

ORDINANCE NO. 2673

AN ORDINANCE granting to **Sawtooth Technologies, LLC.**
the right and franchise to construct, maintain, and operate a fiber optic network, and related appurtenances, for the transmission of broadband Internet services, over, under, and across certain real property; and specifying the limitations and conditions of such franchise.

THE CITY COUNCIL OF THE CITY OF CAMAS DO ORDAIN AS FOLLOWS:

Section I

GRANT OF FRANCHISE

The City of Camas, a municipal corporation and non-charter code city in the State of Washington, 616 NE 4th Avenue, P. O. Box 1055, Camas, Washington 98607 (hereinafter referred to as "City") hereby grants to **Sawtooth Technologies, LLC.**, P. O. Box 857, Stevenson, WA 98648 (hereinafter referred to as "Grantee"), the right, privilege, and franchise to construct, maintain, and operate a fiber optic network and related appurtenances for the transmission of broadband Internet services, over, under, and across the City's real property, as described in **Exhibit A** attached hereto (hereinafter referred to as "Franchise").

The Franchise herein granted shall be deemed non-exclusive, and shall continue and endure throughout the term of this ordinance so long as the Grantee is in compliance with all the terms of this ordinance and all applicable laws and regulations of the federal, state and local governments.

Section II

TERM

This Franchise and the rights granted hereunder to Grantee in this ordinance shall extend and endure for a term of twenty-five (25) years from the effective date of this ordinance unless terminated sooner by the City as hereinafter provided.

Section III

CONSTRUCTION AND MAINTENANCE

All work done by Grantee in connection with the construction, operation, and maintenance of said fiber optic network shall be performed to the satisfaction and subject to the supervision of the city public works director or other duly constituted representative of the City.

Grantee shall not cause any permanent injury to the streets of the City or to the City's utilities located therein, nor shall Grantee in any manner unreasonably disturb or interfere with any water, gas or sewer lines or other conduits now or hereafter laid by the City or any authorized company or corporation in said streets.

Except as to emergency repairs, Grantee shall, prior to installing, repairing or relocating any pipe, main, conduit, or service line, file with the Public Works Department, or such other person designated by the City, plans and specifications thereof showing the work to be done, the location

and nature of the installation to be made, repaired or maintained, and a schedule showing the time of beginning and completion, and shall secure the approval of the City before proceeding with any such work, and shall obtain all necessary permits prior to proceeding with such work. Any subsequent changes in the plans, specifications, or schedules shall require the approval of the City.

Section IV

REPAIR

The Grantee shall, at its own cost and expense, promptly repair all streets and other public places in any way disturbed by the Grantee, its agents, employees, or contractors, and shall restore the same to as good a condition as the same were prior to doing any work therein. Whenever Grantee's construction, maintenance, and repair of the fiber optic require trenching in the improved roadway, Grantee shall design and install a 0.12 foot depth asphalt pavement overlay over the entire roadway where Grantee has cut trenches into the improved roadway.

Section V

RELOCATION

Nothing in this Ordinance shall be deemed or construed to limit the power of the proper authorities of the City of Camas to prosecute and maintain public or local improvements. Whenever in the prosecution or maintenance of such improvements it becomes necessary or convenient to remove, readjust, relocate, or change the location of Grantee's fiber optic cable and appurtenances thereto, the same shall be done by and at the sole expense of the Grantee. Grantees shall remove, readjust, relocate or change location of Grantee's fiber optic cable within 90 days of written notification from the City unless otherwise agreed to by City. In the event Grantee fails to do so, then City may, at Grantee's sole expense, have the fiber optic cable relocated by City's contractor. In such event, Grantee shall pay the cost of relocation within 30 days of submission of an invoice by City.

Section VI

INDEMNIFICATION

The Grantee shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys fees, arising out of or in connection with activities or operations performed by the Grantee or on the Grantee's behalf pursuant to this Franchise, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, officials, employees, and volunteers, Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51, RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Franchise.

Section VII

INSURANCE

Grantee shall procure and maintain, for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by or on the Grantee's behalf with the issuance of this Franchise.

Grantee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Grantee shall obtain insurance of the type described below:

1. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Grantee's Commercial General Liability insurance policy.
2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
3. Excess or Umbrella Liability insurance shall be at least as broad in coverage scope, as the Grantee's Commercial General Liability and Automobile Liability insurance.

B. Minimum Amounts of Insurance

Applicant shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
3. Excess or Umbrella Liability insurance shall be written with limits not less than \$5,000,000 per occurrence and aggregate. This minimum amount requirement may be satisfied instead through the Grantee's Commercial General Liability and Automobile Liability insurance, or any combination of Commercial General, Automobile Liability, and/or Umbrella.

C. Other Insurance Provision

The Grantee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-

insurance, or insurance pool coverage maintained by the City shall be excess of the Grantee's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Grantee shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Applicant before issuance of the Permit.

F. Notice of Cancellation

The Grantee shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

Failure on the part of the Applicant to maintain the insurance as required shall constitute a material breach of the permit or agreement, upon which the City may, after giving five business days notice to the Grantee to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

Section VIII

NON-EXCLUSIVE FRANCHISE

Nothing in this ordinance shall be construed as granting an exclusive franchise or privilege for the use of the City's property as described in Exhibit A, provided however, that any grantee of similar rights and privileges shall not in the exercise thereof unreasonably interfere with the exercise of the rights and privileges hereunder granted.

Section IX

ACCEPTANCE OF FRANCHISE

Grantee shall forfeit and shall be deemed to have forfeited and abandoned all rights, privileges and authority hereby conferred, unless within thirty (30) days after the effective date of this ordinance, it shall file in the office of the City Clerk written acceptance of the rights and privileges conferred hereby, which acceptance shall contain an express understanding by the Grantee, for itself and its successors and assigns, to faithfully comply with and abide and be bound by the terms of this Franchise and all of the requirements hereof, and to faithfully and timely keep and perform each and every term, covenant, agreement, obligation and condition required of, or imposed upon it or them by this Franchise and the Camas Municipal Code.

Section X

TERMINATION

In case of the failure on the part of the Grantee to comply with any of the provisions of this ordinance, or if Grantee does or causes to be done any act or thing prohibited by or in violation of the terms of this ordinance, the City may declare a forfeiture of all rights and privileges granted by this ordinance and all rights thereunder shall cease; provided however, that such forfeiture shall not occur or take effect until the City serves by certified mail, return receipt requested, a written notice upon the local manager of Grantee setting forth clearly and in detail the failure or violation complained of, and Grantee shall thereafter have thirty (30) days from the date of mailing said notice in which to comply with the conditions of this right and privilege. If such failure or violation continues beyond said thirty (30) days, then the City may terminate this right and privilege by ordinance.

Section XI

REMEDIES

In addition to other remedies provided herein, the City reserves and shall have the right to pursue any remedy to compel or enforce the Grantee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reasons herein stated, after giving the notice required hereby, nor shall the delay of the City in declaring a forfeiture preclude it from thereafter doing so.

Section XII

ASSIGNMENT

This franchise and the rights herein granted may be assigned only with the consent of the City, but no such assignment shall be of any force or effect until a copy thereof, certified as such by the property officials of the Grantee, shall have been filed in the office of the City Clerk, nor until the City Council of the City shall have consented to such assignment. Any such successor or assignee of the Grantee must file with the City Clerk written acceptance of the rights and privileges conferred hereby and such successor's or assignee's agreement to fully comply with and abide by and be bound by the terms of this ordinance and all the requirements hereof, and to faithfully and timely keep and perform each and every term, covenant, agreement, obligation and condition required of or imposed upon the Grantee hereunder.

Section XIII

FEDERAL INTEREST

Federal Interest. Grantee will be using funds under a Federal Grant under the Broadband Technology Opportunities Program ("BTOP") to finance the construction of fiber optic broadband facilities and equipment under this franchise. Pursuant to BTOP, Grantee holds its interest in the franchise and the broadband facilities and equipment as trustee for the Federal Agency administering that program, specifically, the National Telecommunications and Information Administration ("NTIA"). BTOP requires participants in that program to file a Covenant of Purpose, Use and Ownership (the "Federal Covenant") with the County Auditor where the property is located. The Federal Covenant requires that the Grantee's interest in the franchise or in the broadband facilities or equipment located on or in the property that is subject to the franchise, not be sold during the useful life of those items without the prior consent of

NTIA. In light of the foregoing, the parties hereto agree as follows:

- (a) Grantee may file a Federal Covenant pertaining to the franchise in a form substantially to that attached hereto.
- (b) Any provisions of this franchise that conflict with the rules and regulations under BTOP are made subject to the provisions of those rules and regulations.
- (c) Notwithstanding the provisions contained in Section XII hereinabove, Grantee may assign its interest in this franchise to NTIA if required to do so under the rules and regulations of BTOP.

Section XIV

COMPENSATION

As compensation for the franchise granted by this ordinance, Grantee shall pay to the City a one time franchise fee of \$1,000.00. Said franchise fee shall be payable within 30 days of adoption of this Ordinance by City.

The Grantee shall also be required to pay all license fees and taxes which it may be required to pay by any other ordinance now in effect or hereinafter enacted, including a business or occupation tax or public utility tax on persons engaged in the business carried on by Grantee.

Section XV

PUBLICATION EXPENSE

In addition to the annual license fee, Grantee shall reimburse the City for the cost of publication of this ordinance.

Section XVI

EFFECTIVE DATE

This ordinance shall take effect and be in force five (5) days from and after its passage and publication and after acceptance by the Grantee as above required.

PASSED by the Council and APPROVED by the Mayor this 15 day of April, 2013.

SIGNED: _____
Mayor

ATTEST: _____
Clerk

APPROVED as to form:

City Attorney

EXHIBIT A

Description of Fiber Optic Network Sawtooth Technologies, LLC.

See attached maps/drawings.

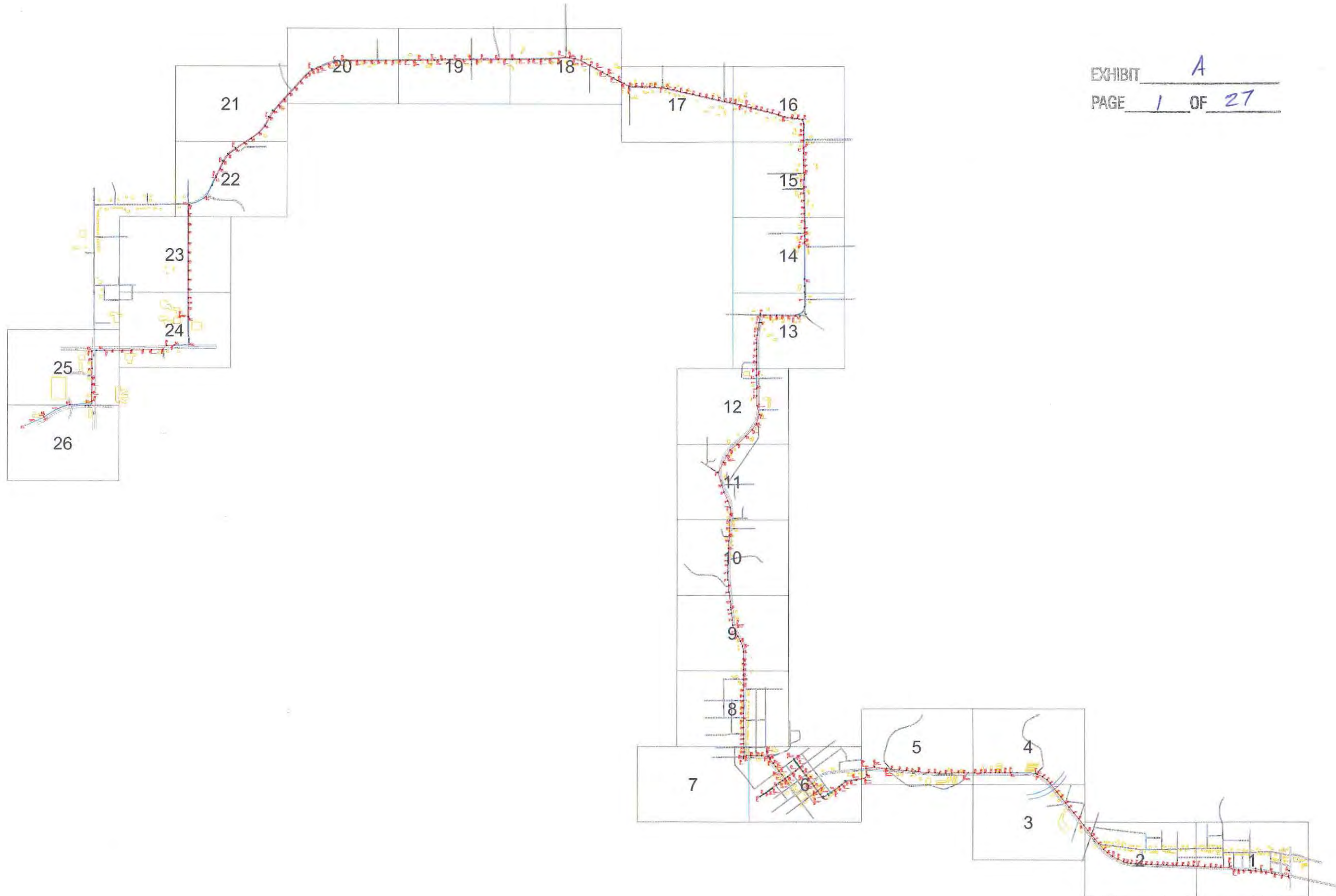


EXHIBIT A
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Sawtooth Technologies,
 LLC. 50 SE Cascade Ave
 Stevenson, WA 98648 Tel.
 509-427-4865 Fax.
 509-427-4828

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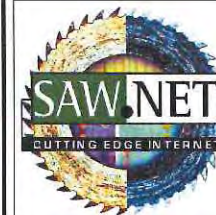
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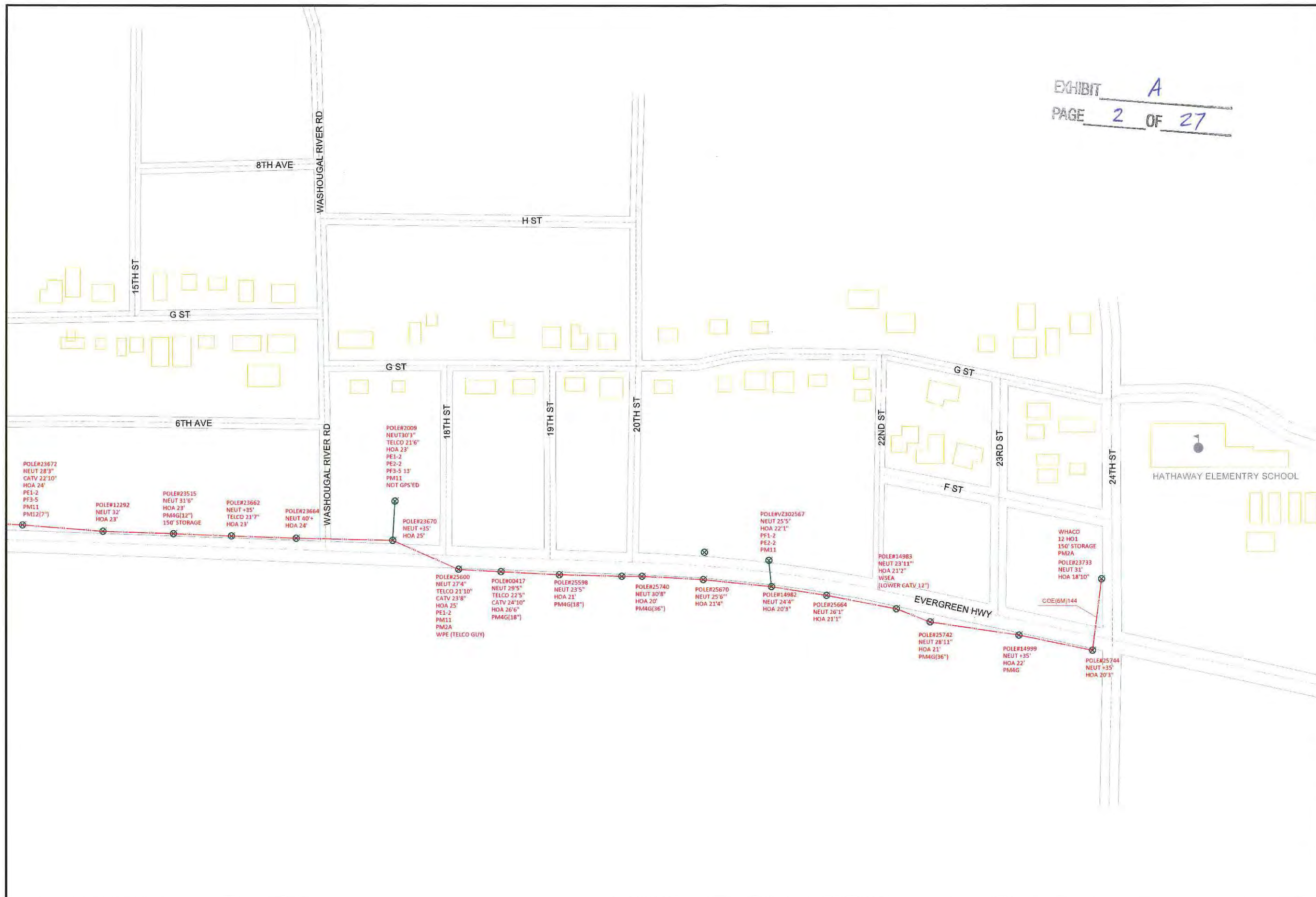




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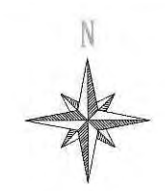
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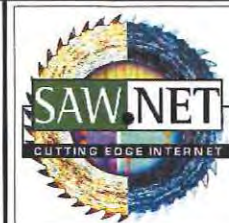
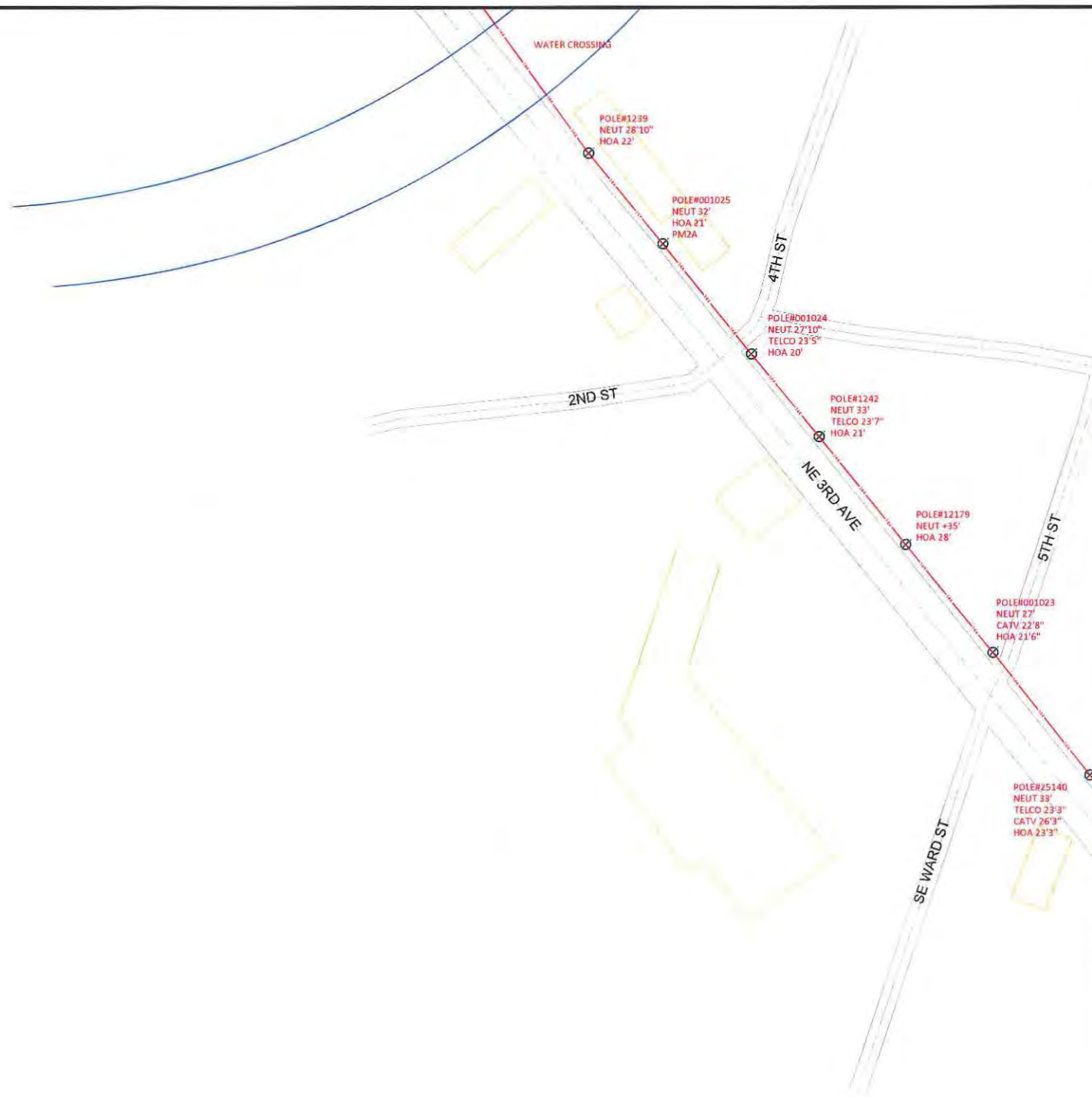
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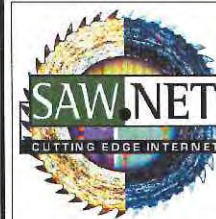
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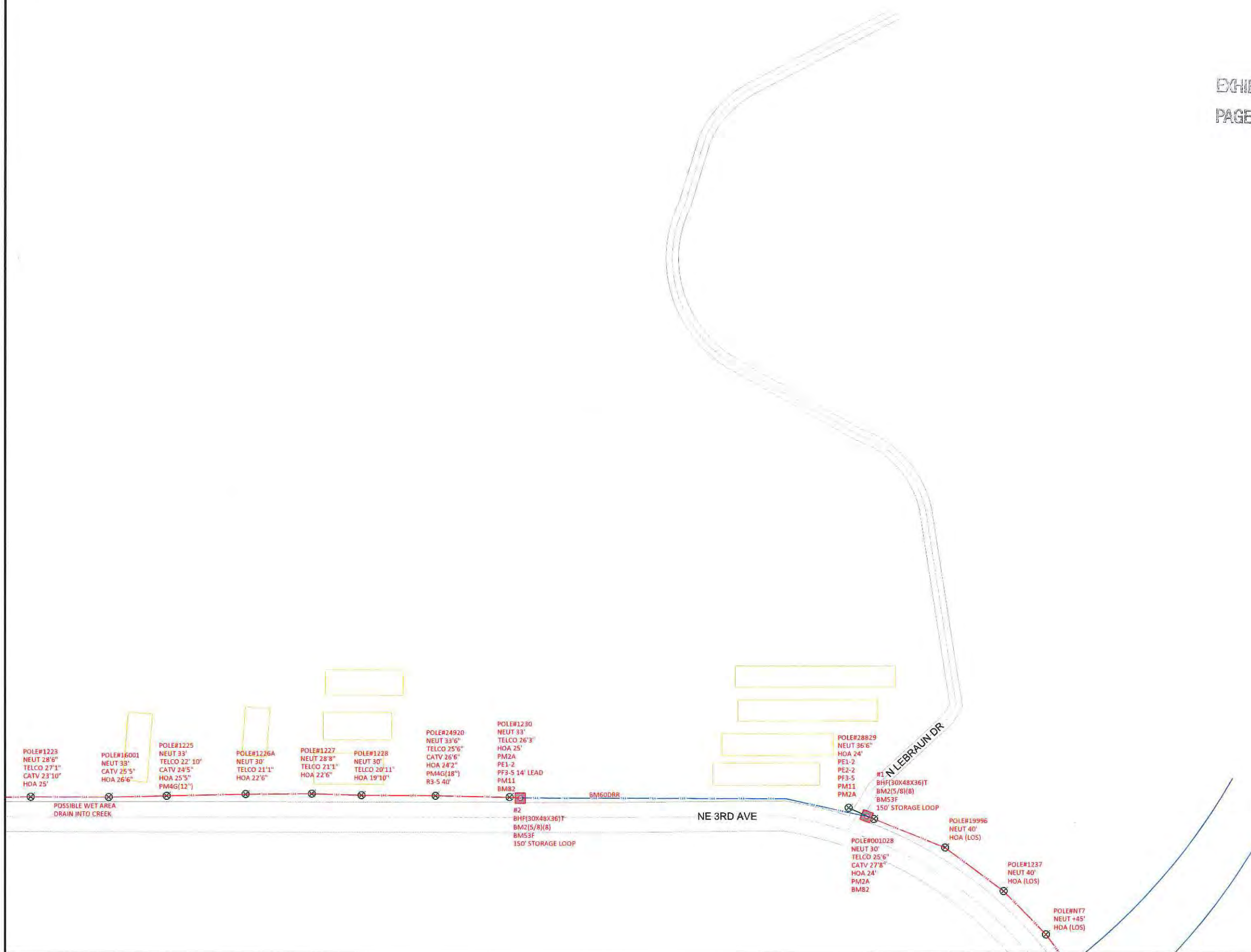
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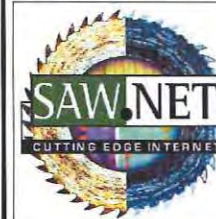
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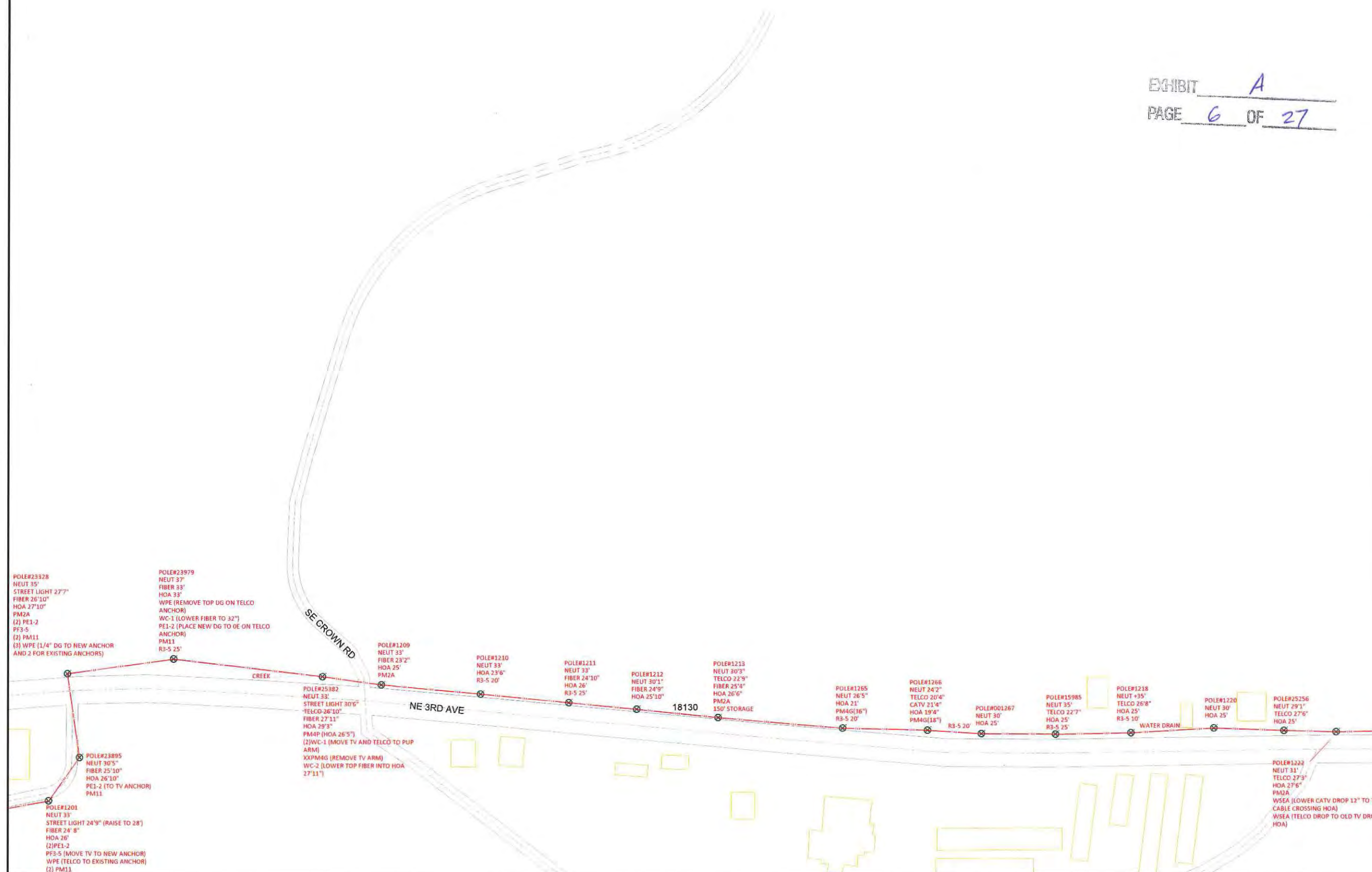
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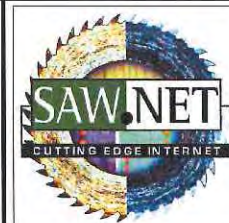
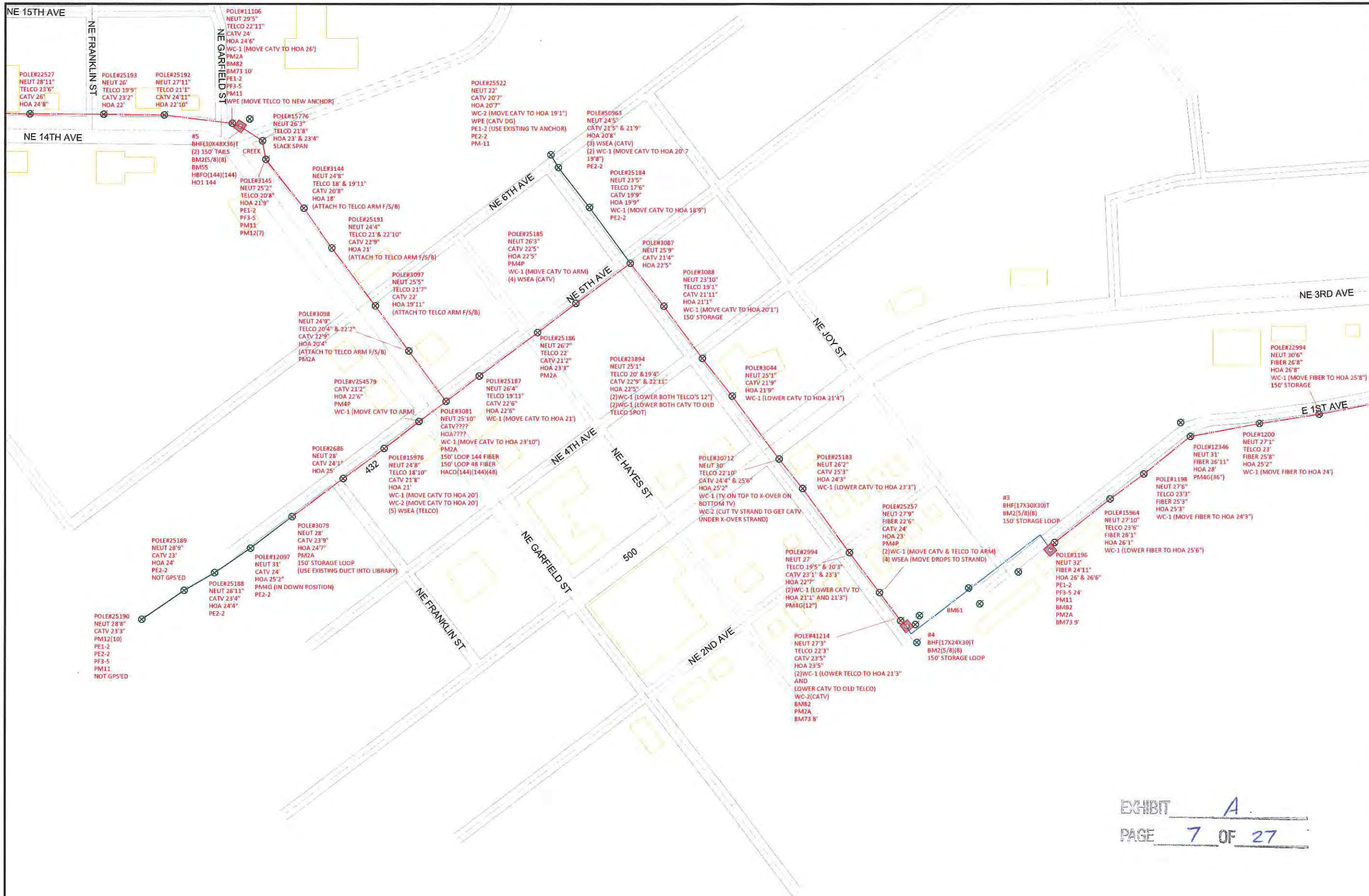
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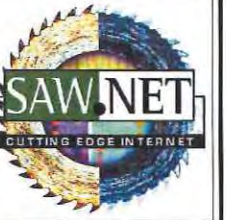


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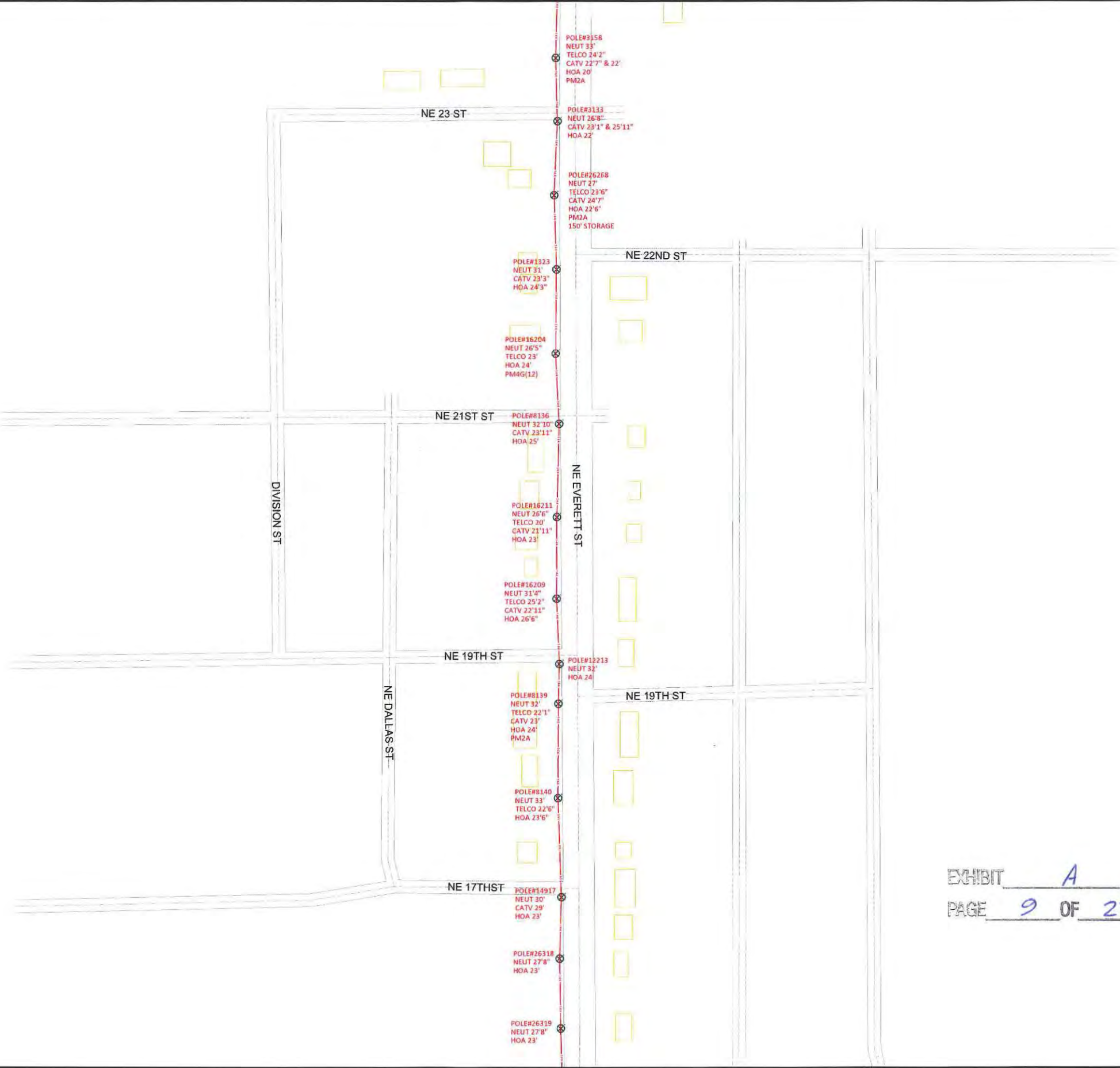


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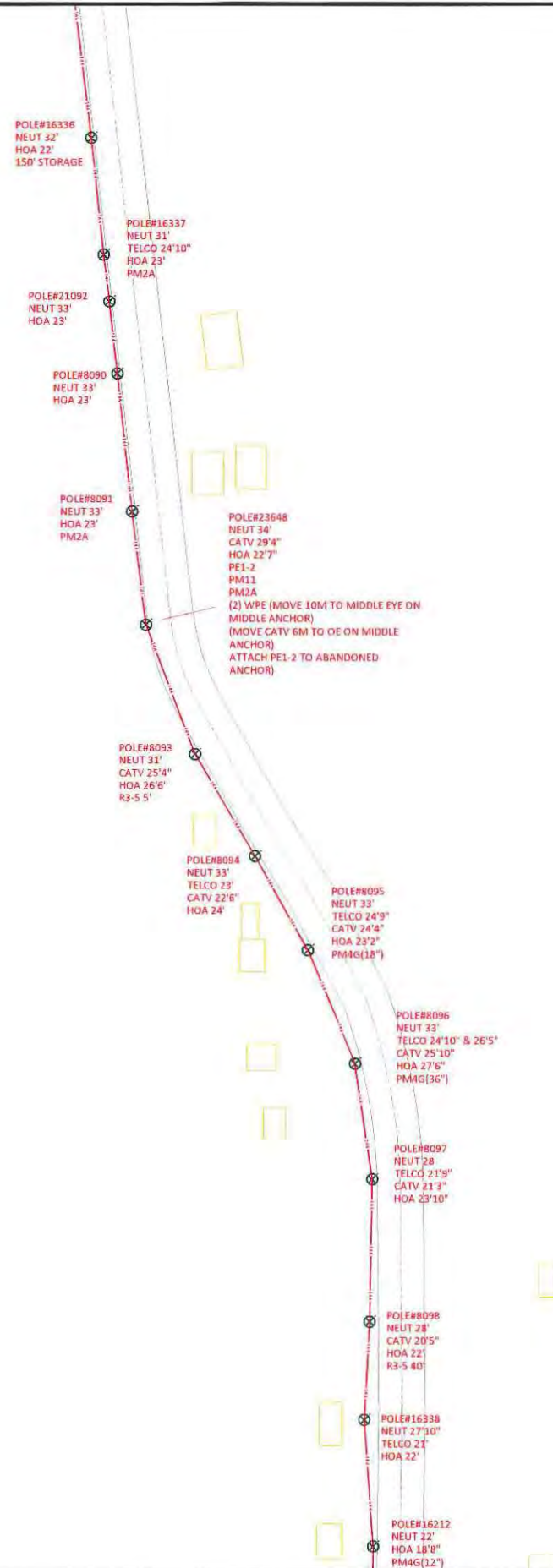
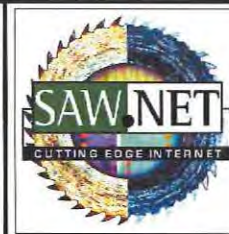


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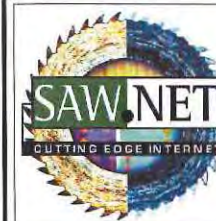
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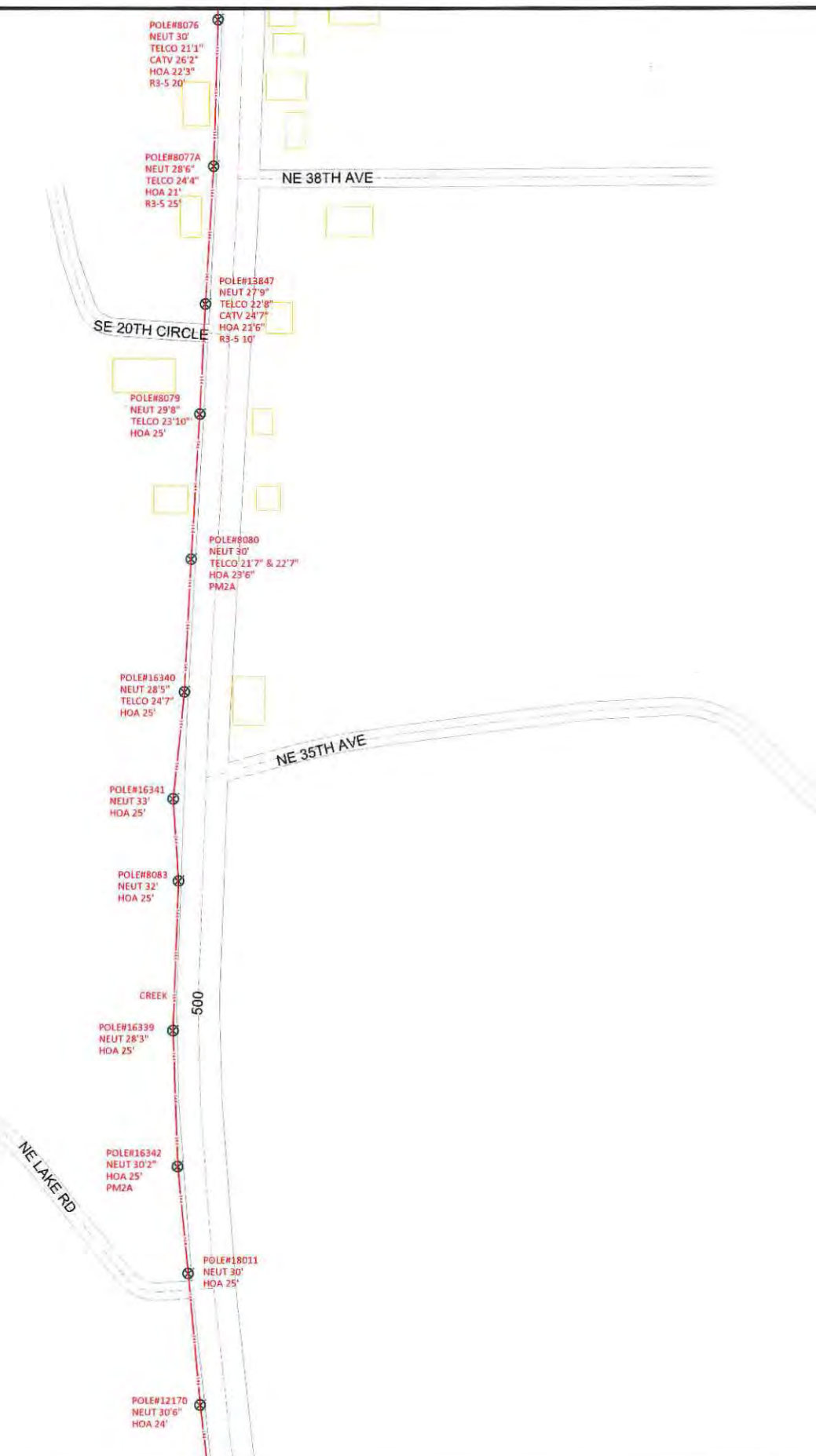


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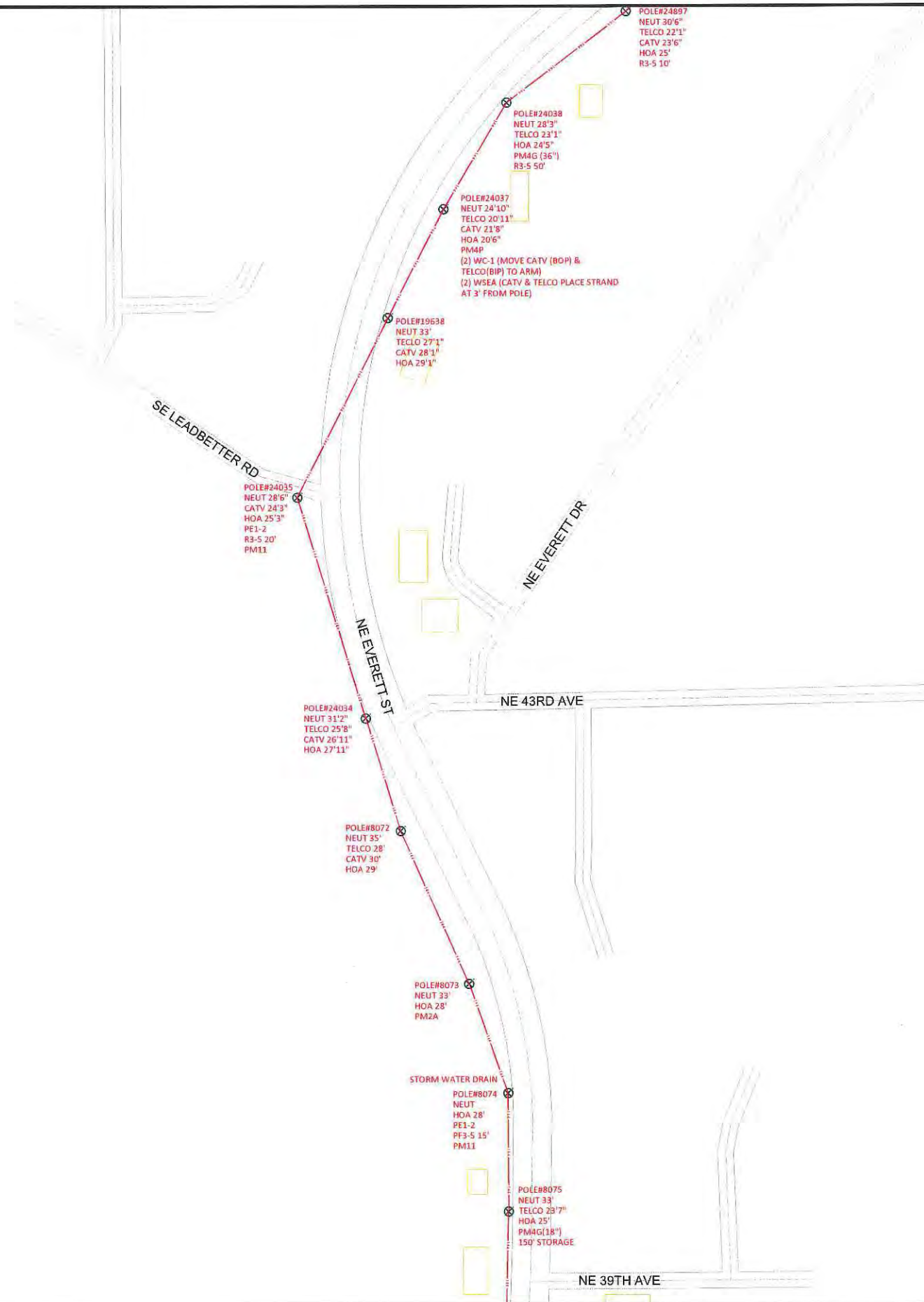



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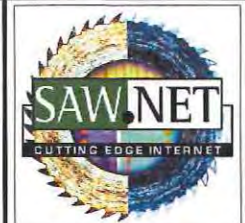
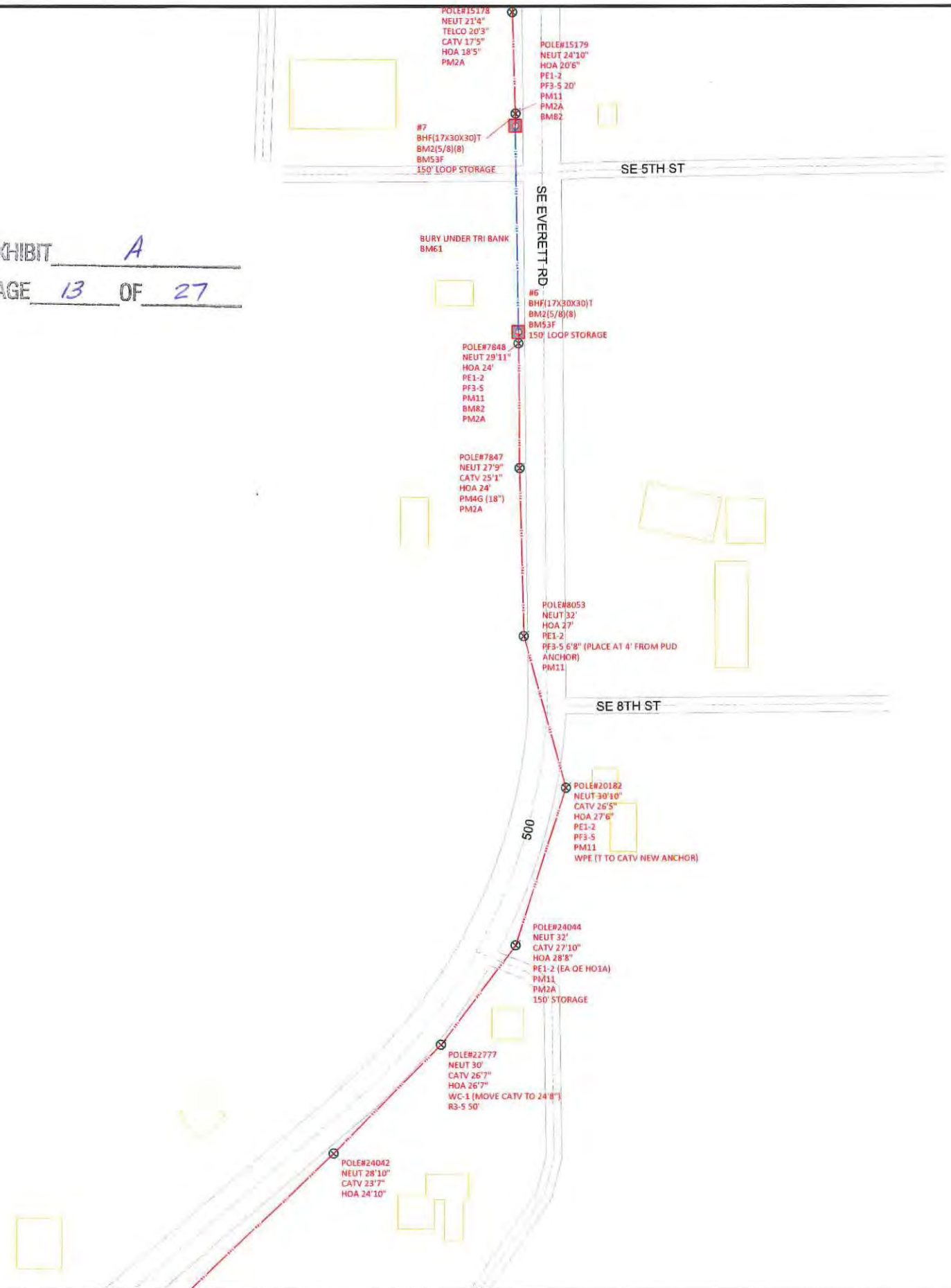


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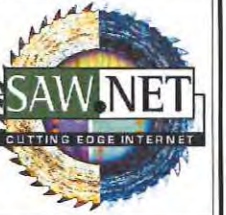
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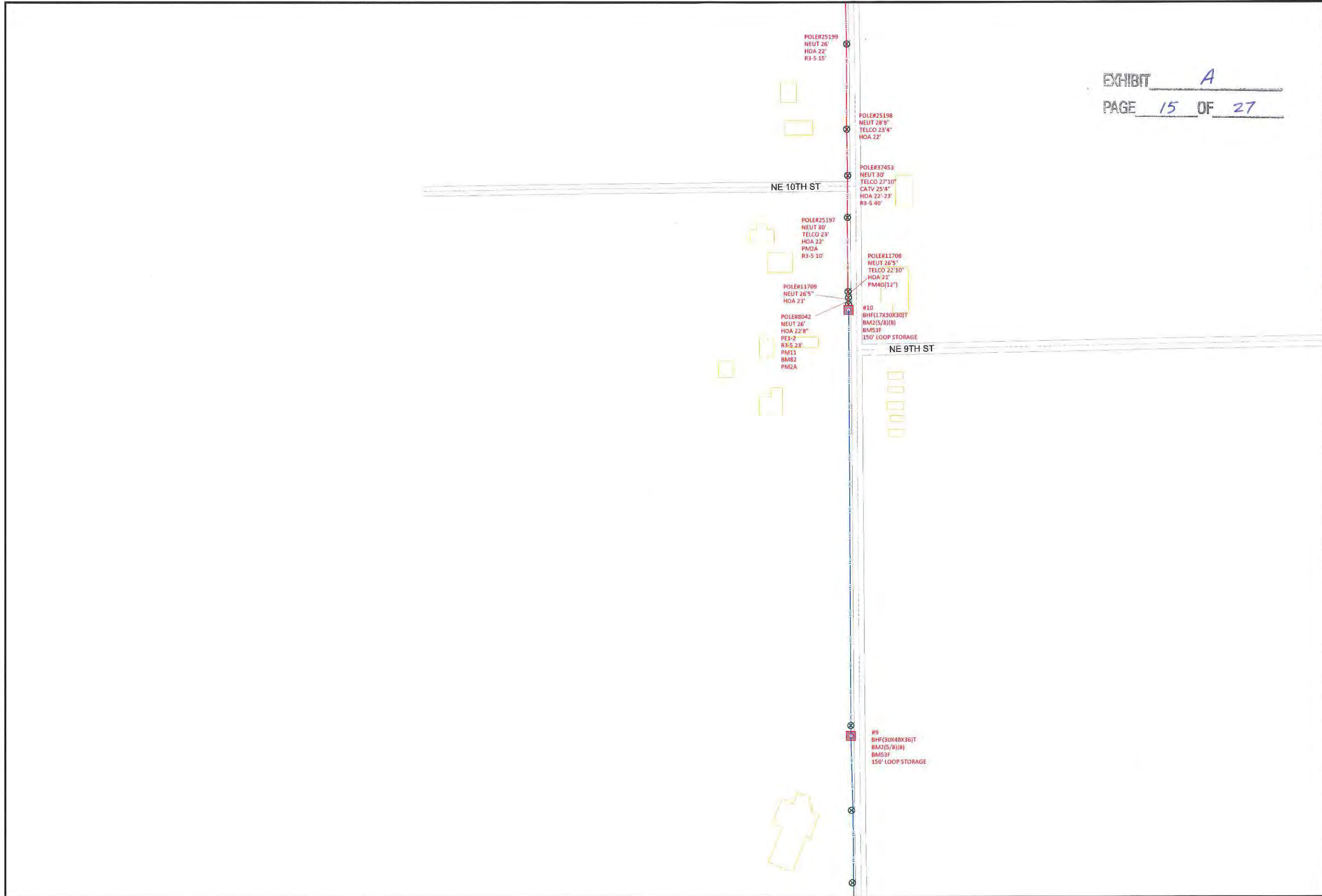
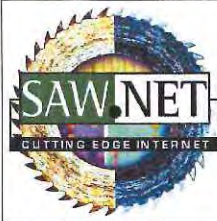


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Stevenson, WA 98648 Tel.
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509-427-4828

LEGEND

- STATION
- HANDHOLE
- POLE
- AERIAL FIBER
- BURIED FIBER
- EXISTING FIBER
- ROAD

DATE CREATED: 11/14/2012

DATE REVISED: 11/15/2012

DRAWN BY: Randy Contreras



SCALE: 1"=200'

COMPANY:
Sawtooth Technologies, LLC.

SYSTEM:

PROJECT NUMBER:

DESCRIPTION:
ROUTE SC-2A

MAP:
14 OF 26



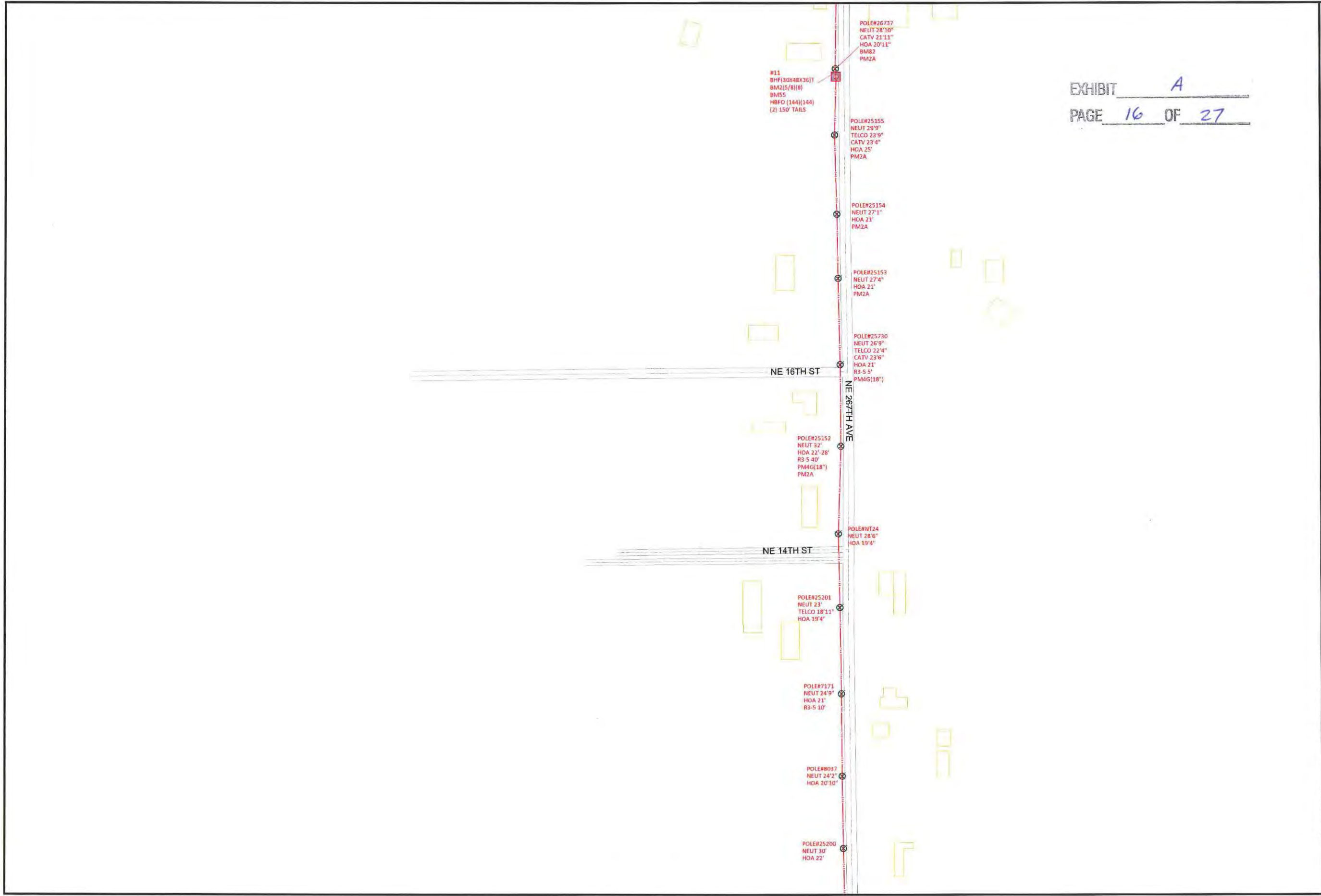


EXHIBIT A
PAGE 16 OF 27



Sawtooth Technologies, LLC. 50 SE Cascade Ave
Stevenson, WA 98648 Tel.
509-427-4865 Fax.
509-427-4828

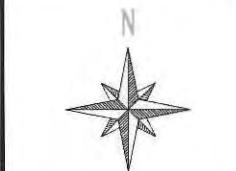
LEGEND

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- POLE
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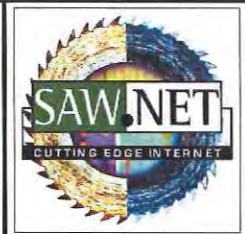
SYSTEM:

PROJECT NUMBER:

DESCRIPTION:
ROUTE SC-2A

MAP:
15 OF 26





Sawtooth Technologies, LLC. 50 SE Cascade Ave
Stevenson, WA 98648 Tel.
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LEGEND

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SCALE: 1"=200'

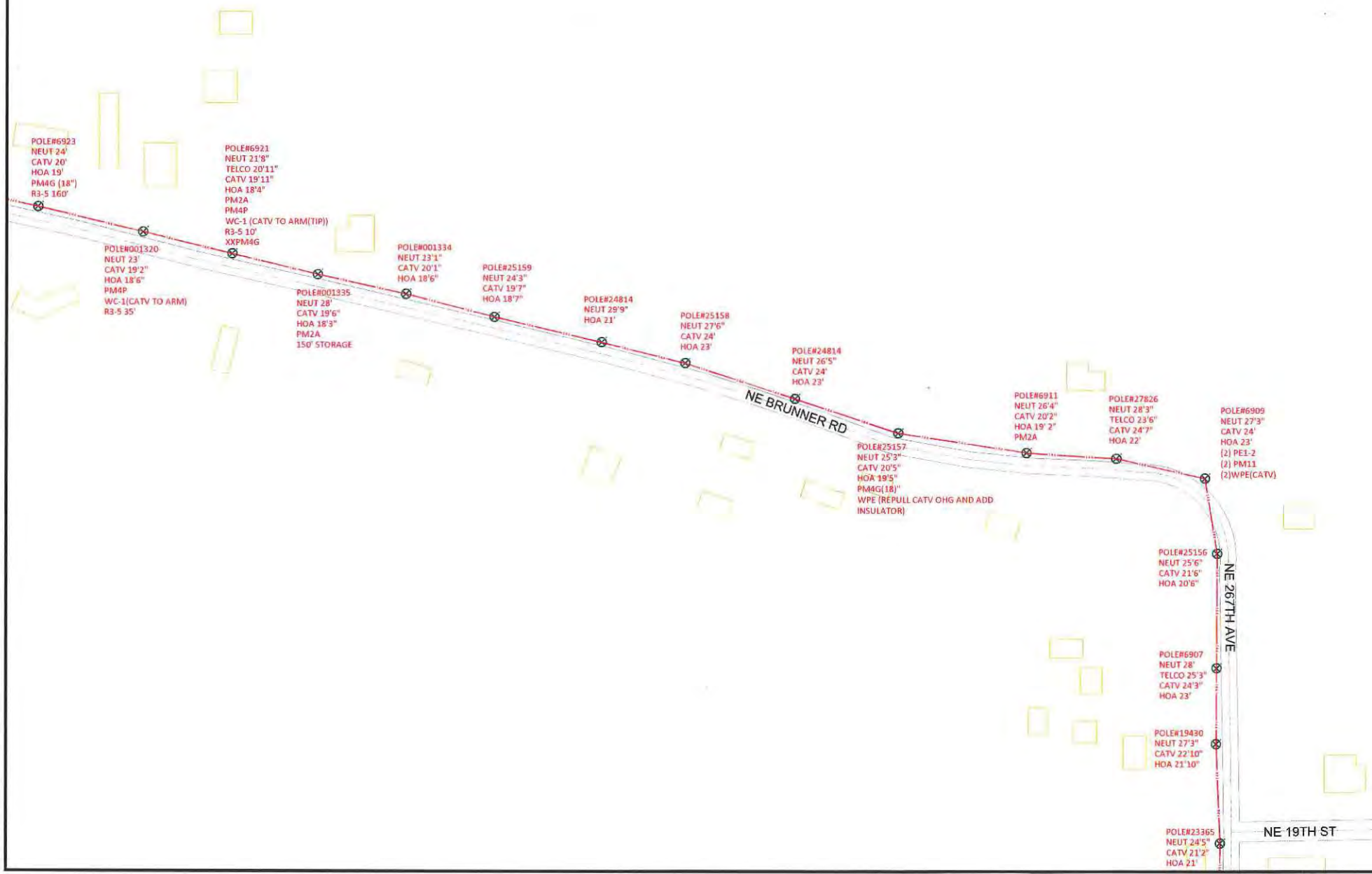
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Sawtooth Technologies, LLC.

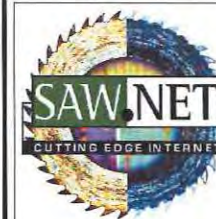
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PROJECT NUMBER:

DESCRIPTION:
ROUTE SC-2A

MAP:
16 OF 26





Sawtooth Technologies, LLC. 50 SE Cascade Ave
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LEGEND

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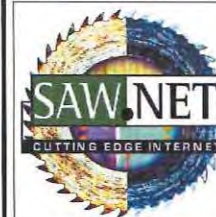
DESCRIPTION:
ROUTE SC-2A

MAP:
17 OF 26



EXHIBIT A
PAGE 18 OF 27





Sawtooth Technologies,
LLC. 50 SE Cascade Ave
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LEGEND

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COMPANY:
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SYSTEM:

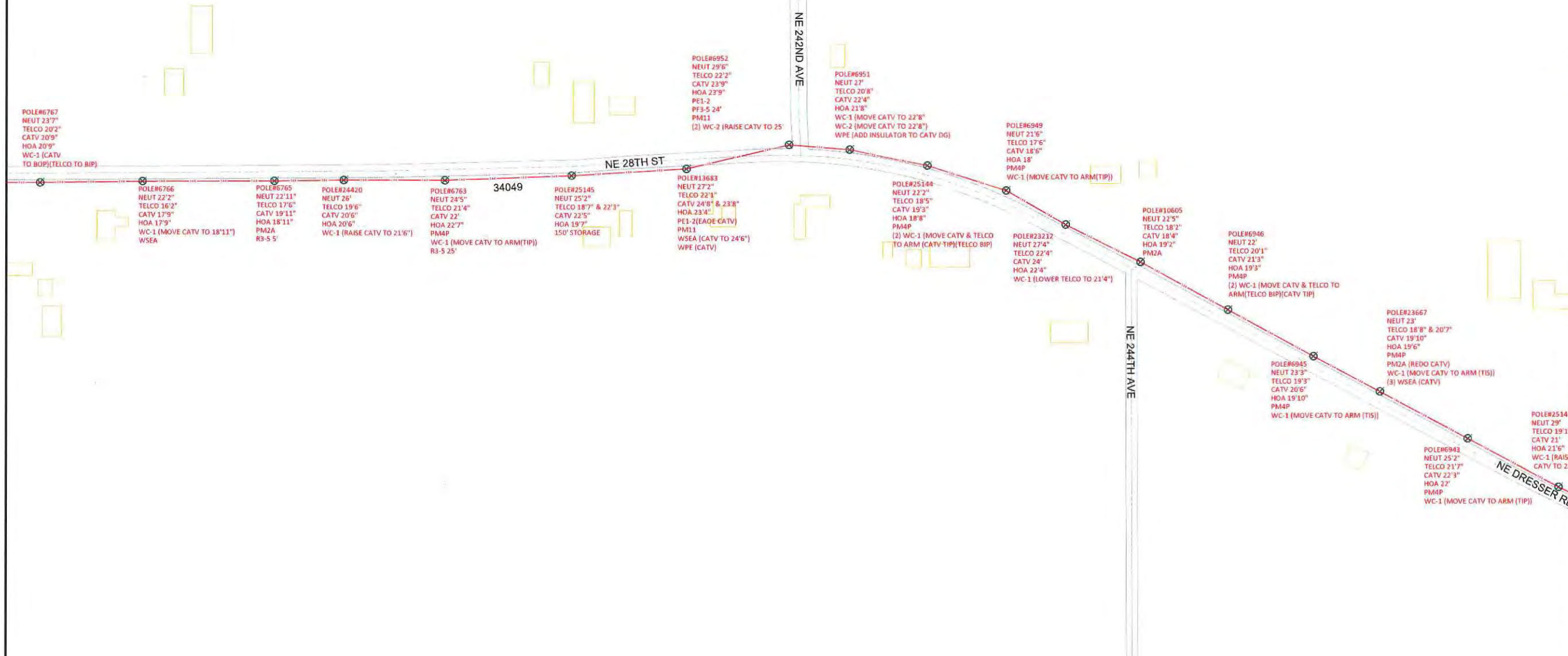
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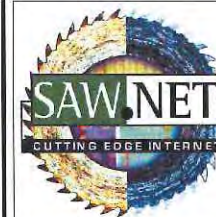
DESCRIPTION:
ROUTE SC-2A

MAP:
18 OF 26



EXHIBIT A
PAGE 19 OF 27





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LEGEND

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COMPANY:
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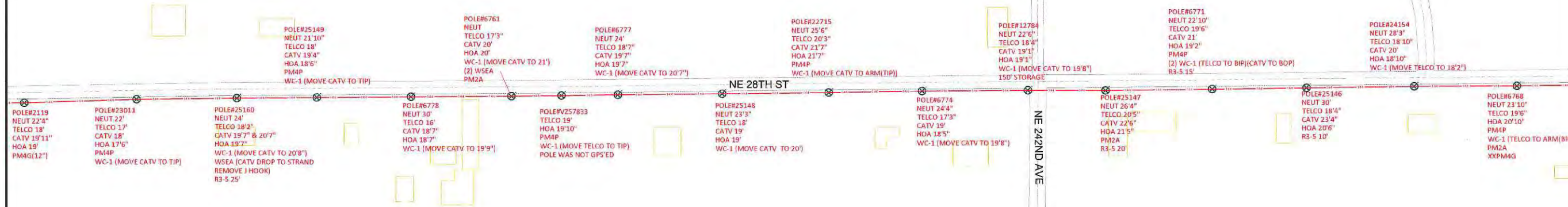
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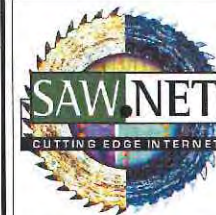
DESCRIPTION:
ROUTE SC-2A

MAP:
19 OF 26



EXHIBIT A
PAGE 20 OF 27





Sawtooth Technologies,
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LEGEND

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- POLE
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- BURIED FIBER
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- ROAD

DATE CREATED: 11/14/2012

DATE REVISED: 11/15/2012

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COMPANY:
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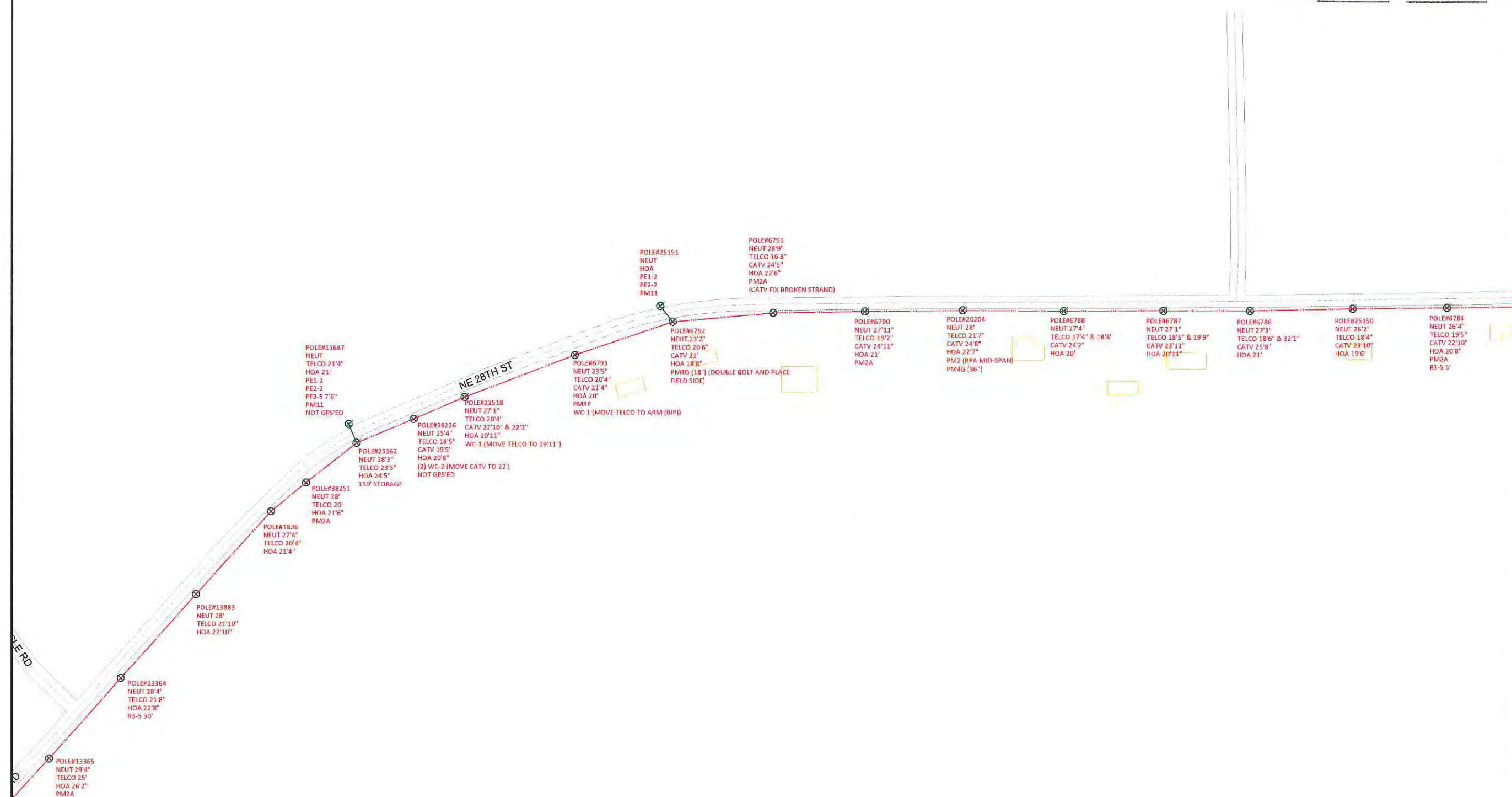
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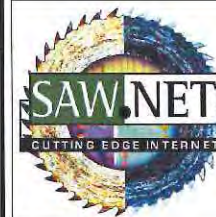
DESCRIPTION:
ROUTE SC-2A

MAP:
20 OF 26



EXHIBIT A
PAGE 21 OF 27





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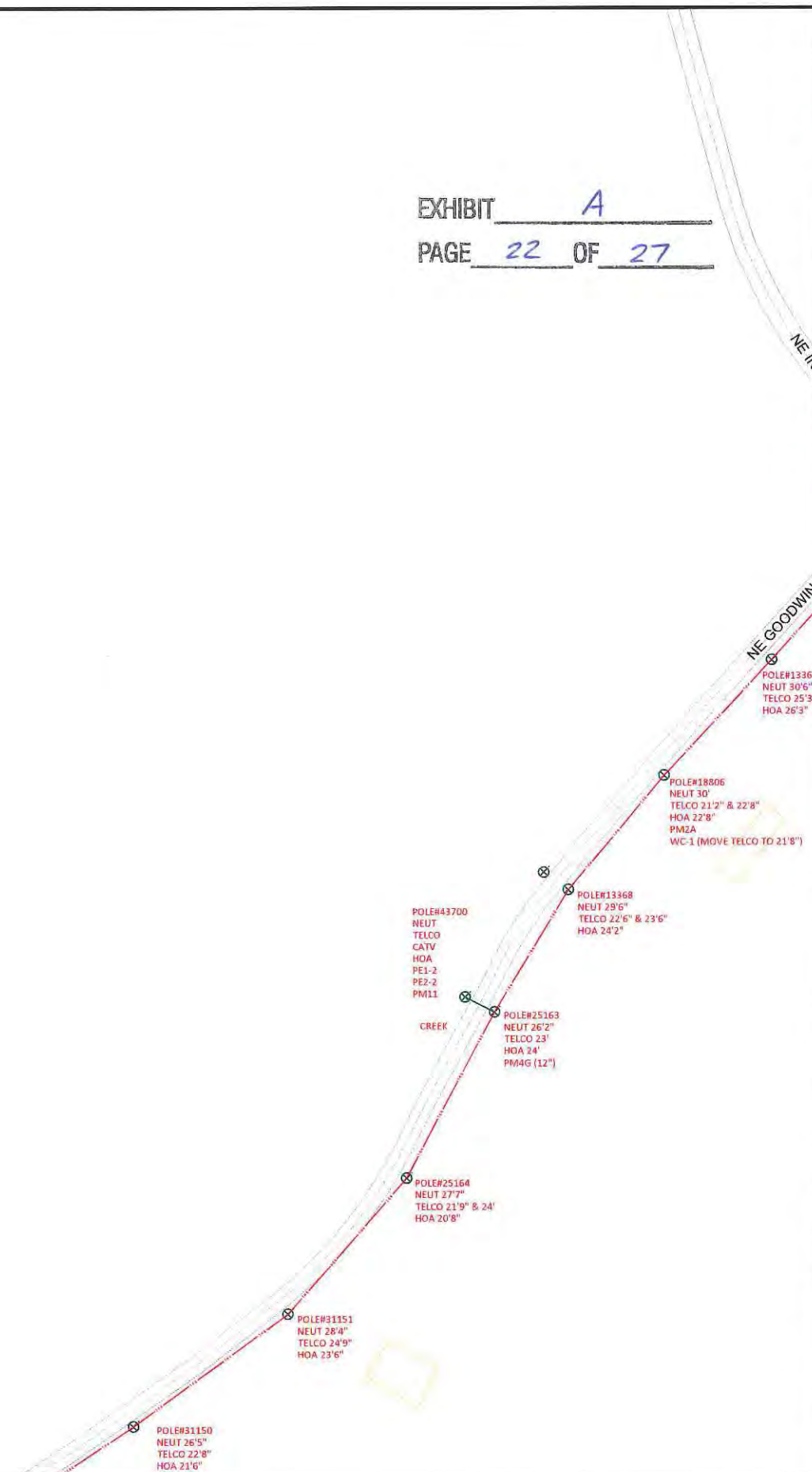
PROJECT NUMBER:

DESCRIPTION:
ROUTE SC-2A

MAP:
21 OF 26



EXHIBIT A
PAGE 22 OF 27





POLE#30188
NEUT 29'4"
CATV 25'6"
HOA 24'4"

POLE#3087
NEUT 26'8"
CATV 23'
HOA 22'
PM2A

POLE#22482
NEUT 28'2"
CATV 24'
HOA 23'

POLE#9836
NEUT 27'8"
CATV 24'
HOA 23'

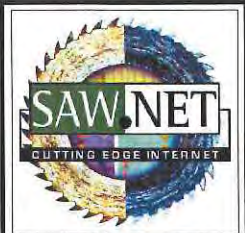
POLE#9835
NEUT 29'
CATV 24'11"
HOA 23'8"
R3-5 25'

POLE#9834
NEUT 27'
CATV 23'6"
HOA 23'

POLE#24885
NEUT 24'11"
CATV 24'1"
HOA 23'

POLE#15588
NEUT 27'10"
CATV 24'
HOA 23'

EXHIBIT A
PAGE 24 OF 27



Sawtooth Technologies,
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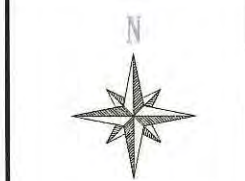
LEGEND

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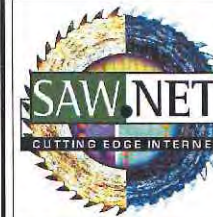
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PROJECT NUMBER:

DESCRIPTION:
ROUTE SC-2A

MAP:
23 OF 26





Sawtooth Technologies,
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COMPANY:
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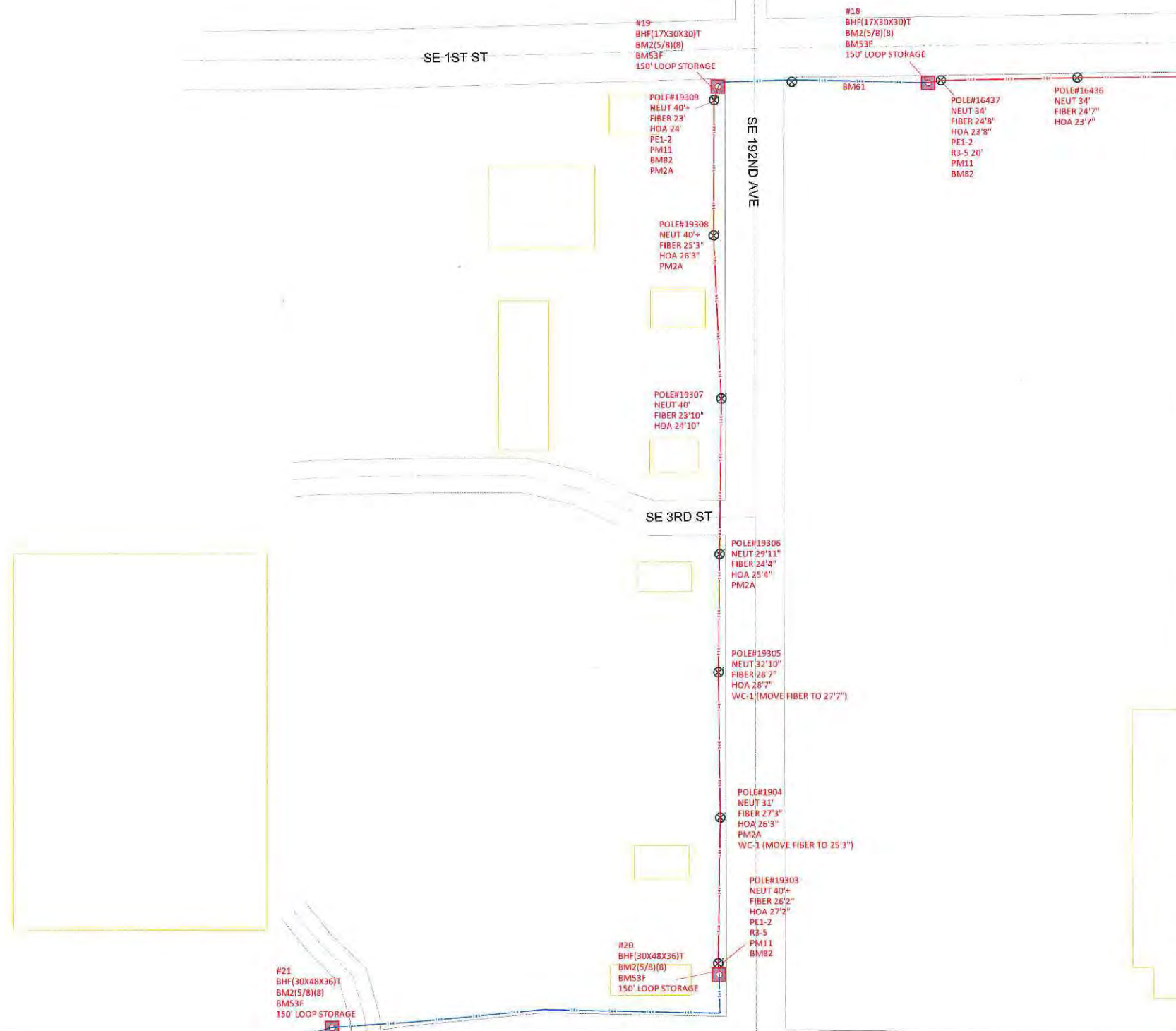
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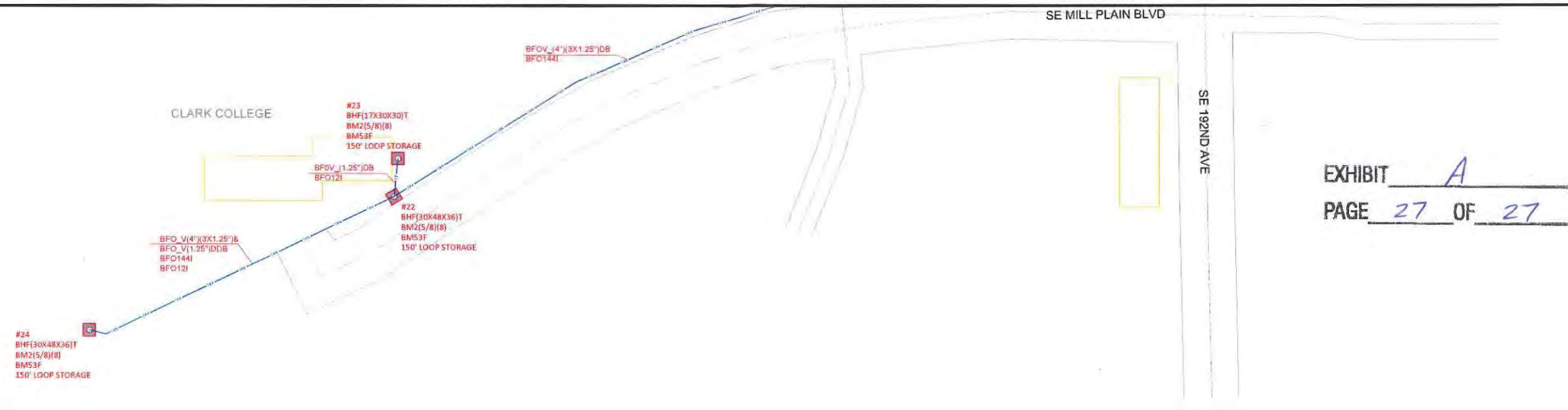
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ROUTE SC-2A


MAP:
25 OF 26



EXHIBIT A
PAGE 26 OF 27








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COMPANY:
Sawtooth Technologies, LLC.

SYSTEM:

PROJECT NUMBER:

DESCRIPTION:
ROUTE SC-2A

MAP:
26 OF 26



RECEIVED
CITY OF CAMAS Sawtooth
2013 MAY -8 AM Technologies

50 SE Cascade Ave.
PO Box 857
Stevenson, WA 98648-0857
Tel. 509.427.4865
Fax: 509.427.4828

FOR FILING WITH CAMAS CITY CLERK

May 3, 2013

City of Camas
616 NE Fourth Avenue
P. O. Box 1055
Camas, WA 98607

Re: Acceptance of Franchise
Granted by City Ordinance No. 2673
Effective 4/29/2013

On April 15, 2013, the Camas City Council passed City Ordinance No. 2673 granting to Sawtooth Technologies, LLC., as Grantee, a Franchise for the construction, operation and maintenance of a fiber-optic network.

Section IX of the Ordinance and Franchise requires the Grantee to file with the City Clerk a written acceptance of the Franchise within 30 days of the effective date.

Sawtooth Technologies, LLC. hereby accepts the rights and privileges conferred to it by the City of Camas pursuant to the subject Franchise.

Grantee, for itself and its successors and assigns, expressly understands and agrees to faithfully comply with, and abide and be bound by, the terms of the Franchise and all of the requirements thereof, and to faithfully and timely keep and perform each and every term, covenant, agreement, obligation and condition required of, or imposed upon it or them by the Franchise and the Camas Municipal Code.

Sincerely,

Sawtooth Technologies, LLC.

By:


Brian J. Adams, Manager

RECEIVED
CITY OF CAMAS
2013 MAY -8 AM 11:46