



CITY OF
TUMWATER

**PUBLIC WORKS COMMITTEE
MEETING AGENDA**

**Online via Zoom and In Person at
Tumwater City Hall, Council Conference
Room, 555 Israel Rd. SW, Tumwater, WA
98501**

**Thursday, March 20, 2025
8:00 AM**

1. Call to Order
2. Roll Call
3. Approval of Minutes: Public Works Committee, February 20, 2025 & March 6, 2025
4. Acceptance of Work for the Tenant Improvements for City of Tumwater Office Space at South Puget Sound Community College (Water Resources & Sustainability Department)
5. Acceptance of Work for the Palermo Security Fencing Replacement Project (Water Resources & Sustainability Department)
6. Schedule 74 Design Agreement with Puget Sound Energy for Old Hwy 99 and 79th Ave RAB (Transportation and Engineering Department)
7. Construction Contract with Northwest Cascade, Inc. for the Linwood Ave Sidewalk, Susitna Ln to 2nd Ave project, Request for Additional Construction Funds (Transportation and Engineering Department)
8. Additional Items
9. Adjourn

Meeting Information

All committee members will be attending remotely. The public are welcome to attend in person, by telephone or online via Zoom.

Watch Online

<https://us02web.zoom.us/j/82337988480?pwd=dUFijgBOfe0JkmDKeDbUlub1udOlmg.1>

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 823 3798 8480 and Passcode 503889.

Public Comment

The public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than 5:00 p.m. the day before the meeting. Comments are submitted directly to the Committee members and will not be read individually into the record of the meeting.

Post Meeting

Video of this meeting will be recorded and posted on our City Meeting page: <https://tumwater-wa.municodemeetings.com>.

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City's ADA Coordinator directly, call (360) 754-4129 or email ADACoordinator@ci.tumwater.wa.us. For vision or hearing impaired services, please contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384.

**TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
FEBRUARY 20, 2025 Page 1**

CONVENE: 8:00 a.m.

PRESENT: Chair Eileen Swarthout and Councilmembers Michael Althausser and Angela Jefferson.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Finance Director Troy Niemeyer, Transportation and Engineering Department Director Brandon Hicks, Water Resources and Sustainability Department Director Dan Smith, WRS Program Manager Patrick Soderberg, Senior Engineer Joseph Norman, Water Resources Specialist Dave Kangiser, and Administrative Assistant Kelly Quiroz.

**APPROVAL OF
MINUTES: PUBLIC
WORKS
COMMITTEE,
JANUARY 23, 2025:**

MOTION: **Councilmember Jefferson moved, seconded by Councilmember Althausser, to approve the minutes of January 23, 2025 as presented. A voice vote approved the motion unanimously.**

**ORDINANCE O2025-
005 AMENDING
TUMWATER
MUNICIPAL CODE
(TMC) 12.28, PUBLIC
EVENTS:**

City Attorney Kirkpatrick briefed members on the proposed ordinance. The purpose of the ordinance is in response to a 2023 audit by Washington Cities Insurance Authority (WCIA) citing the City’s event permitting process lacking notification to an applicant of the City’s requirement for liability insurance, indemnification defense and hold harmless language within the application, and information on whether the event involves political or religious activity. The City received several examples of other model ordinances from other jurisdictions in the state. The proposed ordinance was drafted to meet the needs of the City.

The definition of “special event” includes any event that would be conducted on public property or public right-of-way, any private event on private property that would substantially impact public property or public right-of-way, and any event with over 100 participants deemed to impact City right-of-way. The ordinance requires a permit submitted through a City application along information provided to the applicant on potential reasons for denial of a permit and potential conditions associated with the permit that includes insurance and other permit requirements such as food service permits. Language is included for hold harmless indemnification provisions, and an appeal process if the permit is conditioned or denied. The ordinance includes a provision for a penalty for non-compliance.

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MINUTES OF VIRTUAL MEETING
FEBRUARY 20, 2025 Page 2**

Councilmember Althauser questioned the purpose of requesting information as to whether the event is for political or religious activities. City Attorney Kirkpatrick explained that many times, events involving politics or religion can occur quickly and often cannot be processed within the City’s timeframe for issuance of a permit in addition to the potential application of fee waivers for those types of events. Essentially, the information is requested to meet the operational needs of the City.

Councilmember Jefferson inquired as to the timeline for an applicant to receive a permit. City Attorney Kirkpatrick said the City requires 60 days for an appropriate review by affected departments, as well as to communicate insurance requirements and other permit requirements the applicant may be required to obtain. The City requests a 60-day review recognizing that occasionally, spontaneous events can occur, such as controversial issues that are addressed directly to the Council. Additionally, the City is also required to secure a permit for events it hosts, such as the 4th of July events. She added that the City has already established a permit application process and the permit process is often shorter than 60 days. The proposed ordinance codifies the City’s requirements for each application.

Staff recommends placing Ordinance No. O2025-005 amending Tumwater Municipal Code (TMC) 12.28, Public Events, on the March 4, 2025, City Council Consent Calendar with a recommendation to approve and authorize the Mayor to sign.

MOTION:

Councilmember Jefferson moved, seconded by Councilmember Althauser, to place Ordinance No. O2025-005 amending Tumwater Municipal Code (TMC) 12.28, Public Events, on the March 4, 2025, City Council Consent Calendar with a recommendation to approve and authorize the Mayor to sign. A voice vote approved the motion unanimously.

SERVICE PROVIDER AGREEMENT WITH FULLER DESIGNS FOR THE BEEHIVE INDUSTRIAL AREA STORMWATER RETROFIT DESIGN PROJECT:

Specialist Kangiser reported the agreement is a continuation of a previous request for a grant agreement through the Department of Ecology. The proposal is a service provider agreement with Fuller Designs to complete the work for the Beehive Industrial Area Stormwater Retrofit Design Project.

The Beehive Industrial Area is located on the north side of Trospen Road and is comprised of light industrial uses. The project was prioritized through the City’s stormwater action planning process to satisfy the City’s permit requirement through the NPDES permit. The area experiences localized flooding impacting stormwater management and capacity. The area lacks water quality treatment of stormwater discharging directly to Percival Creek. The solution designed for the area is a series of linear facilities along Joppa and Lambskin with a tire-lined ditch and stormwater easement running between the

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MINUTES OF VIRTUAL MEETING
FEBRUARY 20, 2025 Page 3**

two streets. The conceptual design would help reduce flooding, treat stormwater, and increase curb appeal along the project site. The project is funded by grants through the Water Quality Combined Funding Program requiring a 15% match from the City for 90% design and permitting with funding from the grant available through 2027.

Staff selected Fuller Designs following a competitive bid process to complete data collection, engineering, permits, and completion of 90% design anticipated to be completed by the end of 2025.

Staff recommends placing the Service Provider Agreement with Fuller Designs who will be assisting with the Beehive Industrial Area Stormwater Retrofit Design Project on the March 4, 2025 Council Consent Calendar with a recommendation to approve and authorize the Mayor to sign.

Councilmember Jefferson asked about the timeline for complete construction of the project. Specialist Kangiser reported that the next funding cycle is from 2026 through 2028, which affords construction funds to complete the project. Completion of the project is dependent upon the workload and capacity of staff during that period. The project is scheduled for completion within the next three years.

MOTION:

Councilmember Jefferson moved, seconded by Councilmember Althausser, to place the Service Provider Agreement with Fuller Designs who will be assisting with the Beehive Industrial Area Stormwater Retrofit Design Project on the March 4, 2025 Council Consent Calendar with a recommendation to approve and authorize the Mayor to sign. A voice vote approved the motion unanimously.

**2025 PAVEMENT
MAINTENANCE
PROJECT,
AUTHORITY TO
SOLICIT BIDS:**

Engineer Norman reviewed the proposed 2025 Pavement Maintenance Project and a request to authorize the solicitation of bids for the project.

Every other year, a consultant rates the City’s road system to ascertain pavement condition of City roads. The information informs the project needs of roads that require repair or other improvements. The goal is to repair roads at the right time to avoid degradation of the road base, as well as to maximize the funds available through the Transportation Benefit District. The project also includes some residential roads in addition to main arterials. The scope of the project includes pavement improvements (grinds, inlays/overlays of asphalt, utility patching adjustments, storm drain repairs, road maintenance of pavement markings/striping/raised pavement markings), and sidewalk/driveway improvements for accessibility. The project scope includes 16 areas of focus with the largest segment comprised of Littlerock Road roundabouts.

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FEBRUARY 20, 2025 Page 4**

Engineer Norman reported the request also includes authority to increase change order authority from 10% to 20%. The project is anticipated to take 50 working days to complete beginning with bids in April and construction scheduled from June through October.

Councilmember Jefferson questioned the purpose of requesting a 10% in change order authority. Engineer Norman advised that because of the nature of paving projects staff obtains as much information on roads to the extent prior to developing the project scope. Sometimes, despite the research, staff discovers different conditions such as a difference in the depth of asphalt creating a weak roadway base that requires a deeper layer of asphalt to increase the depth of the base to an appropriate level. Because of the type of repairs and the fast pace of the work, it is difficult to track costs as the project proceeds.

MOTION:

Chair Swarthout moved, seconded by Councilmember Jefferson, to authorize staff to (1) solicit bids for the 2025 Pavement Maintenance project; (2) recommend City Council award and authorize the Mayor to sign a Public Works Contract with the lowest responsible bidder; (3) recommend City Council authorize road closures and detours as required for the duration of the project; (4) recommend City Council authorize night work adjacent to residentially zoned properties when necessary to reduce impacts to the public and avoid impact to critical public services; and (5) staff requests that the Public Works Committee recommend the City Council increase the change order authority provided to the Transportation and Engineering Director under Tumwater Municipal Code 2.14.060 to 20 percent for this project.

**TRAFFIC SIGNAL
CONTROLLER &
DETECTION
UPGRADE,
EQUIPMENT
PURCHASE:**

Engineer Norman presented the request seeking authority to purchase equipment for the Traffic Signal Controller & Detection Upgrade Equipment Project.

The City received federal Congestion Mitigation & Air Quality Improvement Program (CMAQ) grants funds through the Thurston Regional Planning Council (TRPC). The purpose of the federal grant is to improve air quality by increasing the efficiency of the nation's road system. Intersection improvements included in the scope of work are located in the PM₁₀ Air Quality Maintenance Area, an area identified by the size of particulate matter (dust and smoke) of 10 micrometres in diameter. The grant totals \$268,150.00. The scope of the project includes installation of nine signal controllers, 14 traffic signal detection systems, and construction management and installation by City staff.

The Engineer's Estimate for the project is \$353,435.00 of which \$268,150.00 would be funded by the CMAQ grant with the remaining from the

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Transportation Capital Facilities Plan.

Chair Swarthout reviewed the request to the committee.

MOTION:

Councilmember Althauser moved, seconded by Councilmember Jefferson, to place the purchase orders for the traffic signal controller and detection equipment, for the Traffic Signal Controller and Detection Upgrade project, on the March 4, 2025, City Council Consent Calendar with a recommendation to approve and authorize the Mayor to sign. A voice vote approved the motion unanimously.

ADJOURNMENT:

With there being no further business, Chair Swarthout adjourned the meeting at 8:30 a.m.

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

**TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
MARCH 6, 2025 Page 1**

CONVENE: 8:01 a.m.

PRESENT: Chair Eileen Swarthout and Councilmembers Michael Althausser and Angela Jefferson.

Staff: City Attorney Karen Kirkpatrick, Transportation and Engineering Department Director Brandon Hicks, Water Resources and Sustainability Department Director Dan Smith, Deputy Director of Community Development Department Brad Medrud, Engineering Services Manager Bill Lindauer, WRS Program Manager Patrick Soderberg, Community Engagement Specialist Marnie McGrath, and Administrative Assistant Bonnie Hale.

**APPROVAL OF
MINUTES: PUBLIC
WORKS
COMMITTEE,
FEBRUARY 6, 2025:**

MOTION: **Councilmember Jefferson moved, seconded by Councilmember Althausser, to approve the minutes of February 6, 2025 as presented. A voice vote approved the motion unanimously.**

**FIRST AMENDMENT
TO THE SERVICE
PROVIDER
AGREEMENT WITH
FEHR & PEERS FOR
THE
TRANSPORTATION
PLAN OF THE 2025
COMPREHENSIVE
PLAN PERIODIC
UPDATE:**

Deputy Director Medrud reported the proposed amendment is to an existing service provider agreement with Fehr & Peers for assistance in updating the Transportation Plan as part of the larger Comprehensive Plan Periodic Update. The request is for placement of the proposal on the City Council Consent Calendar for the March 18, 2025 meeting for approval and recommend authorizing the Mayor to sign.

The first amendment enables completion of the required Bike and Pedestrian Plan by increasing the project budget by \$50,000 to accommodate the work. The original scope of the project did not include the plan because of an oversight. The work is required as part of the Comprehensive Plan Periodic Update.

Chair Swarthout asked about the source of the additional \$50,000. Deputy Director Medrud said the City received several grants from the state for the periodic update in addition to the funds allocated for the update from the general fund. The additional amount would be funded from the general fund from the remaining allocated funds.

Chair Swarthout reviewed the requested action.

**TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
MARCH 6, 2025 Page 2**

MOTION: Councilmember Jefferson moved, seconded by Councilmember Althausser, to place the First Amendment to the Service Provider Agreement with Fehr & Peers for the Transportation Plan of the 2025 Comprehensive Plan Periodic Update on the March 18, 2025, City Council Consent Calendar with a recommendation to approve and authorize the Mayor to sign. A voice vote approved the motion unanimously.

ADJOURNMENT: With there being no further business, Chair Swarthout adjourned the meeting at 8:07 a.m.

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

TO: Public Works Committee
FROM: Dan Smith, Water Resources & Sustainability (WRS) Director
DATE: March 20, 2025
SUBJECT: Acceptance of Work for the Tenant Improvements for City of Tumwater Office Space at South Puget Sound Community College (SPSCC)

1) Recommended Action:

Place the Tenant Improvements of the City of Tumwater Office Space at SPSCC acceptance of work request on the City Council consent calendar on April 15, 2025 with a recommendation to accept the project as complete and authorize the release of the performance bond as soon as the laws of the state of Washington allow.

2) Background:

During the 2023-2024 biennium, Council authorized moving limited staff from City Hall to an offsite location due to space constraints at City Hall and a growing workforce. Following an extensive search across the city for office space, the City signed a 5-year lease with SPSCC to site WRS Administrative Division office and technical workspaces. On February 1, 2024, the City executed a Small Works Contract with JA Morris, Inc. to complete the necessary remodel of two existing classrooms into a functional workspace for WRS, which also includes a staff kitchen area and a conference room accessible to all City departments. This project provides expanded space for new staff and an increase in parking for staff, fleet vehicles, and the public at City Hall. In addition, WRS is implementing a robust internship program in partnership with SPSCC and the Tumwater School District to support developing expertise in public and environmental health for future decades.

3) Policy Support:

- * Refine and Sustain a Great Organization
 - * 2023-2024 Budget Priorities
-

4) Alternatives:

- None. Project is complete and all administrative requirements have been met.
-

5) Fiscal Notes:

Project funding was split between the Drinking Water (40%), Sanitary Sewer (20%), and Storm Drain (40%) funds. The total project cost, \$273,095.00, was approximately \$25,800 lower than the bid and was completed on time. With tax, the total project cost \$299,739.00. Staff moved into the new space on May 20, 2024.

6) Attachments:

N/A

TO: Public Works Committee
FROM: Steve Craig, WRS Utilities Operations Manager
DATE: March 20, 2025
SUBJECT: Acceptance of Work for the Palermo Security Fencing Replacement Project

1) Recommended Action:

Place the Palermo Security Fencing Replacement Project acceptance of work request on the City Council consent calendar on April 15, 2025 with a recommendation to accept the project as complete and authorize the release of the performance bond as soon as the laws of the state of Washington allow.

2) Background:

The project included the replacement and improvement of 1,180 linear feet of existing perimeter security fencing that surrounds the Palermo drinking water production and treatment facility.

The existing perimeter security fence was removed and replaced with new fencing meeting current security standards for drinking water facilities. Site access control measures were also improved to prevent unauthorized access.

The Public Works Contract with the lowest responsive bidder, West Coast Fence Pros LLC, was signed on September 26, 2024, for \$162,631.32. Work on this project is complete, and the final contract total is \$162,659.82.

3) Policy Support:

- * Safe Drinking Water Act
 - * American Water Infrastructure Act
-

4) Alternatives:

- None. Project is complete and all administrative requirements have been met.
-

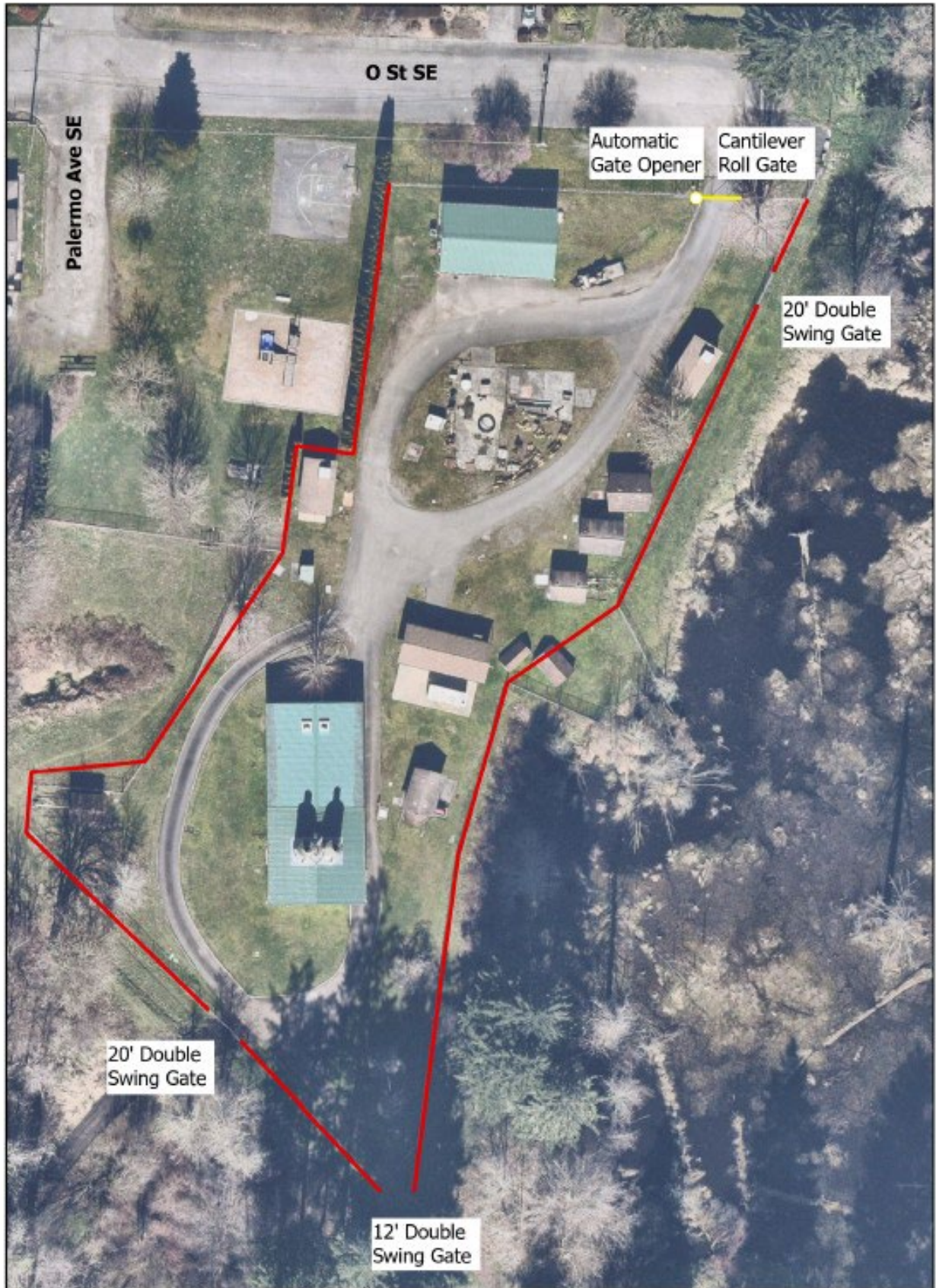
5) Fiscal Notes:

Full project funding in the amount of \$162,659.82 was provided by the Drinking Water fund.

6) Attachments:

- A. Project Overview

Attachment A, Palermo Project Overview



TO: Public Works Committee
FROM: Joseph Norman, Senior Engineer
DATE: March 20, 2025
SUBJECT: Schedule 74 Design Agreement with Puget Sound Energy for Old Hwy 99 and 79th Ave RAB

1) Recommended Action:

Place the Puget Sound Energy (PSE) Schedule 74 Design Agreement on the April 1, 2025 City Council consent calendar with a recommendation to approve and authorize the Mayor to sign.

2) Background:

As part of the Old Hwy 99 and 79th Ave Roundabout and Frontage Improvements project, the City of Tumwater has requested Puget Sound Energy (PSE) underground their overhead utility. The design agreement is the first step in the overall Schedule 74 process with PSE. The design agreement allows PSE to allocate personnel to the design of their relocated facilities and provide the City with plans for inclusion into the project. The agreement will cover the connections to the Operations and Maintenance facility, the parking lot associated with the new facility, and power for new RRFBs associated with the roundabout.

3) Policy Support:

Strategic Priorities and Goals 2025 – 2026

Create and Maintain a Transportation System Safe for All Modes of Travel – Provide a safe, efficient, and cost-effective transportation system.

4) Alternatives:

- Allow overhead power and telecommunication utilities to remain overhead within the project limits.
-

5) Fiscal Notes:

The funds to complete the Schedule 74 Design Agreement will come from the Transportation CFP. PSE will not have an estimate for the Work until after the design is complete.

6) Attachments:

- A. Schedule 74 Design Agreement
- B. Joint Utility Trench
- C. Schedule 74 Construction Agreement

SCHEDULE 74 UNDERGROUND CONVERSION

Project Design Agreement

Project Name: OLD HWY 99 SE & 79TH AVE SE RAB & TRAILS END/79TH UNDERGROUNDING

Project Number: 101169283

THIS Agreement, dated as of this 18 day of February, 2025, is made by and between City of Tumwater, a City (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.
2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.
3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates

Design Agreement, Attachment "A" to Schedule 74, Page 1
 OLD HWY 99 SE & 79TH AVE SE RAB IMPROVEMENT

specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.
5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.
6. Following the Company's receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).
7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.
8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in nature and shall not include, without limitation, information required to be supplied by the Government

Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.
10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.
11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:
 - (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.
 - (b) Each estimate of the costs to be incurred by a party shall, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.
 - (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.
 - (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.
 - (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground

Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

- (f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following:
- (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.

12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,

- (a) notify the Company in writing that this Agreement is terminated; or
- (b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
 - (i) reasonable,
 - (ii) consistent with the Scope of Work, and
 - (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

- (a) change the Scope of Work in accordance with paragraph 13, below, or
- (b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or
- (c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or
- (d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work

prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.
 - (b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.
14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.
 15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a

reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

16. Dispute Resolution Procedures:

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.
- (d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

17. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

18. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

19. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

Attn: _____
Fax: _____

If to the Company:

Puget Sound Energy, Inc.
Christine VanWagenen
2711 Pacific Ave SE, Olympia WA 98501
Attn: CVW

Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.

21. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties.

22. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

Company:

PUGET SOUND ENERGY, INC.

BY _____

BY _____

ITS _____

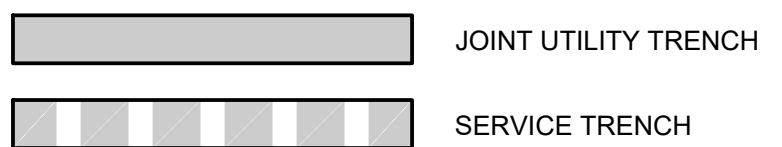
ITS _____

Date Signed _____

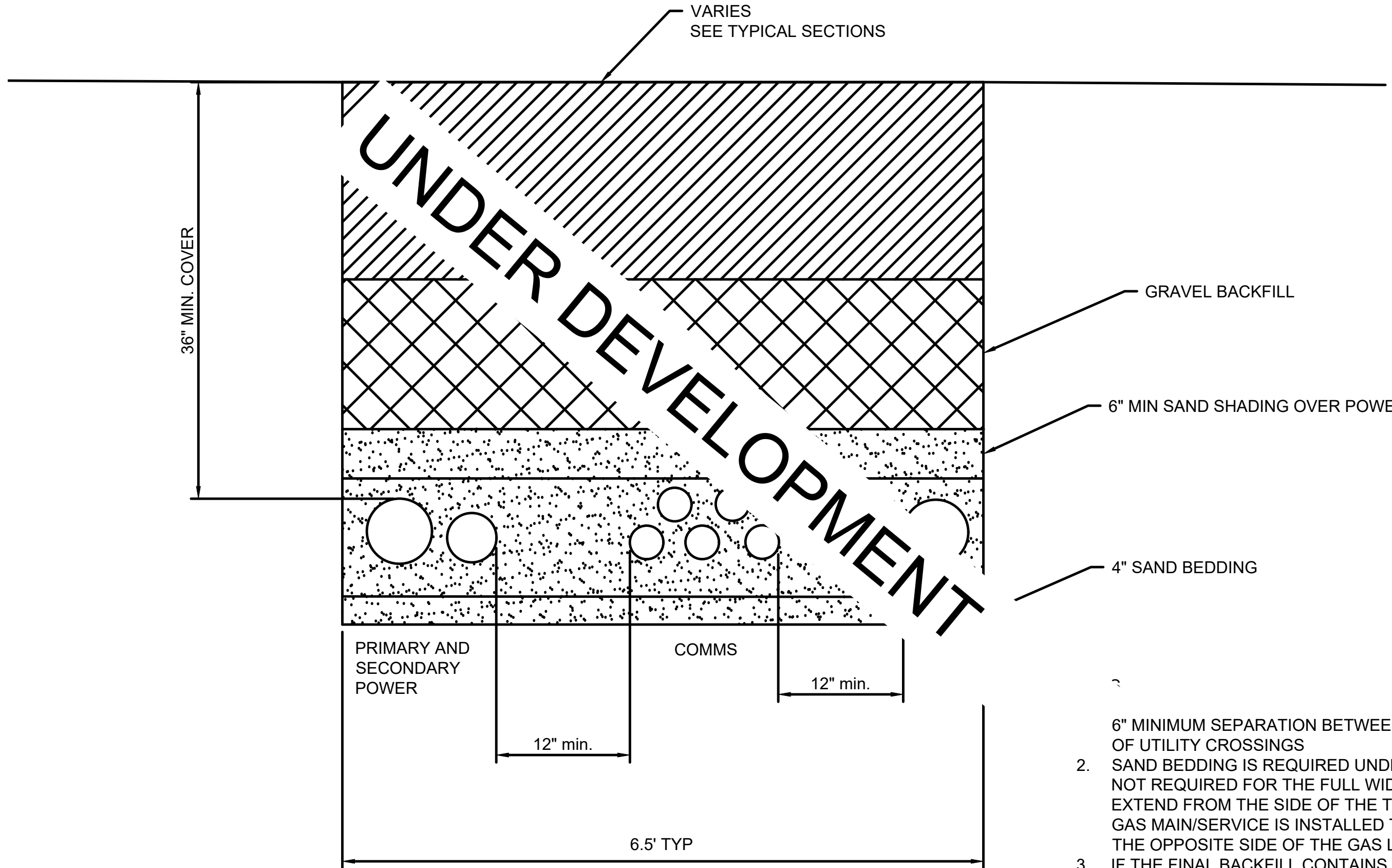
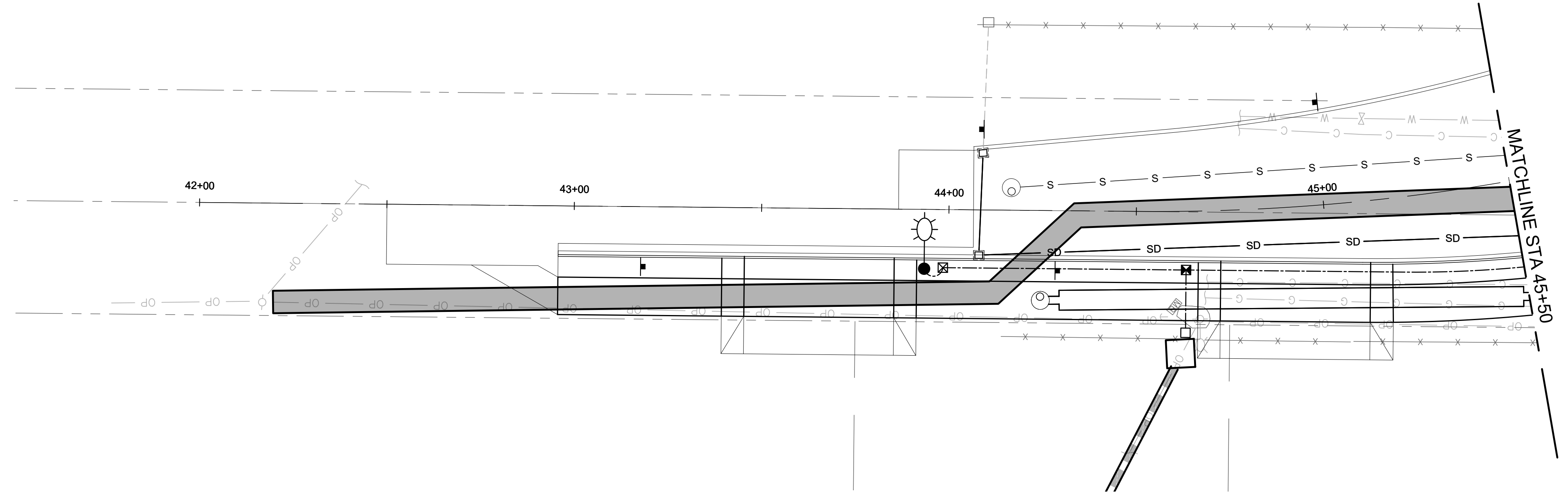
Date Signed _____

Approved as to form:

LEGEND



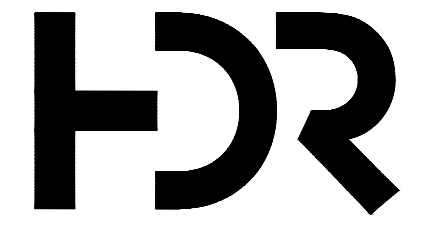
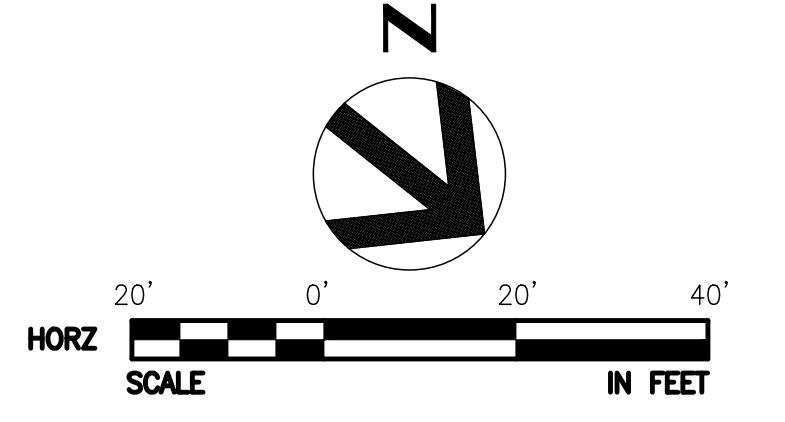
NOTE: SEE PSE PLANS FOR LIMITS OF SERVICE TRENCH WORK OUTSIDE OF CITY RIGHT OF WAY



COORDINATION WITH PRIVATE UTILITIES IS ONGOING. PLANS WILL BE UPDATED IN NEXT SUBMITTAL.

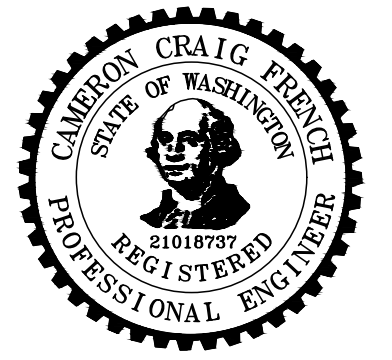
- 6" MINIMUM SEPARATION BETWEEN TOP OF CONDUIT AND BOTTOM OF UTILITY CROSSINGS
- SAND BEDDING IS REQUIRED UNDER PSE GAS PIPE. BEDDING IS NOT REQUIRED FOR THE FULL WIDTH OF THE TRENCH; IT SHALL EXTEND FROM THE SIDE OF THE TRENCH NEAREST TO WHERE THE GAS MAIN/SERVICE IS INSTALLED TO A MINIMUM OF 6 INCHES ON THE OPPOSITE SIDE OF THE GAS LINE
- IF THE FINAL BACKFILL CONTAINS ROCKS 8 INCHES IN DIAMETER OR SMALLER, INSTALL 6 INCHES OF COMPACTED SAND SHADING ACROSS THE FULL WIDTH OF TRENCH. ALTERNATIVES REQUIRE PSE APPROVAL

JOINT UTILITY TRENCH CROSS SECTION (TYP.)



ISSUE	DATE	DESCRIPTION

PROJECT MANAGER	BRAD SHEA
DESIGNED BY	CAMERON FRENCH
DESIGNED BY	LOGAN SOUSA
DRAWN BY	JOHN MCGLAMERY
DRAWN BY	
REVIEWED BY	MASON SKINNER
PROJECT NUMBER	10371976



CITY OF TUMWATER
OLD HWY 99 AND 79TH AVE
ROUNDAABOUT
DRAFT FINAL PLANS
(NOT FOR CONSTRUCTION)

UTILITY UNDERGROUNDING PLANS



0 1" 2" SCALE AS SHOWN

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 SCALE | AS SHOWN

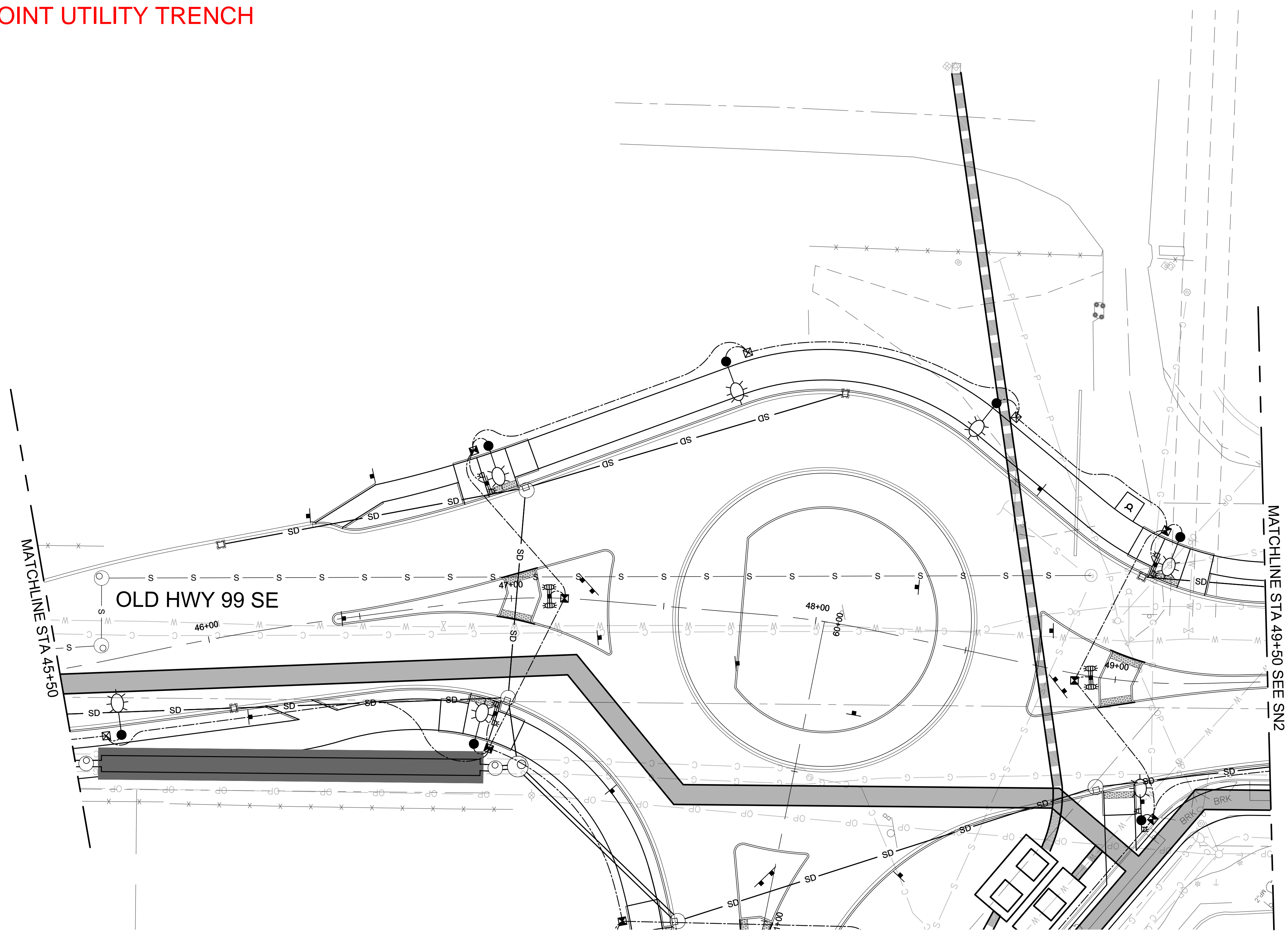
SHEET
UT1
 42 OF 69

ATTACHMENT B - JOINT UTILITY TRENCH

LEGEND

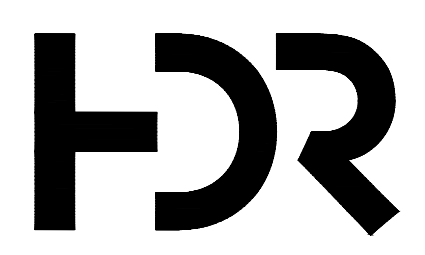
 JOINT UTILITY TRENCH
 SERVICE TRENCH

NOTE: SEE PSE PLANS FOR LIMITS OF SERVICE TRENCH WORK OUTSIDE OF CITY RIGHT OF WAY



COORDINATION WITH PRIVATE UTILITIES IS ONGOING. PLANS WILL BE UPDATED IN NEXT SUBMITTAL.

HORZ SCALE IN FEET



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DESIGNED BY	LOGAN SOUSA
DRAWN BY	JOHN MCGLAMERY
DRAWN BY	
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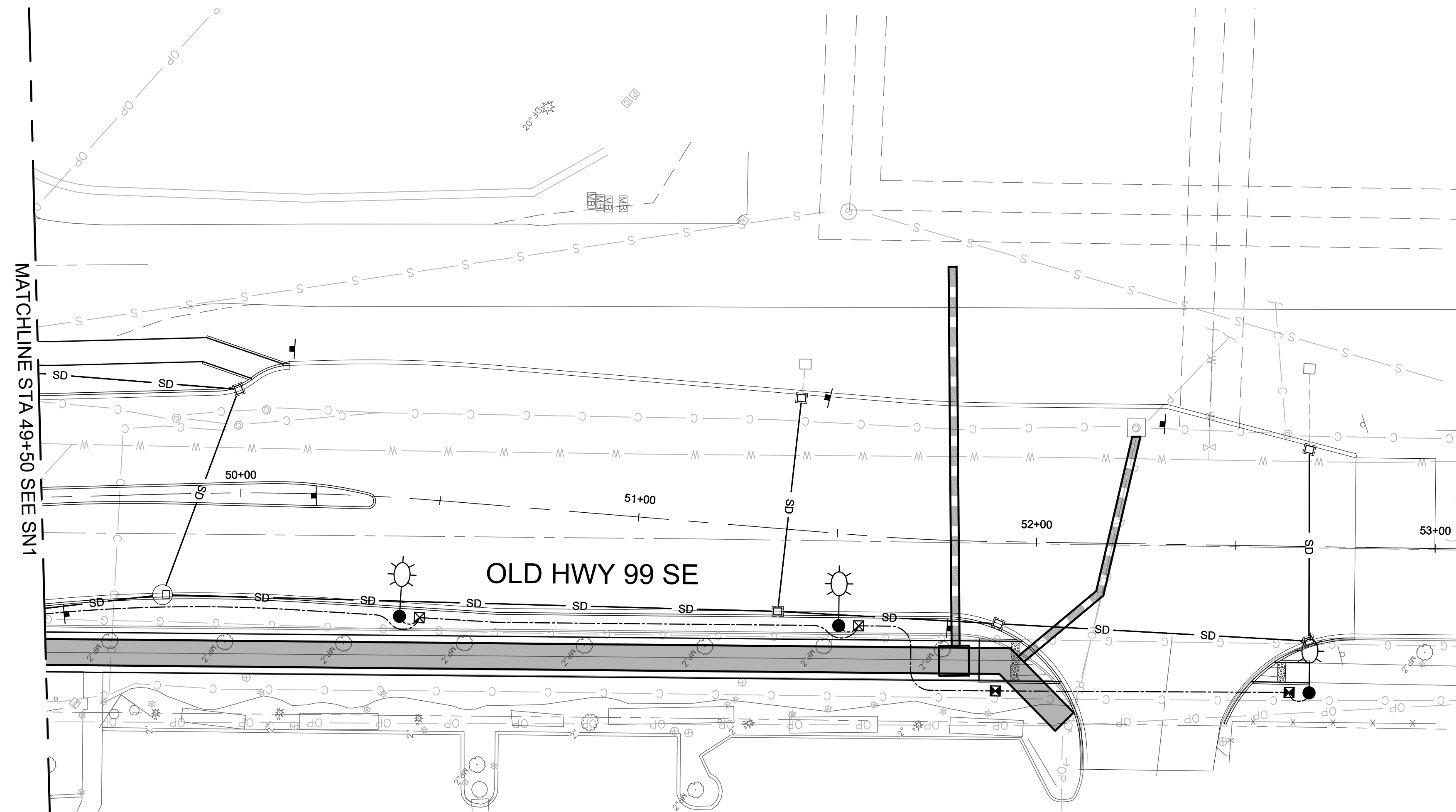


CITY OF TUMWATER
OLD HWY 99 AND 79TH AVE
ROUNDAABOUT
DRAFT FINAL PLANS
(NOT FOR CONSTRUCTION)

UTILITY UNDERGROUNDING PLANS

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 SCALE | AS SHOWN | **UT2**
 43 OF 69

ATTACHMENT B - JOINT UTILITY TRENCH



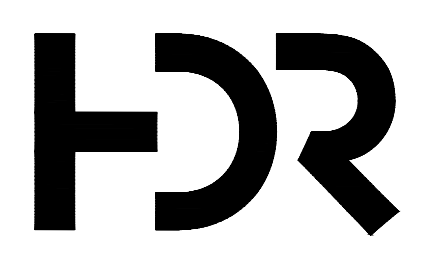
LEGEND

- JOINT UTILITY TRENCH
- SERVICE TRENCH

NOTE: SEE PSE PLANS FOR LIMITS OF SERVICE TRENCH WORK OUTSIDE OF CITY RIGHT OF WAY

COORDINATION WITH PRIVATE UTILITIES IS ONGOING. PLANS WILL BE UPDATED IN NEXT SUBMITTAL.

HORZ SCALE IN FEET



ISSUE	DATE	DESCRIPTION

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DESIGNED BY	LOGAN SOUSA
DRAWN BY	JOHN MCGLAMERY
DRAWN BY	
REVIEWED BY	MASON SKINNER
PROJECT NUMBER	10371976

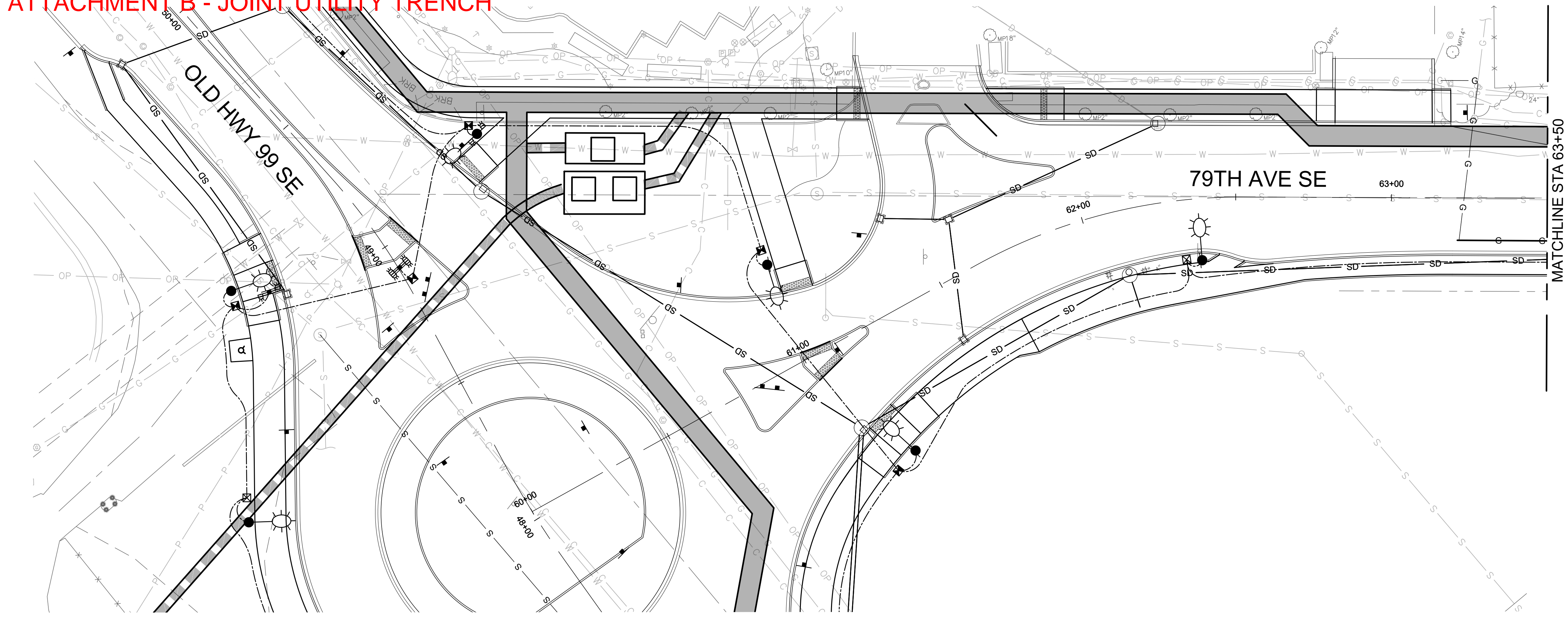


CITY OF TUMWATER
OLD HWY 99 AND 79TH AVE
ROUNDBOUT
DRAFT FINAL PLANS
(NOT FOR CONSTRUCTION)

UTILITY UNDERGROUNDING PLANS

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 44 OF 69

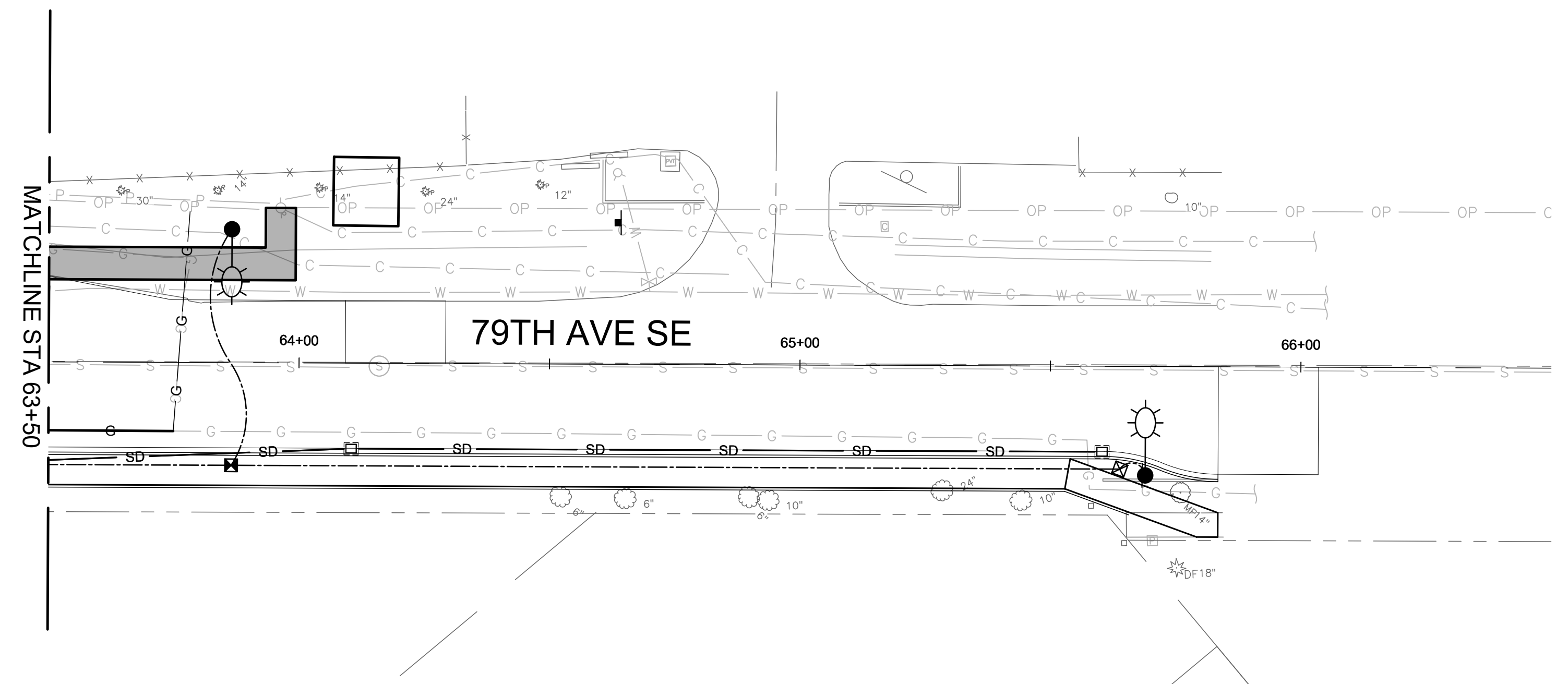
ATTACHMENT B - JOINT UTILITY TRENCH



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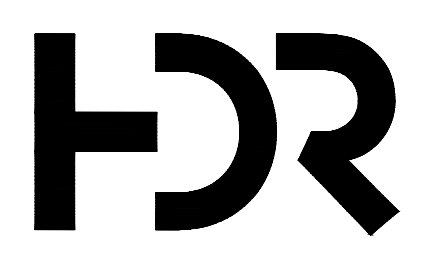
- JOINT UTILITY TRENCH
- SERVICE TRENCH

NOTE: SEE PSE PLANS FOR LIMITS OF SERVICE TRENCH WORK OUTSIDE OF CITY RIGHT OF WAY



COORDINATION WITH PRIVATE UTILITIES IS ONGOING. PLANS WILL BE UPDATED IN NEXT SUBMITTAL.

HORZ SCALE IN FEET



ISSUE	DATE	DESCRIPTION

PROJECT MANAGER	BRAD SHEA
DESIGNED BY	CAMERON FRENCH
DESIGNED BY	----
DRAWN BY	JOHN MCGLAMERY
DRAWN BY	----
REVIEWED BY	MASON SKINNER
PROJECT NUMBER	10371976

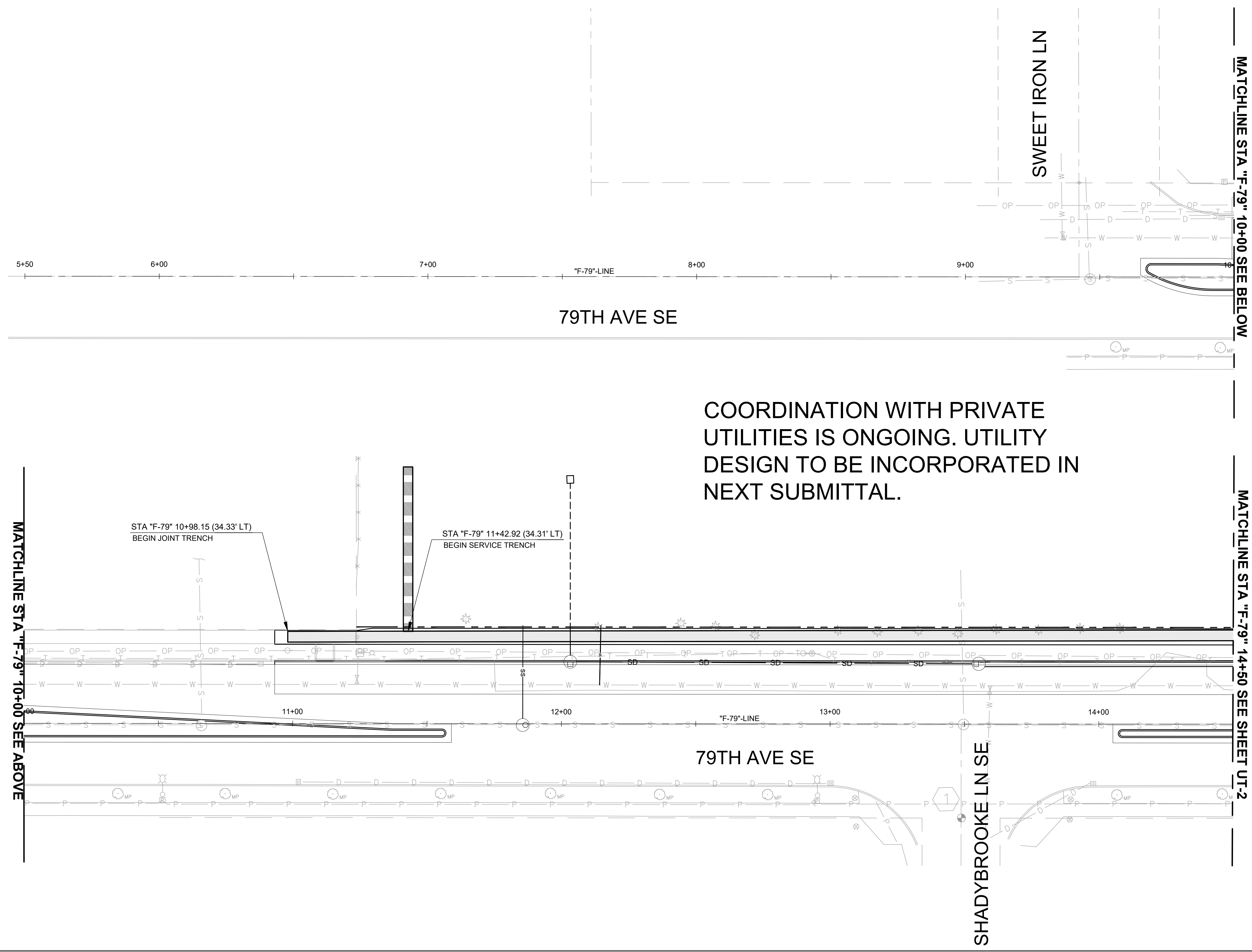


CITY OF TUMWATER
OLD HWY 99 AND 79TH AVE
ROUNDAABOUT
DRAFT FINAL PLANS
(NOT FOR CONSTRUCTION)

UTILITY UNDERGROUNDING PLANS

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 45 OF 69

ATTACHMENT B - JOINT UTILITY TRENCH



COORDINATION WITH PRIVATE UTILITIES IS ONGOING. UTILITY DESIGN TO BE INCORPORATED IN NEXT SUBMITTAL.

LEGEND

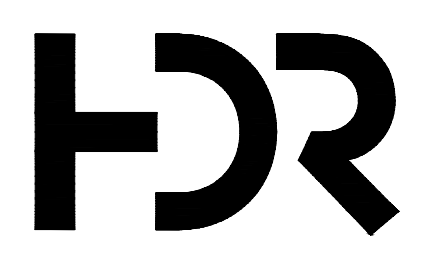
- JOINT UTILITY TRENCH
- SERVICE TRENCH

NOTE: SEE PSE PLANS FOR LIMITS OF SERVICE TRENCH WORK OUTSIDE OF CITY RIGHT OF WAY

Scale
 HORZ SCALE 20' 0' 20' 40' IN FEET

North Arrow
 N

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



ISSUE	DATE	DESCRIPTION

PROJECT MANAGER	BRAD SHEA
DESIGNED BY	CAMERON FRENCH
DESIGNED BY	LOGAN SOUSA
DRAWN BY	JOHN MCGLAMERY
DRAWN BY	
REVIEWED BY	MASON SKINNER
PROJECT NUMBER	10371976



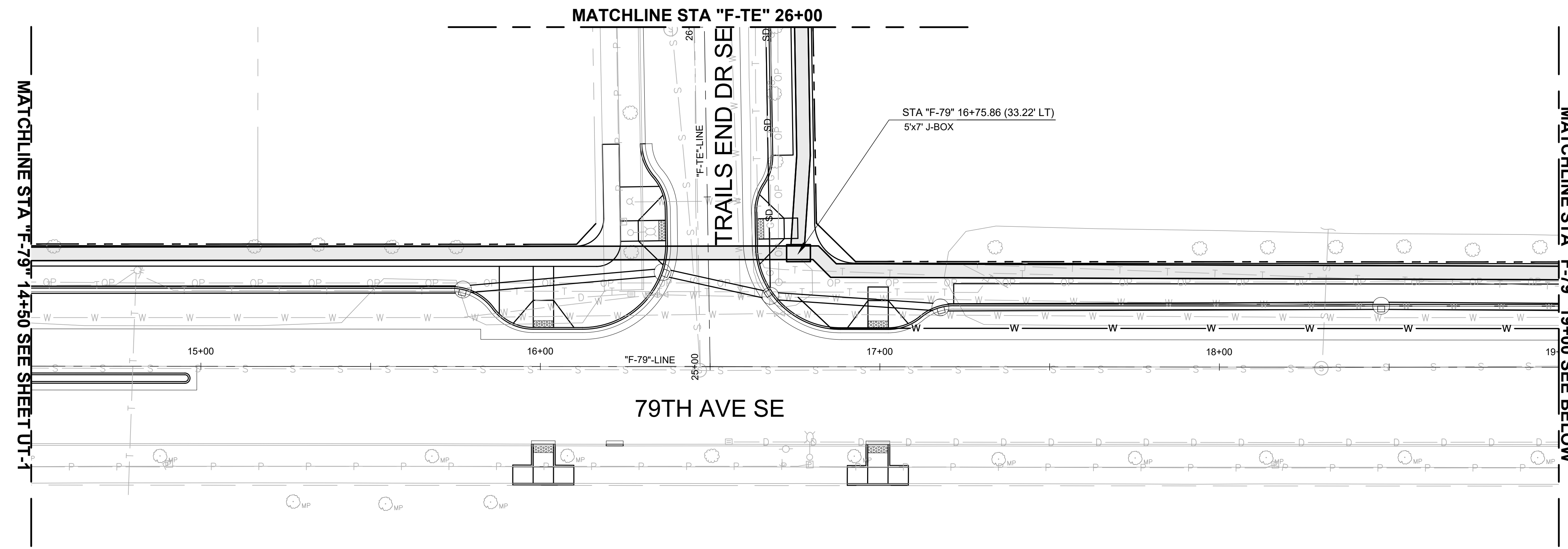
CITY OF TUMWATER
79TH AND TRAILS END FRONTAGE
DRAFT FINAL PLANS
(NOT FOR CONSTRUCTION)

79TH AND TRAILS END FRONTAGE UTILITY UNDERGROUNDING PLANS

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 45 OF 65

ATTACHMENT B - JOINT UTILITY TRENCH



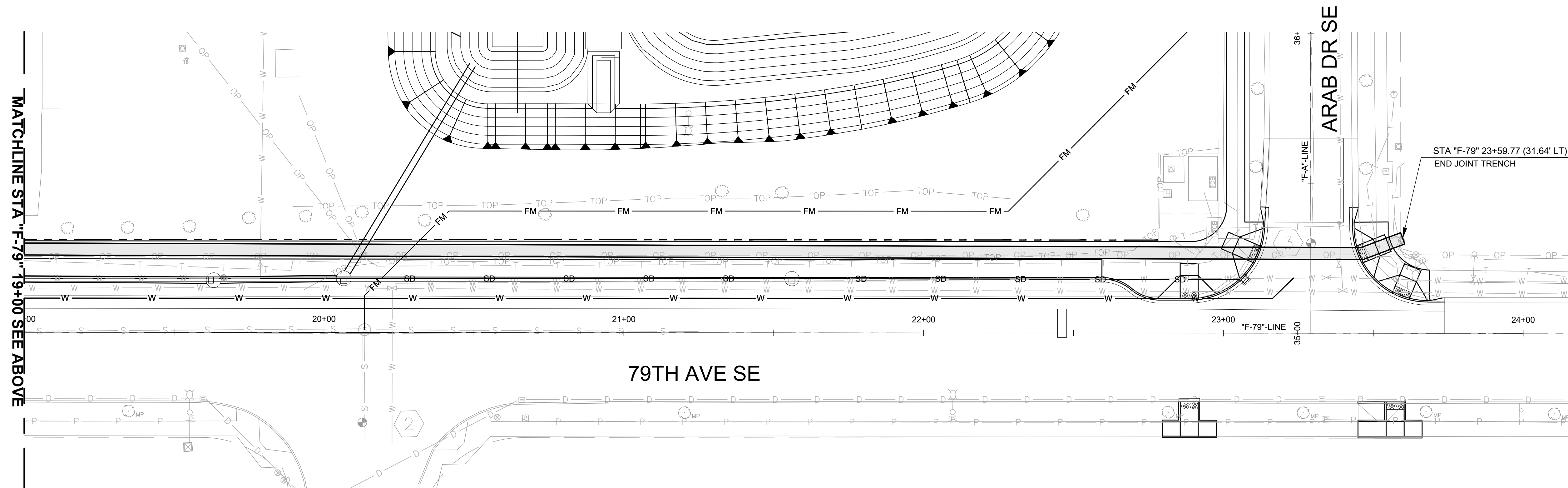
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JOINT UTILITY TRENCH

SERVICE TRENCH

NOTE: SEE PSE PLANS FOR LIMITS OF SERVICE TRENCH WORK OUTSIDE OF CITY RIGHT OF WAY

COORDINATION WITH PRIVATE UTILITIES IS ONGOING. UTILITY DESIGN TO BE INCORPORATED IN NEXT SUBMITTAL.



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

20' 0' 20' 40'
SCALE IN FEET

0 1" 2"
SCALE AS SHOWN

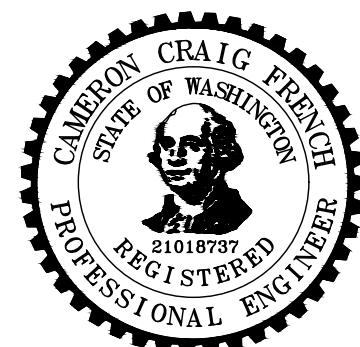
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SHEET UT2
46 OF 65



ISSUE	DATE	DESCRIPTION

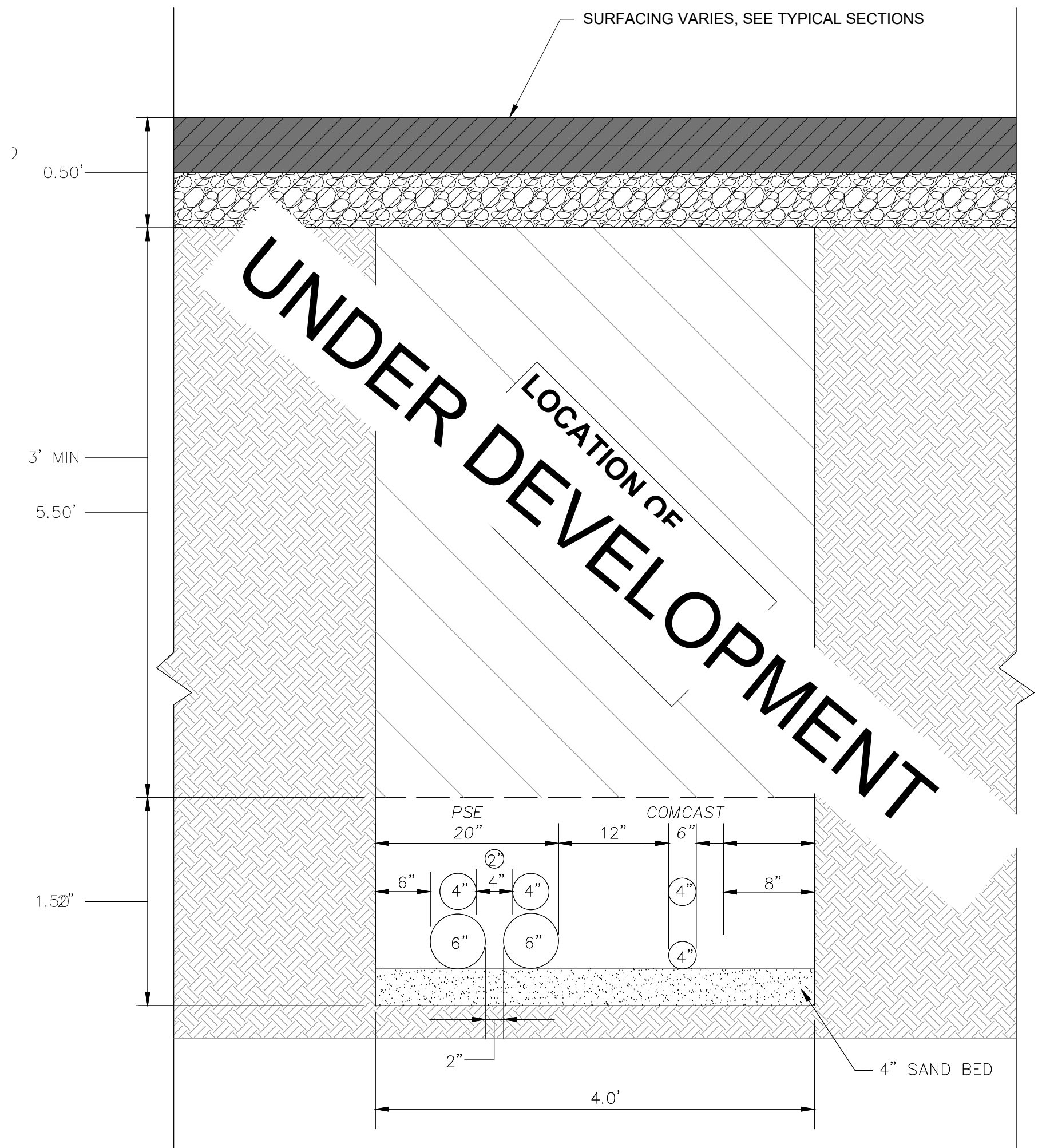
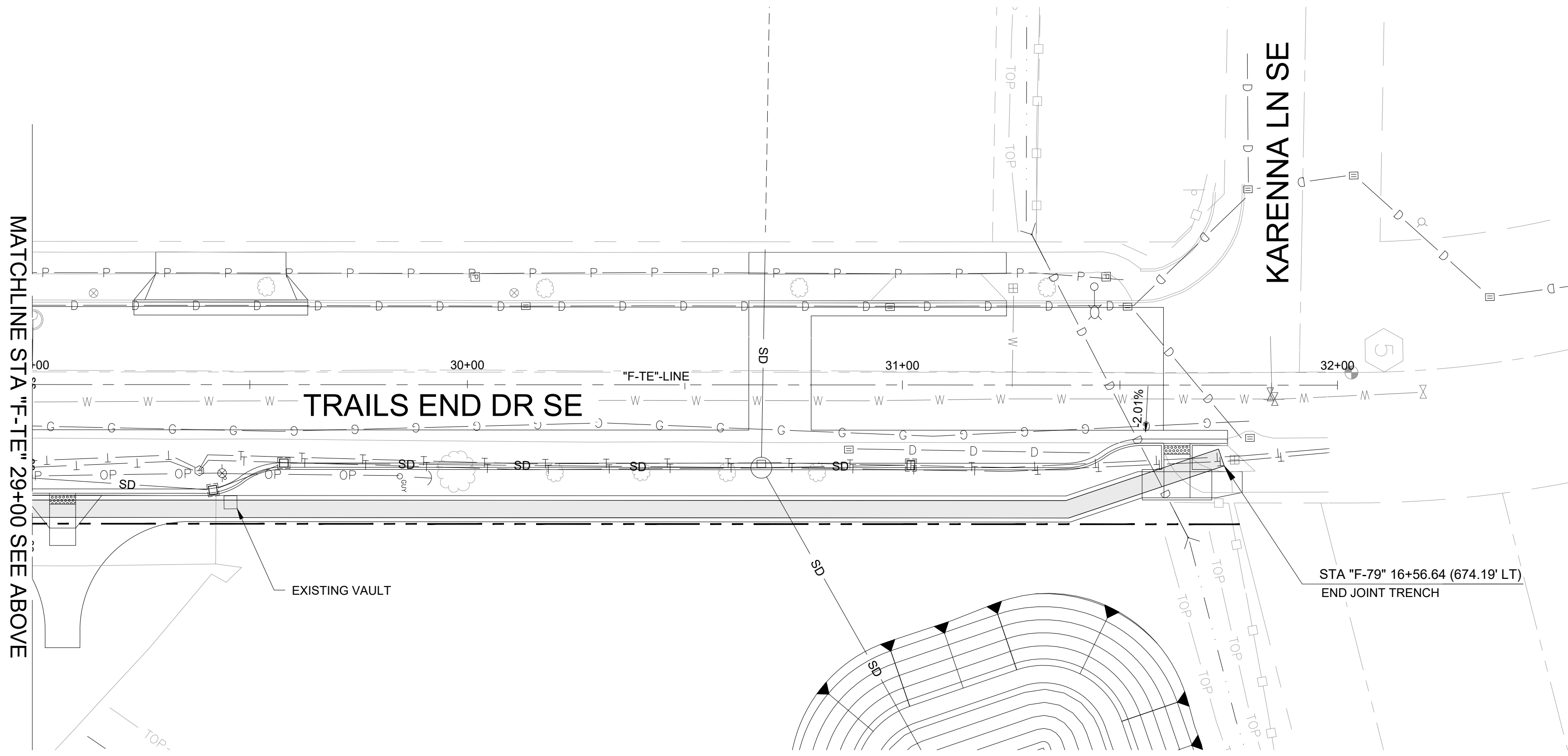
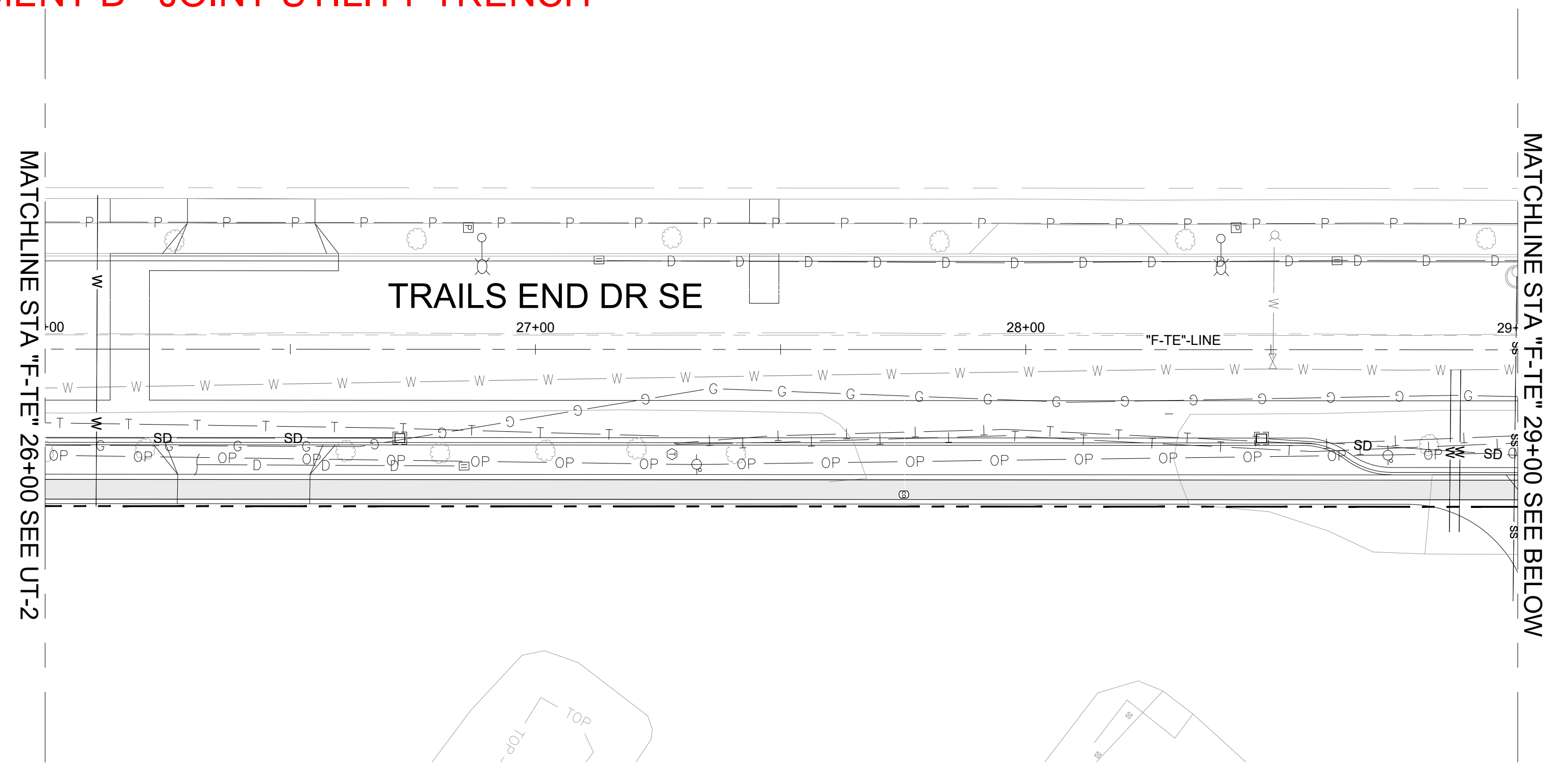
PROJECT MANAGER	BRAD SHEA
DESIGNED BY	CAMERON FRENCH
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DRAWN BY	MASON SKINNER
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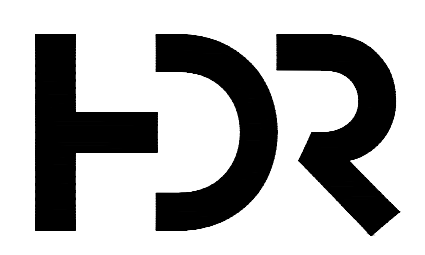
CITY OF TUMWATER
79TH AND TRAILS END FRONTAGE
DRAFT FINAL PLANS
(NOT FOR CONSTRUCTION)

79TH AND TRAILS END FRONTAGE
UTILITY UNDERGROUNDING PLANS

ATTACHMENT B - JOINT UTILITY TRENCH



COORDINATION WITH PRIVATE UTILITIES IS ONGOING. UTILITY DESIGN TO BE INCORPORATED IN NEXT SUBMITTAL.



ISSUE	DATE	DESCRIPTION

PROJECT MANAGER	BRAD SHEA
DESIGNED BY	CAMERON FRENCH
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DRAWN BY	
REVIEWED BY	MASON SKINNER
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CITY OF TUMWATER
79TH AND TRAILS END FRONTAGE
DRAFT FINAL PLANS
(NOT FOR CONSTRUCTION)

79TH AND TRAILS END FRONTAGE UTILITY UNDERGROUNDING PLANS

0 1" 2"

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47 OF 65

**SCHEDULE 74 UNDERGROUND CONVERSION
Project Construction Agreement**

Project Name: OLD HWY 99 SE & 79TH AVE SE RAB & TRAILS END/79TH UNDERGROUNDING
Project Number:

THIS Agreement, dated as of this ____ day of _____, 202__, is made by and between The City of Tumwater, a Municipal Corporation (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy, and pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity has determined that it is necessary to replace the existing overhead electric distribution system within the area specified in the Project Plan (as defined below) (the "Conversion Area") with a comparable underground electric distribution system, all as more specifically described in the Project Plan (the "Conversion Project").

C. The Government Entity and the Company have previously entered into a Project Design Agreement dated as of June 19th 2019 (the "Design Agreement"), pursuant to which the parties completed certain engineering design, cost assessment, operating rights planning and other preliminary work relating to the Conversion Project and, in connection with that effort, developed the Project Plan.

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the completion of the Conversion Project, which both parties intend shall qualify as an underground conversion under the terms of Schedule 74.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Definitions.

(a) Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement, including, without limitation, the following:

- i) Cost of Conversion;
- ii) Public Thoroughfare;
- iii) Temporary Service;
- iv) Trenching and Restoration;
- v) Underground Distribution System; and
- vi) Underground Service Lines.

(b) "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, a "comparable" system shall include, unless the Parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less)

of such diameter and number as may be specified and agreed upon in the Project Plan necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.

- (c) "Estimated Reimbursable Private Conversion Costs" shall mean the Company's good faith estimate of the Reimbursable Private Conversion Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (d) "Estimated Reimbursable Temporary Service Costs" shall mean the Company's good faith estimate of the Reimbursable Temporary Service Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (e) "Estimated Reimbursable Upgrade Costs" shall mean the Company's good faith estimate of the Reimbursable Upgrade Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (f) "Estimated Shared Company Costs" shall mean the Company's good faith estimate of the Shared Company Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (g) "Estimated Shared Government Costs" shall mean the Government Entity's good faith estimate of the Shared Government Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (h) "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.
- (i) "Party" shall mean either the Company, the Government Entity, or both.
- (j) "Private Property Conversion" shall mean that portion, if any, of the Conversion Project for which the existing overhead electric distribution system is located, as of the date determined in accordance with Schedule 74, (i) outside of the Public Thoroughfare, or (ii) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity.
- (k) "Project Plan" shall mean the project plan developed by the Parties under the Design Agreement and attached hereto as Exhibit A, as the same may be changed and amended from time to time in accordance with Section 6, below. The Project Plan includes, among other things, (i) a detailed description of the Work that is required to be performed by each Party and any third party, (ii) the applicable requirements and specifications for the Work, (iii) a description of the Operating Rights that are required to be obtained by each Party for the Conversion Project (and the requirements and specifications with respect thereto), (iv) an itemization and summary of the Estimated Shared Company Costs, Estimated Shared Government Costs, Estimated Reimbursable Private Conversion Costs (if any), Estimated Reimbursable Temporary Service Costs (if any) and Estimated Reimbursable Upgrade Costs (if any), and (v) the Work Schedule.
- (l) "Operating Rights" shall mean sufficient space and legal rights for the construction, operation, repair, and maintenance of the Underground Distribution System.
- (m) "Reimbursable Private Conversion Costs" shall mean (i) all Costs of Conversion, if any, incurred by the Company which are attributable to a Private Property Conversion, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such

Private Property Conversion, as determined consistent with the applicable Company distribution facilities replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion; provided that the portion of the Reimbursable Private Conversion Costs attributable to the Costs of Conversion under subparagraph (i) of this paragraph shall not exceed the Estimated Reimbursable Private Conversion Costs without the prior written authorization of the Government Entity.

- (n) "Reimbursable Temporary Service Costs" shall mean all costs incurred by the Company which are attributable to (i) any facilities installed as part of the Conversion Project to provide Temporary Service, as provided for in Schedule 74, and (ii) the removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment); provided that the Reimbursable Temporary Service Costs shall not exceed the Estimated Reimbursable Temporary Service Costs without the prior written authorization of the Government Entity.
- (o) "Reimbursable Upgrade Costs" shall mean all Costs of Conversion incurred by the Company which are attributable to any Government-Requested Upgrade; provided that the Reimbursable Upgrade Costs shall not exceed the Estimated Reimbursable Upgrade Costs without the prior written authorization of the Government Entity.
- (p) "Shared Company Costs" shall mean all Costs of Conversion (other than Reimbursable Upgrade Costs, Reimbursable Private Conversion Costs and Reimbursable Temporary Service Costs) incurred by the Company in connection with the Conversion Project; provided, however, that the Shared Company Costs shall not exceed the Estimated Shared Company Costs without the prior written authorization of the Government Entity. For the avoidance of doubt, the "Shared Company Costs" shall, as and to the extent specified in the Design Agreement, include the actual, reasonable costs to the Company for the "Design Work" performed by the Company under the Design Agreement.
- (q) "Shared Government Costs" shall mean all Costs of Conversion incurred by the Government Entity in connection with (i) any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity as part of the Government Work, and (ii) the acquisition of any Operating Rights which the Parties have, by mutual agreement, specified in the Project Plan are to be obtained by the Government Entity for the Conversion Project, but only to the extent attributable to that portion of such Operating Rights which is necessary to accommodate the facilities of the Company; provided, however, that the Shared Government Costs shall not exceed the Estimated Shared Government Costs without the prior written authorization of the Company.
- (r) "Total Shared Costs" shall mean the sum of the Shared Company Costs and the Shared Government Costs. For the avoidance of doubt, the Total Shared Costs shall not include, without limitation, (i) costs to the Government Entity for Trenching and Restoration, or (ii) costs associated with any joint use of trenches by other utilities as permitted under Section 3(b).
- (s) "Work" shall mean all work to be performed in connection with the Conversion Project, as more specifically described in the Project Plan, including, without limitation, the Company Work (as defined in Section 2(a), below) and the Government Work (as defined in Section 3(a), below).
- (t) "Work Schedule" shall mean the schedule specified in the Project Plan which sets forth the milestones for completing the Work, as the same may be changed and amended from time to time in accordance with Section 6, below.

2. Obligations of the Company.

- (a) Subject to the terms and conditions of this Agreement, the Company shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Company Work"):
- i) furnish and install an Underground Distribution System within the Conversion Area (excluding any duct and vault installation or other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity);
 - ii) provide a Company inspector on-site at the times specified in the Work Schedule to inspect the performance of any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity; and
 - iii) upon connection of those persons or entities to be served by the Underground Distribution System and removal of facilities of any other utilities that are connected to the poles of the overhead system, remove the existing overhead system (including associated wires and Company-owned poles) of 15,000 volts or less within the Conversion Area except for Temporary Services.
- (b) Upon request of the Government Entity, the Company shall provide periodic reports of the progress of the Company Work identifying (i) the Company Work completed to date, (ii) the Company Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Company Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and the Work Schedule.
- (c) Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate and maintain all electrical facilities installed pursuant to this Agreement including, but not limited to, the Underground Distribution System and Underground Service Lines.
- (d) Subject to the terms and conditions of this Agreement, the Company shall perform all Company Work in accordance with the Project Plan, the Work Schedule and this Agreement.

3. Obligations of the Government Entity.

- (a) Subject to the terms and conditions of this Agreement, the Government Entity shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Government Work"):
- i) provide the Trenching and Restoration;
 - ii) perform the surveying for alignment and grades for ducts and vaults; and
 - iii) perform any duct and vault installation and other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity.
- (b) Other utilities may be permitted by the Government Entity to use the trenches provided by the Government Entity for the installation of their facilities so long as such facilities or the installation thereof do not interfere (as determined pursuant to the Company's electrical standards) with the Underground Distribution System or the installation or maintenance thereof. Any such use of the trenches by other utilities shall be done subject to and in accordance with the joint trench design specifications and installation drawings set forth or otherwise identified in the Project Plan, and the Government Entity shall be responsible for the coordination of the design and installation of the facilities of the other utilities to ensure compliance with such specifications and drawings.
- (c) Upon request of the Company, the Government Entity shall provide periodic reports of the progress of the Government Work identifying (i) the Government Work completed to date, (ii) the Government Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Government Costs and the Work Schedule.

- (d) The Government Entity shall be responsible for coordinating all work to be performed in connection with the street improvement program within the Conversion Area.
- (e) Subject to the terms and conditions of this Agreement, the Government Entity shall perform all Government Work in accordance with the Project Plan, the Work Schedule and this Agreement.

4. Work Schedule.

- (a) The Government Entity and the Company have agreed upon the Work Schedule as set forth in the Project Plan. Changes to the Work Schedule shall be made only in accordance with Section 6, below.
- (b) Promptly following the execution of this Agreement, and upon completion by the Government Entity of any necessary preliminary work, the Government Entity shall hold a pre-construction meeting involving all participants in the Conversion Project to review project design, coordination requirements, work sequencing and related pre-mobilization requirements. Following the pre-construction meeting, the Government Entity shall give the Company written notice to proceed with the Work at least ten (10) business days prior to the commencement date specified in the Work Schedule.
- (c) Subject to the terms and conditions of this Agreement, each Party shall perform the Work assigned to it under this Agreement in accordance with the Work Schedule. So long as the Company performs the Company Work in accordance with the Work Schedule, the Company shall not be liable to the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives) for any claims, actions, damages, or liability asserted or arising out of delays in the Work Schedule.

5. Location of Facilities.

All facilities of the Company installed within the Conversion Area pursuant to this Agreement shall be located, and all related Operating Rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74, as specified by the Parties in the Project Plan.

6. Changes.

- (a) Either Party may, at any time, by written notice thereof to the other Party, request changes in the Work within the general scope of this Agreement (a "Request for Change"), including, but not limited to: (i) changes in, substitutions for, additions to or deletions of any Work; (ii) changes in the specifications, drawings and other requirements in the Project Plan, (iii) changes in the Work Schedule, and (iv) changes in the location, alignment, dimensions or design of items included in the Work. No Request for Change shall be effective and binding upon the Parties unless signed by an authorized representative of each Party.
- (b) If any change included in an approved Request for Change would cause a change in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment shall be made in the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and/or the Work Schedule to reflect such change. The Parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.
- (c) The Work Schedule, the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs, the Estimated Reimbursable Temporary Service Costs and/or the Estimated Reimbursable Upgrade Costs shall be further

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 OLD HWY 99 SE & 79TH AVE SE RAB IMPROVEMENT

equitably adjusted from time to time to reflect any change in the costs or time required to perform the Work to the extent such change is caused by: (i) any Force Majeure Event under Section 11, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Work and was not known by or disclosed to the affected Party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Work which are expressly identified by the Parties in the Project Plan. Upon the request of either Party, the Parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.

- (d) Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each Party shall, if requested by the other Party, proceed with the Work in accordance with any approved Request for Change. Any request to proceed hereunder must be accompanied by a written statement setting forth the requesting Party's reasons for rejecting the proposed equitable adjustment of the other Party.

7. Compensation and Payment.

- (a) Subject to and in accordance with the terms and conditions of this Agreement (including, without limitation, the payment procedures set forth in this Section 7), payment in connection with the Conversion Project and this Agreement shall be as follows:
- i) The Total Shared Costs shall be allocated to the Parties in the following percentages: (A) sixty percent (60%) to the Company, and (B) forty percent (40%) to the Government Entity.
 - ii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Private Conversion Costs, if any.
 - iii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Upgrade Costs, if any.
 - iv) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Temporary Service Costs, if any.
 - v) The Government Entity shall pay one hundred percent (100%) of the costs it incurs to perform that portion of the Government Work specified in Section 3(a)(i) and (ii) (i.e., Trenching and Restoration and surveying).
 - vi) The Company shall pay one hundred percent (100%) of the costs it incurs to design, provide and construct any Company-Initiated Upgrade.
 - vii) The Company shall pay one hundred percent (100%) of the costs it incurs to obtain Operating Rights outside the Public Thoroughfare.
- (b) Based on the allocation of responsibilities set forth in Section 7(a), above, the Parties shall determine the net amount payable by the Government Entity or the Company, as applicable, to the other Party under this Agreement (the "Net Amount"). The Net Amount shall be determined by using the amount of the Total Shared Costs allocated to the Government Entity under Section 7(a)(i), and adjusting such amount as follows:
- i) Subtracting (as a credit to the Government Entity) the amount of the Shared Government Costs.
 - ii) Adding (as a credit to the Company) the amount of all Reimbursable Private Conversion Costs, Reimbursable Upgrade Costs and Reimbursable Temporary Service Costs.
 - iii) Subtracting (as a credit to the Government Entity) any payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement.

The Net Amount, as so calculated, (A) will be an amount payable to the Company if it is a positive number, and (B) shall be an amount payable to the Government Entity if it is a negative number.

- (c) Within sixty (60) business days of completion of the Conversion Project, the Government Entity shall provide the Company with an itemization of the Shared Government Costs (the "Government Itemization"), together with such documentation and information as the Company may reasonably request to verify the Government Itemization. The Government Itemization shall, at a minimum, break down the Shared Government Costs by the following categories, as applicable: (i) property and related costs incurred and/or paid by the Government Entity, including any costs of obtaining Operating Rights, and (ii) construction costs incurred and/or paid by the Government Entity, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Government Entity.
- (d) Within thirty (30) business days after the Company's receipt of the Government Itemization and requested documentation and information, the Company shall provide the Government Entity a written statement (the "Company Statement") showing (i) an itemization of the Shared Company Costs, (ii) the Parties' relative share of the Total Shared Costs based on the Company's itemization of the Shared Company Costs and the Government Entity's itemization of the Shared Government Costs set forth in the Government Itemization, (iii) any Reimbursable Private Conversion Costs, (iv) any Reimbursable Upgrade Costs, (v) any Reimbursable Temporary Service Costs, (vi) any credits to the Government Entity for payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement, and (vii) the Net Amount, as determined in accordance with Section 7(b), above, together with such documentation and information as the Government Entity may reasonably request to verify the Company Statement. The itemization of the Shared Company Costs included in the Company Statement shall, at a minimum, break down the Shared Company Costs by the following categories, as applicable: (i) design and engineering costs, and (ii) construction costs, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Company.
- (e) Within thirty (30) business days after the Government Entity's receipt of the Company Statement and requested documentation and information, the Net Amount shall be paid by the owing Party to the other Party, as specified in the Company Statement.

8. Indemnification.

- (a) The Government Entity releases and shall defend, indemnify and hold the Company harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Government Entity in its performance under this Agreement. During the performance of such activities the Government Entity's employees or contractors shall at all times remain employees or contractors, respectively, of the Government Entity.
- (b) The Company releases and shall defend, indemnify and hold the Government Entity harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Company in its performance under this Agreement. During the performance of such activities the Company's employees or contractors shall at all times remain employees or contractors, respectively, of the Company.
- (c) Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by

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or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

9. Conversion of Service to Customers within Conversion Area.

- (a) Upon commencement of the Work, the Government Entity shall notify all persons and entities within the Conversion Area that service lines to such customers must be converted from overhead to underground service within the applicable statutory period following written notice from the Government Entity that service from underground facilities are available in accordance with RCW 35.96.050. Upon the request of any customer, other than a single family residential customer, within the Conversion Area, the Company shall remove the overhead system and connect such persons' and entities' Underground Service Lines to the Underground Distribution System.
- (b) The Parties acknowledge that single family residences within the Conversion Area must (i) provide a service trench and conduit, in accordance with the Company's specifications, from the underground meter base to the point of service provided during the conversion, and (ii) pay for the secondary service conductors as defined in Schedule 85 of the Company's Electric Tariff G. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to owners failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

10. Dispute Resolution.

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the Parties. A Party who wishes dispute resolution shall notify the other Party in writing as to the nature of the dispute. Each Party shall appoint a representative who shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to any Request for Change or any equitable adjustment under Section 6, above, or the compensation payable by or to either Party under Section 7, above, and which is not resolved by senior management within the time permitted under Section 10(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this Section 10, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the Parties. Each Party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing Party's costs and expenses (including, but not limited to, reasonable attorneys' fees) by the other Party.

- (d) Unless otherwise agreed by the Parties in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

11. Uncontrollable Forces.

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or any failure or delay in the performance by the other Party, or a third party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

12. Insurance.

- (a) PSE shall, and shall require each of its contractors to, secure and maintain in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) comprehensive general liability insurances, with a minimum coverage of \$2,000,000 per occurrence and \$2,000,000 aggregate for personal injury; and \$2,000,000 per occurrence/aggregate for property damages, and professional liability insurance in the amount of \$2,000,000.
- (b) The Government Entity shall ensure that each of its contractors performing any Government Work secures and maintains in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) insurance policies having the same coverage, amounts and limits as specified Section 12(a), above.
- (c) In lieu of the insurance requirements set forth in Section 12(a), above, the Company may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the Government Entity's request, the Company shall provide the Government Entity with reasonable written evidence that the Company is maintaining such self-insurance.

13. Other.

- (a) Agreement Subject To Tariff. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electrical Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.
- (b) Termination. The Government Entity reserves the right to terminate the Conversion Project and this Agreement upon written notice to the Company. In the event that the Government Entity terminates the Conversion Project and this Agreement, the Government Entity shall reimburse the Company for all costs reasonably incurred by the Company in connection with the Work performed prior to the effective date of termination. In such event, the costs reimbursable to the Company (i) shall not be reduced by any Shared Government Costs or other costs incurred by the Government Entity, and (ii) shall be paid within thirty (30) days after the receipt of the Company's invoice therefor. Sections 1, 5, 7, 8, 9, 10, 11 and 13 shall survive any termination of the Conversion Project and/or this Agreement.

- (c) Facilities Greater Than 15,000 Volts. Nothing in this Agreement shall in any way affect the rights or obligations of the Company under any previous agreements pertaining to the existing or future facilities of greater than 15,000 Volts within the Conversion Area.
- (d) Compliance With Law. The Parties shall, in performing the Work under this Agreement, comply with all applicable federal, state, and local laws, ordinances, and regulations.
- (e) No Discrimination. The Company, with regard to the Work performed by the Company under this Agreement, shall comply with all applicable laws relating to discrimination on the basis race, color, national origin, religion, creed, age, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
- (f) Independent Contractor. The Company and the Government Entity agree that the Company is an independent contractor with respect to the Work and this Agreement. The Company is acting to preserve and protect its facilities and is not acting for the Government Entity in performing the Work. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties. Neither the Company nor any employee of the Company shall be entitled to any benefits accorded employees of the Government Entity by virtue of the Work or this Agreement. The Government Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Company, or any employee of the Company.
- (g) Nonwaiver of Rights or Remedies. No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall, except to the extent provided in this Agreement, be construed as a waiver or, or choice of, or relinquishment of any right under any provision of this Agreement or any right at law or equity not otherwise provided for herein. The express waiver by either Party of any right or remedy under this Agreement or at law or equity in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.
- (h) No Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives.
- (i) Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental regulatory authorities and courts having jurisdiction over this Agreement, the Parties or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental regulatory authorities and courts that are required to be incorporated into agreements of this character are by this reference incorporated in this Agreement.
- (j) No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.
- (k) Severability. In the event that any provision of this Agreement or the application of any such provision shall be held invalid as to either Party or any circumstance by any court having jurisdiction, such provision shall remain in force and effect to the maximum extent provided by law, and all other provisions of this Agreement and their application shall not be affected thereby but shall remain in force and effect unless a court or arbitrator holds they are not severable from the invalid provisions.

- (l) Notice. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

<u>If to the Government Entity:</u>	<u>City of</u> Xxxx main street Attn: Phone Number: Email:
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<u>If to the Company:</u>	<u>Puget Sound Energy, Inc.</u> Xxxx main street Attn: Phone Email:
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Any Party may change its address specified in this Section 13(l) by giving the other Party notice of such change in accordance with this Section 13(l).

- (m) Applicable Law. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- (n) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties; provided, however, that except as expressly set forth in this Agreement, nothing herein is intended to or shall alter, amend or supersede the Design Agreement and the same shall remain in full force and effect in accordance with its terms.
- (o) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Parties, including but not limited to, any entity to which the rights or obligations of a Party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:	Company:
City of _____	PUGET SOUND ENERGY, INC.
BY _____	BY _____
ITS _____	ITS _____
Date Signed _____	Date Signed _____

Approved as to form: _____.

TO: Public Works Committee
 FROM: Colby Fletcher, Construction Engineer
 DATE: March 20, 2025
 SUBJECT: Construction Contract with Northwest Cascade, Inc. for the Linwood Ave Sidewalk, Susitna Ln to 2nd Ave project, Request for Additional Construction Funds

1) Recommended Action:

Increase the Transportation and Engineering Director's change order authority under Tumwater Municipal Code 2.14.060 from 10% to 20% for the Linwood Ave Sidewalk, Susitna Ln to 2nd Ave project, and place on the April 1, 2025 City Council consent calendar.

2) Background:

The Linwood Ave Sidewalk, Susitna Ln to 2nd Ave project addresses pedestrian and bicycle safety improvements. The project includes construction of new sidewalks and infill sections of missing sidewalk along Linwood Ave and adjacent streets to complete a walkable path between residential neighborhoods and Michael T. Simmons elementary school. Other improvements include upgrades to existing sidewalk ramps to current ADA standards, concrete driveways, stormwater improvements, asphalt pavement overlay, roadway pavement marking, and signage upgrades.

This project is currently under construction and expected to be completed by late Spring 2025.

The City Council awarded the project on July 16, 2024, to Northwest Cascade, Inc. with their official bid of \$1,451,572.00. Per Tumwater Municipal Code (TMC) 2.14.060, Public works – Change order authority, *“The director of public works or the department director of the project department is authorized to approve any contract change order, provided the total construction costs with the change order do not exceed the contract bid amount by more than ten percent.”* Current estimates indicate construction costs will exceed the contract bid amount by 20 percent, which exceeds the authority provided to staff under TMC 2.14.060. Staff are proactively requesting an increase in change order authority based on projected total cost to avoid claims for delayed payment.

There are many factors that have contributed to increases for this project included but not limited to; additional work to rebuild the intersection at Linwood Ave and 7th Ave in order to improve Intercity Transit useability and move the route using 6th Ave back to the historical route on 7th Ave, additional roadway repairs, unknown utility conflicts, discovery of unknown obstructions and obstacles.

3) Policy Support:

Create and Maintain a Transportation System Safe for All Modes of Travel – Bike and Pedestrian System Improvements.

4) Alternatives:

- Reject the request for additional funds and do not complete project construction.
-

5) Fiscal Notes:

The project is funded in part by the Transportation Improvement Board (TIB) Fuel Tax Agreement. A total of \$393,750 has been awarded to this project. Local funding match comes from the TBD and Transportation CFP.



6) Attachments:

A. Project Overview

LINWOOD AVENUE SIDEWALK, SUSITNA LANE TO 2ND AVENUE



LEGEND

-  SIDEWALK/DRIVEWAY/ADA RAMP IMPROVEMENTS
-  MILL AND INLAY