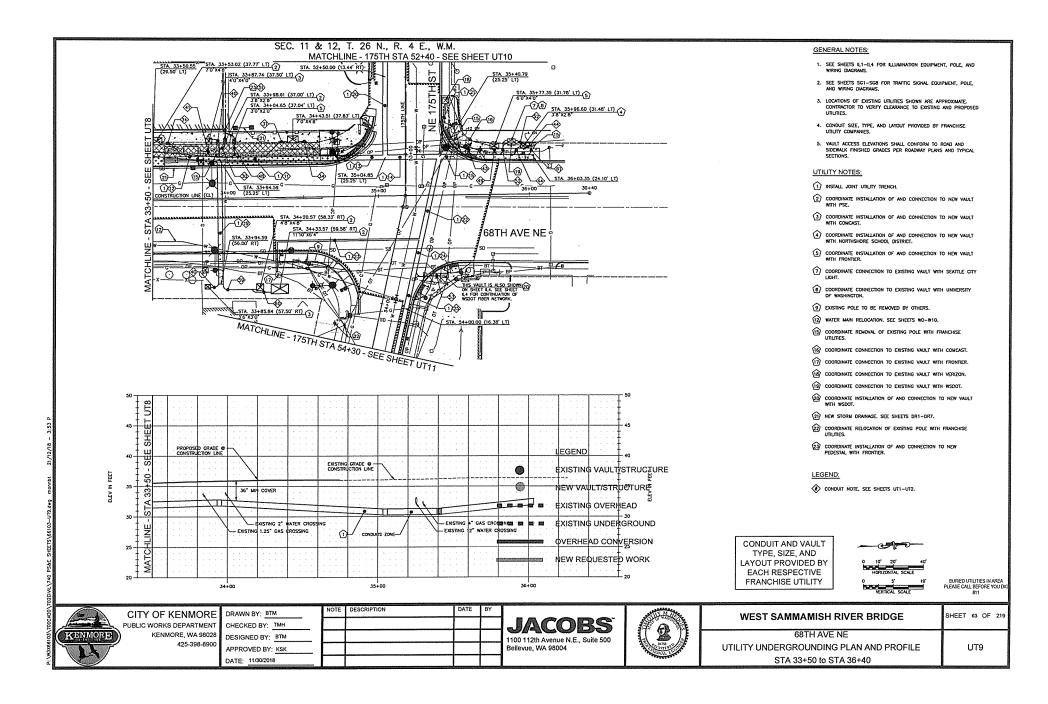


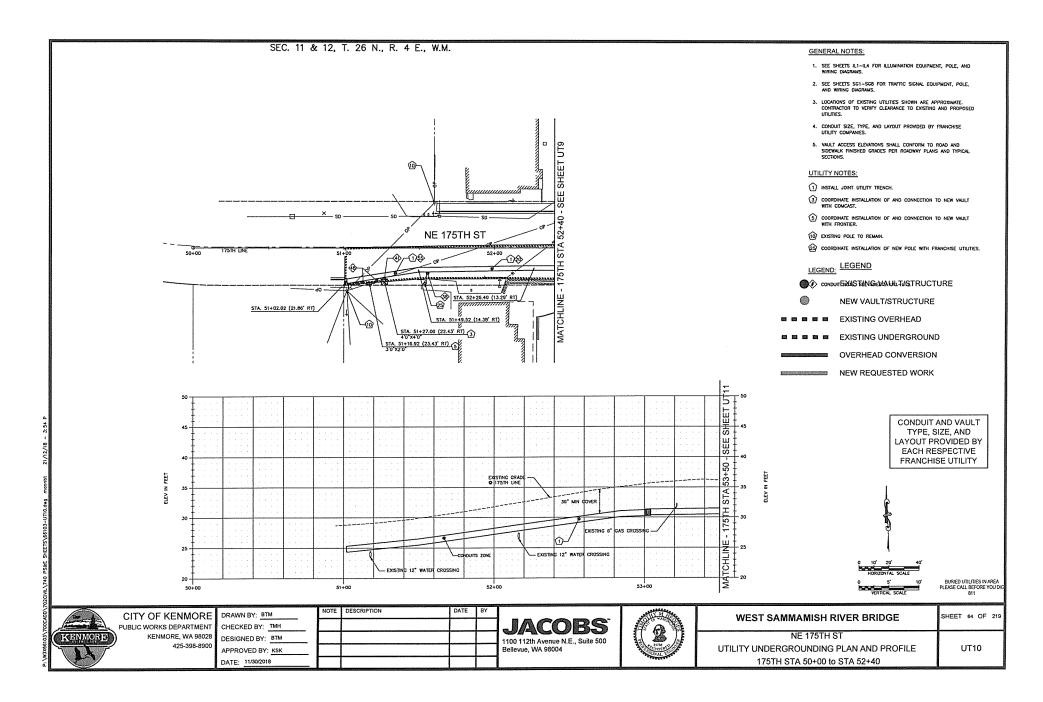


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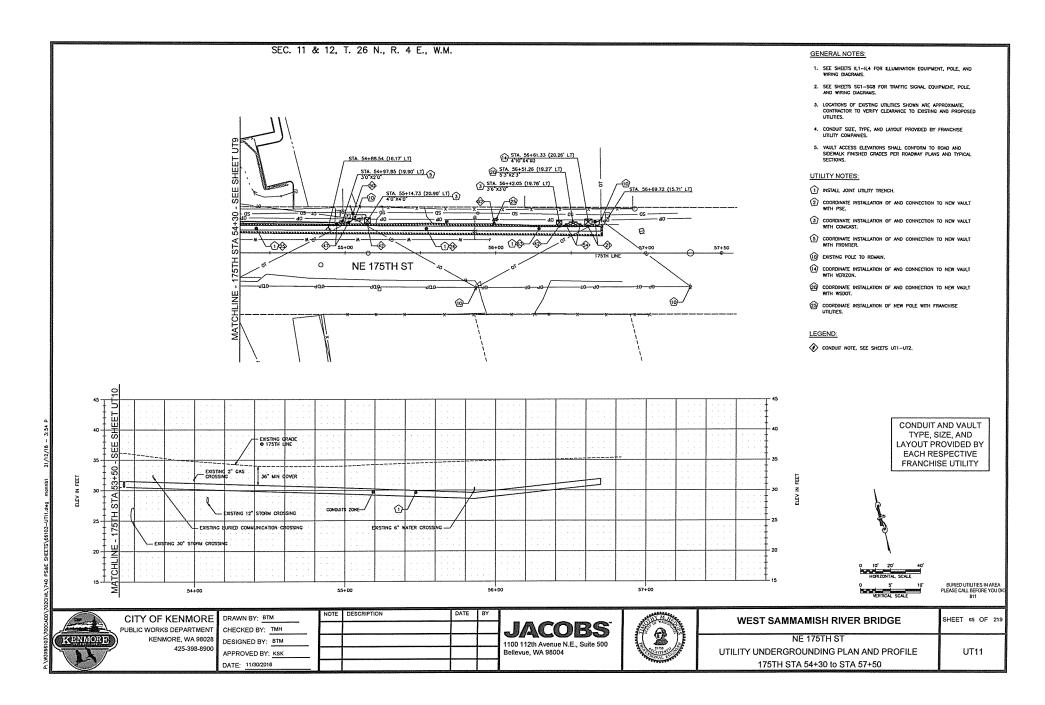


EXHIBIT B

ESTIMATED COST OF DISTRICT WORK

NORTHSHORE SCHOOL DISTRICT COSTS

	Schedule F			
	Vault (3'8"x2'8")			\$5,964
	1-1/4" PVC Conduit			\$24,261
	2" PVC Conduit			\$10,747
	1-1/4" PVC Utility Pole Riser			\$422
	Joint Utility Trench			\$7,079
	Minor Changes			\$5,000
A			Subtotal	\$53,473
	Proportional Share of Other Project Costs	Totals	NSD Proportional Share	
			%	Cost
В	Total Estimated Construction Cost	\$27,200,866		
	Proportional Share (A/B)		0.02%	
	Proportional Share (A/B) Traffic Control Bid Items (Schedule A)	\$1,112,776	0.02%	\$2,225
			0.02%	\$2,225 \$80
	Traffic Control Bid Items (Schedule A)	\$1,112,776	0.02%	
	Traffic Control Bid Items (Schedule A) Erosion Control Bid Items (Schedule A)	\$1,112,776 \$40,000	0.02%	\$80
	Traffic Control Bid Items (Schedule A) Erosion Control Bid Items (Schedule A) Utility Coordinator Bid Item (Schedule A)	\$1,112,776 \$40,000 \$31,950	0.02%	\$80 \$60
	Traffic Control Bid Items (Schedule A) Erosion Control Bid Items (Schedule A) Utility Coordinator Bid Item (Schedule A) Mobilization (Schedule A) Construction Management/Testing Services	\$1,112,776 \$40,000 \$31,950 \$2,220,711	0.02%	\$80 \$60 \$4441

TOTAL COST ASSIGNMENT TO NORTHSHORE SCHOOL DISTRICT (A+C):

\$68,439