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ORIGINAL

FRANCHISE TO NORTHEAST SAMMAMISH SEWER AND WATER DISTRICT

ORDINANCE NO. 1645

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, GRANTING THE NORTHEAST SAMMAMISH SEWER AND WATER DISTRICT THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, LANES, ALLEYS, HIGHWAYS, AND OTHER RIGHTS OF WAY OF THE CITY OF REDMOND, WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, ALTERING, OPERATING, MAINTAINING, PROTECTING AND REPAIRING A WATER PIPELINE SYSTEM KNOWN AS THE 187TH AVE. N.E. INTERTIE.

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WHEREAS, the Northeast Sammamish Sewer and Water District, Redmond, Washington (hereinafter "District"), is currently involved in the construction of the 187th Ave. N.E. Intertie (hereinafter "Intertie") water pipeline system, and

WHEREAS, a portion of the route of the Intertie will pass through the City of Redmond, Washington (hereinafter "Redmond") and the District has applied to Redmond for a franchise to install a portion of the Intertie in certain City streets and public rights of way, and

WHEREAS, the Redmond City Council has determined to grant the franchise to the District subject to certain terms and conditions which the Council deems necessary due to the nature of the Intertie project, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Franchise Granted. The District is hereby granted the right, privilege, authority and franchise to construct, reconstruct, alter, operate, maintain, protect and repair the Intertie along, across, and through those streets, avenues, lanes, alleys, highways, and other rights of way in Redmond, which are identified on Exhibit "A" attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. Installation Standards.

- A. Pursuant to the undergrounding requirements of the Redmond Municipal Code, all facilities and equipment comprising the Intertie which are to be installed underground shall be located at a minimum depth of 48 inches.
- B. All facilities shall be installed and maintained at such places and positions as shall least interfere with the free passage of traffic and be in accordance with the laws of the State of Washington, the ordinances of Redmond regulating such construction and the Redmond construction standards.
- C. The plans and specifications for the construction of the Intertie have been reviewed by the Redmond public works department and found to be in substantial compliance with Redmond standards. Upon approval of all necessary Redmond permits, construction will be authorized. The following specific construction standards shall apply to construction maintenance and repair of all facilities constructed pursuant to this franchise:
  1. All City of Redmond construction standards in effect at the time of the maintenance or repair.
  2. All City of Redmond excavation standards in effect at the time of the maintenance or repair.
  3. Should Redmond in the future rebuild the roadway and change the profile of the roadway, it shall be the responsibility of the Grantee to ensure that the Grantee's facilities are adequately protected. Any cost incurred in providing this protection shall be at the sole expense of the Grantee.

4. The Grantee shall provide the City of Redmond with "as-built" drawings of those facilities within 187th Ave. N.E.

D. Whenever it shall be necessary for the District, its officers, employees, agents, independent contractors, or third persons acting under the direction of the District, in exercise of any right granted by this ordinance, to excavate any area, then the District shall without delay restore the surface of said area to as good and safe condition in all respects as it was prior to the excavation and in accordance with Redmond standards in effect at the time of the excavation. All excavations and the location or relocation of all facilities hereunder shall be subject to the supervision, direction and approval of the City Engineer, and the District shall pay all costs incurred by the City in the inspection and supervision of such work. In the event that the District, its officers, employees, agents, independent contractors or third persons acting under the District's direction, should fail to restore said excavation areas to the satisfaction of the Redmond City Engineer, Redmond, upon thirty (30) days notice, may make such repairs or restorations as are necessary to return these areas to as good and safe a condition in all respects as they were prior to the excavation. Within thirty (30) days of presentation of an itemized invoice, including the reasonable costs of labor and equipment, the District shall pay the reasonable costs of restoration or repair. If suit is brought as a result of the District's failure to pay for repair or restoration, and Redmond is the prevailing party in such suit, then the District shall pay all of the actual costs incurred by Redmond thereby, including reasonable attorneys' fees and other litigation-related costs, together with interest at the rate of 1 percent per month from the invoice presentation date. However, the District shall not be required to pay such actual costs, including reasonable attorneys' fees and other litigation-related costs, to the extent that such costs are caused by the negligence of Redmond, its officers, agents, servants, independent contractors or employees.

Section 3. Relocation. Whenever any person or entity, other than Redmond or any person acting under the direction or control of Redmond, requests the District to relocate its

facilities in order to accommodate the work or facilities of such person or entity within the area for which this franchise is granted, then the District shall have the right to refuse such relocation or to impose such terms and conditions upon such relocation as the District deems appropriate.

Section 4. Indemnification.

- A. In the progress of any work performed, including the construction, reconstruction, alteration, installation, repair, operation, protection and maintenance of all water pipelines, mains, service lines, attachments, appurtenances, apparatus, appliances and other facilities, the District shall use reasonable and proper safety precautions to avoid damage to persons or property.
- B. The District hereby agrees to indemnify, defend and hold harmless Redmond, its officer, agents and employees, from all claims, actions and damages of every kind or description which may accrue to, or be suffered by, any person or persons, including, but not limited to, employees of the District, corporation, or property by reason of, in whole or in part, any construction, reconstruction, alteration, installation, repair or maintenance that is faulty or not otherwise in accordance with the terms of this Agreement, defective material or equipment and/or maintenance, or any act or activity carried on by the District, its officers, agents, servants, independent contractors, or employees, in the exercise or in furtherance of the privileges and authority granted herein, except to the extent that such damages or losses are caused by the negligence of Redmond, its officer, agents, or employees. To the extent necessary to fulfill this indemnity obligation and only as to claims against Redmond, its officers, agents and employees arising out of the exercise or in furtherance of the privileges and authority granted herein, the District waives whatever rights against suits by its employees that it may have by virtue of the Washington State Workers Compensation laws, RCW Title 51, or other similar state or federal legislation. In the event any claim or demand is presented to or filed with Redmond which may give rise to the District's duty to hold Redmond harmless, Redmond shall, within a reasonable time, notify the District of such claim or demand, and the District shall have the right, at its election,

to settle or compromise such claim or demand. In the event any suit or action is commenced in which Redmond is named as a party, and which such suit or demand alleges facts which might give rise to the District's obligation to hold Redmond harmless, the District shall be notified thereof, and the District shall have the right, at its sole cost and expense to defend, settle or compromise such suite or action by attorneys of its own election. Should the District decline to defend such suit or action and it is determined by a court of law that the District has a duty under this franchise to defend and hold Redmond harmless in connection with the cause of action alleged in such suit or action, the District hereby agrees to reimburse Redmond for Redmond's costs and expenses, including reasonable attorney's fees, incurred in defending such suit or action, and in prosecuting Redmond's right to be held harmless. However, the District shall not be required to reimburse Redmond for such costs and expenses, including attorney's fees, to the extent that Redmond, its officers, agents, servants, independent contractors or employees are adjudged negligent in a final, non-appealable judgment entered by a court of competent jurisdiction. Redmond shall reimburse the District for costs and expenses, including reasonable attorneys fees, that the District incurs in defending any suit against Redmond, its officers, agents, servants, independent contractors and employees, only to the extent that Redmond, its officers, agents, servants, independent contractors or employees are adjudged negligent in a final non-appealable judgment entered by a court of competent jurisdiction and only in proportion to the relationship that the negligence of Redmond, its officer, agents, servants, independent contractors or employees bears to the overall negligence of all parties defendant or persons liable in such action.

- C. Redmond shall have the right at all times to participate through its own attorney in any suit or action which arises out of any right, privilege or authority granted by or exercised pursuant to this franchise where Redmond determines that such participation is required to protect the interests of the City or public.

Section 5. Insurance. The District shall obtain and shall continuously maintain in force during the remaining term of this franchise, public liability insurance written on an

occurrence basis in an amount not less than \$1,000,000 per person and \$2,000,000 per occurrence for personal injuries and property damage arising out of the exercise of the franchise granted herein. The policy of insurance shall name Redmond as an additional insured and shall contain a provision that it will not be canceled or reduced without sixty (60) days advance written notice to Redmond. The form of this policy shall be approved by Redmond.

Section 6. Nonexclusive Franchise. This franchise is not and shall not be deemed to be an exclusive franchise. This franchise shall not in any manner prohibit Redmond from granting other and further franchise, permits or rights over, upon, under, in and along the areas to which this franchise applies, except to the extent that such additional franchise or right would substantially interfere with the District's exercise of its franchise rights. This franchise shall not prohibit nor prevent Redmond from using the franchise areas or affect the jurisdiction of Redmond over the same or any part thereof.

Section 7. Compliance.

- A. If the District fails to comply with any provision of this franchise, Redmond may compel compliance by serving upon the District a written notice of the violation and the direction to comply within ninety (90) days from the date the order is received by the District. If the District is not in compliance with this franchise after expiration of said ninety (90) day period, and such noncompliance is substantial and material and not due to events beyond the District's control, Redmond may declare and immediate forfeiture and termination of this franchise, provided, however, that if any failure to comply with this franchise by the District cannot be corrected with due diligence within said ninety (90) day period, then Redmond shall extend the time for compliance for such time as may be

reasonably necessary for the District to comply, so long as the District commences prompt and diligent action to affect such compliance.

- B. The notice requirement of Paragraph (A) of this Section shall not apply if the noncompliance of the District results, in Redmond's opinion, in any emergency or life threatening condition. In such case, Redmond may set a period of less than ninety (90) days for the District to comply and may set such conditions and specifications for compliance as are reasonable under the circumstances. In the event that the District fails to comply with any time or condition set for compliance under this paragraph, and such failure is not due to events beyond the District's control, Redmond may declare an immediate forfeiture and termination of this franchise and may take whatever steps Redmond deemed necessary to correct the emergency condition and restore safety. In such an event, the District shall be liable to Redmond for all costs and expenses incurred by Redmond in taking such corrective action, except to the extent such costs and expenses result from the negligence of Redmond, its employees and agents. The District further agrees that it will provide service personnel on a twenty-four hour basis who will be available on call with as fast or practicable response time after the District has been notified that an emergency exists.
- C. Nothing herein shall limit the remedies available to either party in the event of a breach by the other party of any term of this franchise. Each party may sue for injunctive relief, specific performance and/or damages in addition to the remedies provided herein.
- D. The District may, at its sole discretion, terminate this franchise at any time, upon ninety (90) days written notice to Redmond. Such termination shall not, however, act to terminate or release the District from any obligations accruing under this franchise including, but not limited to, the obligation to indemnify, defend and hold harmless from injuries or damages as provided in Section 4 above, or obligation of the District to remove of its facilities pursuant to subparagraph E below.
- E. In the event this franchise is forfeited or terminated for any reason stated herein, the District shall, within a reasonable time and at its sole cost and expense, remove all of its equipment and facilities from the areas for which this

franchise is granted and restore such areas to as good and safe condition as they were prior to installation of the equipment and facilities as is reasonably practicable.

Section 8. Other Permits Required. Nothing in this franchise shall relieve the District of the obligation to obtain any and all necessary federal, state and City permits for the construction of its facilities within the City of Redmond, Washington, including, but not limited to, excavation and street use permits required by the Redmond Municipal Code. The District shall be required to obtain all necessary permits prior to the commencement of any work in the franchise areas.

Section 9. Alterations. The City may, for any public purpose, require the District to change, alter, construct, improve, locate or relocate its pipes and mains; and the City, its successors or assigns, upon reasonable notification by City's Council shall forthwith change, alter, construct, improve, locate, relocate, repair and maintain its pipes and mains and all appurtenances and appendages thereto, at its own cost and expense so as to conform to the changes reasonably required by City's Council.

Section 10. Record Keeping (As-Builts). The District shall at all times keep full and complete plans, plat or plats, specifications, and records showing the location and size of all water and sewer mains and lines heretofore laid in the City, and showing the location of all gauges and other service construction, and such plans, plat or plats, specifications, profiles, and records shall be kept current by the District to show thereon the exact location of all additional mains and lines



hereinafter installed by the District and its successors and assigns, and they shall, within 48 hours, be subject to inspection by the proper officials and agents of the City. Furthermore, for the purpose of emergency preparedness upon the City's request to the District shall furnish free of cost a plan showing the location and purpose of each and every major shut off valve in the City.

Section 11. Assignment. This franchise cannot be sold, transferred, leased, assigned or disposed of, in whole or in part, either by force or involuntary sale, merger, consolidation or otherwise without prior written approval of the City of Redmond, which approval shall not be unreasonably withheld. All of the terms, provisions and conditions here of shall insure to and be binding upon the respective successors and assigns of the District.

Section 12. Franchise Terms. The franchise granted by this ordinance shall be for a period of 50 years, commencing on the date this ordinance becomes effective, provided that the District shall have no rights under this franchise unless and until the District files with Redmond a written consent to all terms and conditions of this franchise ordinance, and the franchise granted by this ordinance shall be null and void if such written consent is not filed within sixty (60) days after the effective date of this ordinance. Provided, further, if the District fails to commence installation of the Intertie in Redmond within two (2) years from and after the date that this franchise becomes effective, then the rights herein granted shall cease, and this franchise shall be terminated.

Section 13. Police Powers Not Affected. Nothing herein shall be deemed to affect Redmond's ability to exercise its police powers.

Section 14. Notices. All notices required to be given by this franchise shall be given or served and shall not be deemed to have been duly given or served, unless in writing and forwarded by certified or registered mail, addressed to the addresses of the parties specified below.

TO: CITY OF REDMOND

Public Work Director  
CITY OF REDMOND  
15670 N.E. 85th Street  
Redmond, Washington 98052

TO: NORTHEAST SAMMAMISH SEWER AND WATER DISTRICT

Manager  
NORTHEAST SAMMAMISH SEWER AND WATER DISTRICT  
3600 Sahalee Way Northeast  
Redmond, Washington 98053

Or such other addresses as the parties from time to time may direct.

Section 15. Severability. If any material, term, provision, condition, or portion of this ordinance shall be held to be invalid by the decision of any court or regulatory body of competent jurisdiction, Redmond may, at its option, deem the entire franchise to be affected and nullified. However, in the event of such a determination of invalidity as to any material part of this ordinance, Redmond may elect to treat the portion declared invalid as severable and enforce the remaining provisions of this ordinance.

Section 16. Effective Date. This ordinance, being an exercise of a power specifically delegated Redmond's legislative

body, is not subject to referendum, and shall take effect five (5) days after passage and publication of the ordinance or a summary thereof consisting of the title.

APPROVED:

*Doreen Marchione*  
MAYOR, DOREEN MARCHIONE

ATTEST/AUTHENTICATED:

*Sandra L. Marion*  
for CITY CLERK, DORIS SCHAIBLE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY *Theresa A. Bonstedt*

FILED WITH THE CITY CLERK:	8/15/91	
PASSED BY THE CITY COUNCIL:	9/3/91	First Reading: 8/20/91
PUBLISHED:	9/8/91	Second Reading: 9/3/91
EFFECTIVE DATE:	9/13/91	
ORDINANCE NO.	<u>1645</u>	

The undersigned accepts all of the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations contained within.

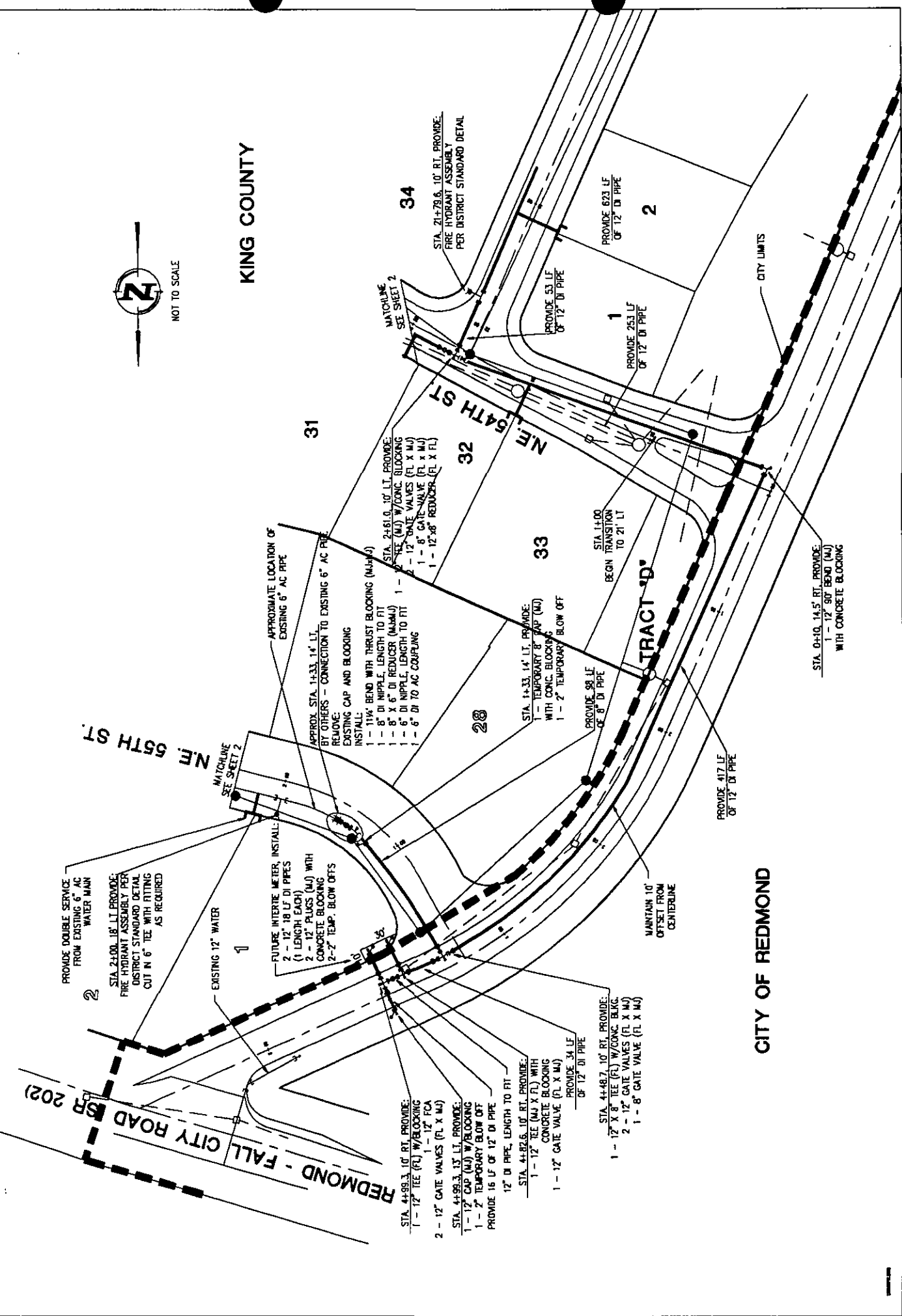
GRANTEE, NORTHEAST SAMMAMISH SEWER AND WATER DISTRICT

By: *Harold Matthews*  
Harold Matthews  
Manager



KING COUNTY

CITY OF REDMOND



PROVIDE DOUBLE SERVICE FROM EXISTING 6" AC WATER MAIN  
STA. 2+00.18' LI. PROVIDE FIRE HYDRANT ASSEMBLY PER DISTRICT STANDARD DETAIL CUT IN 6" TEE WITH FITTING AS REQUIRED

EXISTING 12" WATER

FUTURE INTERIOR METER, INSTALL:  
2 - 12" 18 LF DI PIPES (1 LENGTH EACH)  
2 - 12" PLUGS (M) WITH CONCRETE BLOCKING  
2-2" TEMP. BLOW OFFS

APPROXIMATE LOCATION OF EXISTING 6" AC PIPE  
BY OTHERS - CONNECTION TO EXISTING 6" AC PIPE  
REMOVE:  
EXISTING CAP AND BLOCKING  
INSTALL:  
1 - 11 1/2" BEND WITH THRUST BLOCKING (M/M/J)  
1 - 8" DI NIPPLE LENGTH TO FIT  
1 - 8" X 6" DI REDUCER (M/M/J)  
1 - 6" DI NIPPLE LENGTH TO FIT  
1 - 8" GATE VALVE (FL X M/J)  
1 - 12" X 8" REDUCER (FL X FL)

STA. 4+99.3, 10' RT. PROVIDE:  
1 - 12" TEE (FL) W/BLOCKING  
1 - 12" FCA  
2 - 12" GATE VALVES (FL X M/J)  
STA. 4+99.3, 13' LI. PROVIDE:  
1 - 12" CAP (M) W/BLOCKING  
1 - 2" TEMPORARY BLOW OFF  
PROVIDE 16 LF OF 12" DI PIPE  
12" DI PIPE LENGTH TO FIT

STA. 4+82.6, 10' RT. PROVIDE:  
1 - 12" TEE (M/J X FL) WITH CONCRETE BLOCKING  
1 - 12" GATE VALVE (FL X M/J)  
PROVIDE 34 LF OF 12" DI PIPE

STA. 4+487, 10' RT. PROVIDE:  
1 - 12" X 8" TEE (FL) W/CONC. BLKC.  
2 - 12" GATE VALVES (FL X M/J)  
1 - 8" GATE VALVE (FL X M/J)

MAINTAIN 10' OFFSET FROM CENTERLINE

PROVIDE 417 LF OF 12" DI PIPE

STA. 1+33, 14' LI. PROVIDE:  
1 - TEMPORARY 8" CAP (M)  
1 - 2" TEMPORARY BLOW OFF

STA. 1+00 BEGIN TRANSITION TO 21' LI.

STA. 0+10, 14.5' RT. PROVIDE:  
1 - 12" 90° BEND (M/J) WITH CONCRETE BLOCKING

STA. 2+61.0, 10' LI. PROVIDE:  
2 - 12" TEE (M/J) W/CONC. BLOCKING  
2 - 12" GATE VALVES (FL X M/J)  
1 - 8" GATE VALVE (FL X M/J)  
1 - 12" X 8" REDUCER (FL X FL)

MATCHLINE SEE SHEET 2

PROVIDE 623 LF OF 12" DI PIPE

PROVIDE 253 LF OF 12" DI PIPE

PROVIDE 53 LF OF 12" DI PIPE

STA. 21+79.6, 10' RT. PROVIDE:  
FIRE HYDRANT ASSEMBLY PER DISTRICT STANDARD DETAIL

CITY LIMITS

REDMOND - FALL CITY ROAD (SR 202)

NE 55TH ST.

NE 54TH ST

TRACT 1D