### Contract

### City of Waukesha - Everstream GLC Holding Company LLC

Fiber-Optic Communications Facilities Joint Construction and Use

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as the City; and Everstream GLC Holding Company LLC, 1228 Euclid Avenue, Suite 250, Cleveland, Ohio 44115, referred to as Everstream. Together the City and Everstream are referred to as the Parties.

#### **Recitals**

Everstream is, among other things, an internet service provider, maintaining a fiber-optic network. Everstream wishes to expand its fiber network in Waukesha, and will install new ducts and fiber in the City. The City also maintains a fiber network, and wishes to expand its network to provide redundant loops and greater reliability to its network.

Everstream will be installing new ducts along locations where the City wishes to add fiber of its own, and Everstream wishes to add fiber in locations where the City already maintains its own fiber, both in ducts and aerial-mounted. It will be mutually advantageous for the Parties to co-locate and share facilities where possible.

Everstream is willing to purchase and install cable, duct, handholes, and other associated equipment and facilities at its own expense, and to convey ownership of certain such facilities being installed for Waukesha to the City of Waukesha solely in consideration of the City's agreement to allow Everstream's installation of its own facilities within City right-of-way and on and within City-owned poles and ducts.

Therefore, in consideration of the mutual promises contained herein, the Parties agree and contract as follows:

- Purchase and Installation of Cable and Facilities. Everstream will purchase and install single-mode fiber-optic cable, duct, handholes, and other facilities according to the plans and specifications shown in Appendix 1, including facilities indicated in Appendix 1 as being installed for the City, at Everstream's sole expense, except as otherwise shown as the City's responsibility and expense in Appendix 1. Construction and installation is further subject to the following:
  - a. All cable, duct, handholes, and other materials installed pursuant to this Contract shall be new material of first quality, and installed in a workmanlike manner in accordance with NECA/FOA 301 (2016) and all applicable federal, state, and local codes. After installation, Everstream shall insure that the installation Everstream tests the installed cables and that they are fully functional.
  - b. Wherever new duct labeled "Everstream & Waukesha" is indicated on Appendix 1, separate ducts for Everstream and the City shall be installed, with separate handholes for the Everstream and City ducts, and cable as specified in Appendix 1 shall be pulled through the City duct.
  - **c.** Wherever Everstream cable is pulled through existing City duct, separate handholes will be installed for Everstream cables.
  - **d.** The City will be responsible for splices of City cable, both existing cables and those cables designated as being installed for the City in Appendix 1.
  - **e.** The installation of cables shall be subject to all applicable municipal ordinances, codes, and permit requirements.
- 2. Conveyance of Cables and Duct to City, Ownership, and Use of Cables. Upon completion of the installation of fiber-optic cables and ducts as shown in Appendix 1, ownership of and title to all cables, ducts, handholes, and other equipment designated in Appendix 1 as being installed for Waukesha (whether designated as "installed for Waukesha," "City," or other indication that it is installed for the City) shall be conveyed to the City, without additional consideration. The conveyance shall occur without further documentation, however, Everstream shall execute and deliver to the City any bills of sale or other instruments conveying title as reasonably requested by the City. Everstream warrants that it has good and merchantable

title to the items conveyed to the City, and conveys them free and clear of all liens and encumbrances. The City shall retain ownership of its already-existing cables and ducts, and Everstream shall retain title to all other cables and ducts installed by it pursuant to this Contract. The cables shall be for the exclusive use of their respective owners, and neither Party shall have any rights to use in any way the other's cables.

- 3. Warranty of Quality and Workmanship. Everstream warrants to the City that the installation of the cables, ducts, handholes, and associated facilities shall be free from defects in workmanship for a period of one year after they are conveyed to the City pursuant to section 2. City must notify Everstream in writing of all defects in workmanship within that one-year period, and Everstream shall promptly correct all such defects at its sole expense. Everstream shall deliver and assign all manufacturer warranties to the City to the extent they are assignable.
- 4. Permission to Use City Facilities and Right-of-Way. The City grants Everstream permission to install, maintain, and replace fiber-optic cables within City-owned duct or overlashed on City-owned cables as indicated on Appendix 1, during the Term of this Contract. The City further grants Everstream permission to install, maintain, and replace fiber-optic cables, duct, handholes, and associated equipment within City rights-of-way as indicated in Appendix 1, during the Term of this Contract. Everstream shall be solely responsible for acquiring any additional, necessary rights from utilities, municipalities, and private property owners, including any permits required by local government units. The City shall execute and deliver to Everstream easements as reasonably requested by Everstream, which shall be subject to the terms and conditions of this Contract, including the provisions of termination in section 12.
- **5. Incorporation of Appendix 1.** Appendix 1 is incorporated into this Contract by reference.
- **6. Variance from Plans and Specifications.** The location of fiber-optic cable to be installed pursuant to this Contract shall substantially conform to the locations shown in Appendix 1. The specific location of the cables is within the reasonable discretion of the installer and is subject to minor variations due to obstructions, geographic conditions, and other similar factors; however, the locations of the installed cables shall not deviate substantially from the locations shown in Appendix 1. The specific location of the cables within the locations shown in Appendix 1 is also subject to the reasonable direction of the City.
- 7. Management of Installation. Everstream shall hire, at Everstream's sole expense, Multimedia Communications & Engineering, Inc., referred to herein as MC&E, to oversee and manage the installation of cable, duct, handholes, and other facilities required by this Contract. Everstream's contract with MC&E shall require that MC&E shall adhere to the terms and standards of this Contract. The City shall be a third-party beneficiary to the contract between Everstream and MC&E.
- 8. Everstream Temporary Use of City Fiber, Warranty Disclaimer, Liability Waiver. During installation of facilities pursuant to section 1, and for a period of 90 days after completion of such installation, City shall allow Everstream to use City-owned-but-unused "dark" fiber on a temporary basis, as such fiber is available for such use. City shall accommodate Everstream's requests to use "dark" fiber in good faith. City shall not be required to install any additional fiber, or remove fiber from City use, to accommodate Everstream's requests. City disclaims all warranties of quality and condition of fiber so provided to Everstream, including all implied warranties, and specifically including without limitation warranties of fitness for purpose; and Everstream accepts the "dark" fiber for use as-is. Everstream waives all claims for damages against the City arising from the use of the "dark" fiber or from its inability to be used, including all incidental and consequential damages and loss of business revenue. Everstream shall be responsible at its sole expense for all splices required to use City "dark" fiber.
- 9. Maintenance, Repairs, and Locates. After completion of installation and conveyance of title to the City pursuant to section 2, each Party shall be responsible for maintenance, repair, and replacement of their respective cable, ducts, handholes, and other equipment, at their sole expense. Each Party shall be responsible for complying with Diggers Hotline locate requests for their respective cables and ducts, and the Parties shall not be responsible or liable for damage to the other's cables or ducts arising from a failure to respond properly to locate requests.

- **10. Utility Make-Ready Requests.** Where Everstream cables are overlashed on City aerial cables, Everstream shall be responsible for complying with utility "make-ready" requests with regard to both Everstream's and the City's cables bundled together.
- 11. Notice of Maintenance and Repair of Cables. When maintenance, repair, or replacement is required to Everstream cables that are either overlashed to City aerial cables or are located in City-owned duct, Everstream shall give the City at least 72 hours advance notice of such work to the City; unless an emergency requires immediate action, in which case Everstream shall give notice to the City as soon as possible.
- 12. Term and Termination. The Term of this Contract commences upon its execution and terminates on the date 25 years thereafter. Upon the termination of this Contract, Everstream may elect to continue use of the facilities installed hereunder, however, a fee for continued use of facilities within City right-of-way shall be required of Everstream. Upon such election, the Parties shall negotiate in good faith an extension of this Contract providing for payment by Everstream to the City of a fee for maintaining its facilities in City right-of-way at then-current market rates. If the Parties are unable to agree upon terms of an extension within 30 days after the termination of this Contract, then Everstream shall cease use of its facilities in City right-of-way and City may inspect, and disconnect and remove if necessary, any such facilities.
- **13. Indemnification.** Everstream shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, Everstream's installation of facilities pursuant to section 1, or their continued presence and maintenance within City right-of-way, including court costs and actual attorney fees.
- 14. Insurance. The Parties shall be responsible at their own expense for maintaining casualty insurance on their respective facilities. Everstream shall maintain insurance of the following kinds and for not less than the following limits, at Everstream's sole expense, at all times during which it maintains any facilities in City right-of-way. Policies shall be occurrence, and not claims-made, policies. Everstream shall obtain an endorsement making the City an additional insured, and Everstream's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Everstream shall deliver a certificate of insurance to City showing that all requirements of this section are met.
  - **a.** Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
  - **b.** Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
  - **c.** Umbrella, \$5,000,000.
  - **d.** Worker compensation, statutory requirements.
- **15. Risk of Loss.** The Everstream shall bear the risk of loss by fire, flood, wind, theft or other casualty, to materials and partially-completed improvements, until any items to be conveyed to the City have been conveyed to and accepted by the City.
- **16.** Parties Are Independent Contractors. Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
- 17. Governmental Immunities and Notice Requirement Preserved. Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities, notice requirements, or liability limitations imposed by Wis. Stats. §893.80 or any other law.
- **18. Force Majeure.** Regardless of any other term or provision herein, neither Party shall be in default of this Contract if the failure to perform timely was the result of an unforeseen circumstance reasonably beyond the Party's control, provided performance resumes or takes place as soon as reasonably possible after

- circumstances return to normal, in good faith. All time periods and deadlines stated herein shall be extended by a period reasonably necessary to accommodate such delays.
- 19. Adequacy of Consideration. Everstream acknowledges that the consideration being given by the City for the facilities to be purchased and installed by Everstream, and then subsequently conveyed to the City, is the City's permission for Everstream to install and maintain its facilities in City right-of-way, and other considerations expressed in this Contract, and that such consideration is adequate and sufficient to support the obligations required by this Contract. Everstream further acknowledges that an extension of this Contract will require additional consideration.
- **20. Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees, if judgment in favor of the non-breaching party is obtained.
- 21. Integration. This Contract embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
- **22. Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the Parties to this Contract.
- 23. Governing Law and Jurisdiction. This Contract will be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

### City of Waukesha

By Shawn N. Reilly, Mayor Date:	Attested by Gina L. Kozlik, City Clerk Date:
Everstream GLC Holding Company LLC	
By (print name)	_ _
Title:	_
Date:	

# Appendix 1

### Contents:

Summary - this page
Title page - page CS1
Overview - pages OV1 to OV5
Detailed plan drawings - pages 1 to 39

## Summary:

- Sheet OV1: Overview of the routes
- Sheet OV2: New underground builds
- Sheet OV3: New aerial builds
- Sheet OV4: Over lash builds
- Sheet OV5: Existing City conduit builds
- Sheets 1-9: Jennifer Ln to Main St. The route runs from Jennifer Ln to Manhattan Dr, to Josephine St, to Highland Ave, to Moreland Rd, to White Rock Ave, to Main St. To Pleasant St, to Arcadian Ave, to N East St. Everstream is anticipating using AT&T ducts to run down N East St to Wisconsin Ave to St Paul St.
- Sheet 10-11: Extra capacity for the City
- Sheets 12-18: (New) City Hall to the Police Department, to Fire station 4, to Meadowbrook Park. The route is from Buena Vista & Barstow to Northview and Meadowbrook. This follows the existing route running down Barstow to Lemira, Lemira to Delafield, Delafield to Northview.
- Sheets 17,19-27: Fire Station 4 to Fire station 3. The Route is from Northview and Grandview to Grandview and Sunkist, Sunkist to University, University to Summit, Summit to Merrill Hills (New Bypass), Merrill Hills to Genesee (HWY 59).
- Sheets 29-31: Fire station 3 to Transit. The route is from Les Paul Parkway and Genesee Rd (HWY X) to Genesee Rd. and Sunset Dr, Sunset to Badger Dr.
- Sheets 29, 32-36: Fire station 3 & Transit to the Police Firing Range. The is from Sunset Dr. & St. Paul Ave. to Chapman Dr, to Spring City Dr, to Sentry Dr.
- Sheet 27: Fire station 3 to Water Utility: The route is from Genesee and Les Paul Parkway to Les Paul Parkway and Sunset
- Sheets 37-39: Water Utility to Fire station 2: From Les Paul Parkway & Sunset to Les Paul Parkway & Pearl.

# **Appendix 1 - Title Page**

# everstream®

FASTER FIBER. BETTER BUSINESS.

## Project Engineer:

Multimedia Communications & Engineering, Inc.

Contact: Joel Mikulsky

Civil Engineering Technician

PO Box 11064

Green Bay, WI 54307

Ph. 920-301-7900 ext. 1001 Email: jmikulsky@mcewi.com

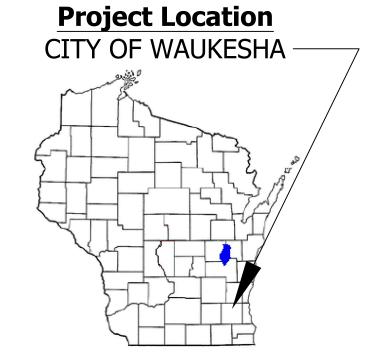
## Designed By:

Multimedia Communications & Engineering, Inc.

Contact: Mindy Metoxen

**OSP Engineer** 

Ph. 920-301-7900 ext. 1008 Email: mmetoxen@mcewi.com





CALL DIGGERS HOTLINE 3 DAYS BEFORE DIGGIN AT 811 OR (800) 242-8511 EMERGENCY ONLY: (262) 432-7910

ALL UNDERGROUND UTILITY LOCATIONS SHOWN ARE APPROXIMATE. UTILITY INFORMATION WAS PROVIDED IN RESPONSE TO PLANNING LOCATE REQUESTS. CONSTRUCTION CONTRACTOR IS RESPONSIBLE FOR DETERMINING THE LOCATION OF MUNICIPAL AND PRIVATE UTILITIES; COMPLETE REPAIR OF ANY AND ALL DAMAGES & RESTORATION INCURRED SHALL BE AT THE EXPENSE OF THE CONTRACTOR. FACILITY PLACEMENT SUBJECT TO CHANGE UPON FIELD LOCATE COMPLETION.

RIGHTS-OF-WAY ARE DEPICTED BASED ON FIELD OBSERVATIONS AND THE LATEST STATE AND COUNTY RECORDS AVAILABLE.

## COORDINATE SYSTEM: HARN/WI.WAUKESHAWI-F

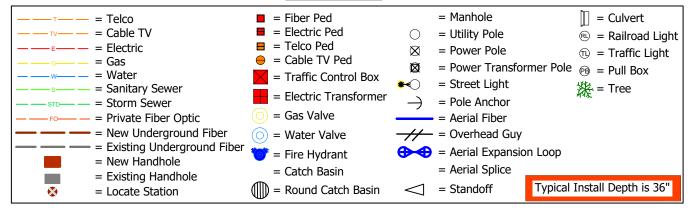
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## Table of Contents:

Title Page

Overview Pages (5 pages)

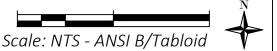
SCALED 1:50 Sheets (39 pages)



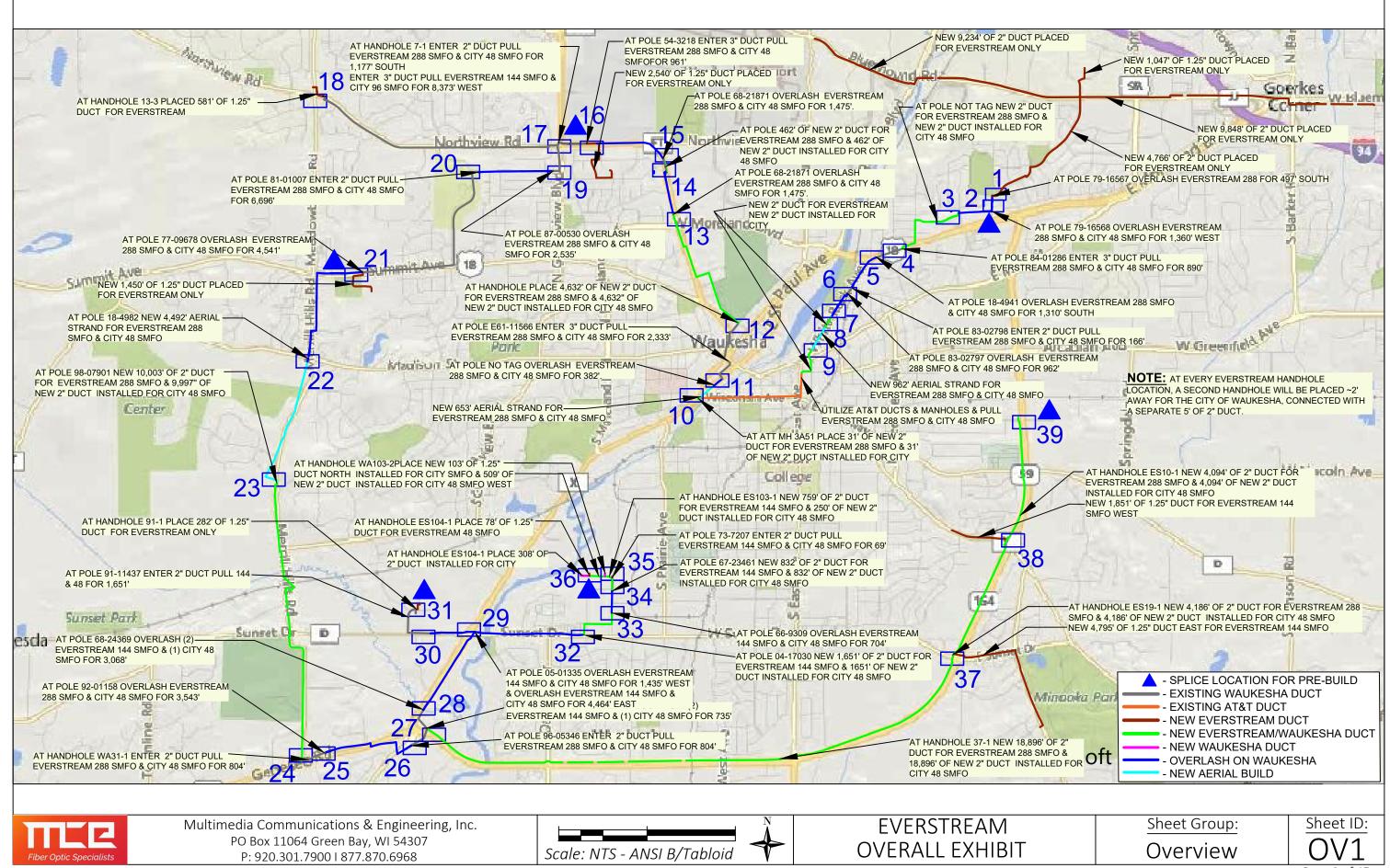
- SPLICE LOCATION FOR PRE-BUILD
- EXISTING WAUKESHA DUCT
- EXISTING AT&T DUCT
- NEW EVERSTREAM DUCT
- NEW EVERSTREAM/WAUKESHA DUCT
- NEW WAUKESHA DUCT
- OVERLASH ON WAUKESHA
- NEW AERIAL BUILD

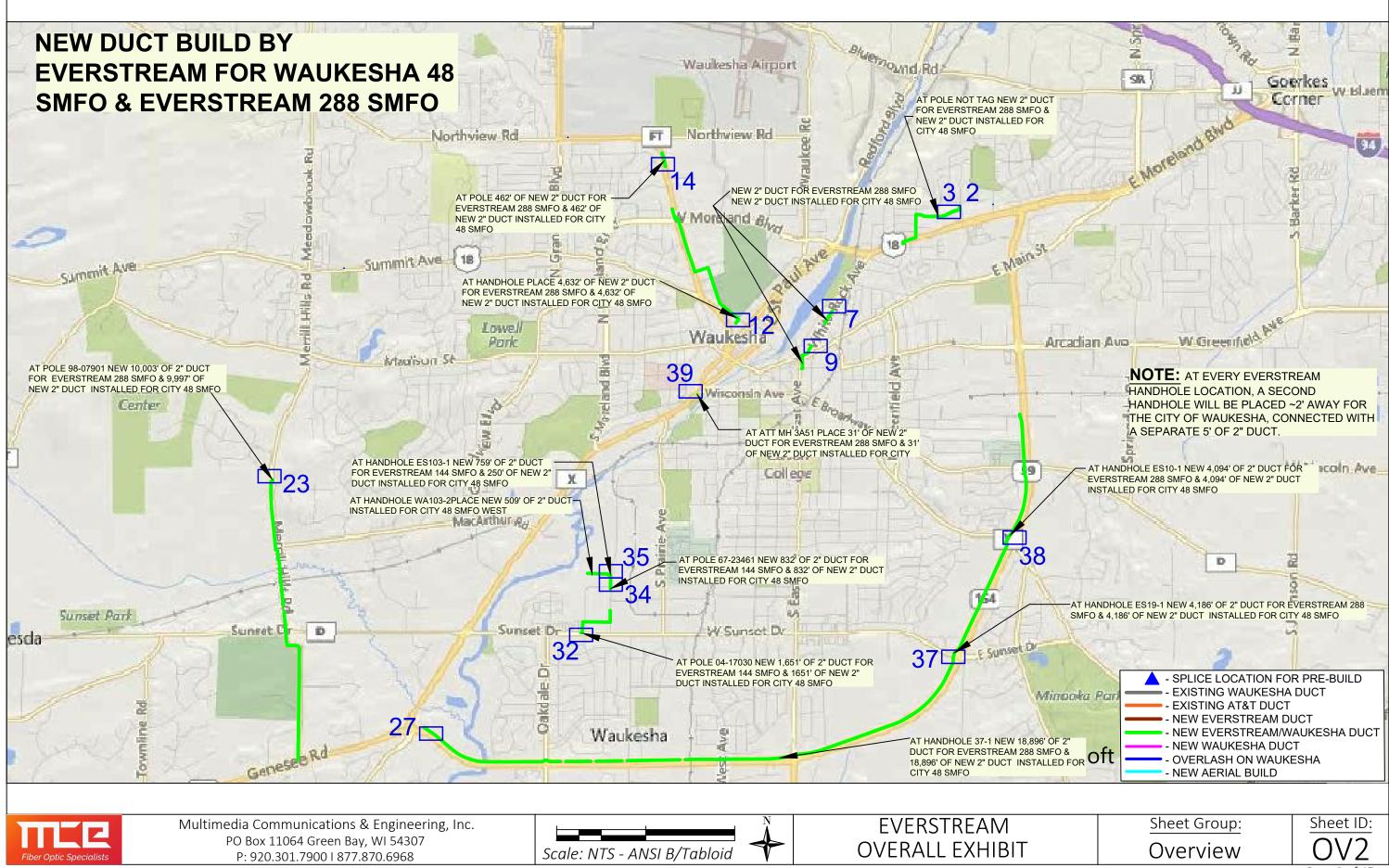


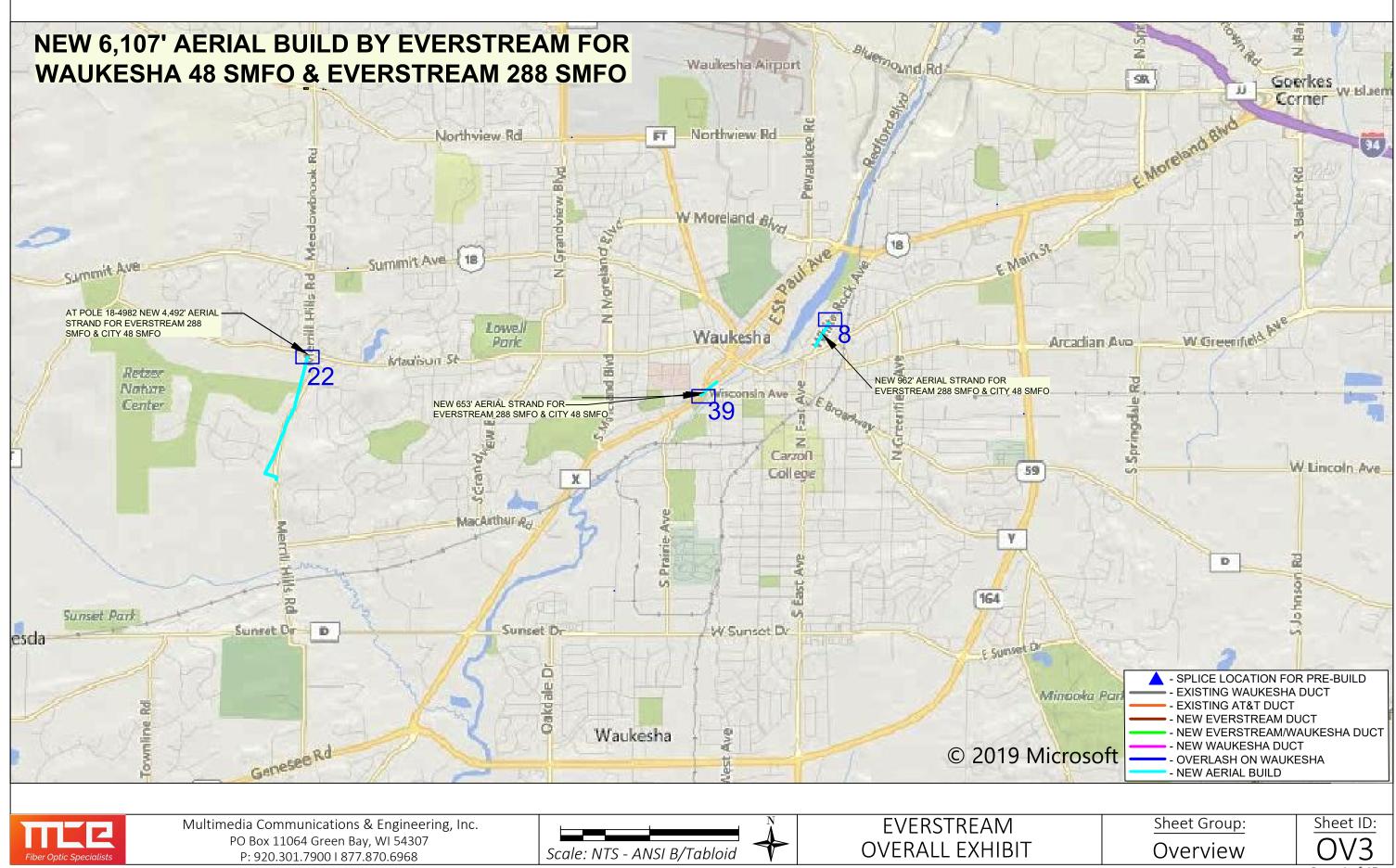




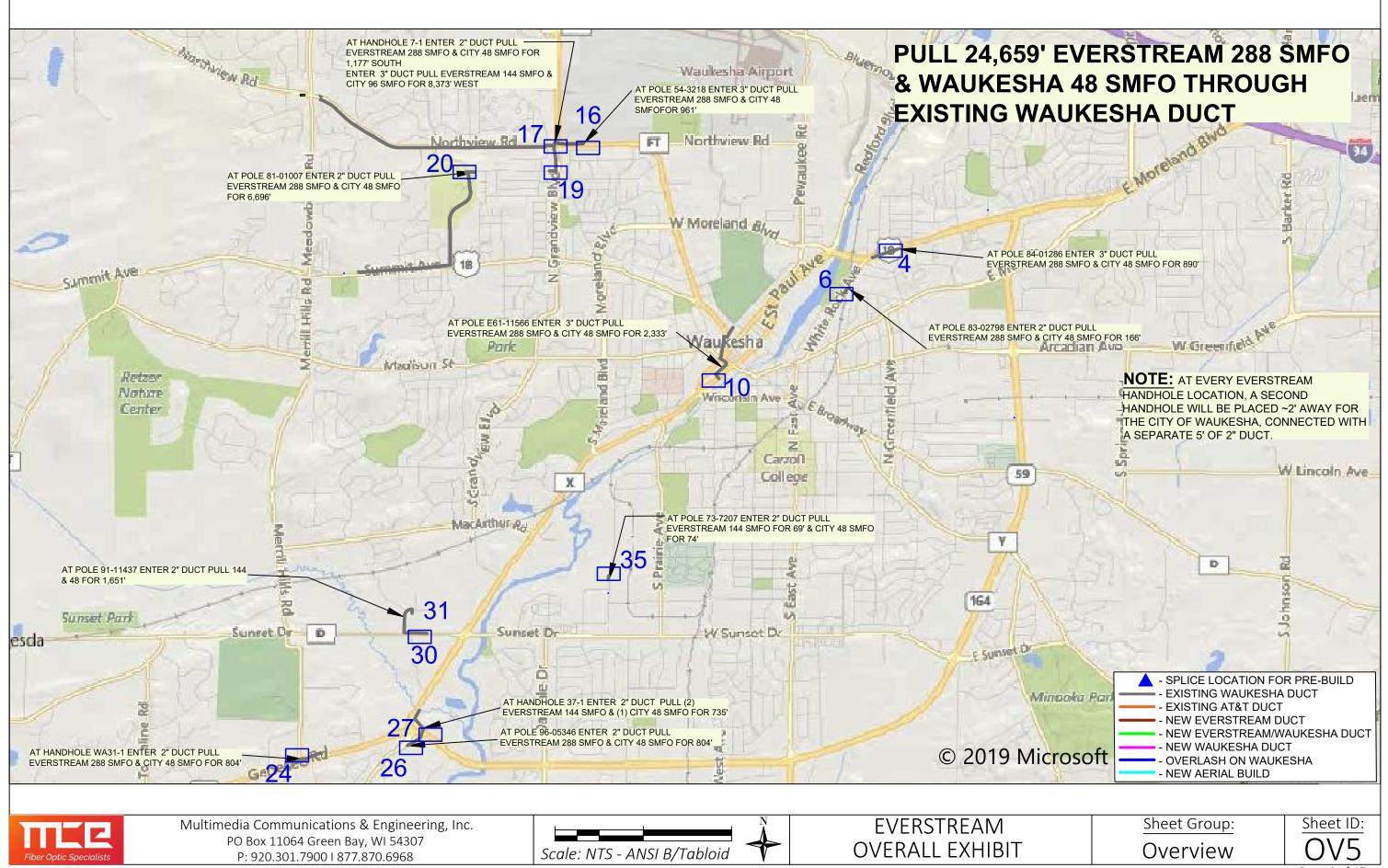
# Appendix 1 - Overview Pages



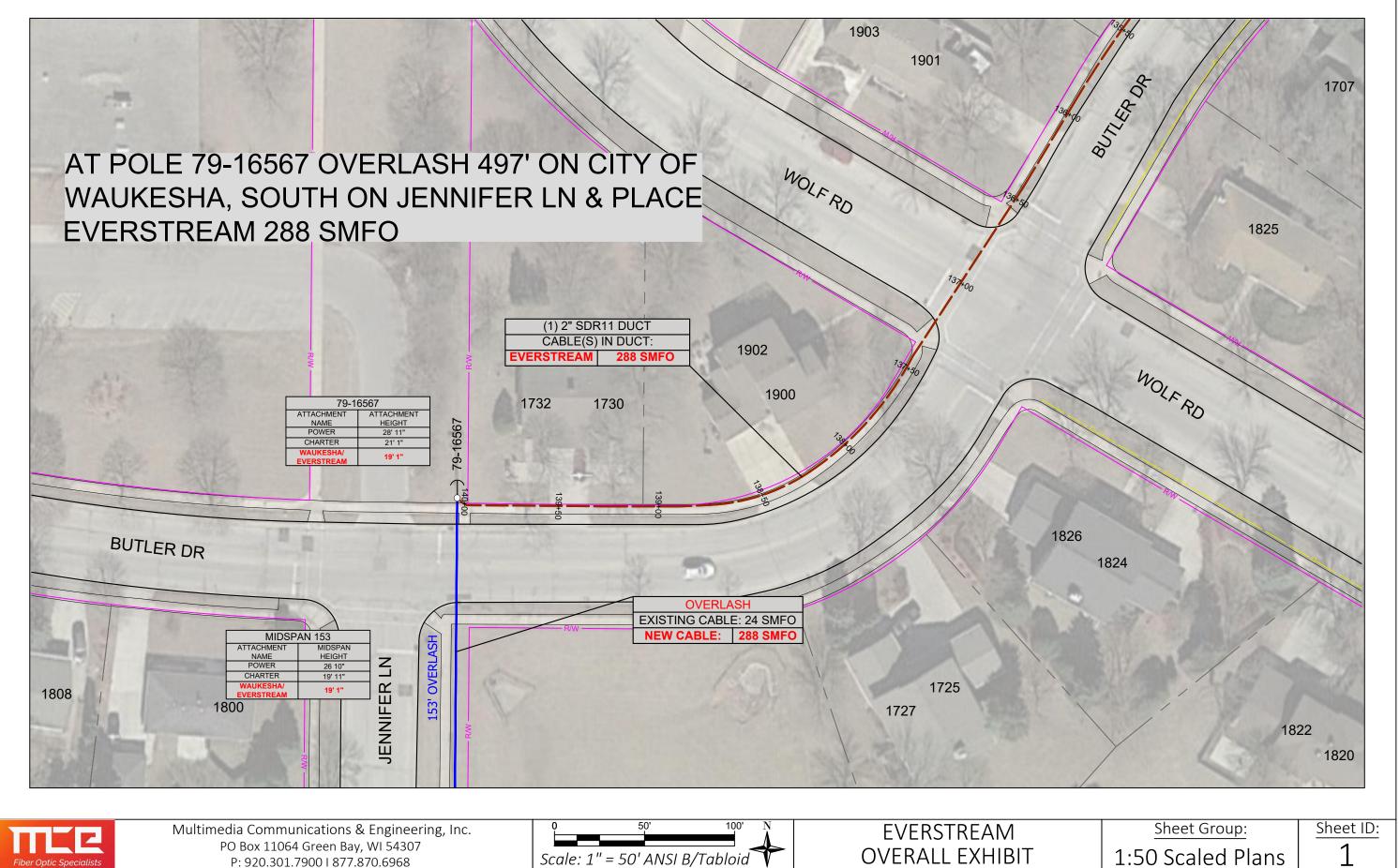


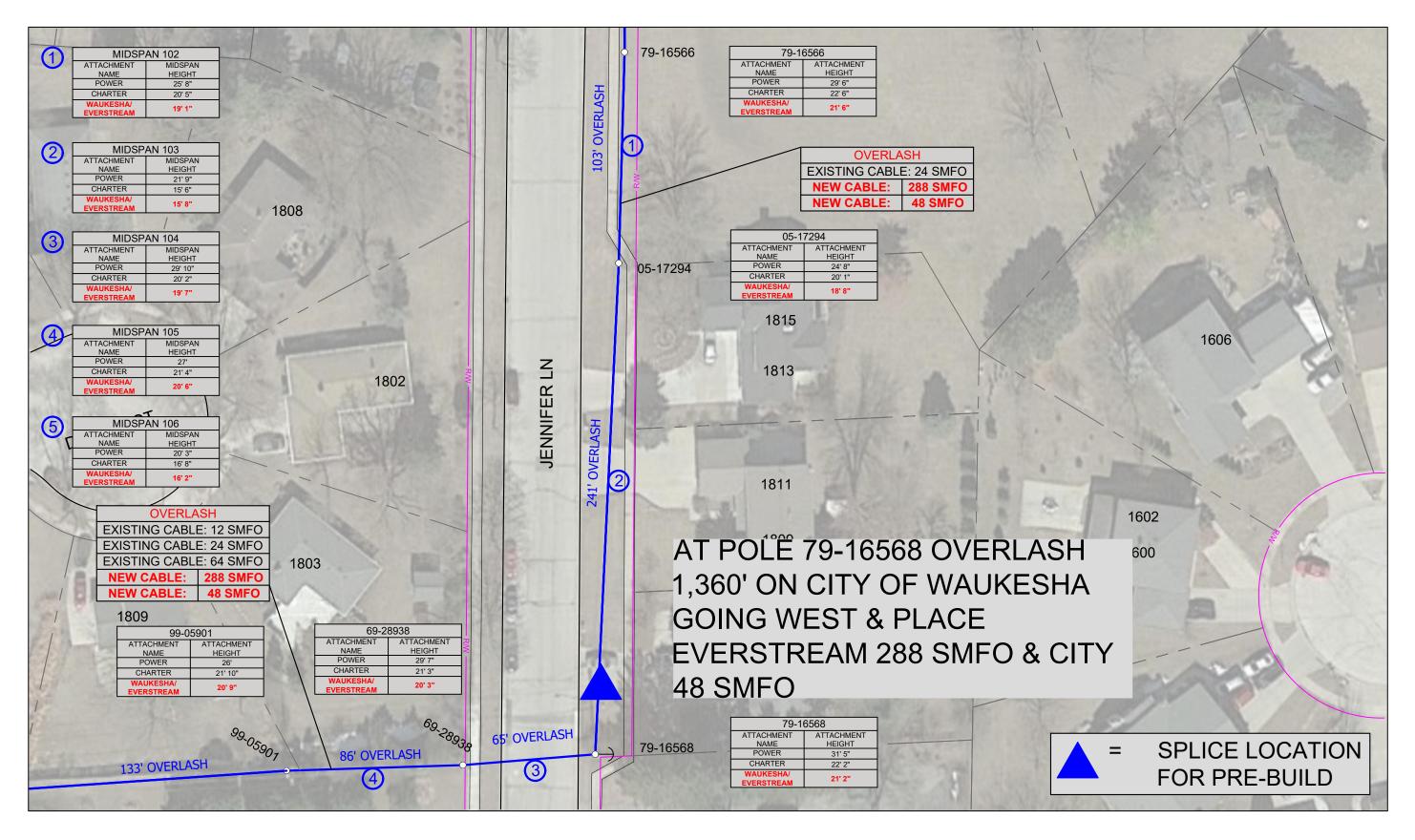






# Appendix 1 - Detailed Plan Drawings



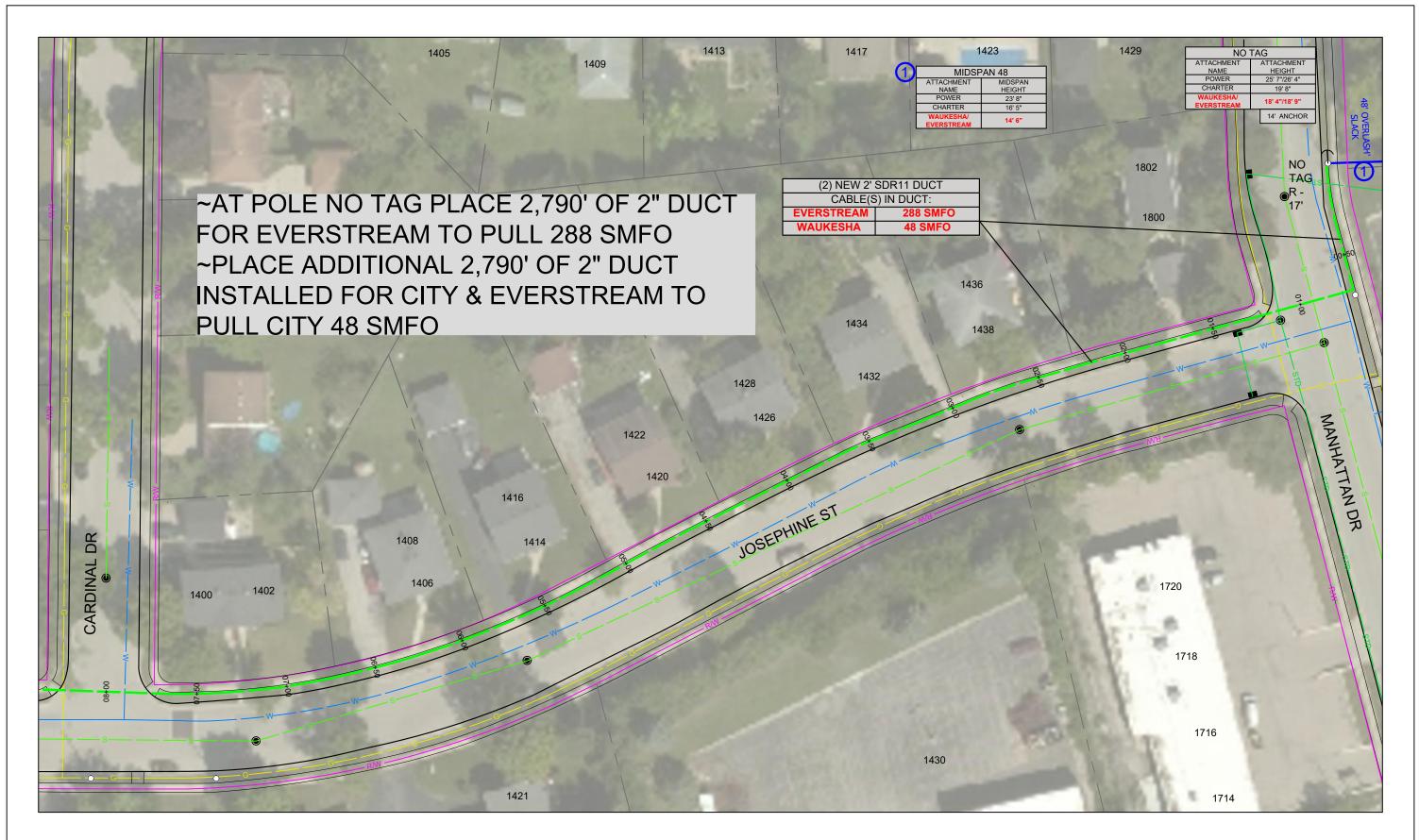




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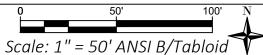
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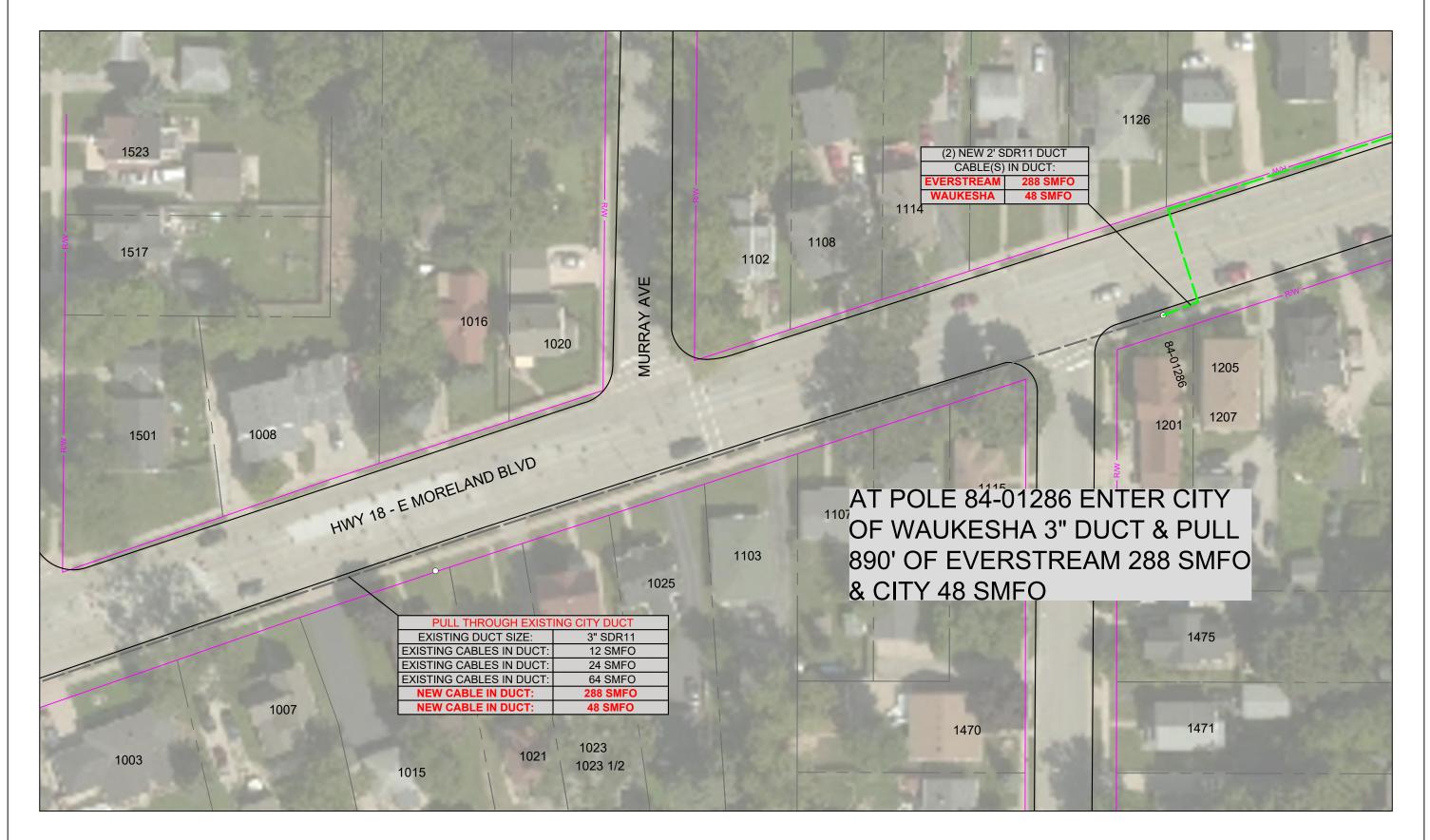




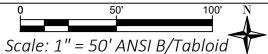


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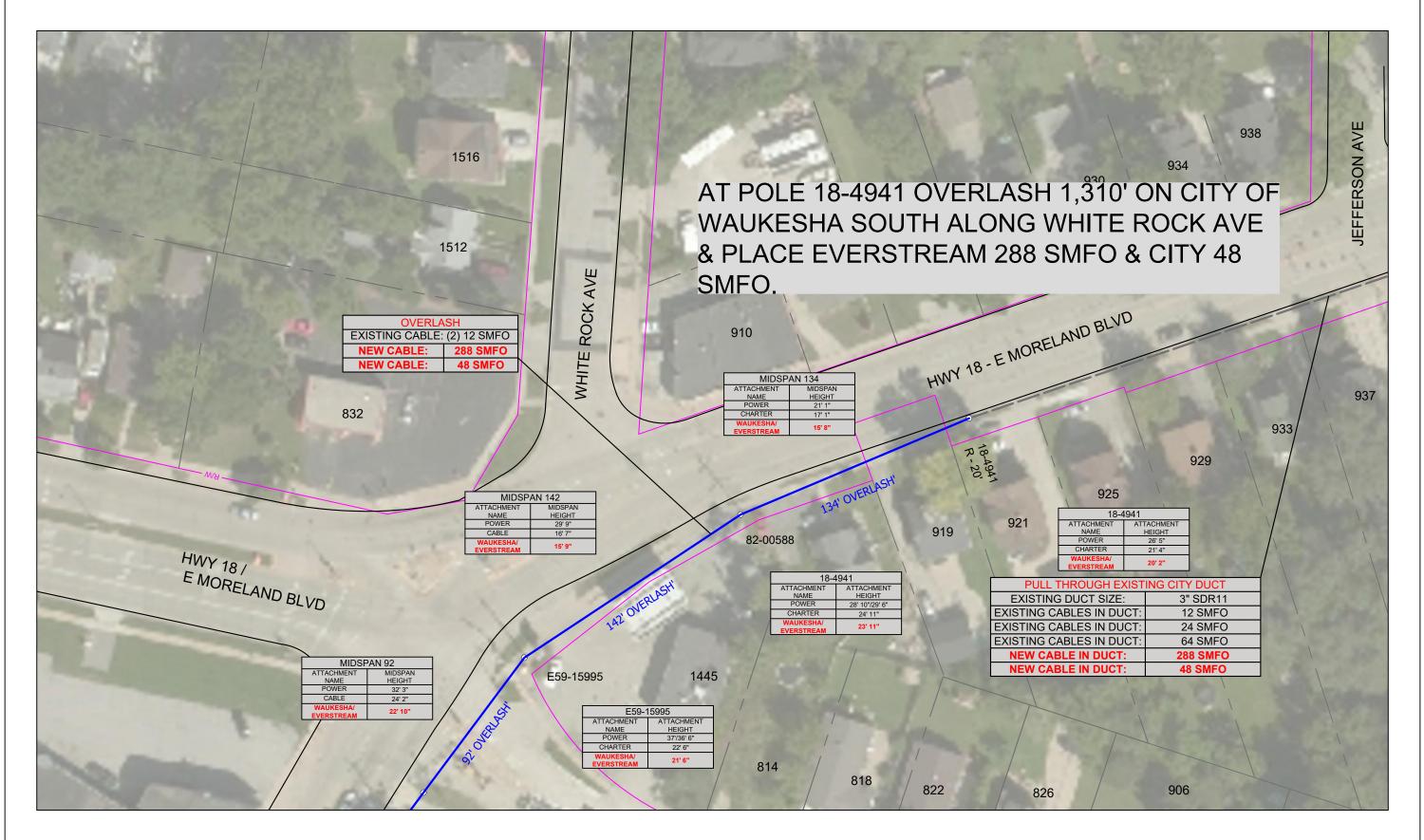






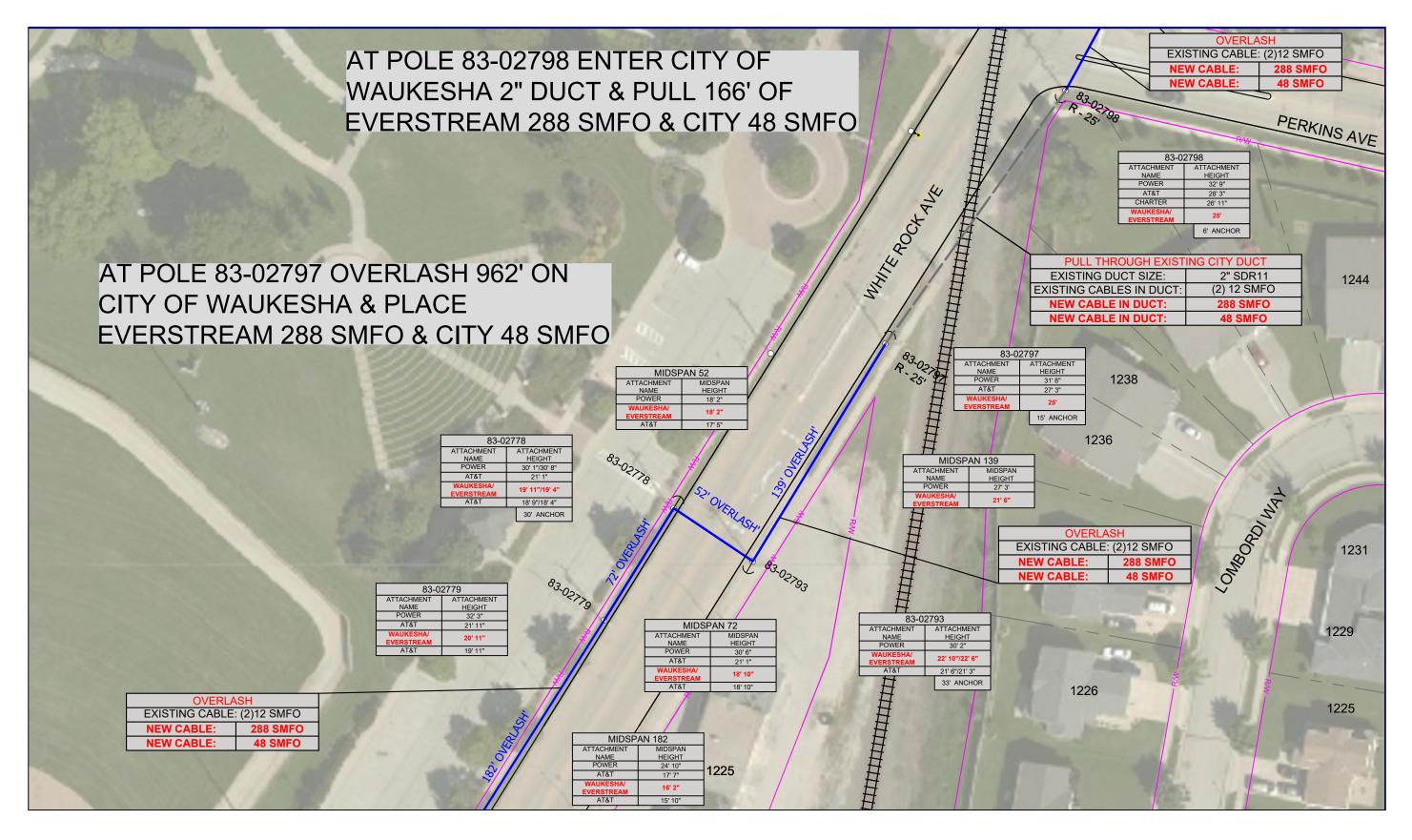


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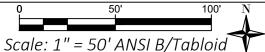


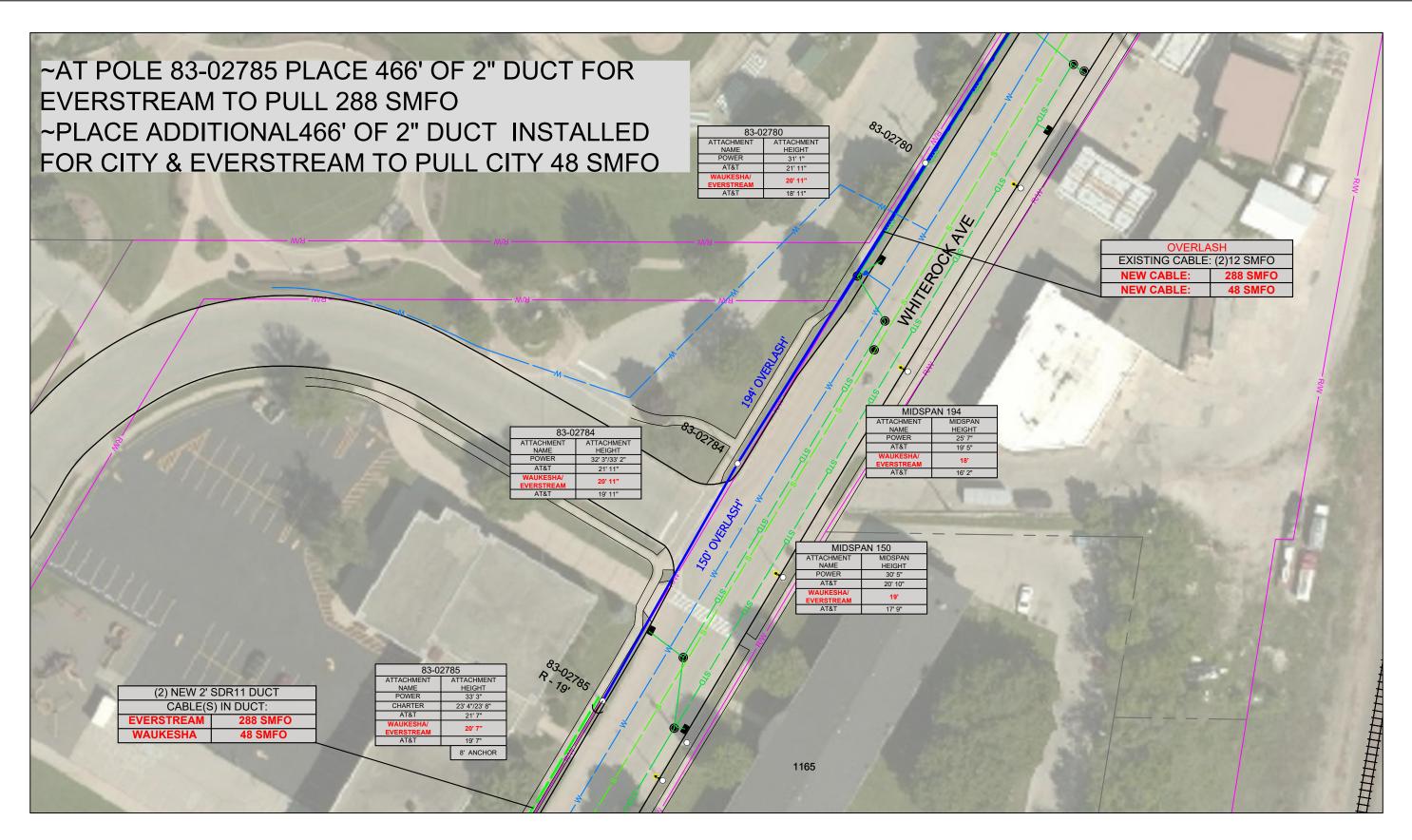




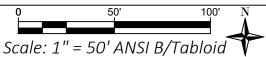


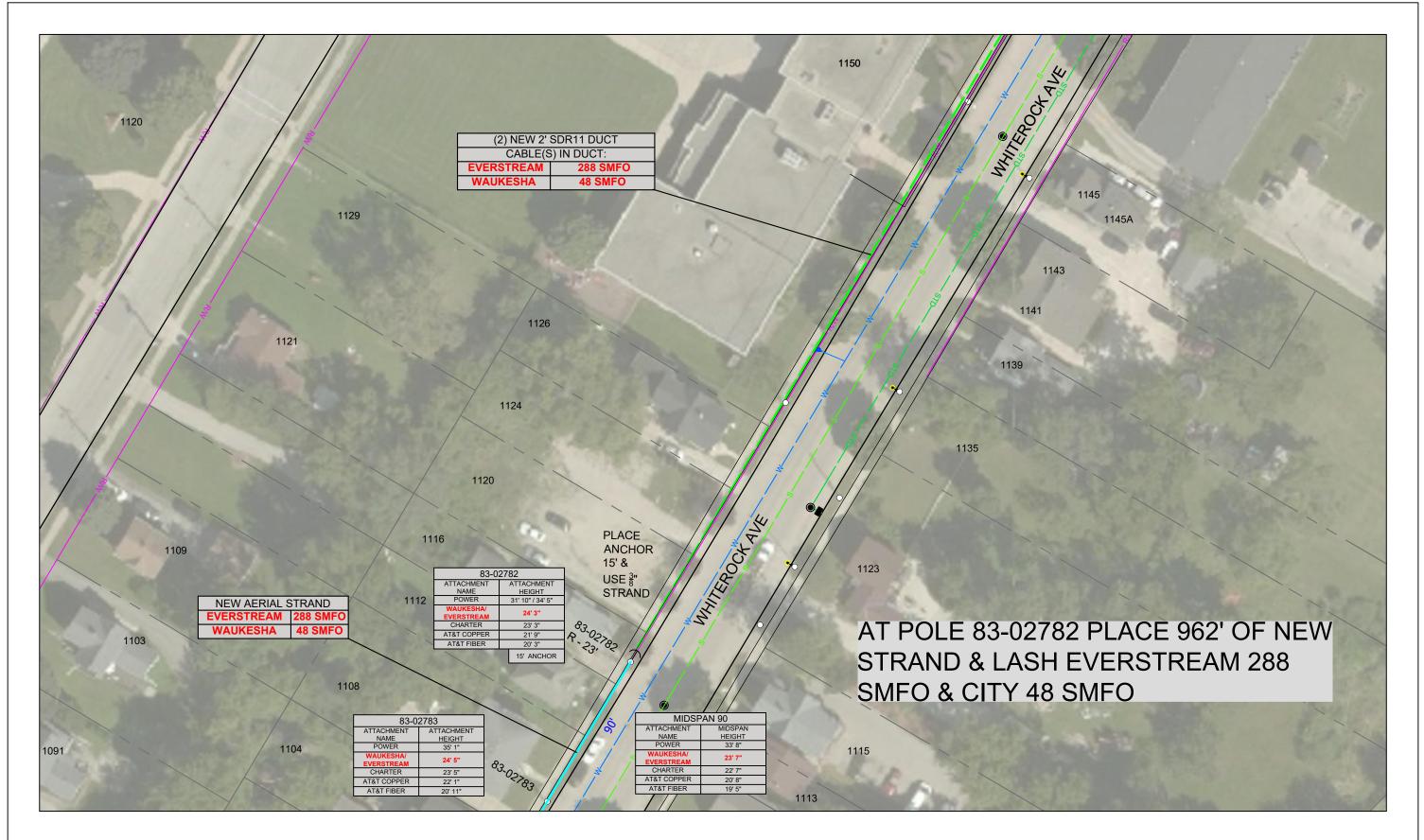




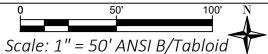


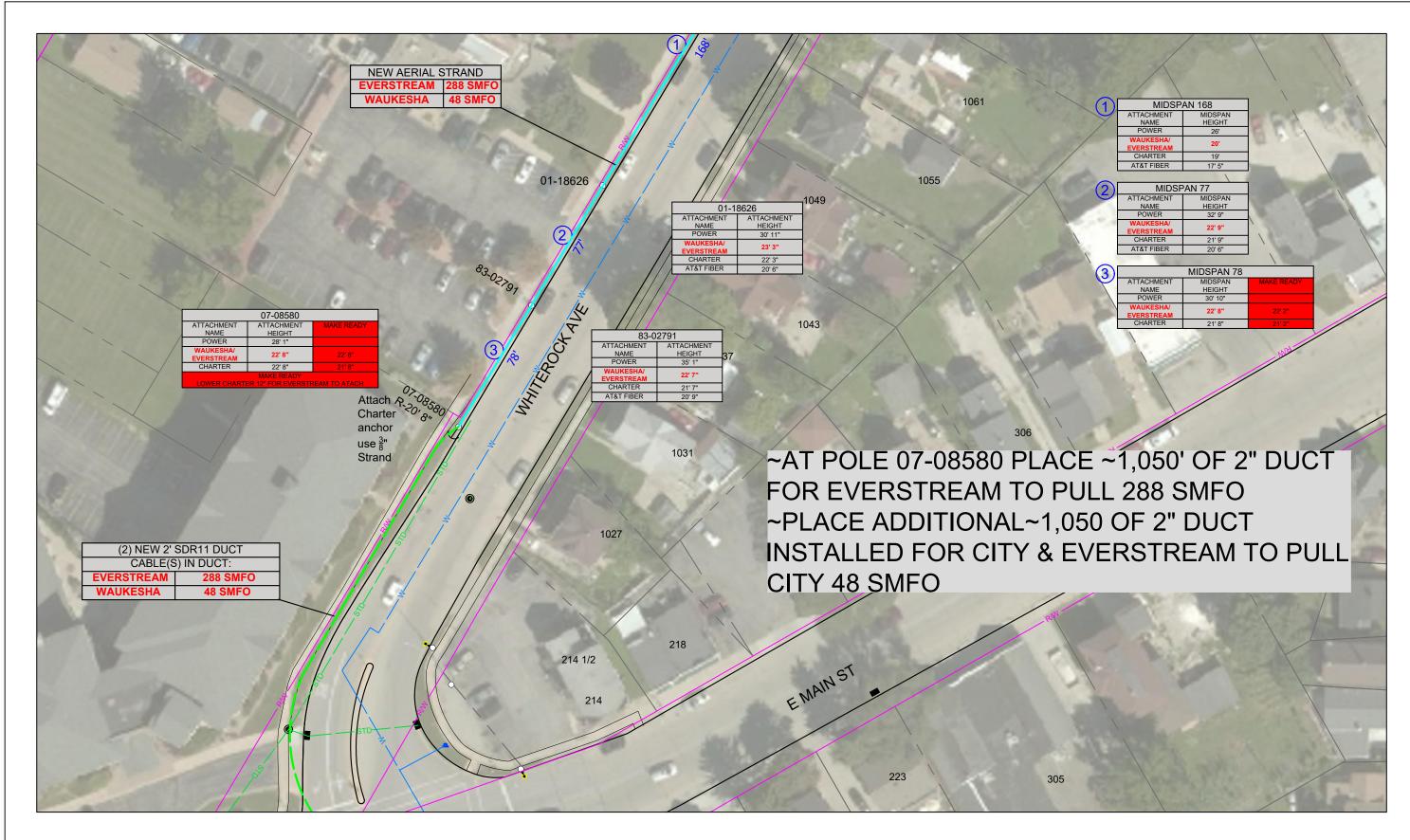




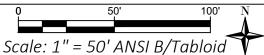


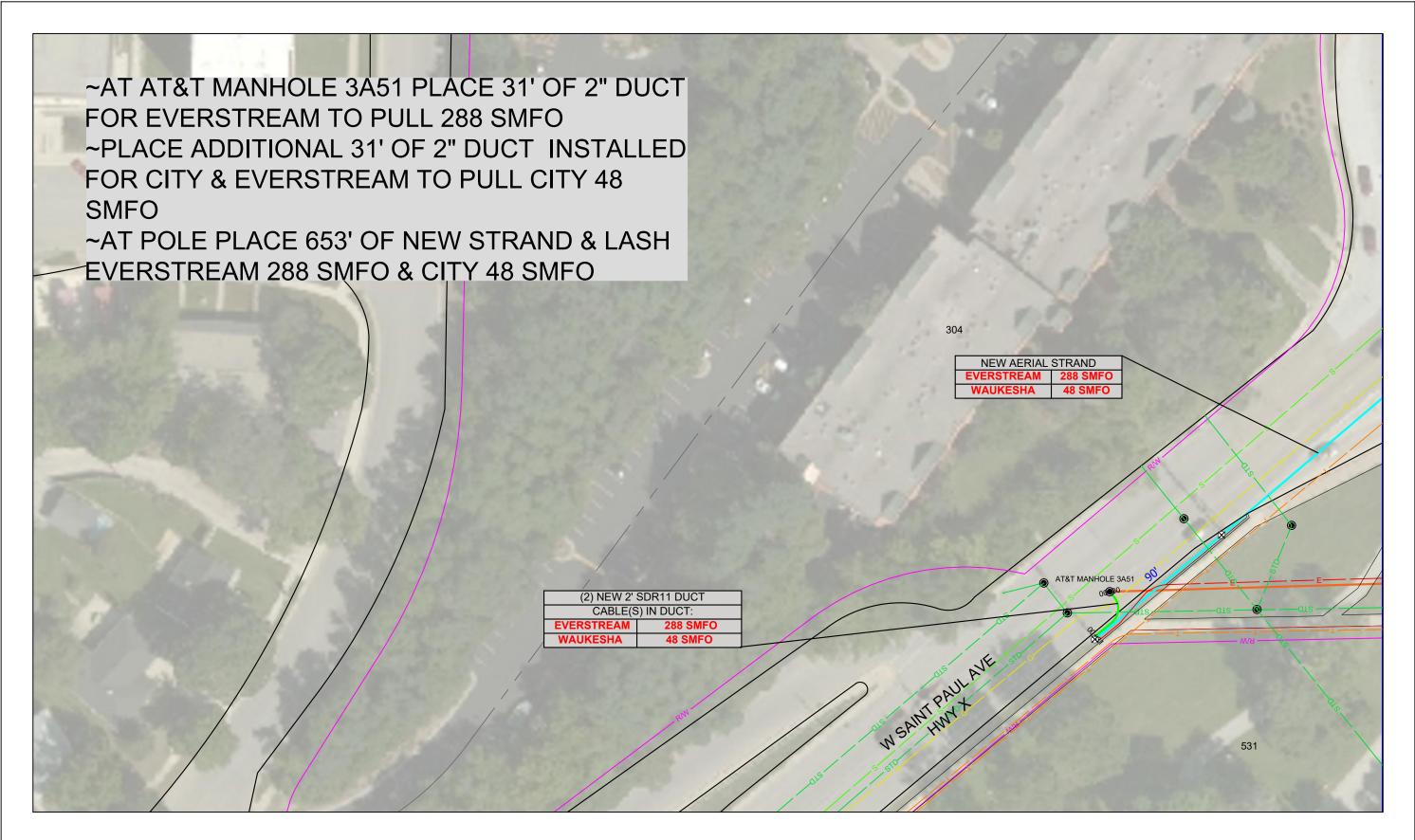




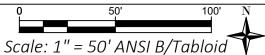


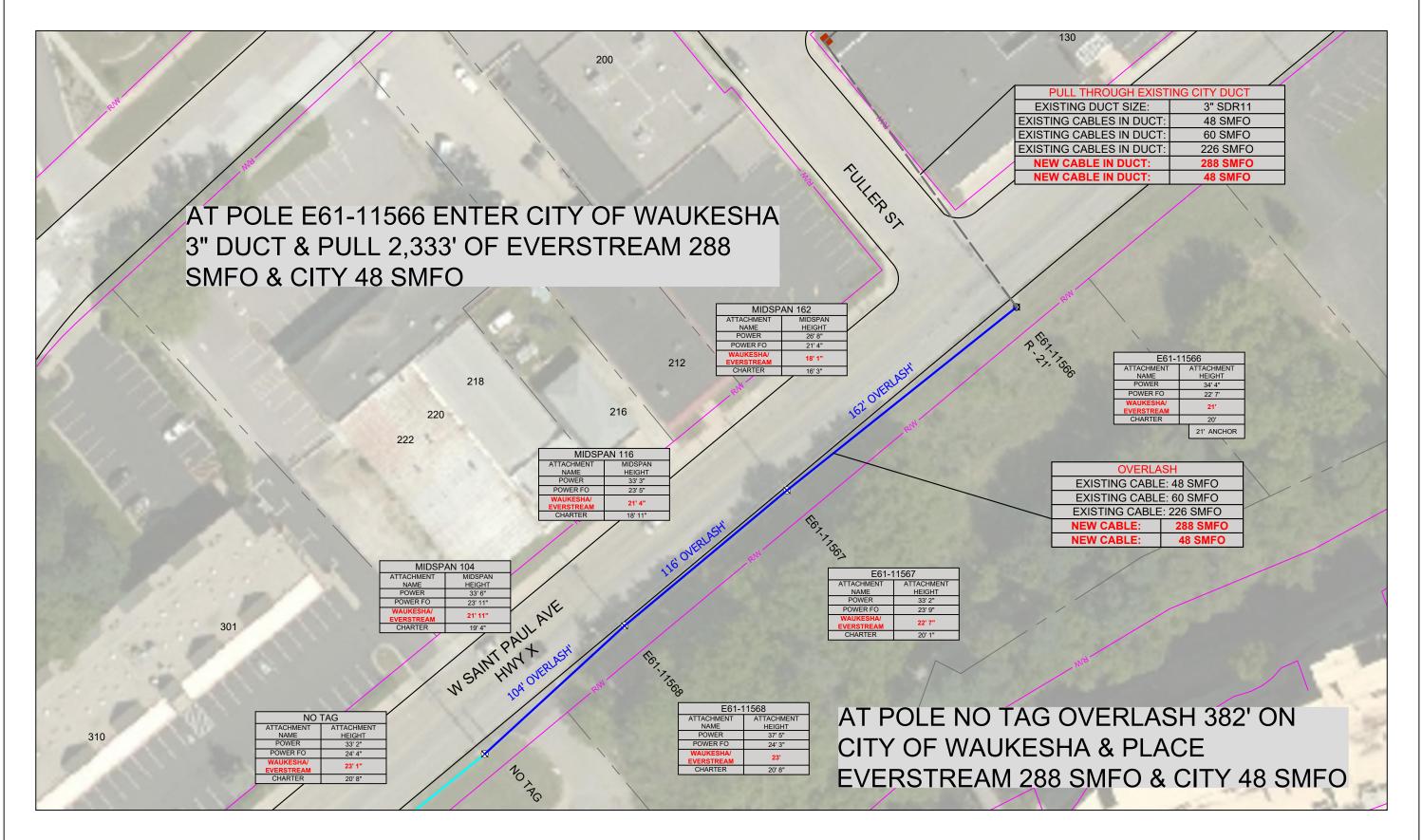




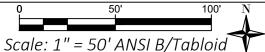


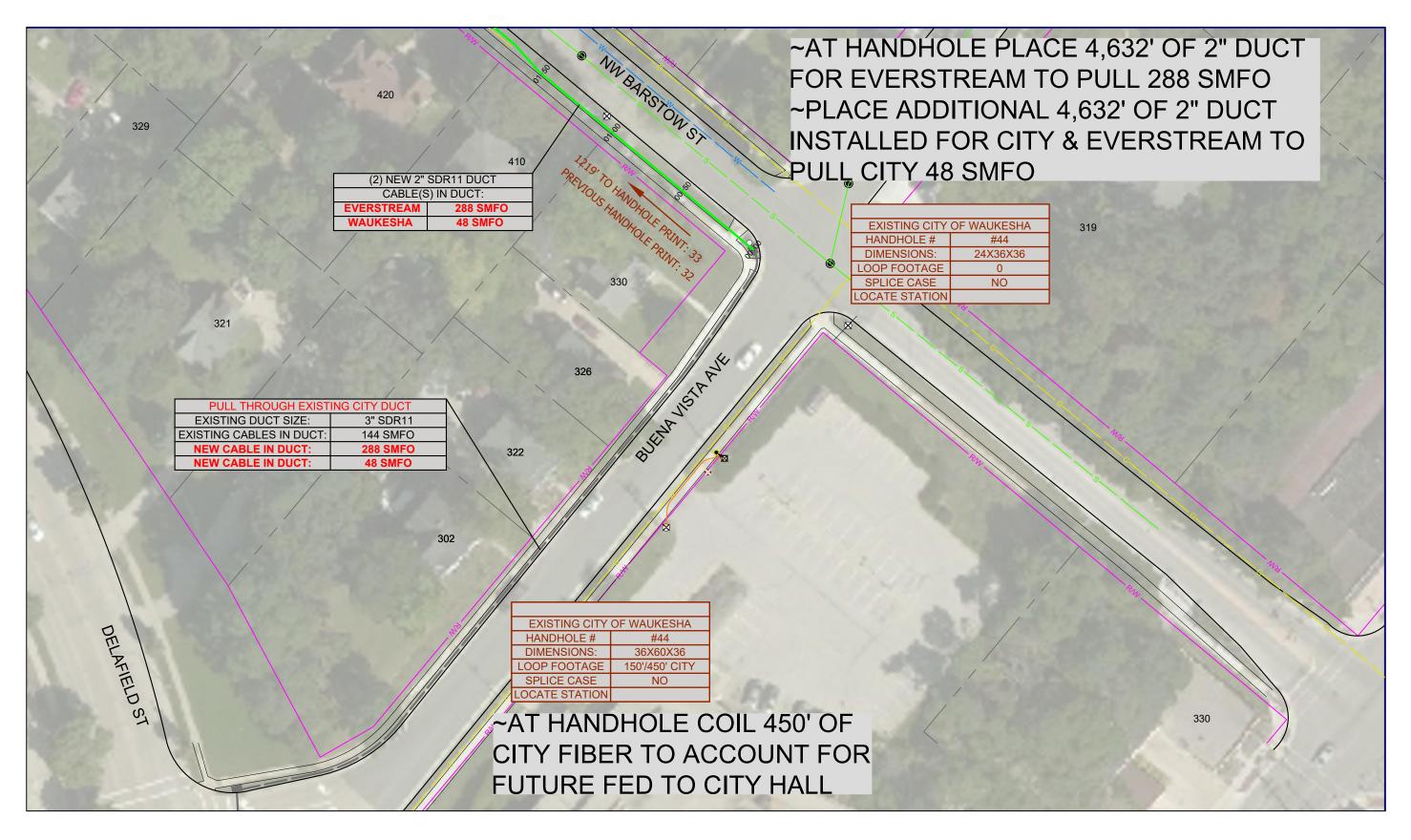




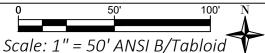


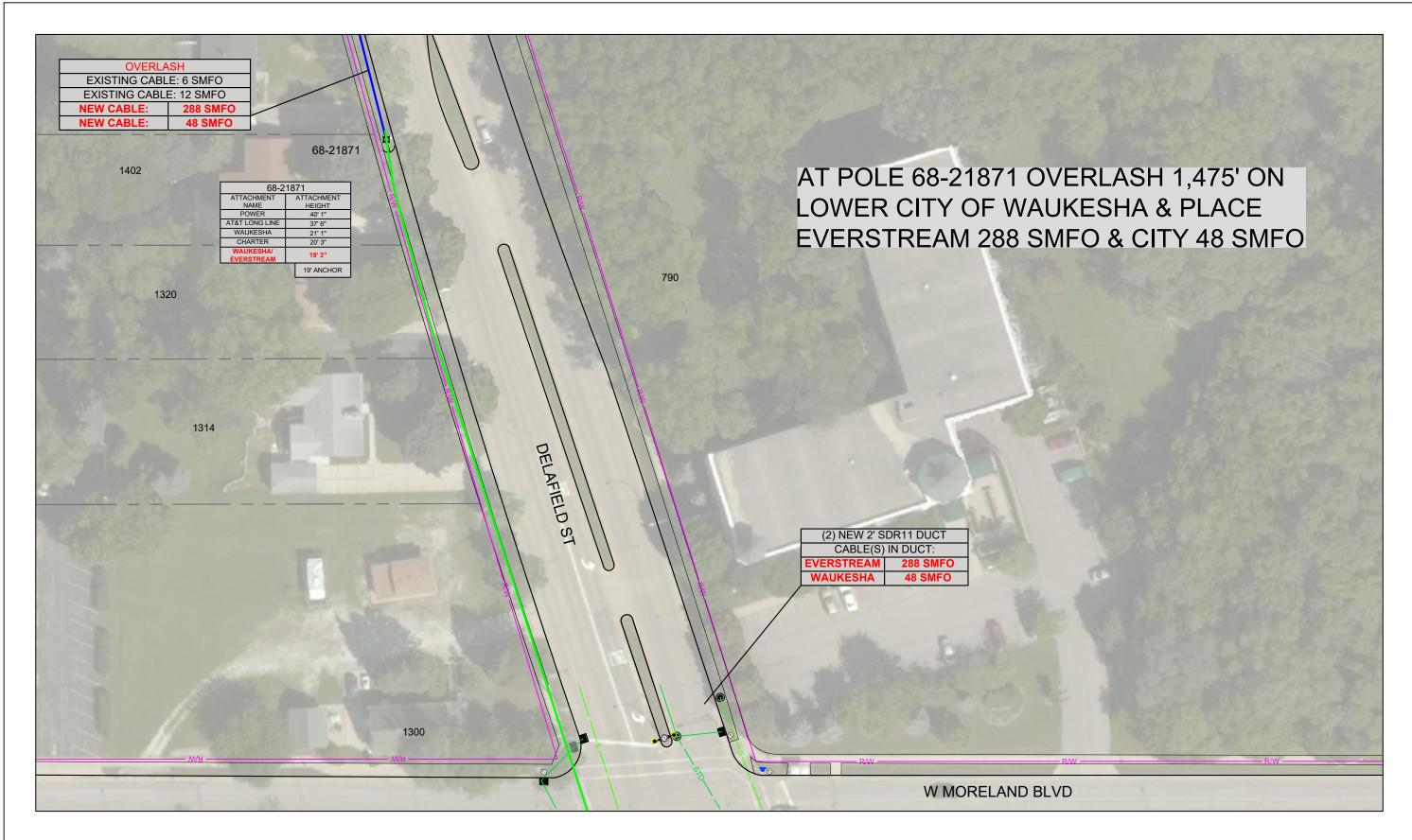








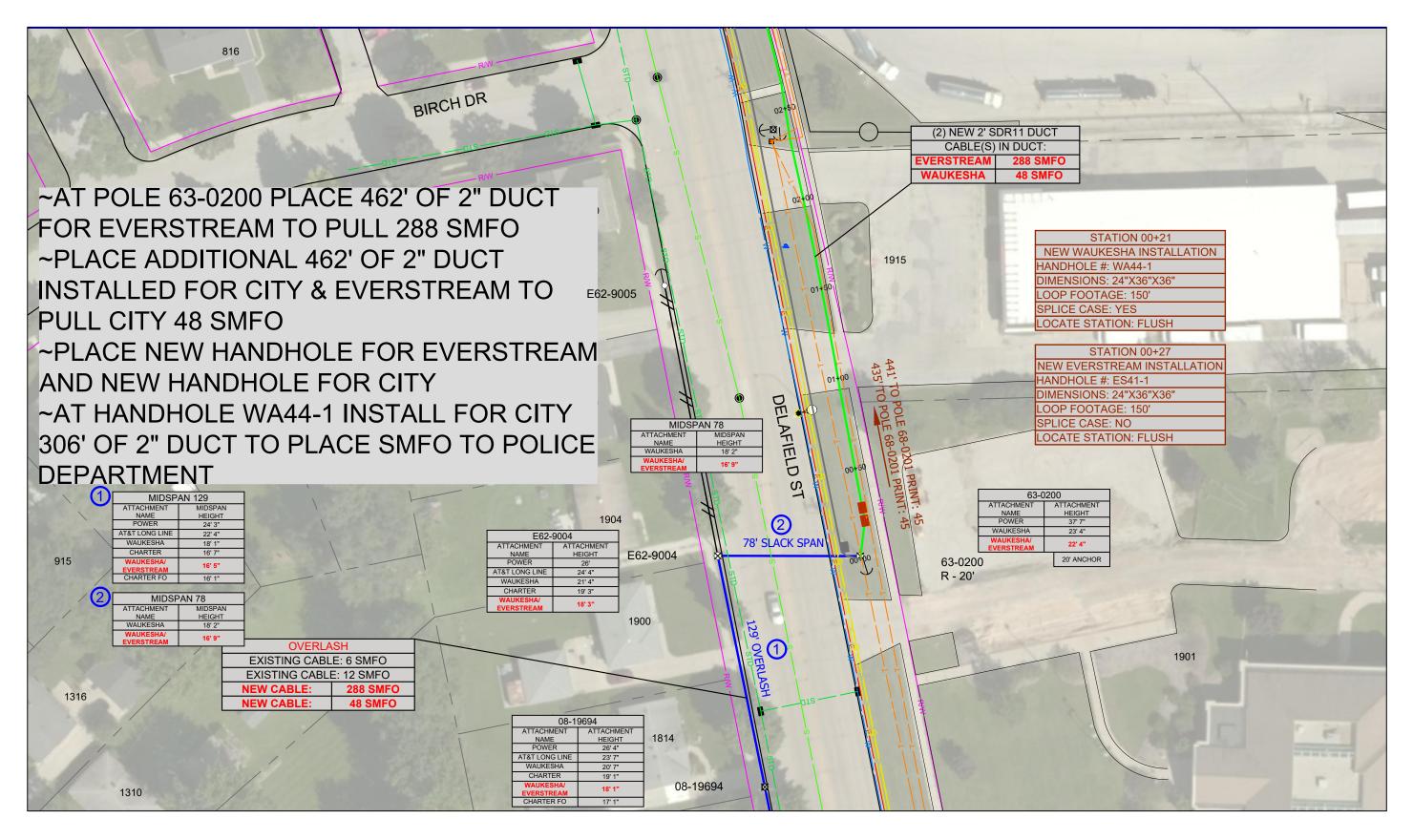




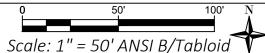


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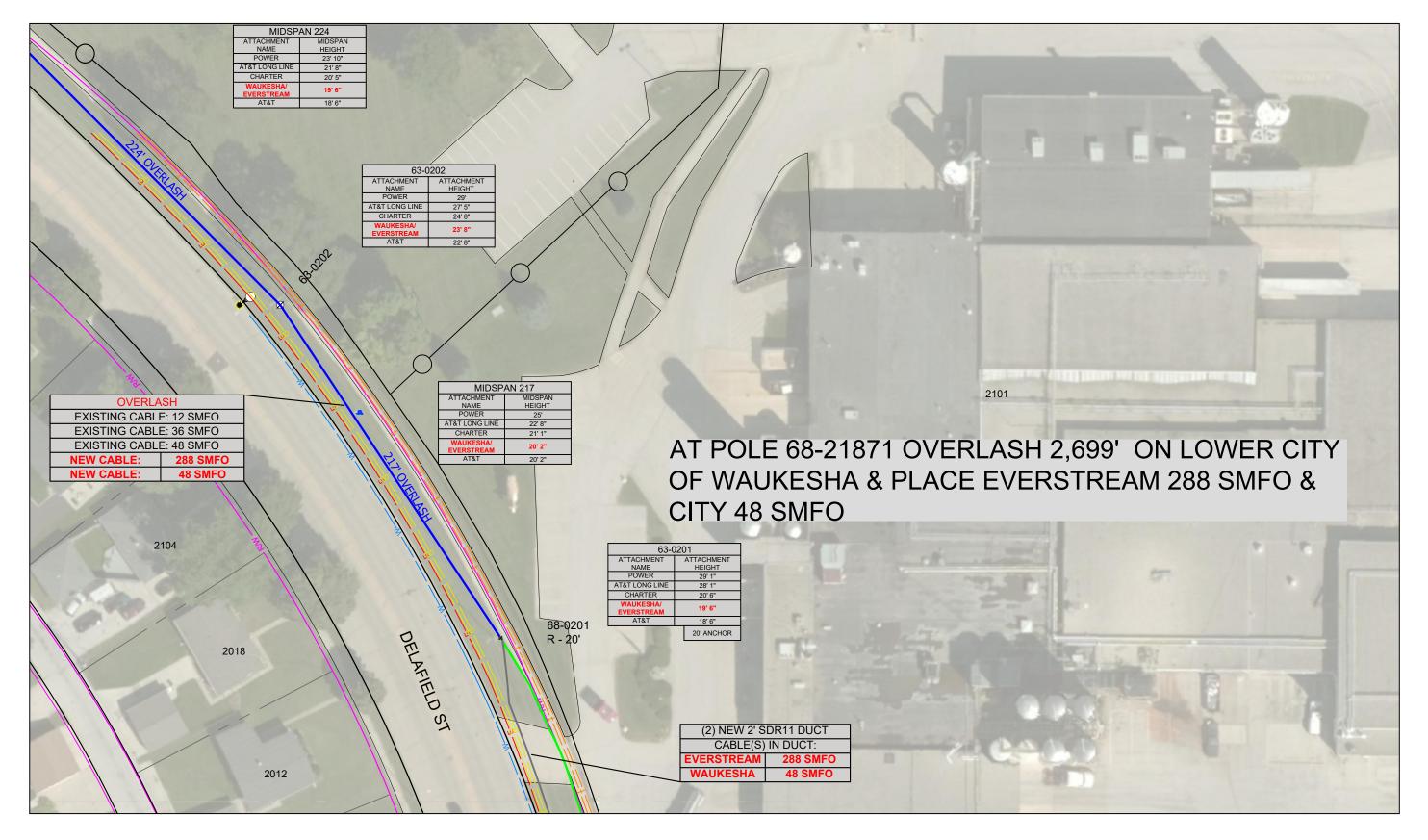




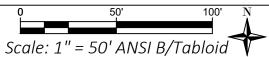


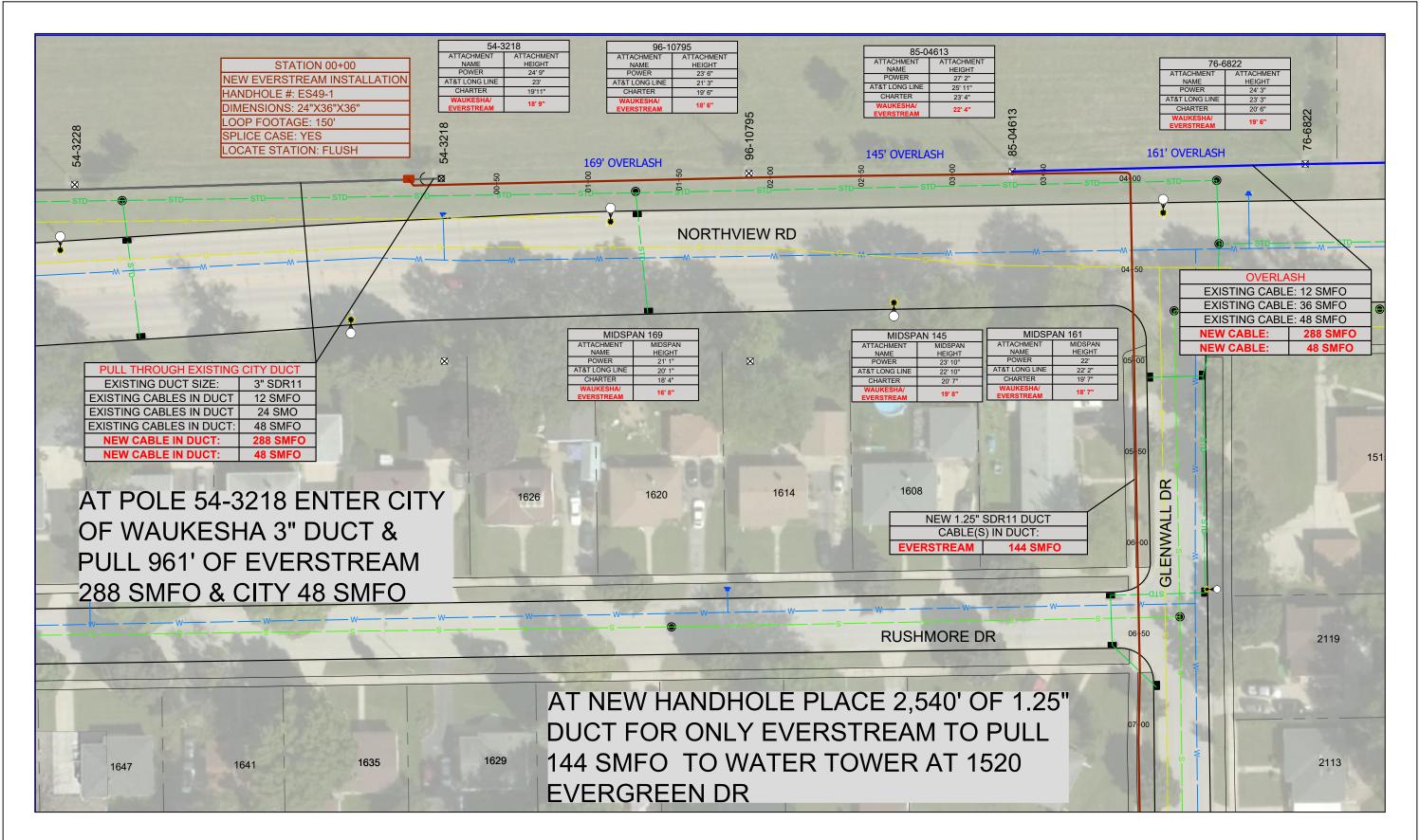


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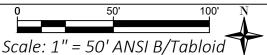


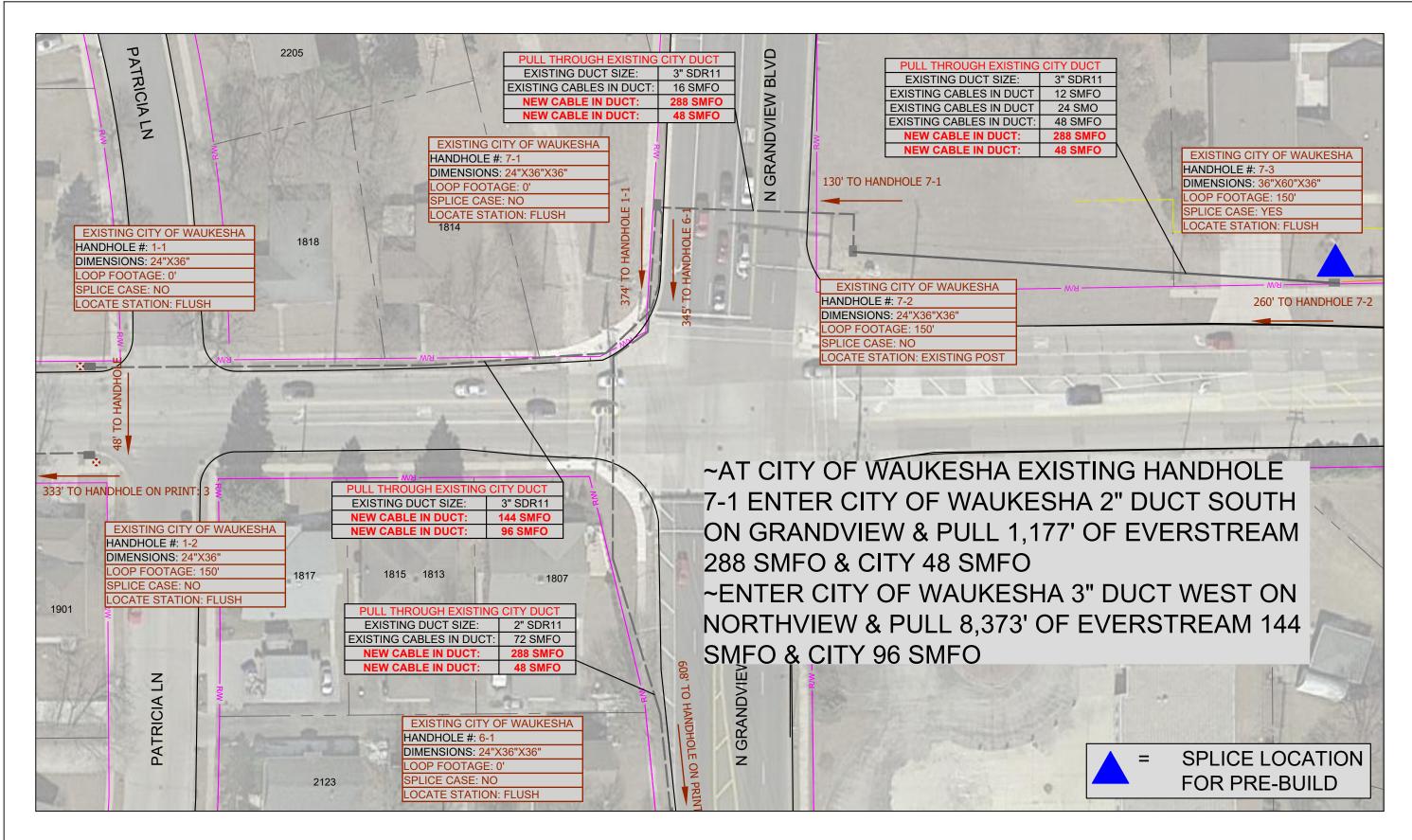




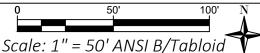


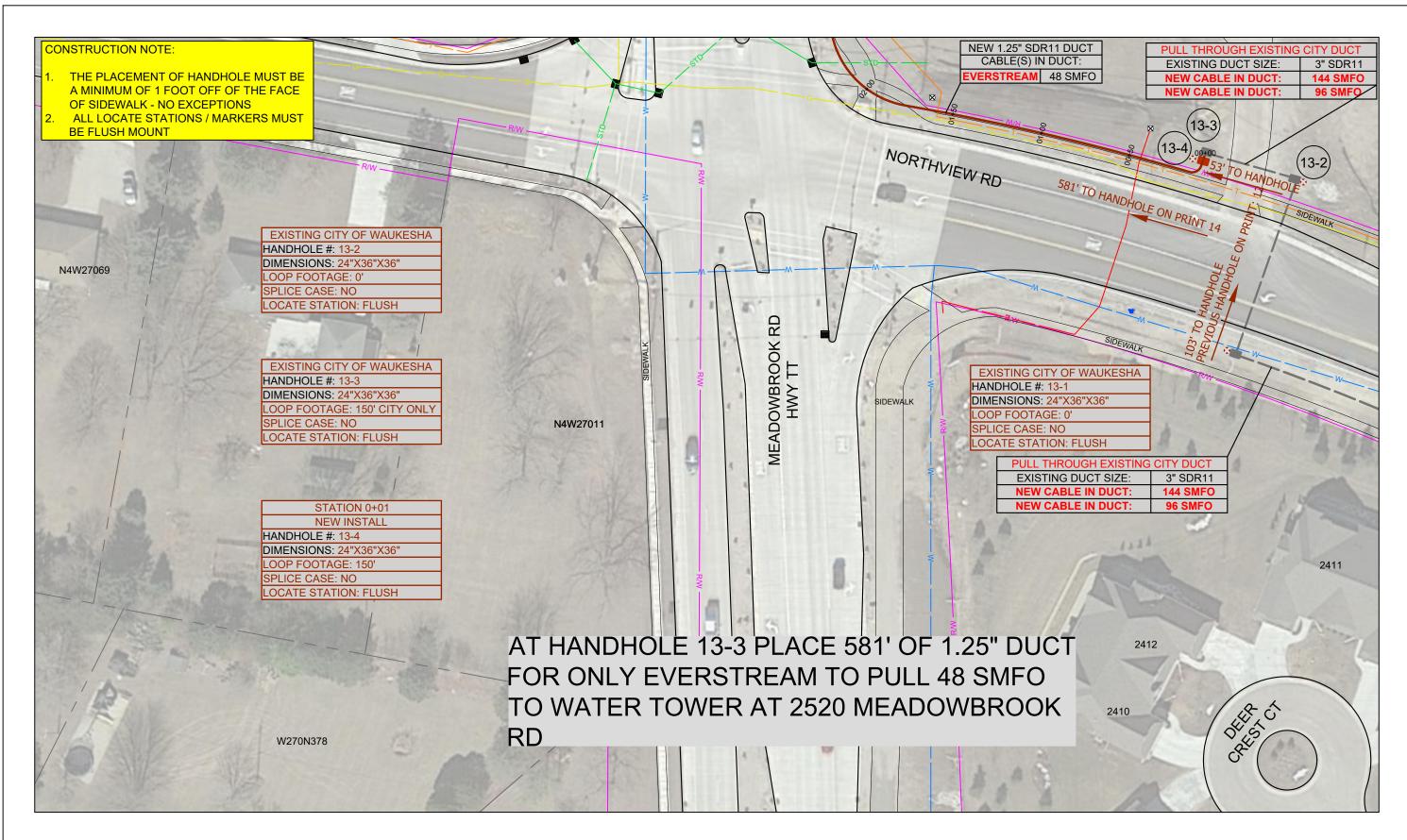




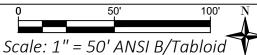


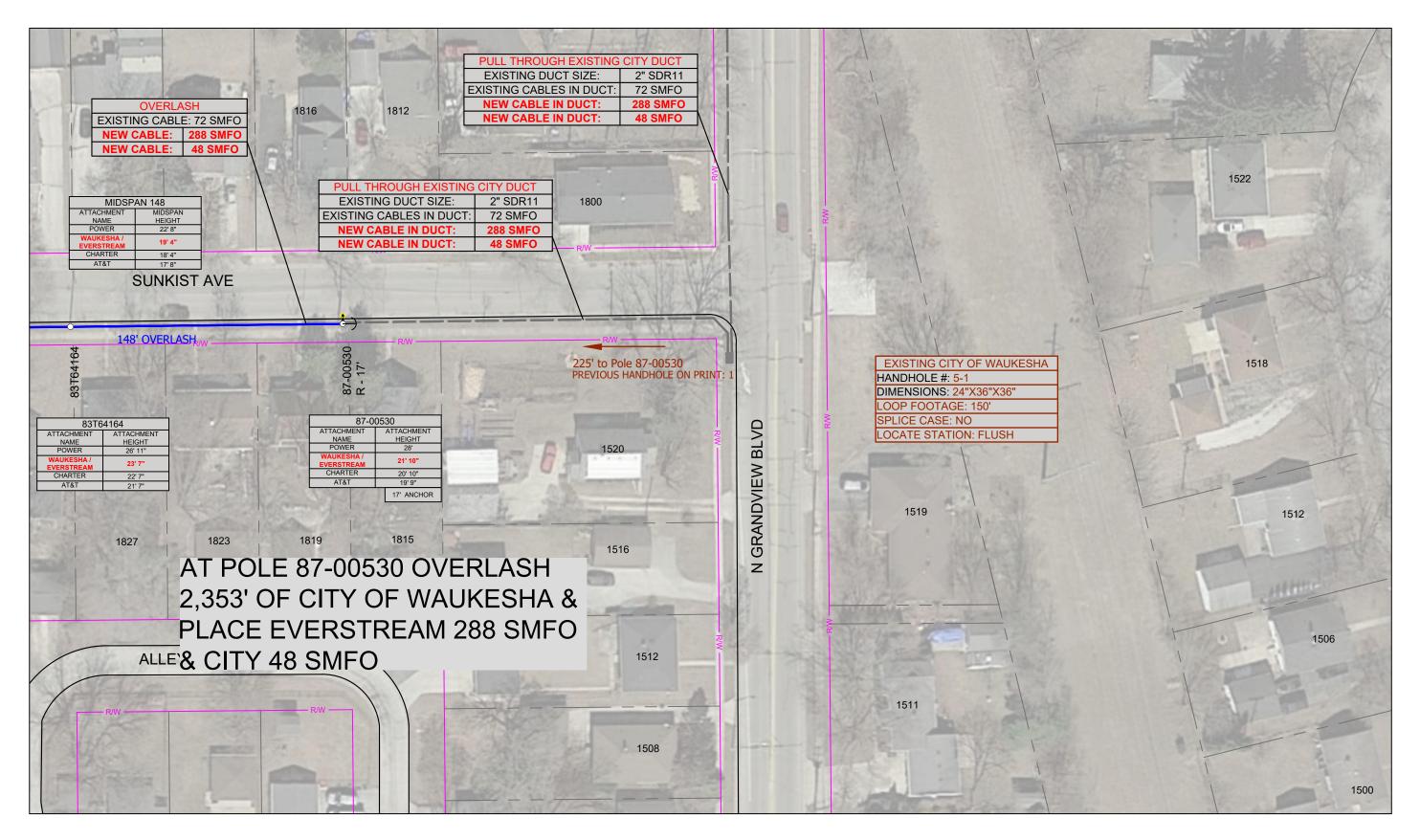






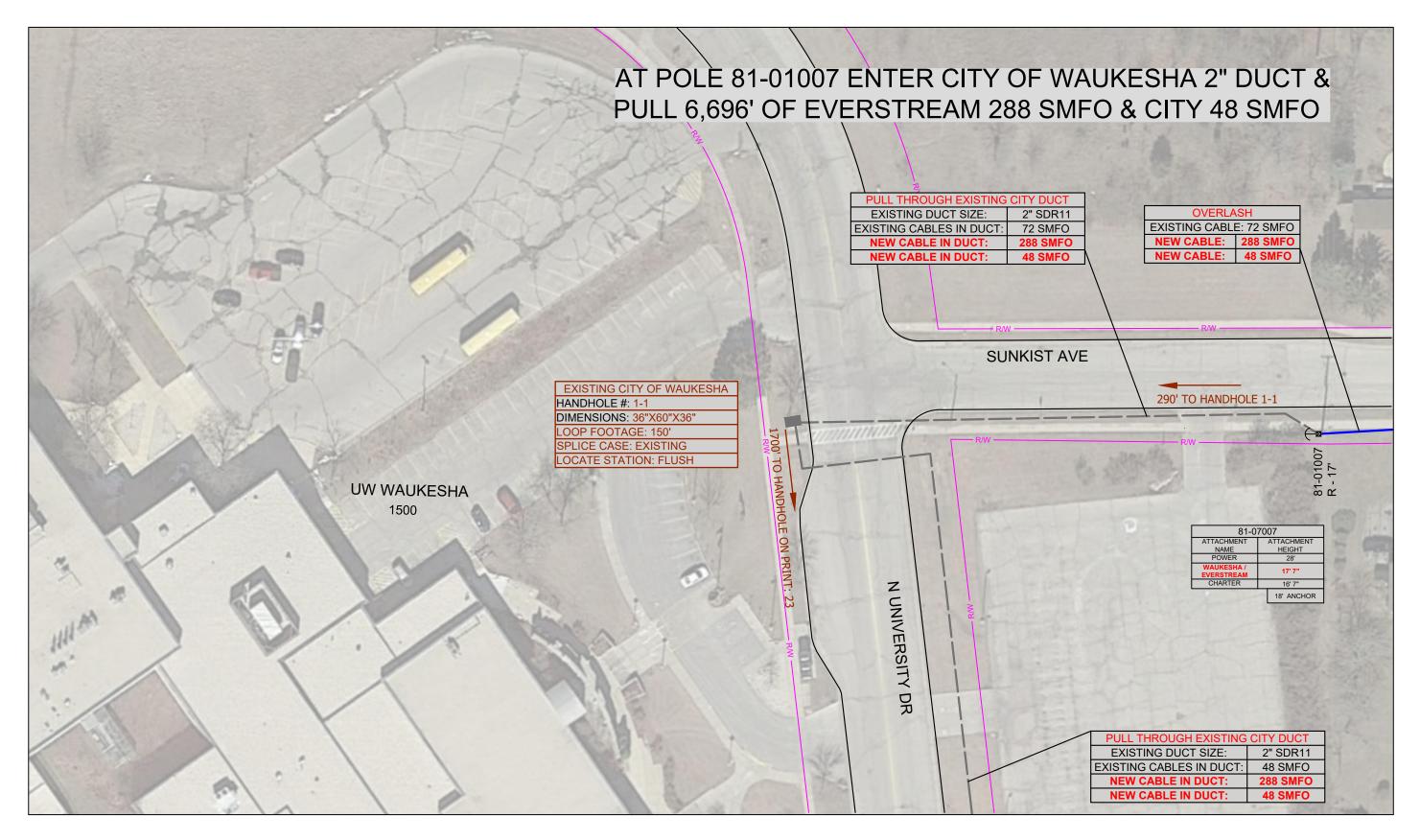






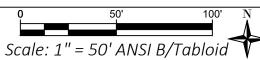


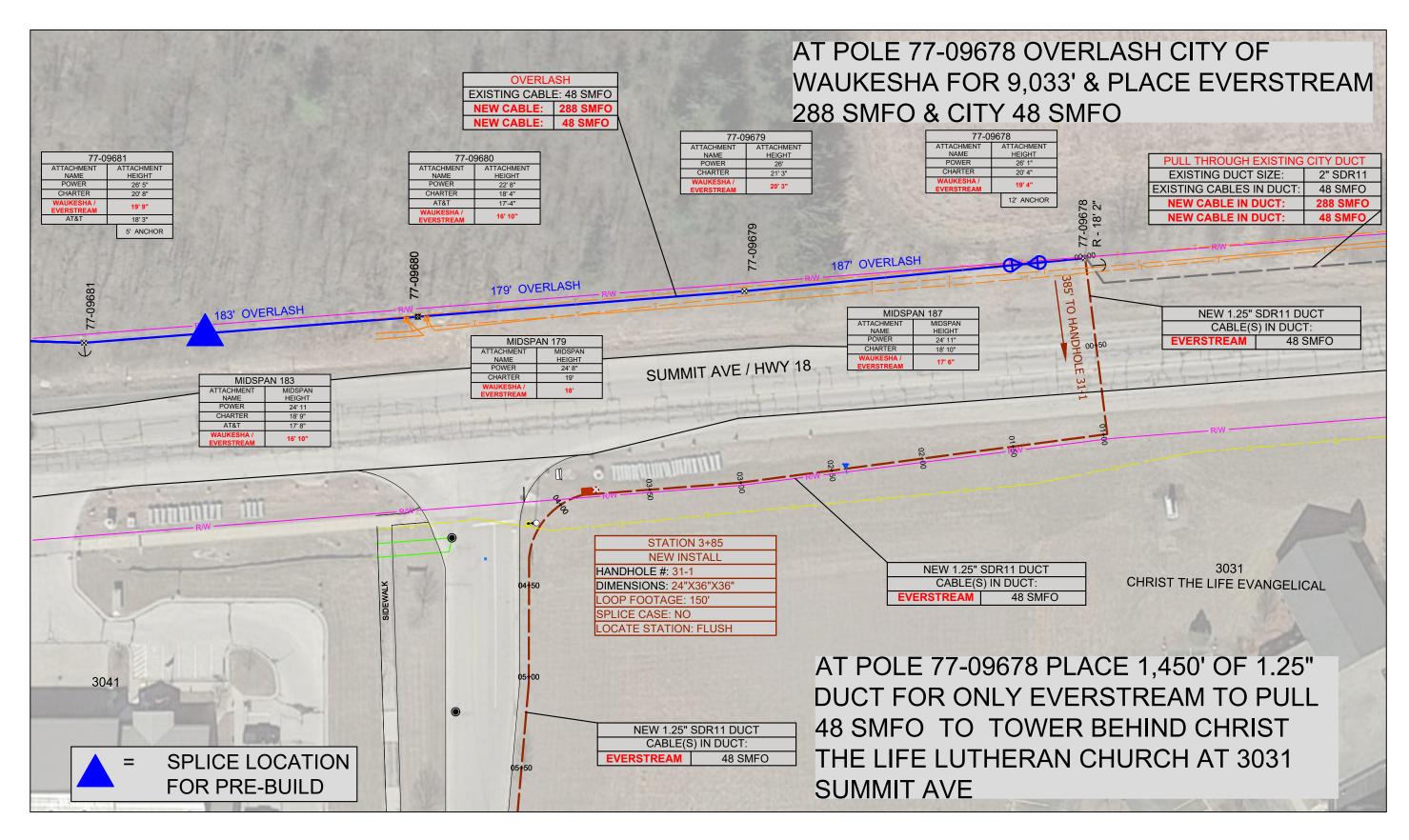




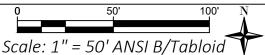


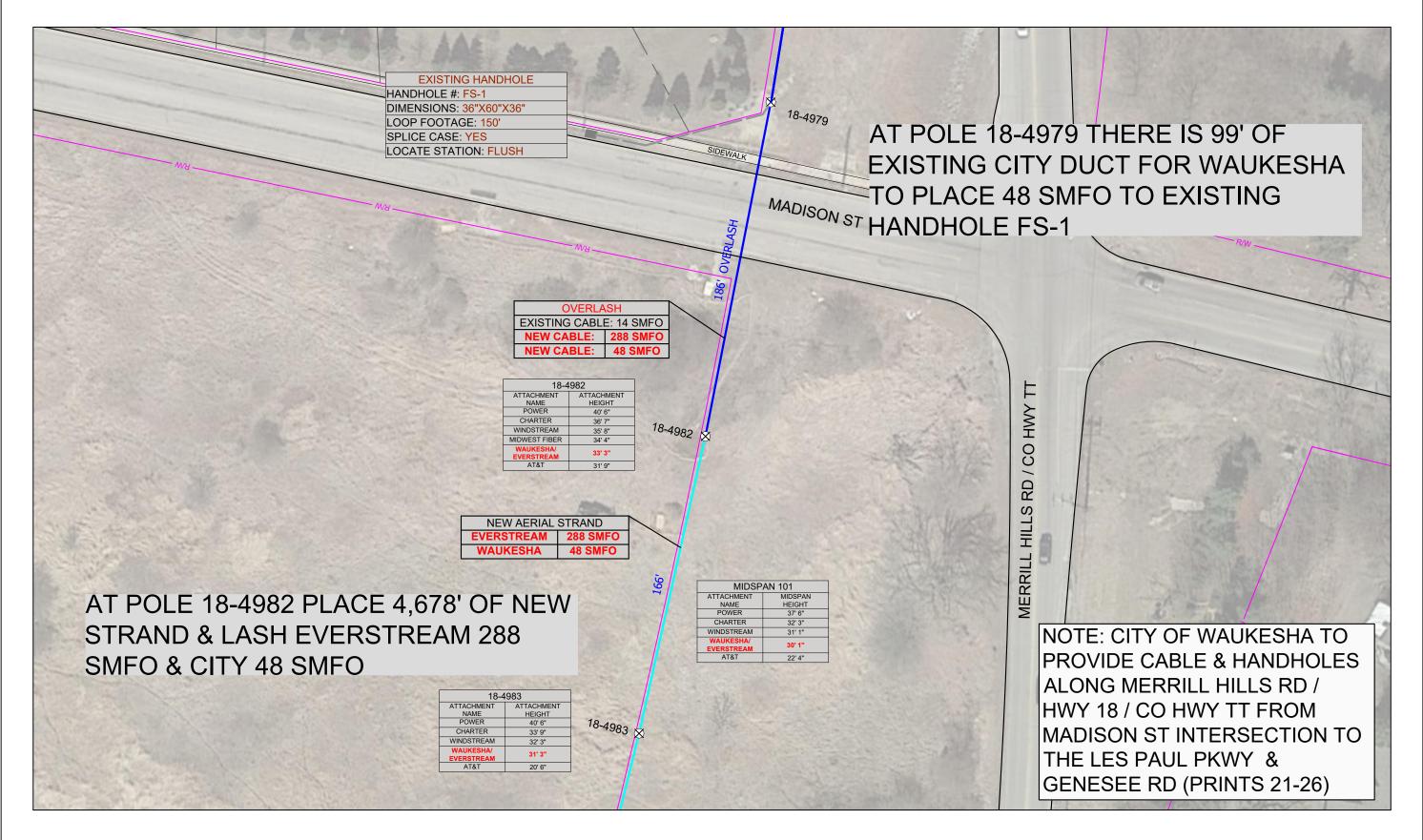
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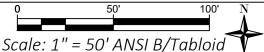


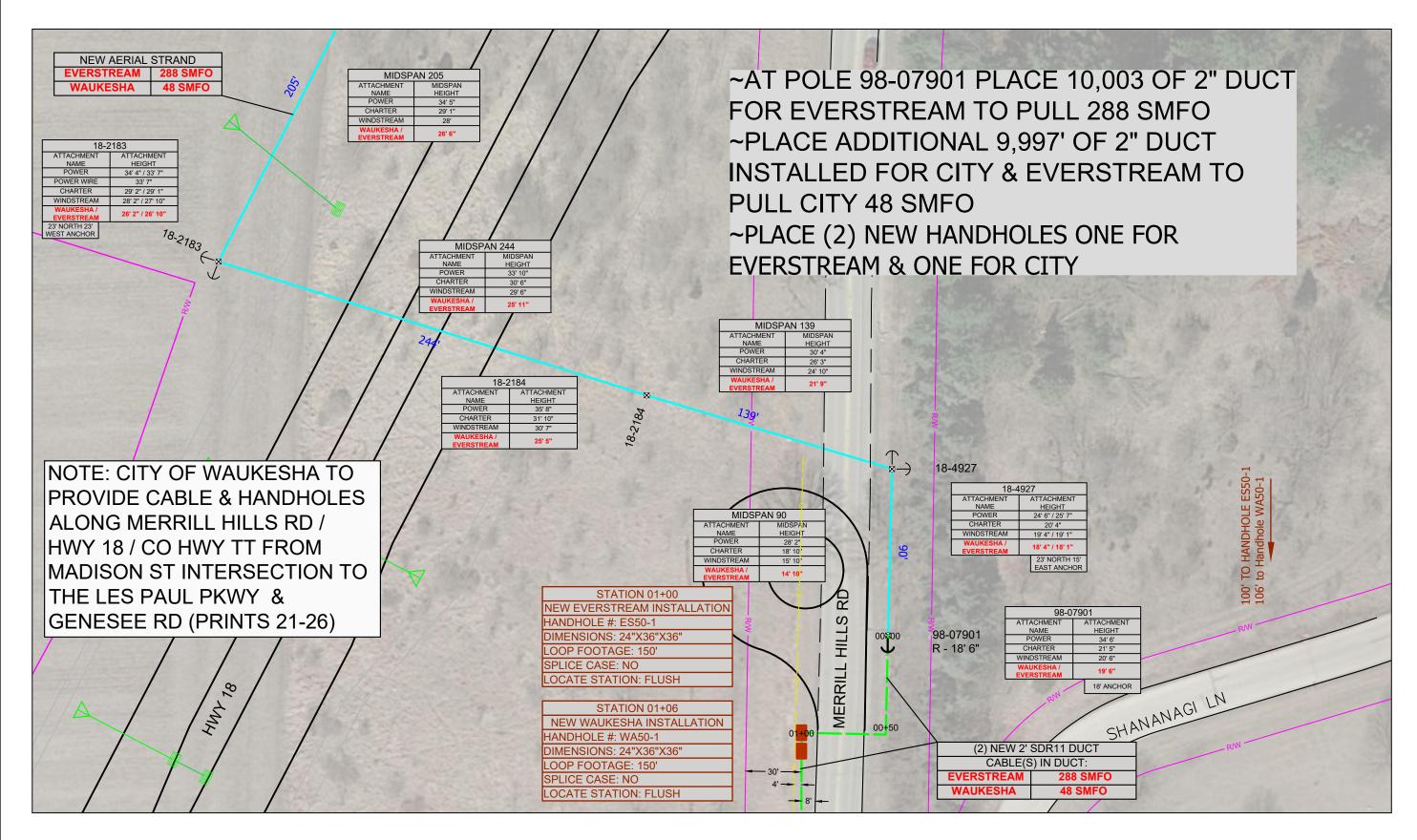




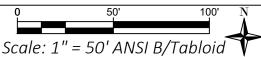


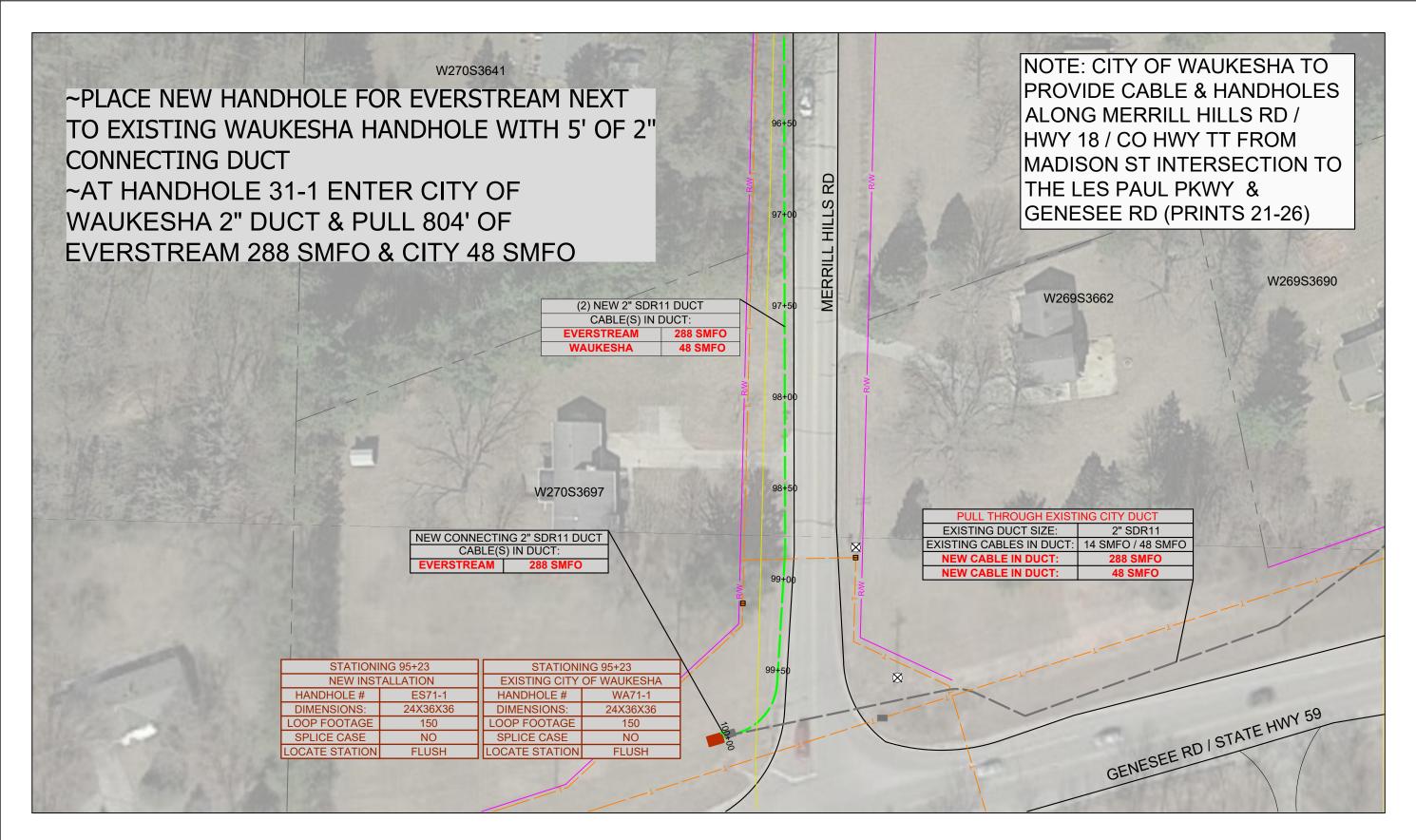




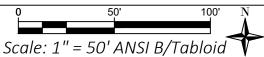


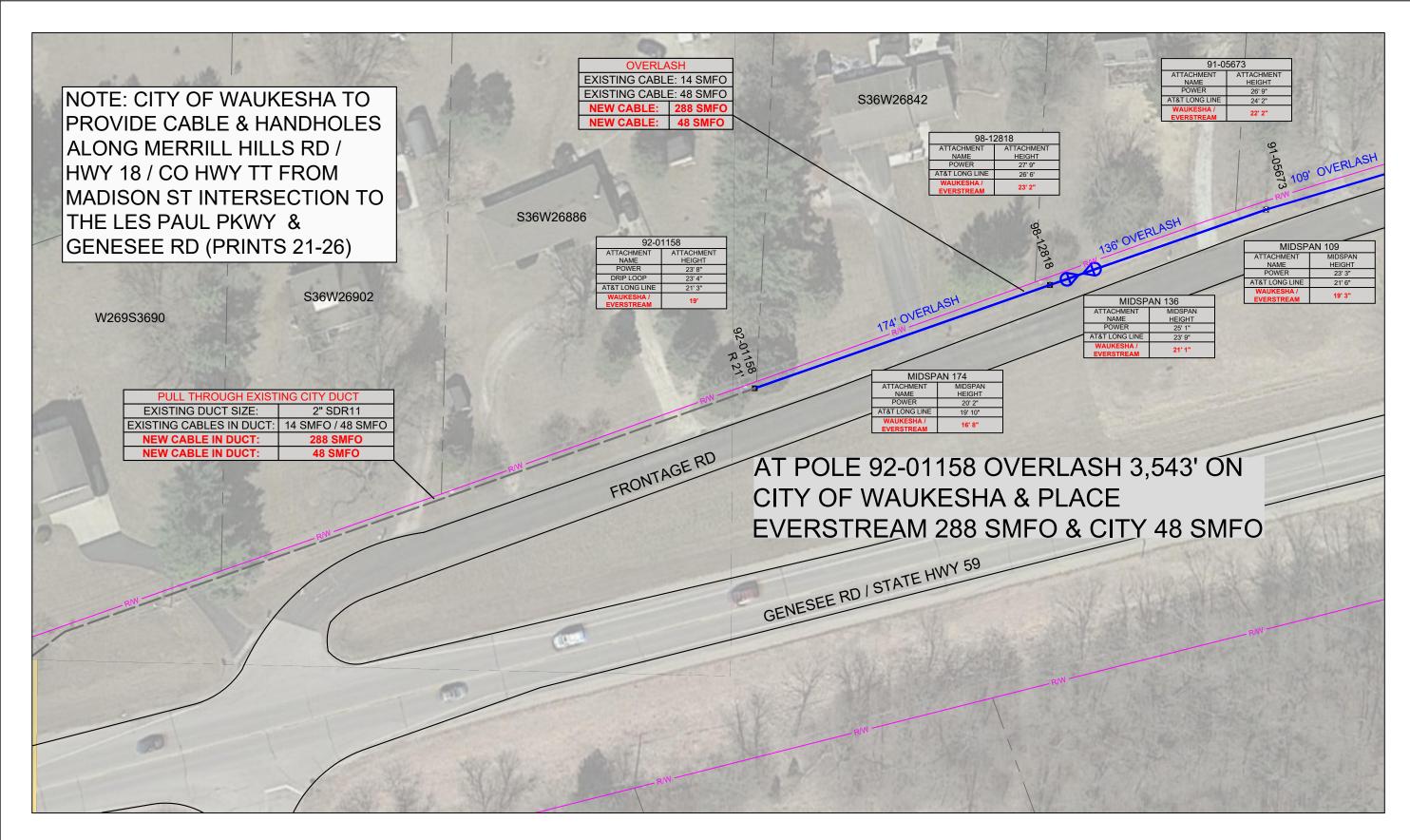








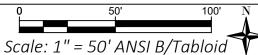


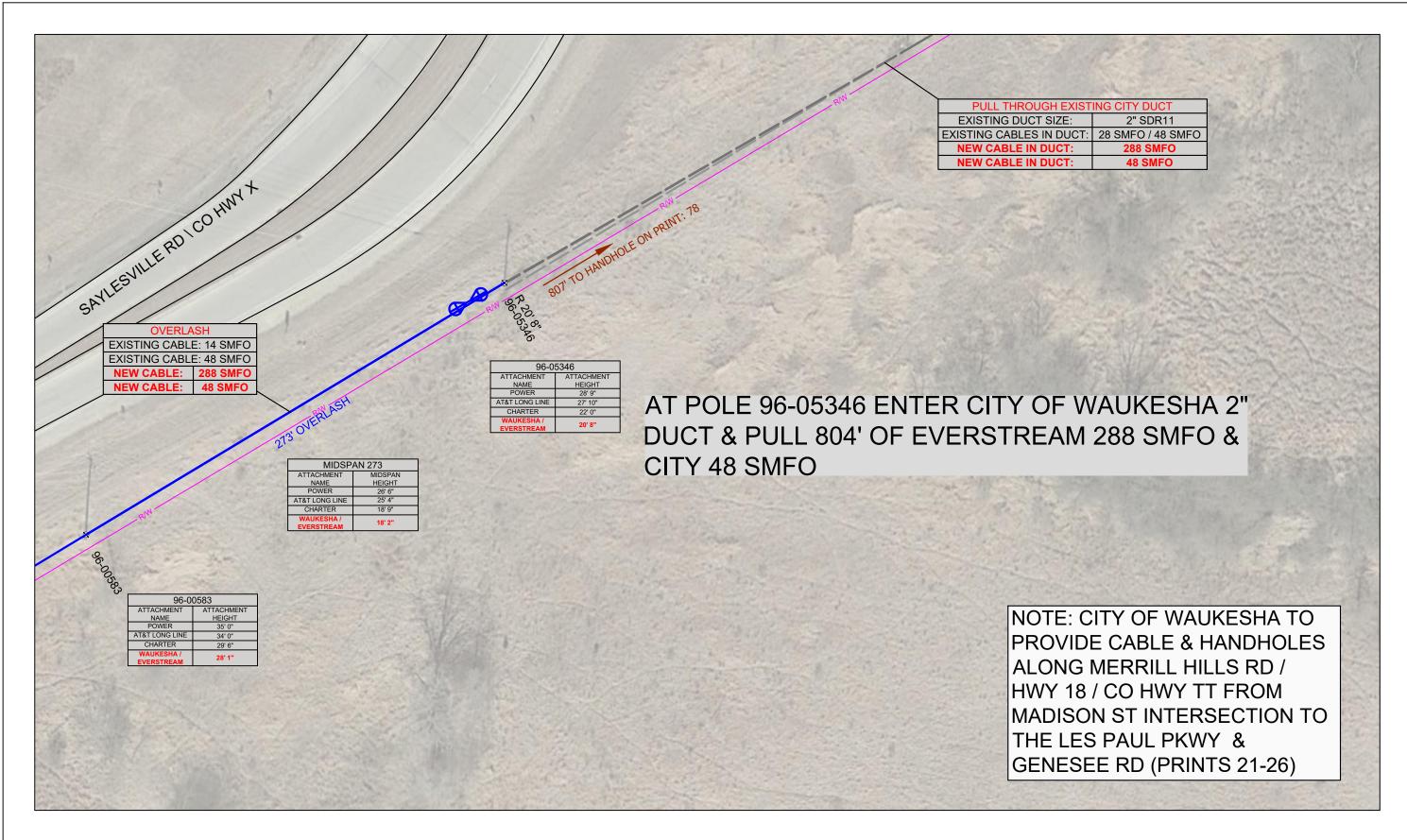




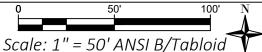
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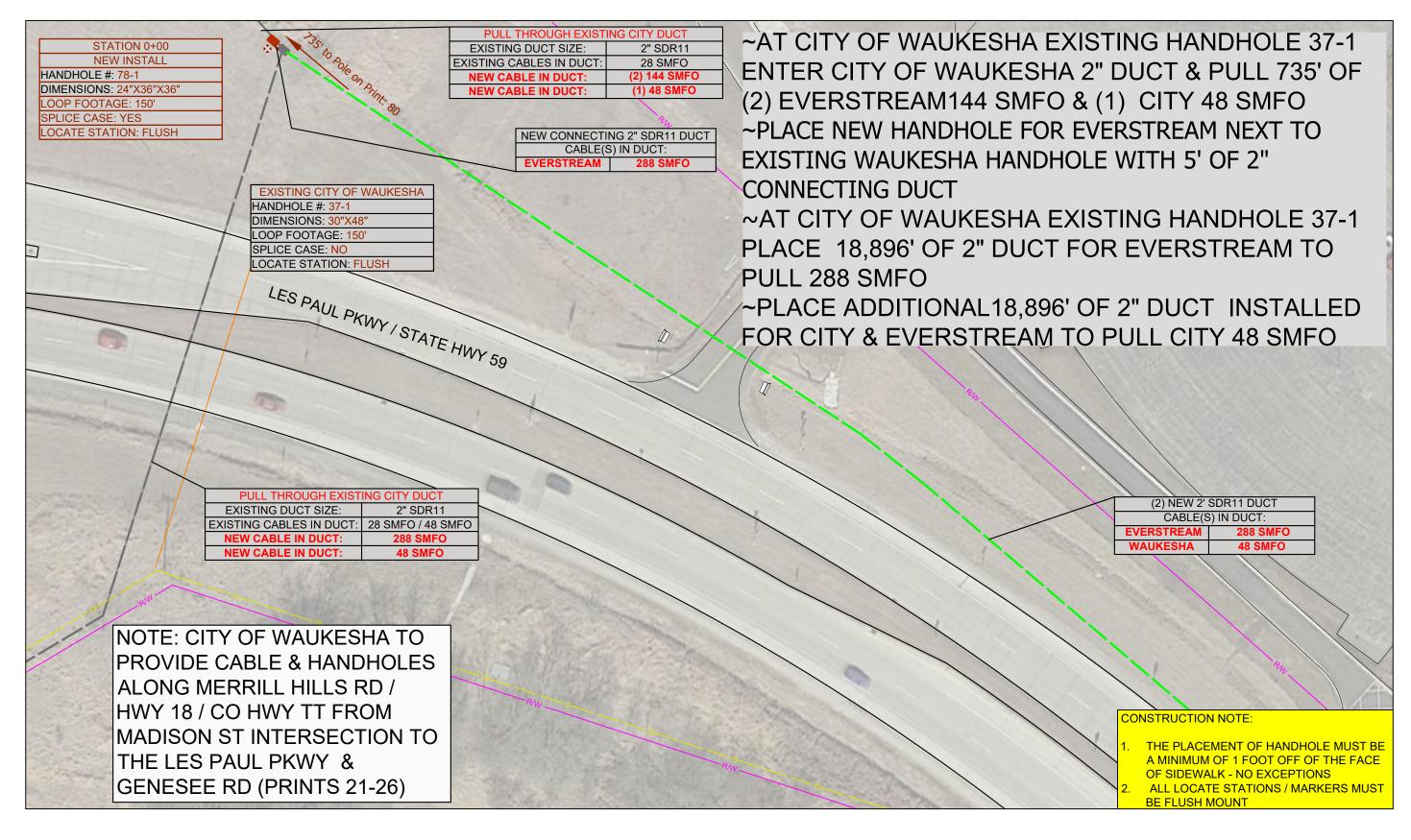
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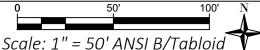


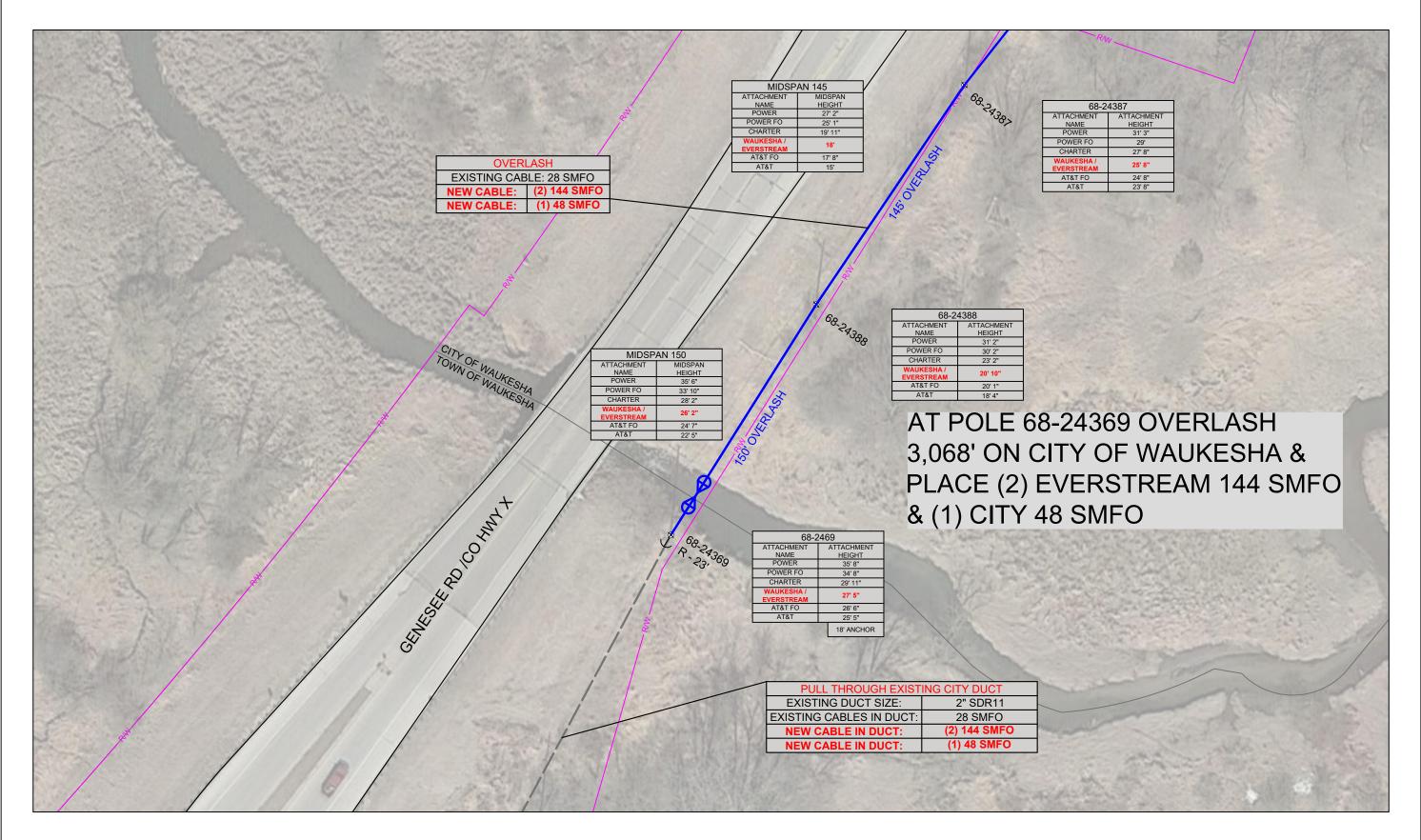




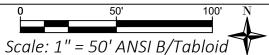


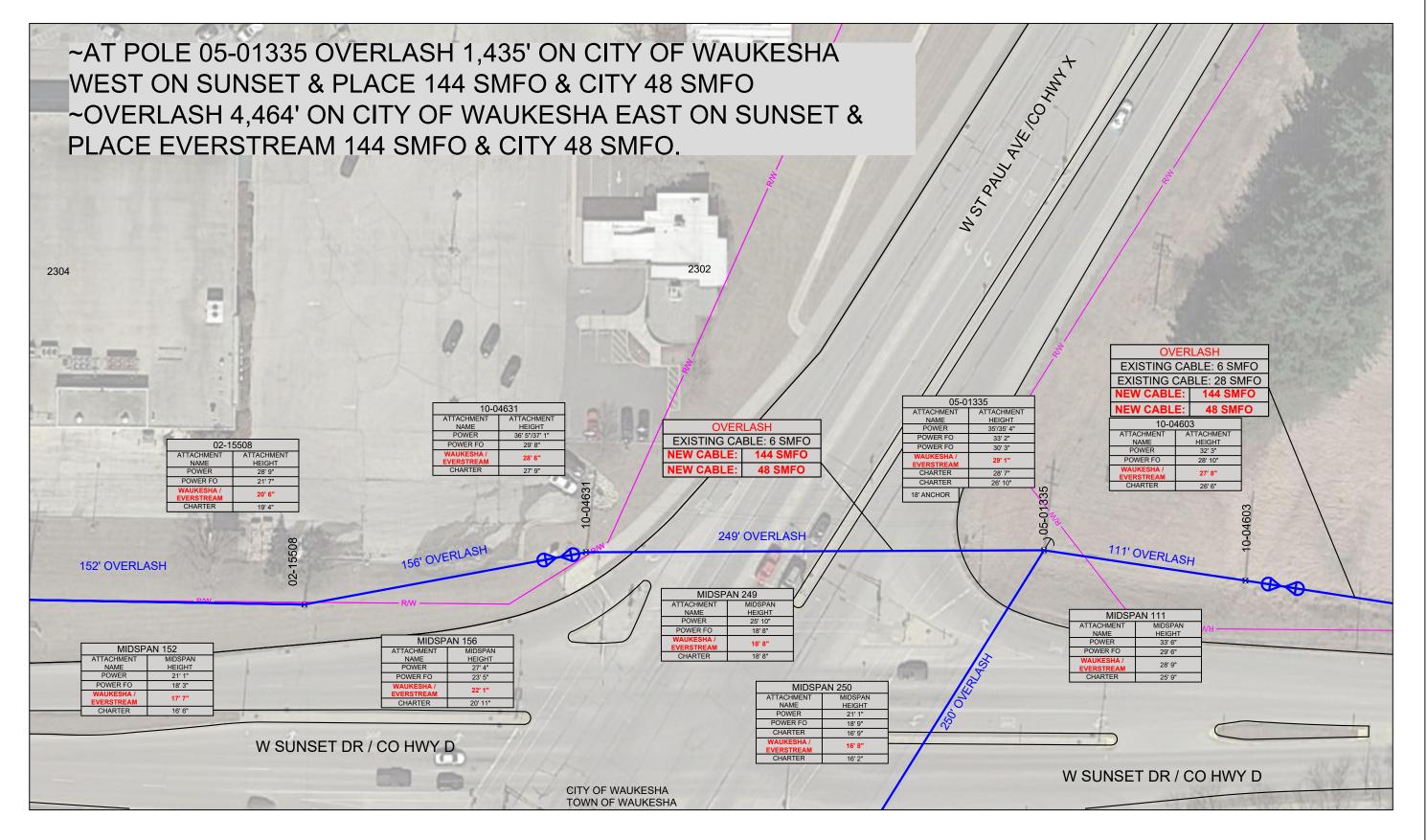












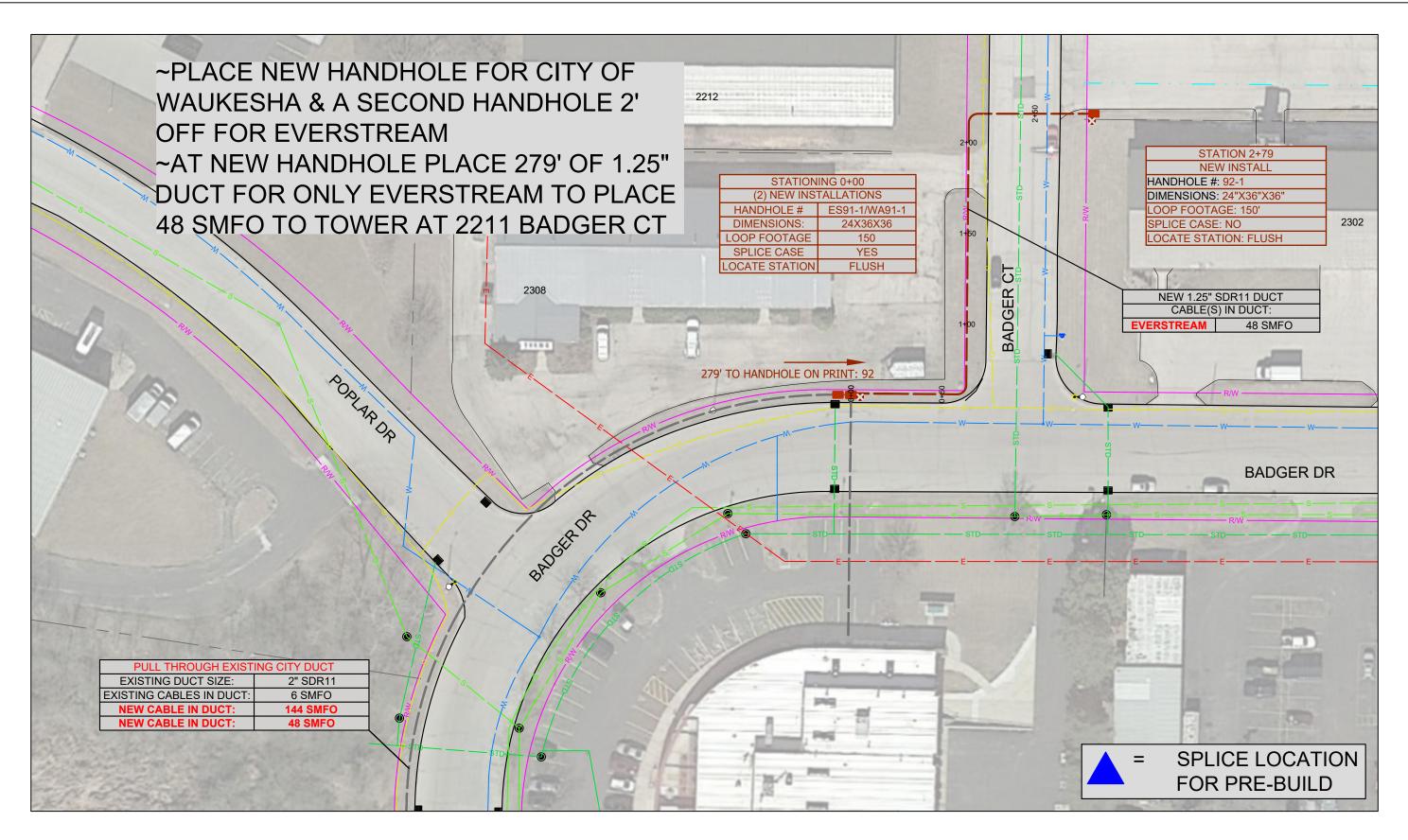




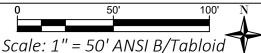


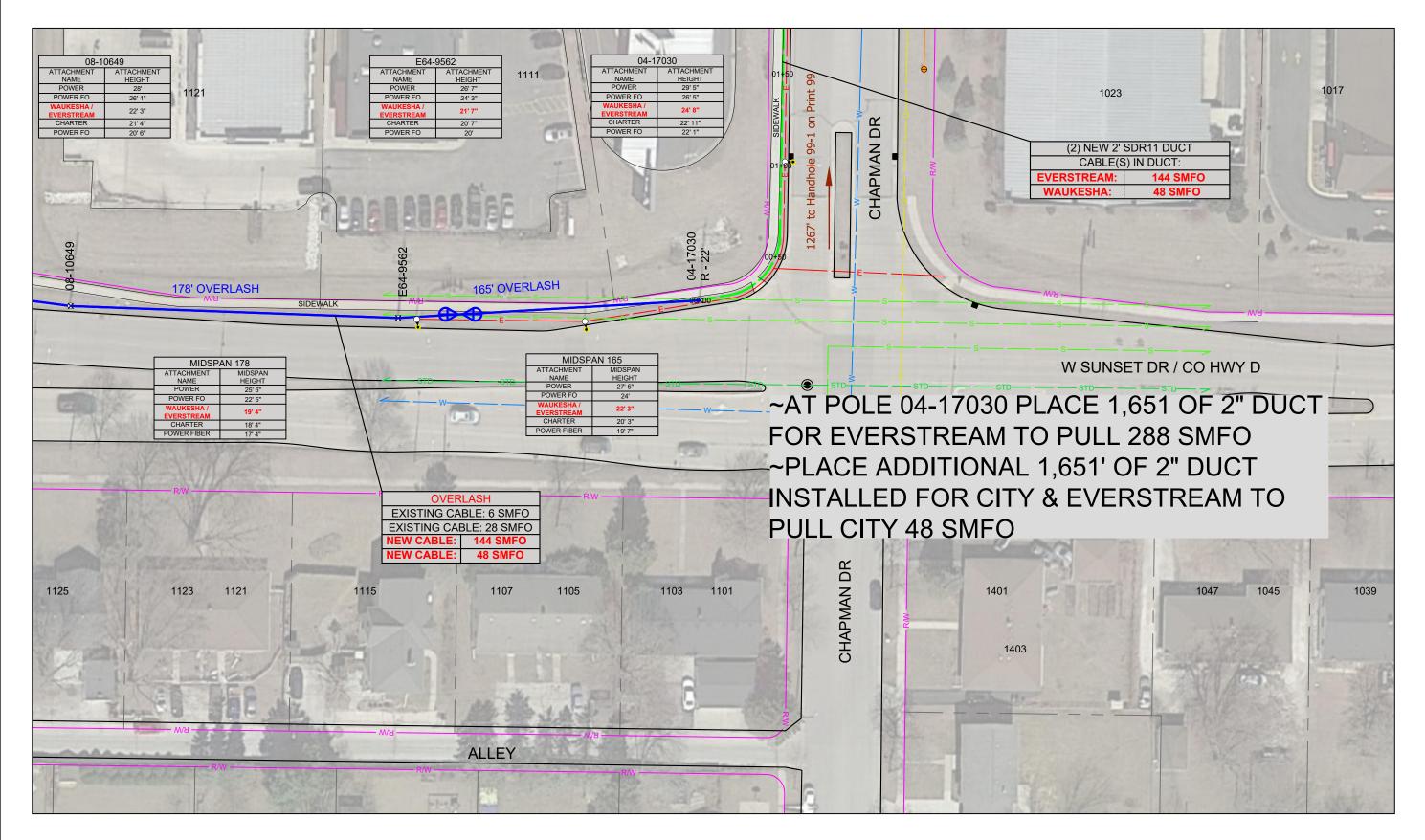




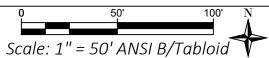


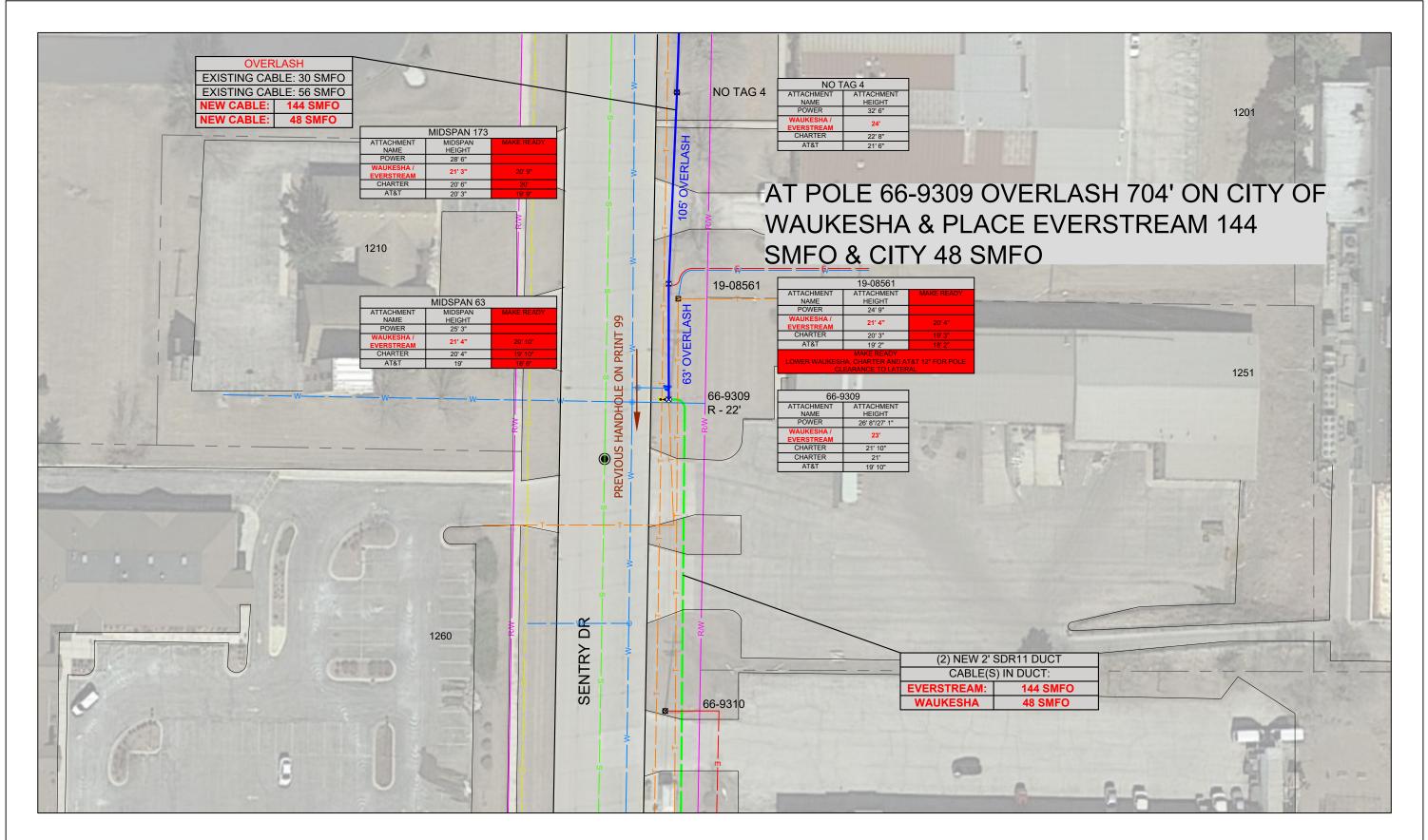








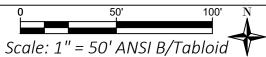


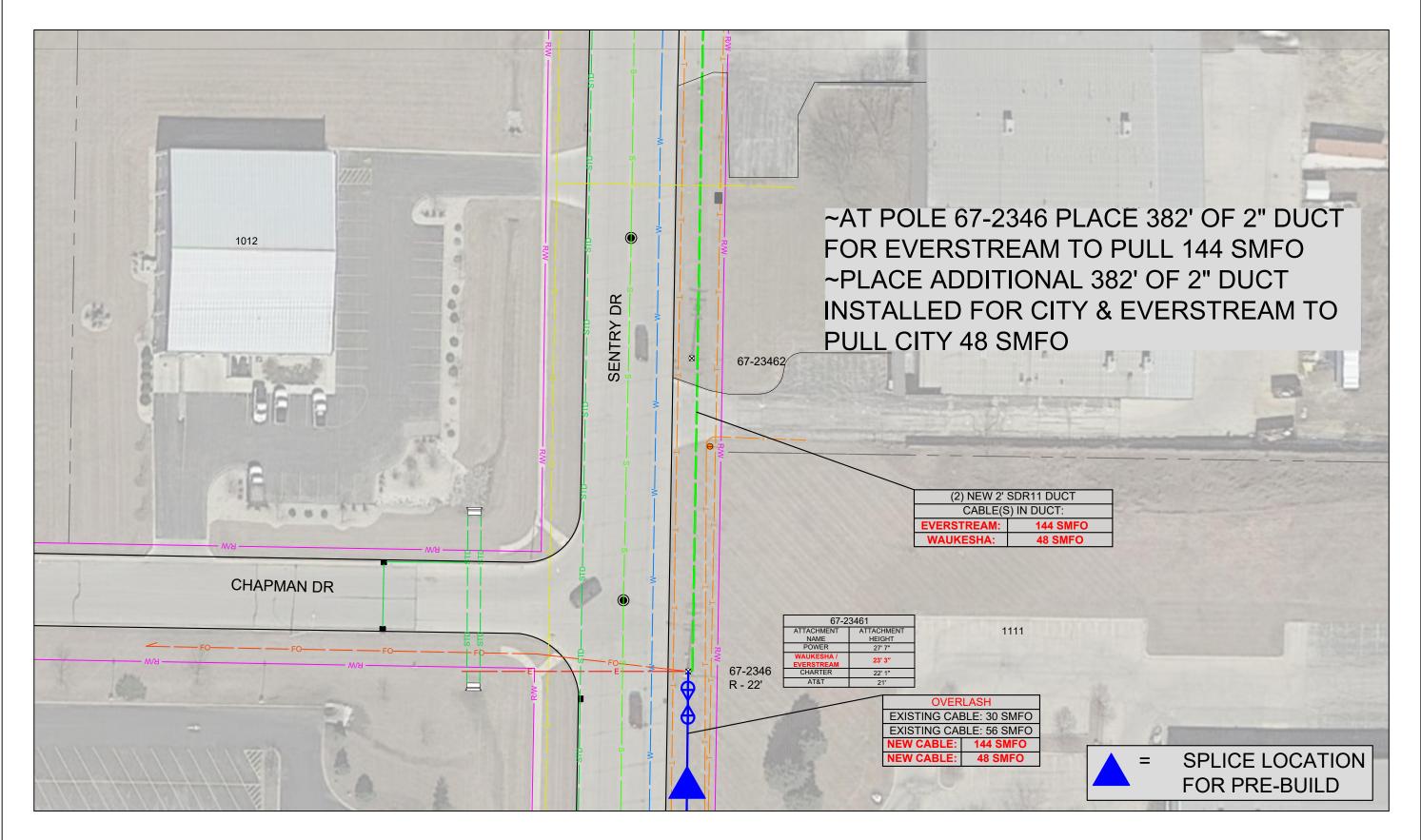




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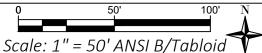




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EVERSTREAM OVERALL EXHIBIT Sheet Group: 1:50 Scaled Plans Sheet ID:

