

ORDINANCE NO. 764

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, GRANTING A FRANCHISE TO FATBEAM, LLC, TO PROVIDE A
TELECOMMUNICATIONS SYSTEM WITHIN THE CITY**

WHEREAS, Fatbeam, LLC, a Washington limited liability company has applied to the City of University Place for a franchise seeking to install, construct, operate, maintain and repair telecommunications facilities and a network system in certain rights-of-way of the City; and

WHEREAS, Fatbeam, LLC and the City desire to enter into an agreement authorizing Fatbeam, LLC to use certain portions of the right-of-way in the City for its telecommunications system subject to certain conditions and restrictions;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Granting a Telecommunication Franchise to Fatbeam, LLC. Fatbeam, LLC is hereby granted a franchise to construct, maintain and provide telecommunication services, as set forth in the Telecommunications Right-of-Way Use Franchise Agreement between the City of University Place and Fatbeam, LLC, in the form attached hereto as Exhibit A and incorporated herein by reference.

Section 2. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances by a court of competent jurisdiction shall not be affected.

Section 3. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward copies of this ordinance to the franchisee and permit holder as set forth in this ordinance.

Section 4. Publication and Effective Date. This Ordinance has been submitted to the University Place City Attorney; granted an approving vote of at least a majority of the University Place City Council at a regular meeting after initial introduction on November 7, 2022; and has been published in a summary at least once in a newspaper of general circulation in the City of University Place prior to passage.

This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five (5) days from and after its passage by the University Place City Council and publication in the summary form attached to the original of this Ordinance and by this reference approved by the City Council.

PASSED BY THE CITY COUNCIL ON NOVEMBER 21, 2022.

Steve Worthington, Mayor

ATTEST:

Emelita J. Genetia, City Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

Publication Date: 11/23/22

Effective Date: 11/28/22

TELECOMMUNICATIONS RIGHT-OF-WAY USE

FRANCHISE AGREEMENT

Whereas, Fatbeam, LLC, a Washington limited liability company ("COMPANY"), and the City of University Place ("City") have engaged in negotiations regarding permitting the COMPANY to install, operate and maintain a telecommunications system in certain rights-of-way of the City ("Agreement"); and

Whereas COMPANY and the City desire to enter into an agreement authorizing COMPANY to use certain portions of the right of way in the City for its communication system subject to certain conditions and restrictions; now therefore, COMPANY and the City agree as follows:

Agreement

A. COMPANY is authorized to use those certain City rights-of-way as specified in the Scope of Work, Attachment A, for the purpose of constructing, replacing, maintaining and using equipment and facilities for a telecommunications system provided they shall first obtain all necessary permits and authorizations required by the City. Such permits and authorizations shall be issued subject to the provisions of the University Place Municipal Code and the General conditions set forth in this Agreement, which General Conditions shall be incorporated by reference in such permits and authorizations as if fully set forth in whole therein. Such permits and authorizations shall also be subject to any other applicable City ordinances, resolutions, codes, policies and standards. Nothing provided herein shall in any way limit the City's authority to otherwise exercise its police powers.

B. COMPANY and the City recognize that the rights-of-way authorized to be used by COMPANY pursuant to Paragraph A above will permit COMPANY to construct its telecommunications system. COMPANY and the City further recognize that COMPANY may need to utilize substantial additional rights-of-way in order to be able to provide service to its customers. COMPANY agrees to cooperate with the City's Public Works and Community and Economic Development Departments to identify and evaluate those additional rights-of-way necessary for COMPANY to serve its customers. Priority shall be given to use of those rights-of-way, construction upon which can be coordinated with other City and private construction activities in a manner that will least impact the existing condition of the rights-of-way, the traffic during construction, and the adjacent neighborhoods during construction and after installation. The Director of the Public Works Department or other person designated by the City Manager, shall be authorized to approve the use by COMPANY of such additional rights-of-way requested by COMPANY which the Director deems appropriate.

Any additional rights-of-way authorized for use by the Director from time to time shall be listed and made an addendum to Attachment A.

C. Compensation and Financial Provisions

1. Fees; Taxes.

1.1 State Prohibition of Franchise Fee. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee. COMPANY agrees that if this statutory prohibition is removed, the City may assess a reasonable franchise fee to be agreed to by the parties. The parties agree that this Section does not limit the right of COMPANY to challenge the franchise fee pursuant to 47 USC §253.

1.2 COMPANY Subject to the City Telephone Business Tax. COMPANY agrees that all or a portion of its services offered in the City of University Place may be specifically taxable as a telephone business under University Place Municipal Code 4.35 and are taxable at the rate specified in University Place Municipal Code 4.35 now in effect or as amended, which at the time of the execution of this Franchise Agreement is six percent (6%) of COMPANY'S total gross income. It is agreed that the amount of total gross income to be taxed will include the amount of tax imposed on COMPANY by City ordinance. This Franchise does not limit the City's power of taxation.

1.3 COMPANY obligated to Pay Administrative Costs. In accord with RCW 35.21.860 as presently effective and as it may be later amended, COMPANY must pay the City an amount sufficient to recover administration expenses incurred in receiving and approving this Franchise, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist in the City's consideration and processing of this Franchise application. The first \$2,500 of said expenses will be covered by the \$2,500 application fee deposited with the City. COMPANY will also pay the reasonable costs of enforcing or, as necessary, reviewing the provisions of this Franchise, as well as costs involved with the modification, amendment, renewal, or transfer of this Franchise as ordered by the City Manager, whether such costs result from accrued in-house staff time or out-of-pocket expenses or administrative costs, as well as expenses of retaining independent technical, legal, or financial consultants or advisors; or whether relating to costs incurred due to initial system development or to future system expansion. The amount of payment to be made by COMPANY to cover these administrative costs is an amount determined to be reasonable by the City Manager. Such obligation further includes municipal fees related to receiving and approving permits or licenses, inspecting plans and construction, or relating to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt of the City's billing therefor.

1.4 Manner of Payment; Audit. COMPANY shall make all required fee payments in the form, intervals, and manner requested by the City Finance Director and shall furnish him/her any information related to his/her revenue collection functions reasonably requested. In case of audit, the City Finance Director may require COMPANY to furnish a verified statement of compliance with COMPANY'S obligations or in response to any questions. Said certificate may be

required from an independent, certified public accountant at COMPANY'S expense. All audits will take place on COMPANY'S premises or offices furnished by COMPANY, which shall be a location within the City of University Place or other mutually agreeable place; however, COMPANY must agree to pay the associated costs. COMPANY agrees, upon request of the City Finance Director, to provide copies of all documents filed with any federal, state, or local regulatory agency, to be mailed to the City Finance Director on the same day as filed, postage prepaid, affecting any of COMPANY'S facilities or business operations in the City of University Place.

1.5 No Other Deductions. Subject to federal law and regulation, no deductions, including current or previously paid fees, shall be subtracted from the gross income amount upon which payments are calculated and due for any period, nor shall copyright fees or other license fees paid by COMPANY be subtracted from the gross income for purposes of calculating payments.

1.6 Late Payments. Any fees owing which remain unpaid more than 10 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12 percent per annum or 2 percent above highest prime lending rate published daily in the Wall Street Journal during the period the payment is due but unpaid, whichever is greater.

1.7 Period of Limitations. The period of limitation for recovery of any fee payable hereunder shall be six years from the date on which payment by COMPANY is due, subject to tolling as provided as a matter of law or equity.

2. Auditing and Financial Records.

COMPANY shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the City. Without limiting its obligations under this Franchise, COMPANY agrees that it will collect and make available books and records for inspection and copying by the City in accordance with UPMC 4.35. COMPANY shall be responsible for collecting the information and producing it. Books and records shall be produced to the City at the City Hall or such other location as the parties may agree. Notwithstanding any provision of UPMC 4.35 or this Franchise, if documents are too voluminous or for security reasons cannot be produced at the City Hall or mutually agreeable location within the City, then COMPANY may produce the material at another central location, provided it also agrees to pay the additional reasonable costs incurred by the City in reviewing the materials.

COMPANY shall take all steps required if any, to ensure that it is able to provide the City all information which must be provided or may be requested under UPMC 4.35 or this Franchise, including by providing appropriate subscriber privacy notices. Nothing in this section shall be read to require COMPANY to violate 47 USC §551. COMPANY shall be responsible for redacting any data that federal law prevents it from providing to the City. Records shall be kept for at least six years. In addition to maintaining all records

as required by UPMC 4.35, COMPANY shall maintain records sufficient to show its compliance with the requirements of this Franchise and shall produce those records within 30 days of a City request.

COMPANY agrees to meet with a representative of the City upon request to review its methodology of record-keeping, financial reporting, computing fee obligations, and other procedures, the understanding of which the City deems necessary for understanding the meaning of reports and records.

In exercising its rights under this section, the City agrees to request access to only those books and records which it deems reasonably necessary as part of a bona fide exercise of its authority over the telecommunications system under the Franchise, UPMC 4.35, or other applicable law.

The City also reserves its right to charge site specific charges for the use of City right-of-way for placement of personal wireless services equipment or facilities as provided in RCW 35.21.860(e).

D. This Agreement shall be in effect for a period of ten (10) years from the effective date of this Agreement. This Agreement shall be automatically renewed for three (3) additional five (5) year period(s) thereafter.

E. This Agreement may be terminated if COMPANY fails to commence construction of its facilities/system within one year of the effective date of this Agreement unless otherwise agreed to in writing by the City.

F. To the extent that COMPANY makes the facilities and/or services available to other governmental entities within the State of Washington, COMPANY shall also make such facilities and services available to the City at similar rates and on similar terms and conditions unless otherwise prohibited or restricted by state or federal laws, regulations, or tariffs.

G. The General Conditions referenced in paragraph A are as follows:

1. Permits and Authorizations. COMPANY shall apply for and obtain all necessary permits and authorizations prior to the construction, installation and operation of its telecommunications system in those certain rights-of-way specified in Attachment A.

2. Installation of Equipment.

2.1 All facilities shall be installed and maintained at such locations shown in Attachment A, and subsequent amendments to Attachment A, as may be approved by the City so as to least interfere with existing and planned utilities and with the free passage of traffic, in accordance with the laws of the State of Washington and the ordinances and standards of the City regulating such

construction. For purposes of this Section 2, "planned" shall mean utilities which the City intends to construct in the future, which intent is evidenced by the inclusion of said utility project in the Capital Facilities Plan, a comprehensive plan or other written construction or planning schedule. No permit condition shall conflict with or waive any requirement of the University Place Municipal Code for the construction of said facilities.

2.2 In areas of the City where all utilities are underground when COMPANY installs new or extended facilities, COMPANY shall install its facilities underground in such areas. In areas of the City where existing above ground communication utility installations are in place, when COMPANY installs new or extended facilities, COMPANY may install its facilities above ground in such areas, provided such overhead installation does not interfere with the operation and use of the public right-of-way including traffic operations, sight distance, street lighting, and street trees. The installation of any service lines within five (5) feet of a street light shall be a minimum of 20 feet above ground. New service lines shall be placed underground between the transmission lines and the associated building in all locations.

2.3 If, during the term of this Franchise, the City shall direct the COMPANY to replace (convert) its overhead facilities then existing within the Franchise area or portion thereof with underground facilities, the COMPANY will cooperate and participate with the City and underground its facilities within the Franchise area including paying all costs thereof.

2.4 If the City undertakes any public works improvement which would otherwise require relocation of COMPANY'S above-ground facilities in accordance with Section 3 below, the City may, by written notice to COMPANY, direct that COMPANY convert any such facilities to underground facilities. All costs for such conversion shall be paid by the COMPANY.

3. Relocation.

3.1 Whenever the City undertakes or approves the construction of any sewer or storm drainage line or other street improvement project (including, without limitation, installation of traffic signals, street lights, sidewalks and pedestrian amenities wherein the facility so constructed or approved is or shall become, by gift, transfer, dedication or otherwise, a public facility owned, maintained or operated by the City) and such project necessitates the relocation of COMPANY'S then existing facilities, the City shall:

3.1.1 Provide COMPANY, at least ninety (90) days prior to the commencement of such improvement project, written notice requiring such relocation; and

3.1.2 Provide COMPANY with copies of preliminary plans depicting the proposed alignment of such street improvement project so that COMPANY may relocate its facilities to accommodate such street improvement project.

3.1.3 After receipt of such notice, COMPANY shall complete the relocation of such facilities at no charge or expense to the City so as to accommodate the improvement project construction schedule.

3.2 If the City requires the subsequent relocation of any facility within five years of the date of relocation of such facility pursuant to subsection 3.1 above, the City shall bear the entire cost of such relocation.

3.3 The provisions of this Section 3 shall in no manner preclude or restrict COMPANY from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City where the facilities to be constructed by said person or entity are not or will not become City owned, operated or maintained facilities.

3.4 Should COMPANY elect to relocate all of its facilities to non-City owned facilities, this Right of Way Use Agreement shall be terminated and be of no further force and effect, effective as of the date COMPANY provides written notice that it has fully relocated said facilities.

4. Repairs. If the City requires the relocation (temporary or permanent) of COMPANY's facilities for the purpose of repairing or maintaining any City owned, operated or maintained facility, COMPANY shall make such relocation at no cost to the City.

5. Record of Installations.

5.1 As a condition of this Right of Way Use Agreement, COMPANY shall provide to the City upon request and at no cost, a copy of all as-built plans, maps and records, including revealing the final location and condition of its facilities within the rights-of-way. Such records shall be provided in a format acceptable to the City. With respect to excavations by COMPANY near any other facilities in the rights-of-way, COMPANY and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable State law.

5.2 Upon written request of the City, COMPANY shall provide the City with the most recent update available of any plan of potential improvements to its facilities that are subject to this Right of Way Use Agreement; provided, however, any such plan submitted shall be for informational purposes only and shall not obligate COMPANY to undertake any specific improvements, nor shall such plan be construed as a proposal to undertake any specific improvements. The City agrees not to disclose such information unless required to do so pursuant to chapter 42.56 RCW. In any event, the City agrees to notify COMPANY of the

anticipated disclosure of such information at least five (5) days prior to such disclosure.

6. Shared Use of Excavations.

6.1 If at any time, or from time to time, either COMPANY or the City shall cause excavations to be made near facilities, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (i) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (ii) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

6.2 Joint Trench. The City reserves the right to require COMPANY to joint trench with other franchisees if both entities are anticipating trenching within the same franchise area and provided that the terms of this Section are met.

7. Restoration After Construction. COMPANY shall, after construction, maintenance or repair of facilities, leave the area in as good or better condition in all respects as it was in before the commencement of such construction, maintenance or repairs. All concrete-encased recorded monuments which have been disturbed or displaced by such work shall be restored pursuant to City standards and specifications. COMPANY agrees to promptly complete restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

8. Hold Harmless and Indemnity; Exclusion of Damages.

8.1 COMPANY shall indemnify, save harmless and defend the City, its elected and appointed officials, employees, and agents (including reimbursing the City for all costs and attorneys' fees) from any and all damages, claims, or demands, of any kind, brought by a third party in connection with an injury to or death of any and all persons, caused by COMPANY or its use of the rights-of-way, including, but not limited to, COMPANY, its agents, employees, subcontractors and their successors and assigns as well as the City or the City's employees, elected and appointed officials and agents, contractors and all third parties. COMPANY shall further indemnify, save harmless and defend the City, as provided above, from all property damage of any kind, whether tangible or intangible, including loss of use resulting from such damage, that occurs in connection with any work performed by COMPANY or caused by the presence of COMPANY or its officials, employees, agents, contractors, subcontractors, or their property upon or in proximity to City rights-of-way or City utilities. Such indemnification will not extend to damages, claims, or demands to the extent caused by the negligence or intentional misconduct of the City, its employees, agents or contractors or a third party.

8.2 This indemnification, hold harmless, and defense agreement includes the promise that COMPANY shall indemnify, save harmless and defend the City, its elected and appointed officials, employees and agents (including reimbursing the City for all costs and attorneys' fees) from any and all damages, claims, or demands of any kind on account of COMPANY's violation of city, county, state or federal laws relating to environmental health except to the extent caused by the negligence of the City, its employees, agents or contractors.

8.3 COMPANY agrees that its obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, COMPANY, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event the City incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from COMPANY.

8.4 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, INDIRECT, OR PUNITIVE LOSSES, DAMAGES, OR FOR ANY LOSS OF USE OR GOODWILL, INTERRUPTION OF BUSINESS, LOSS OR INACCURACY OF BUSINESS INFORMATION OR DATA, LOST OR ANTICIPATED LOSS OF PROFITS OR SAVINGS, REVENUE, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, HOWSOEVER DESCRIBED OR CLAIMED; WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, STRICT PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH.

9. Insurance. COMPANY shall maintain in full force and effect throughout the term of this Agreement the following:

9.1 One Million Dollars (\$1,000,000) comprehensive general liability insurance for bodily injury or death to any one person; and

9.2 Two Million Dollars (\$2,000,000) comprehensive general liability insurance for bodily injury or death resulting from any one accident;

9.3 One Million Dollars (\$1,000,000) comprehensive general liability insurance for property damage resulting from any one accident; and

9.4 The City shall be named as an additional insured on any policy for the purposes of any actions performed under this Agreement.

10. Civil Penalties and Additional Relief.

10.1 Notwithstanding any other provision herein, the City may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Agreement when civil or criminal penalties are inadequate to effect compliance. In addition to the penalties set forth in this section, violation of any provision of this Agreement may also result in the revocation of any rights-of-way use agreement, rights-of-way use permit, facilities lease, or other authorization.

10.4 Nothing in this Section shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Agreement.

11. Non-Exclusive. The rights and privileges herein granted shall not be deemed exclusive and the right is hereby reserved to the City to grant to any other person, company, corporation or association, including the City, the right to exercise the rights and privileges herein granted; provided that such grant to any other person, company, corporation or association, including the City, does not disturb or affect the rights and privileges herein granted to COMPANY.

12. Police Powers. Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. COMPANY shall not by this Agreement obtain any vested rights to use any portion of the City right-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Agreement. This Agreement and the permits and authorizations issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits and authorizations.

13. Construction Permit Required. Prior to the performance of any work in any public rights-of-way, and in addition to any other permits required by law, COMPANY shall apply for and obtain from the City, a Right of Way Use Permit, which application and Permit shall comply with all applicable City ordinances, regulations or standards. If the City reasonably determines that there is a potential for injury, damage or expense to the City as a result COMPANY's use of the rights-of-way the City may require COMPANY to provide additional security in a form acceptable to the City, for activities described in the subject permit.

14. Modifications of Terms and Conditions.

14.1 General. The City and COMPANY hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise in accordance with the provision of this Section.

14.2 Participation. At any time during the term of this Franchise, the City or COMPANY may request, by written notice, that the other promptly participate in negotiations to alter, amend or modify the terms and condition of this Franchise.

14.3 Process. Within a reasonable time after receipt of the notice, the City and COMPANY shall, at a mutually agreed-upon time and place, commence negotiations to alter, amend or modify the terms and conditions of this Franchise. The City and Grantee shall conduct such negotiations in good faith and with due regard to all pertinent facts and circumstances; provided, however, that neither the City nor COMPANY shall be obligated to agree to any proposed alteration, amendment or modification. Further, no rights or privileges granted by this Franchise shall be prejudiced, impaired or otherwise affected by the failure of the City or COMPANY to agree to any proposed alteration, amendment or modification.

14.4 Negotiations. Neither the City nor COMPANY shall be obligated to continue negotiations after the expiration of ninety (90) days from the date they commence such negotiations; provided, however, the City and COMPANY may agree to continue such negotiations for an additional period of time.

14.5 Ordinance. Any alteration, amendment or modification to which the City and COMPANY agree shall be submitted to the legislative authority of the City as a proposed ordinance. The ordinance so proposed shall expressly provide that, unless COMPANY properly files a written notice of acceptance within sixty (60) days of its effective date, the ordinance shall not be effective and this Franchise shall not be altered, amended or modified. To the extent permitted by law, the party proposing the alteration, amendment or modification shall bear all actual administrative costs directly related to approval thereof.

14.6 Facilities – Limited. It is the understanding of the parties that this Franchise is limited to facilities to provide Telecommunications Service. The parties to this agreement acknowledge that if the COMPANY endeavors to provide services or utilities beyond the scope of this agreement, such additional services or utilities may be added to this Franchise only by written addendum. Additional services or utilities may be subject to franchise fees, and state or local taxes as allowed by law.

H. Interference. The City shall not use, nor shall the City permit others to use, any portion of the right-of-way in any way which unreasonably interferes with the operation of COMPANY's facilities in the locations authorized under this Agreement. COMPANY shall provide notice to the City of such interference and the City and COMPANY shall then cooperatively work to eliminate or substantially mitigate such interference.

I. Abandonment or Non-Use of Facilities. In the event COMPANY discontinues commercial use of any facility located in any City right-of-way for a period of one hundred eighty (180) consecutive days or longer, the City may, upon ninety (90) days' written notice from the City to COMPANY, require removal of all such facilities from the City rights-of-way at COMPANY's sole expense. If COMPANY fails to remove such facilities upon proper notice from the City, the City may remove such facilities and COMPANY shall be responsible for reimbursing the City for the City's cost of removal.

Notwithstanding any other provision of this Agreement, the City may permit COMPANY to abandon such facilities in place; however, no facilities of any type may be abandoned in place without the express written consent of the City. Upon permanent abandonment, the facilities shall become the property of the City, and COMPANY shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring ownership of such facilities to the City. The provisions of this Section shall survive the expiration, revocation or termination of this Agreement.

J. Severability. If any term, provision, condition, or portion of this Agreement shall be held to be invalid or unconstitutional for any reason, the portion declared invalid shall be severable and the remaining portions of this Agreement shall be enforceable unless to do so would be inequitable or would result in a material change in the rights and obligations of the parties hereunder.

K. Transferability. The rights and privileges granted to COMPANY as provided in this Agreement may only be assigned or transferred to another entity with the prior written approval of the City, which shall not be unreasonably withheld, conditioned or delayed. However, COMPANY may assign or transfer the rights and privileges granted herein to any affiliate, parent or subsidiary of COMPANY, or to an entity with or into which COMPANY may merge or consolidate, or to an entity which controls, is controlled by, or is under common control with such entity or to any purchaser of all or substantially all of the assets of COMPANY without the requirement for City approval, so long as the successor provides written notice to the City that it agrees to be fully liable to the City for compliance with all terms and conditions of this Agreement.

L. Reimbursement of City. COMPANY shall reimburse the City, upon submittal by the City of an itemized billing by project costs, for COMPANY's proportionate share of all actual, identifiable and reasonable expenses incurred by the City in planning, designing, constructing, installing, repairing or altering any City facility as the result of the actual or proposed presence in the rights-of-way of COMPANY's facilities. Such costs and expenses shall include but not be limited to the proportionate cost of City personnel utilized to oversee or engage in any work in the rights-of-way as the result of the presence of COMPANY's facility in the rights-of-way. Such costs and expenses shall also include the proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of facilities or the routing or rerouting of any utilities so as not to interfere with facilities. The time of City employees shall be charged at their respective rate of salary, including overtime if utilized, plus benefits (approximately 22% of salary) and overhead. Any other costs will be billed proportionately on an actual cost basis. All billing will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. The billing may be on an annual basis, but the City shall provide COMPANY with the City's itemization of costs at the conclusion of each project for information purposes.

M. Effective Date. This Agreement shall take effect upon execution by both parties to this Agreement, and after five (5) days from and after passage by the University Place City Council and publication of the Ordinance summary.

N. Miscellaneous.

1. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

2. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

3. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

4. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

CITY: Stephen P. Sugg
City Manager
City of University Place
3609 Market Place W., Ste. 200
University Place, WA 98466

COMPANY: Fatbeam, LLC
2065 W. Riverstone Drive, Ste. 202
Coeur d'Alene, ID 83814
Attn: Chariti Zlateff
Project Manager

The City or COMPANY may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received five (5) days after placing in U.S. Mail, certified, or the next day after sending via overnight delivery.

5. This Agreement shall be governed by the laws of the State of Washington, with venue in Pierce County.

6. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

7. All Riders and Exhibits annexed hereto form material parts of this Agreement.

8. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as follows.

CITY:

City of University Place

By: _____

Stephen P. Sugg
City Manager

Date: _____

COMPANY:

Fatbeam, LLC

By: _____

Its _____

Date: _____

ATTACHMENT A – SCOPE OF WORK

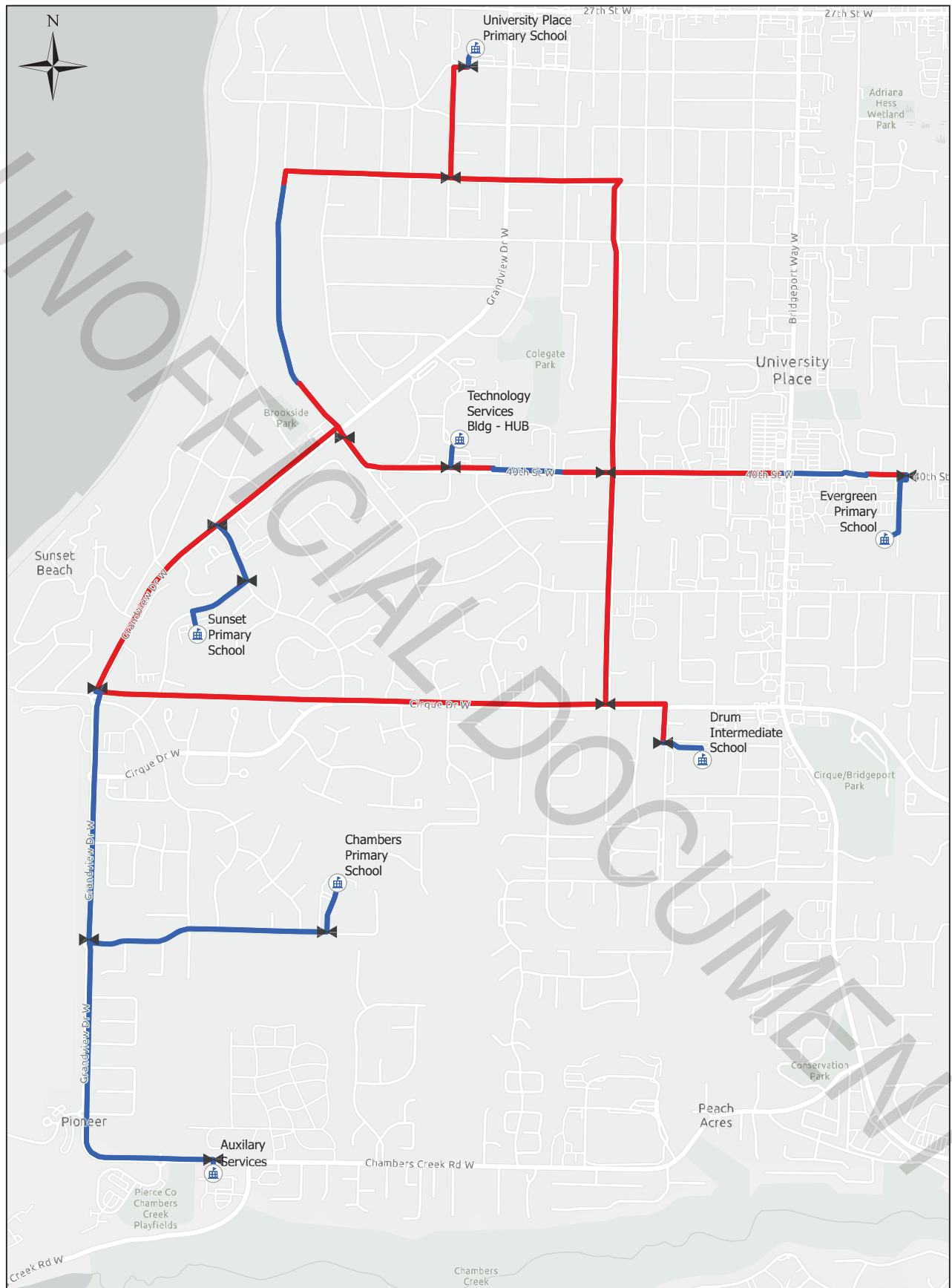
COMPANY is authorized to place its facilities in those public rights-of-way within the municipal boundaries of City identified on the attached maps, copies of which are incorporated by reference, subject to applying for and obtaining all necessary permits and authorizations prior to the construction, installation and operation of its telecommunications system.

COMPANY's placement of facilities is for the following purpose:

The fiber build is a newly constructed dark fiber optic network, from one (1) HUB location at 8805 40th Street West Suite A University Place, Washington 98466 to the six (6) school district locations. Fatbeam build will be connecting approx. 3,700 feet of 24 count fiber out to each site from the respective HUB. The backbone consists of approx. 11,400 feet of 96 count fiber and approx. 31,900 feet of 288 count fiber. The route is anticipated to be 27,200 feet of aerial fiber build and 19,800 feet of underground fiber build.

COMPANY may not place wireless equipment (such as radios or antennas) for the provision of wireless service. COMPANY may place cable to such wireless equipment consistent with the terms of this Ordinance.

University Place SD - Fatbeam Proposed Route



Schools



Splice Closure

Fiber

Placement Type

Aerial

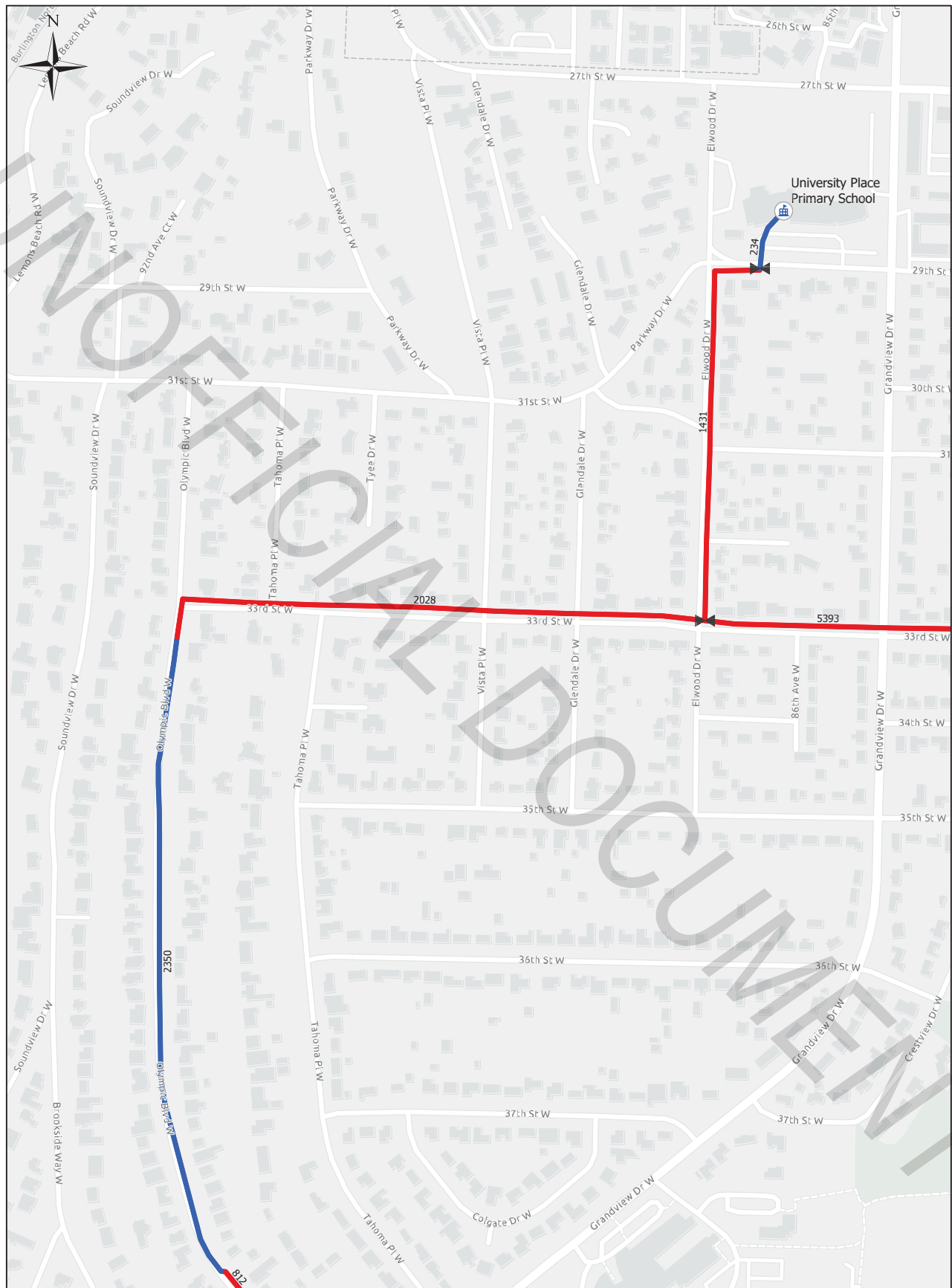
Underground

Total Fiber Network Miles: 8.8 Miles

0 0.07 0.15 0.3 0.45 0.6 Miles



University Place SD - Fatbeam Proposed Route



Schools



Splice Closure

Fiber

Placement Type

— Aerial

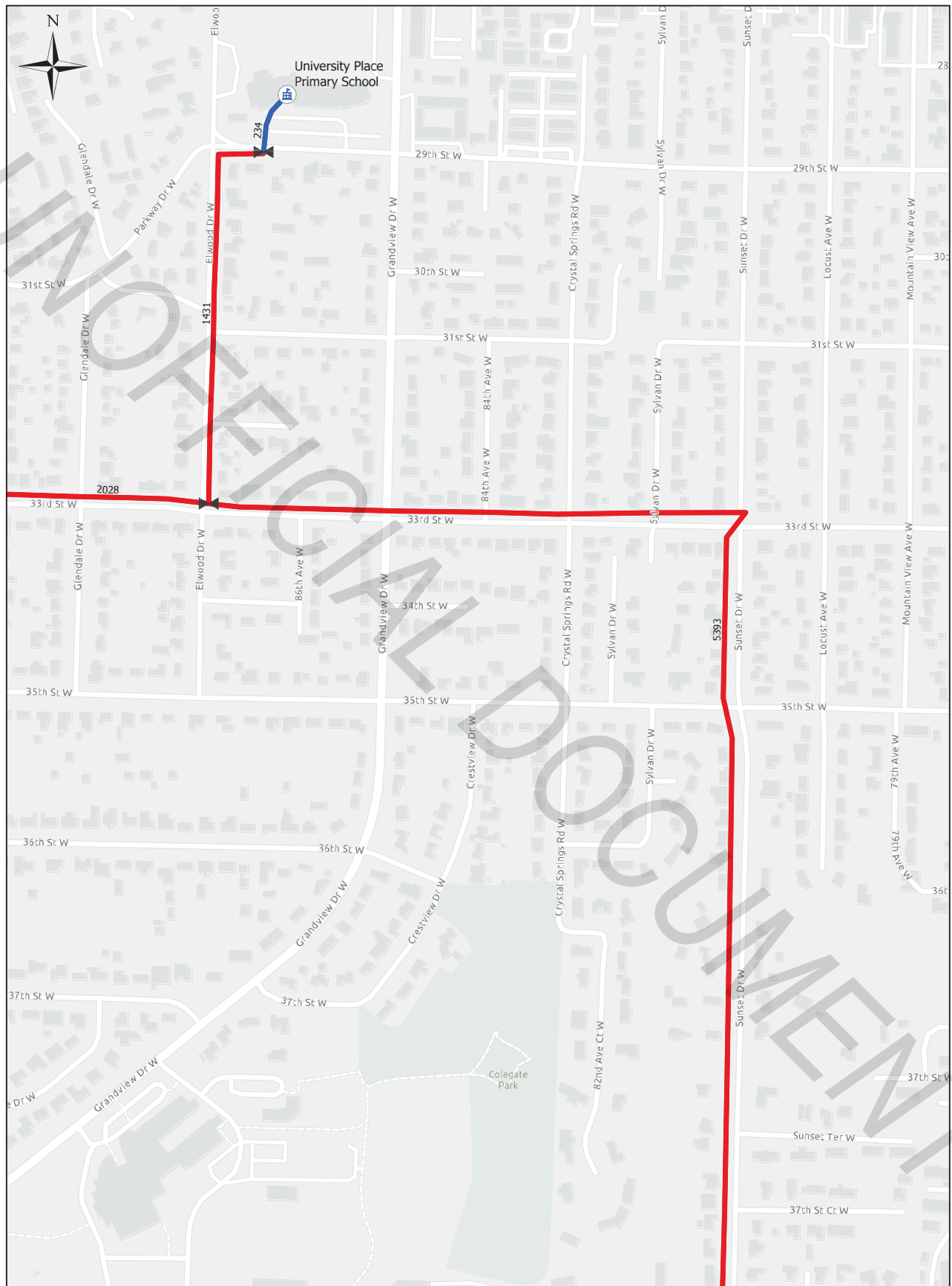
— Underground

Total Fiber Network Miles: 8.8 Miles

0 0.02 0.04 0.09 0.14 0.18 Miles



University Place SD - Fatbeam Proposed Route



Schools



Splice Closure

Fiber

Placement Type

Aerial

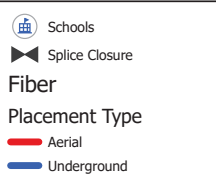
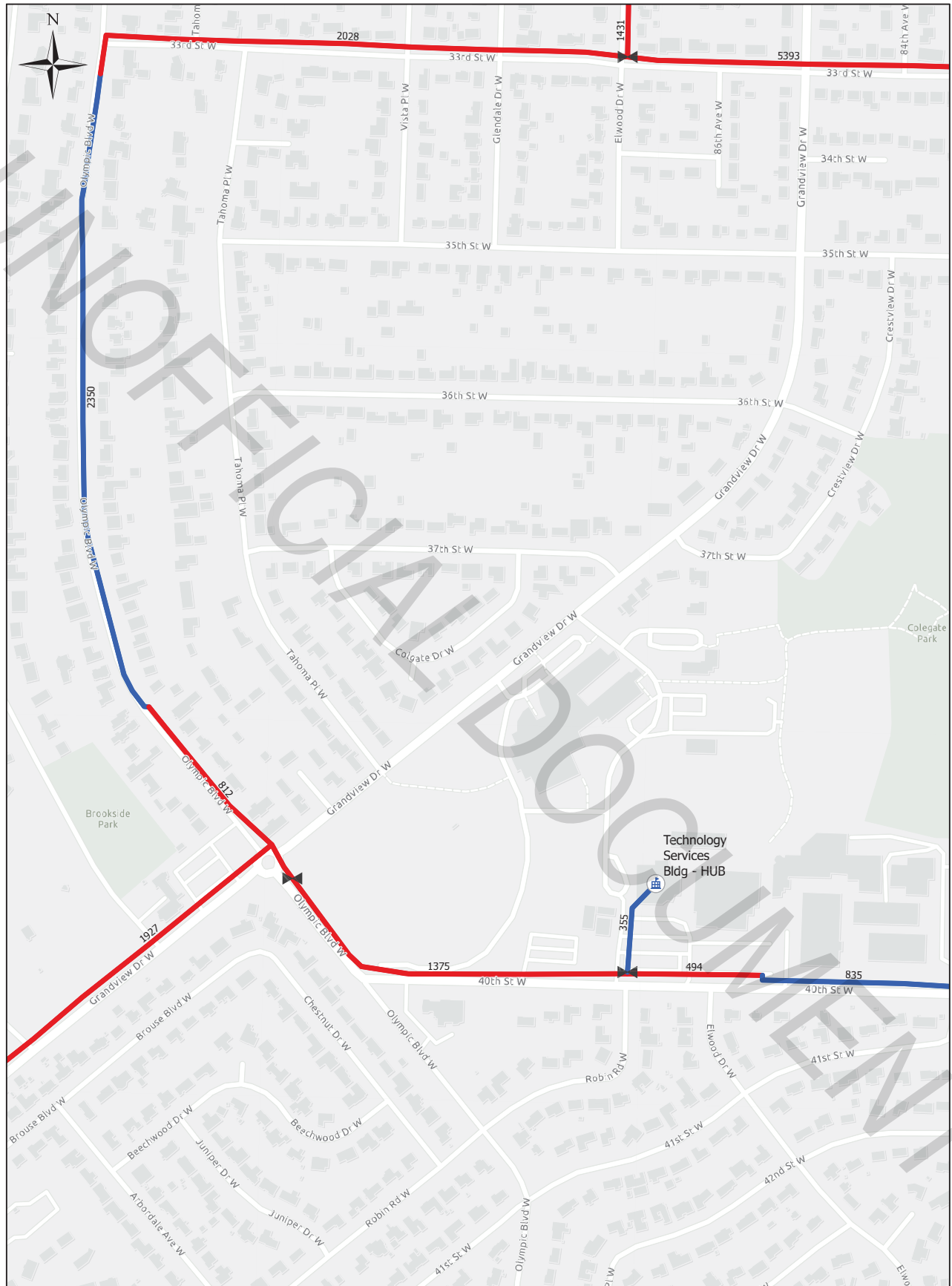
Underground

Total Fiber Network Miles: 8.8 Miles

0 0.02 0.04 0.09 0.14 0.18 Miles



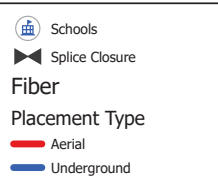
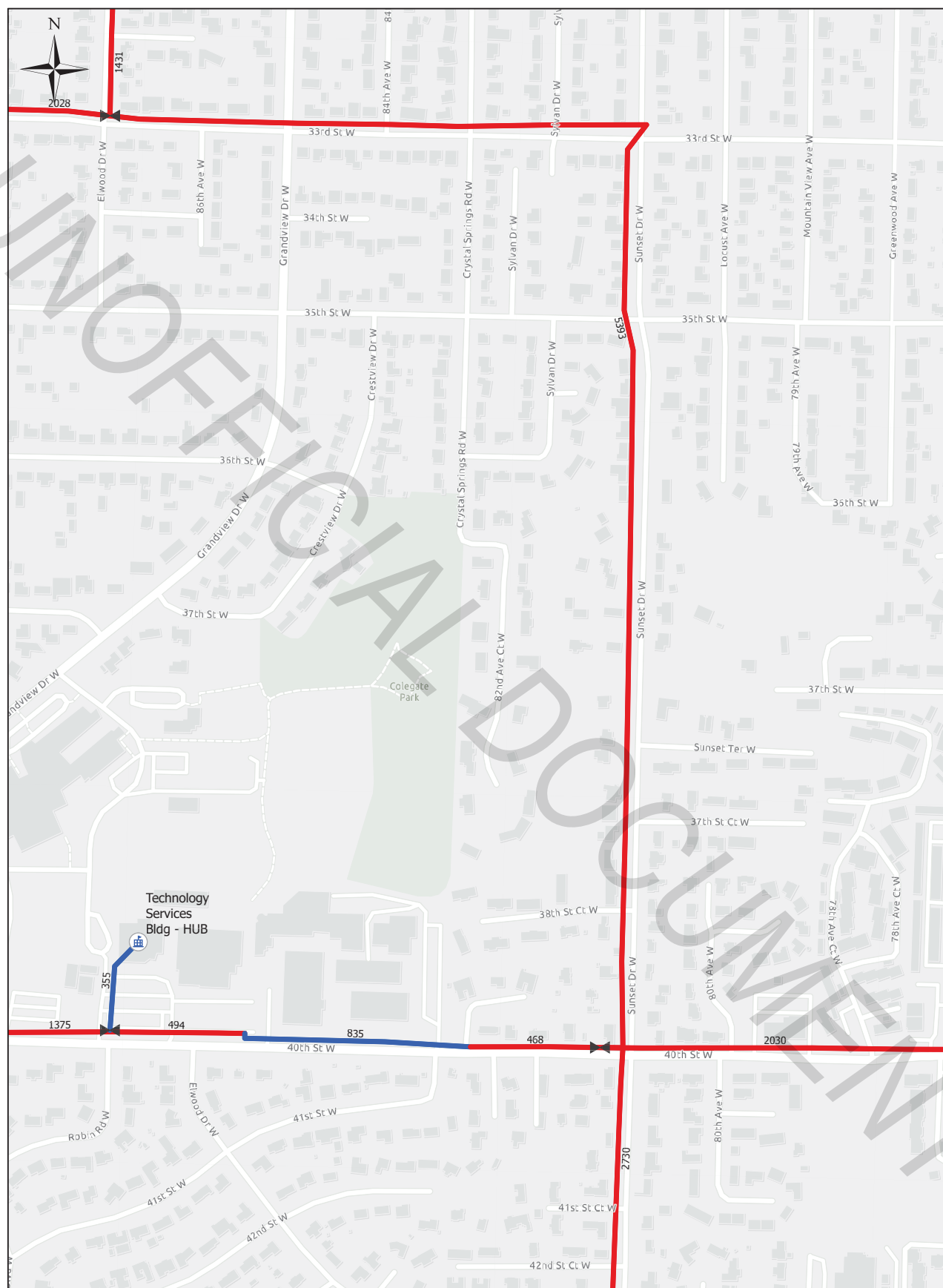
University Place SD - Fatbeam Proposed Route



Total Fiber Network Miles: 8.8 Miles



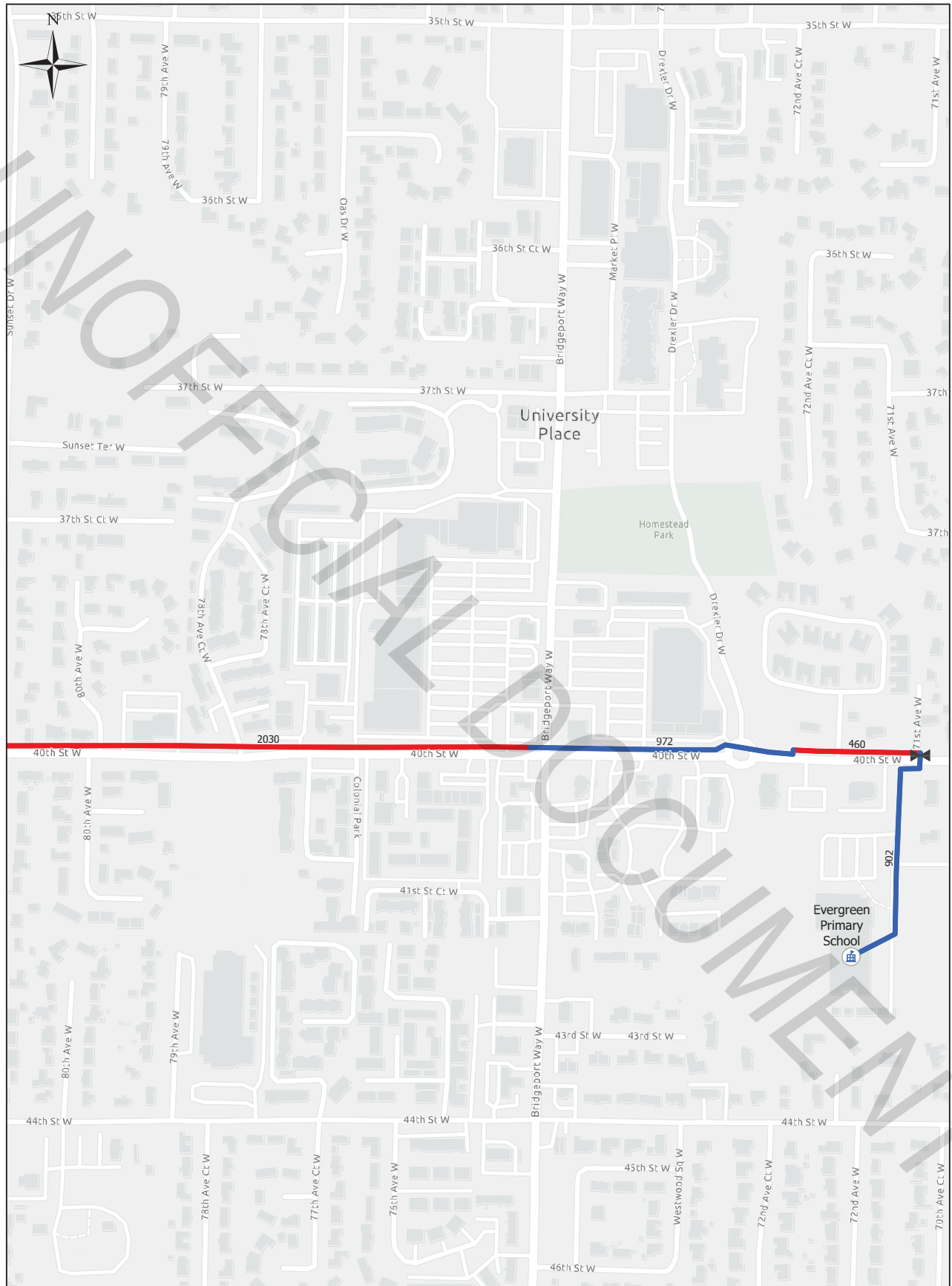
University Place SD - Fatbeam Proposed Route



Total Fiber Network Miles: 8.8 Miles



University Place SD - Fatbeam Proposed Route



Schools



Splice Closure

Fiber

Placement Type

— Aerial

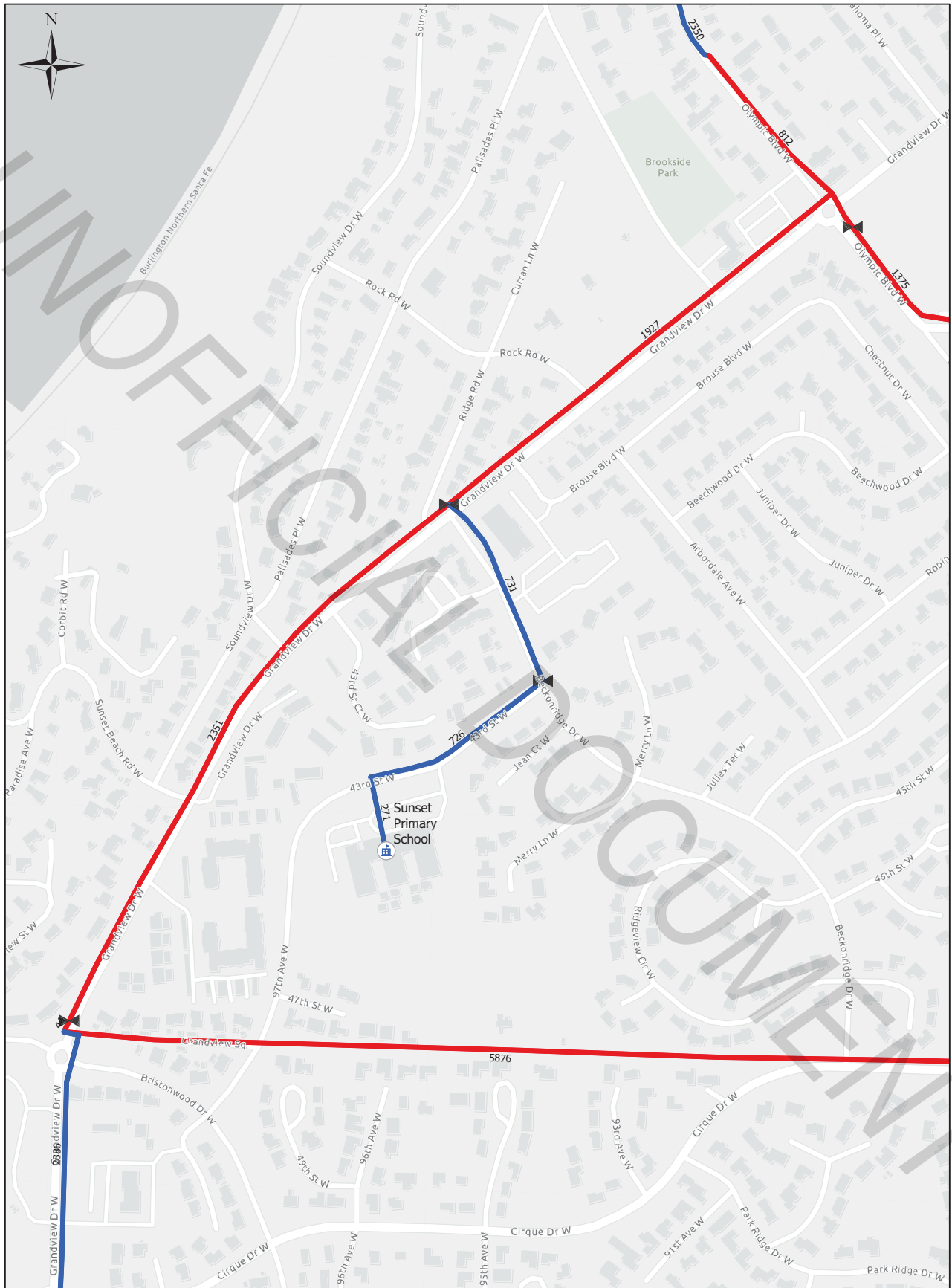
— Underground

Total Fiber Network Miles: 8.8 Miles

0 0.02 0.04 0.09 0.14 0.18 Miles

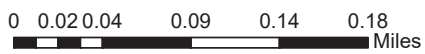


University Place SD - Fatbeam Proposed Route

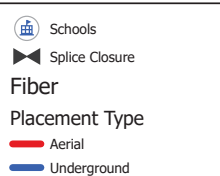
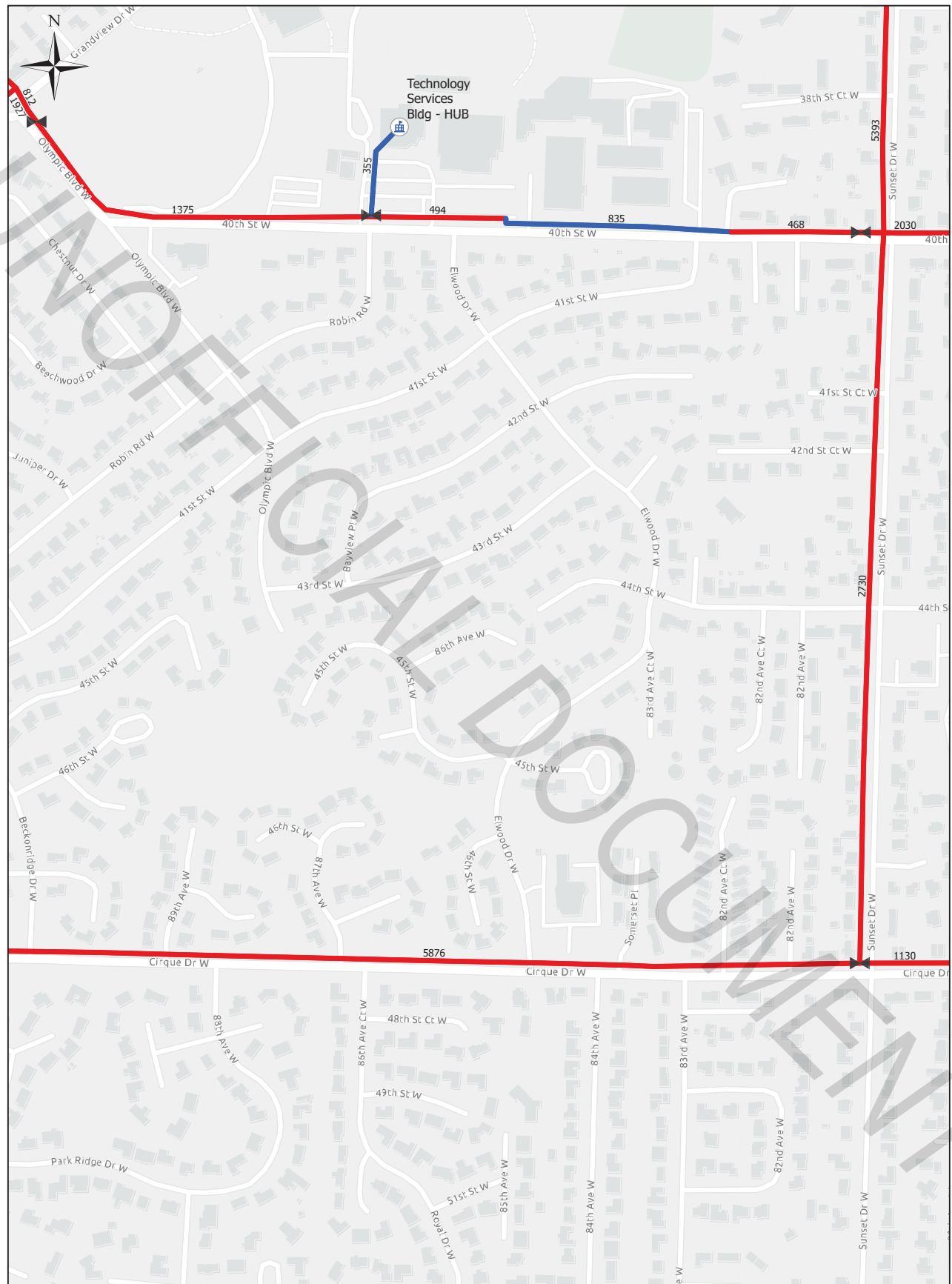


 Schools
 Splice Closure
Fiber
Placement Type
 Aerial
 Underground

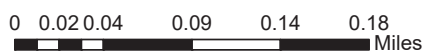
Total Fiber Network Miles: 8.8 Miles



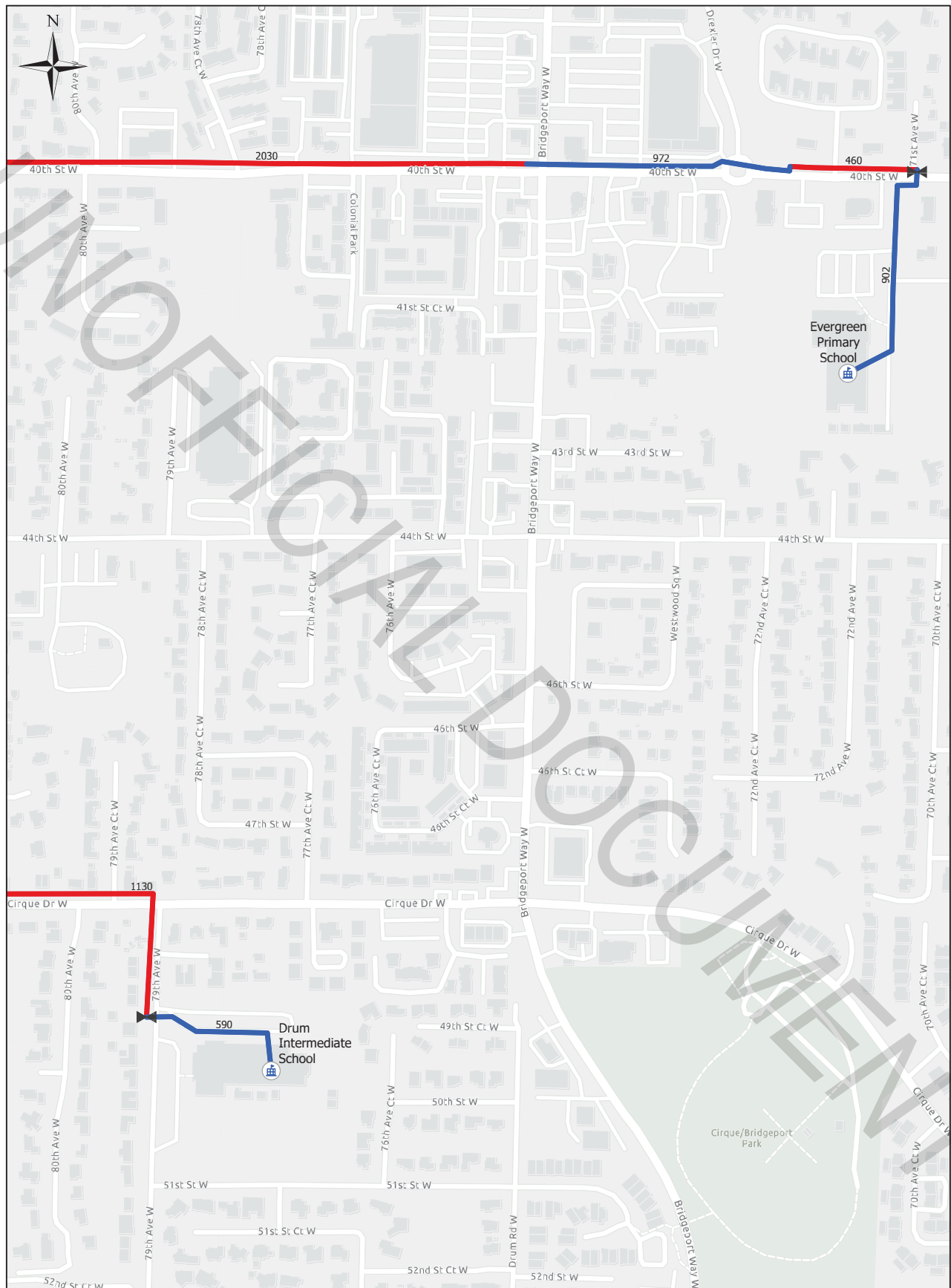
University Place SD - Fatbeam Proposed Route



Total Fiber Network Miles: 8.8 Miles



University Place SD - Fatbeam Proposed Route



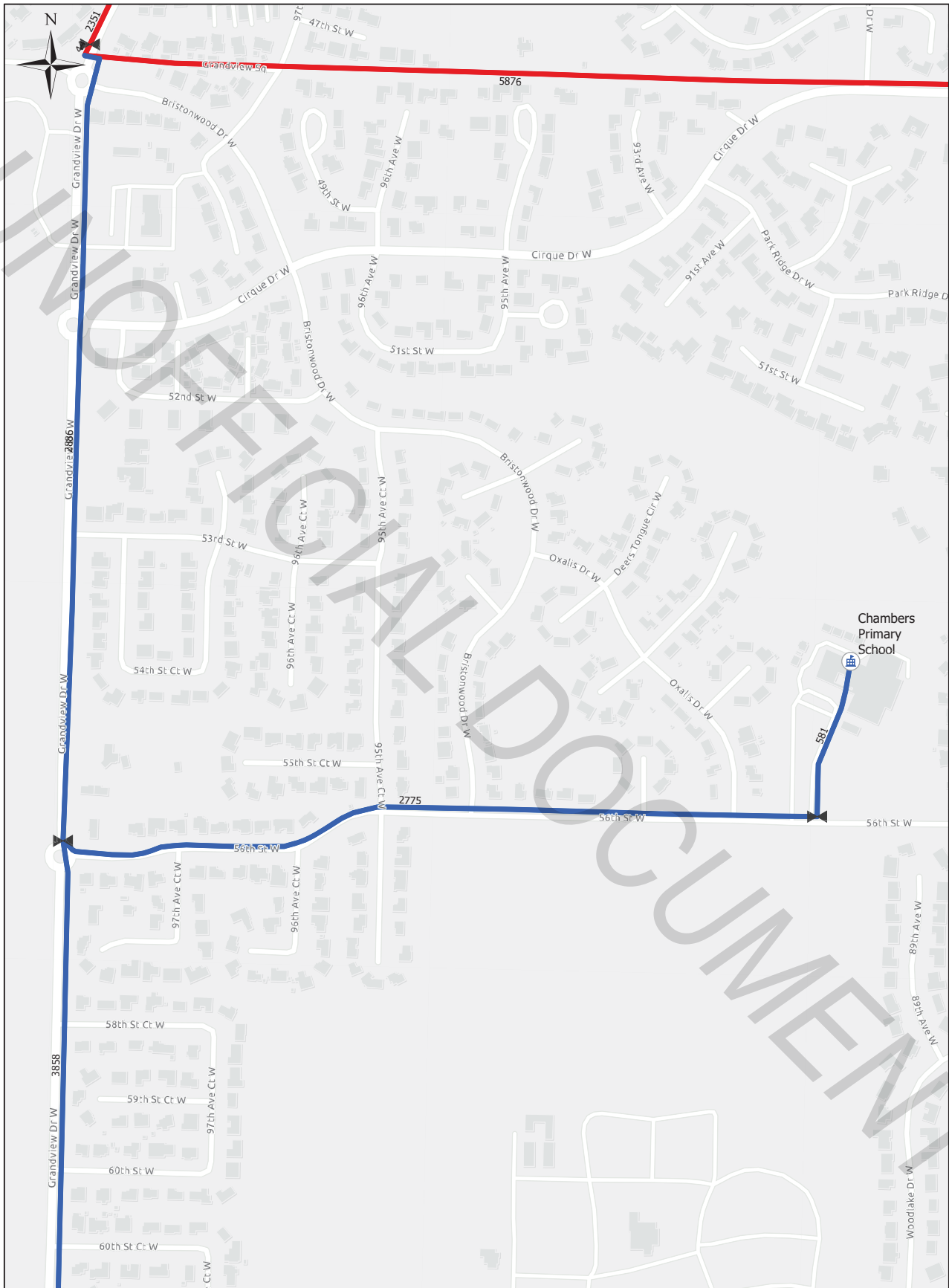
- Schools
- Splice Closure
- Fiber**
- Placement Type**
- Aerial
- Underground

Total Fiber Network Miles: 8.8 Miles

0 0.02 0.04 0.09 0.14 0.18 Miles



University Place SD - Fatbeam Proposed Route



 Schools

 Splice Closure

Fiber

Placement Type

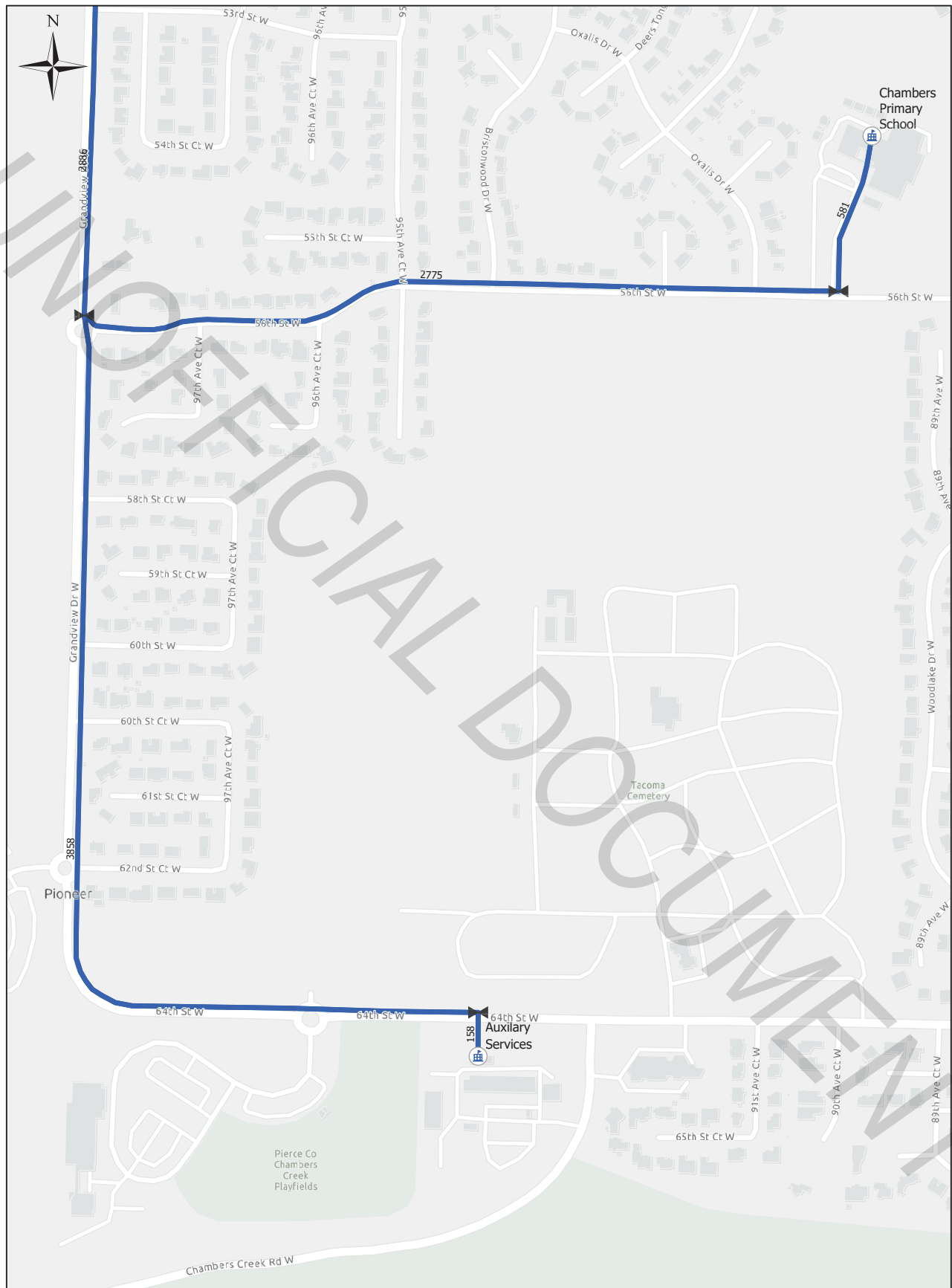
 Aerial

 Underground

Total Fiber Network Miles: 8.8 Miles



University Place SD - Fatbeam Proposed Route



- Schools
- Splice Closure
- Fiber**
- Placement Type**
- Aerial
- Underground

Total Fiber Network Miles: 8.8 Miles

