

**INTERLOCAL AGREEMENT BY AND BETWEEN
CLARK COUNTY AND
CLARK PUBLIC UTILITIES**

Overhead Electric Line Relocation, NE 10th Ave Road Project

This Interlocal Agreement (the "Agreement") is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between Clark County (the "County"), political subdivision of the state of Washington with an address of P.O. Box 9810, Vancouver, WA 98666-9810, and Clark Public Utilities ("CPU"), a municipal corporation with an address of P.O. Box 8900, Vancouver, WA 98668 on the dates indicated below. The County and CPU are sometimes collectively referred to as the "Parties" or to either one individually as a "Party."

RECITALS

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington provides for cooperative efforts between governmental entities; and

WHEREAS, the County has concluded that construction of road improvements to NE 10th Avenue between NE 154th Street and NE 164th Street (the "Project Area") is necessary; and

WHEREAS, CPU owns certain facilities in the Project Area, located on easements, which must be relocated or adjusted in order to complete the County's road improvement project; and

WHEREAS, the County desires these facilities be relocated elsewhere or adjusted in order to allow the project to proceed; and

WHEREAS, CPU has requested compensation from the County for the performance of the relocation work and the County has agreed; and

WHEREAS, both the County and CPU agree that it is in the best interests of the Parties to collaborate on the relocation work in a timely and cost-effective manner;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the Parties hereby mutually agree as follows.

AGREEMENT

1. **PURPOSE.** This Agreement is entered into pursuant to the authority of RCW 39.34.080. The purpose of this Agreement is to set forth the mutual obligations, responsibilities and rights of the County and CPU relating to the relocation of CPU facilities as described herein.
2. **TERM.** This Agreement shall become effective upon the date of last signature of the Parties below, and shall continue until December 31, 2018 or until the relocation work has been completed by CPU and accepted by the County (in a timely manner) and the County has paid CPU in full, whichever is later, unless terminated sooner.

3. ADMINISTRATION. No new or separate legal or administrative entity is created to administer the provisions of this Agreement. The Parties hereto shall be jointly responsible for administering the performance herein. The Parties will not acquire any jointly-owned real or personal property in connection with performance of this Agreement. The Parties shall each be responsible for their own individual financial costs of performance of this Agreement, except as otherwise described herein. No joint budget will be prepared to carry out the performance of this Agreement.
4. TERMINATION. This Agreement may only be terminated if mutually agreed to by both Parties. Should this Agreement be terminated prior to completion of the relocation work by CPU, the County agrees to compensate CPU for the relocation costs incurred by CPU for work performed up to that date.
5. SCOPE OF WORK.
 - a. CPU agrees to adjust and relocate existing electrical facilities on behalf of the County to accommodate construction of the road improvements on NE 10th Avenue between NE 154th Street and NE 164th Street, as described on the plans prepared by CPU dated 02/06/17 and the project map attached hereto as Exhibit "A" (collectively identified as the "County Relocation Work"), both of which are incorporated herein by this reference.
 - b. All materials provided by CPU subject to reimbursement by the County are to be Buy America compliant in accordance with 23 CFR 635.410 and WSDOT General Special Provision (GSP) 1-06.OPT1(A).GR1, except those materials CPU is unable to procure as such. CPU will provide to the County the necessary information regarding the installed non-compliant materials in order for the County to document and report such occurrence to the appropriate governing authorities. This documentation shall include the following items:
 - i. Certification of Materials Origin (DOT Form 350-109 EF)
 - ii. Buy America-Foreign Steel Tracking (DOT Form 350-005 EF)
 - iii. A list of materials identifying all items permanently installed
 - iv. Records showing good faith effort to procure Buy America compliant materials
 - c. The County acknowledges that it may be necessary for CPU to use some non-Buy America compliant materials during construction and directs CPU to proceed with construction using non-compliant materials where no alternative is available. The County, as the recipient of FHWA grant funding, will be responsible for documenting all non-compliant materials to be installed by CPU in performing the County Relocation Work. The County agrees to reimburse CPU for any additional material and labor costs necessary in order to bring those materials into compliance as may be required at a future date, if directed to do so by the FHWA or any other governing authority. CPU shall invoice the County for such costs following any mandated reconstruction.
 - d. CPU currently has agreements with communications companies and allows joint use contacts along the Project Area's existing pole alignment. The County agrees to work with these companies to ensure their facilities are relocated in a timely manner. CPU shall not be responsible for the relocation of joint use facilities or the cost thereof.

6. PAYMENT.

- a. CPU agrees that it shall initially pay for the actual direct and related indirect costs of the adjustments and relocation, including but not limited to, permitting, property rights (including acquiring replacement easements), materials, construction, construction engineering, contract administration and overhead costs, associated with the County Relocation Work.
- b. The County agrees to provide reimbursement to CPU for the actual direct and related indirect costs of the County Relocation Work, which is currently estimated to be One Million, Seven Hundred Fifty-five Thousand, Seven Hundred Thirty-four and 99/100 Dollars (\$1,755,734.99).
- c. CPU shall invoice the County and provide supporting documentation thereof, and the County agrees to pay CPU within thirty calendar days of receipt of an invoice.

7. DISPUTE RESOLUTION. In the event of a dispute between the County and CPU regarding performance of this Agreement, the Parties shall proceed as follows:

- a. The County Manager of the County and the General Manager of CPU, or their designated representatives, shall first review such dispute and provide the Parties options for mutual resolution of the dispute.
- b. Any controversy or claim arising out of or relating to this Agreement or the alleged breach of such Agreement that cannot be resolved by the County Manager of the County and the General Manager of CPU, or their designated representatives, may be submitted to mediation and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

8. INDEPENDENT CONTRACTOR. Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. CPU shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of a Party an employee of the other Party for any purpose, including but not limited to, for withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

9. INDEMNIFICATION. To the extent authorized by law, the County and CPU shall indemnify and hold harmless one another and their employees and/or officers from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind of nature, brought against one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement, provided, however, that if such claims are

caused by or result from the concurrent negligence of (a) the County and (b) CPU, their respective employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the County or CPU, and provided further, that nothing herein shall require the County or CPU to hold harmless or defend the other or its employees and/or officers from any claims arising from that Party's sole negligence or that of its employees and/or officers. Notwithstanding the foregoing, since the County is directing CPU to install materials that may not be compliant with the Buy America requirements, CPU shall not be responsible to the County for any loss, claim, penalty, or expense attributed to a violation of the Buy America requirements and the County shall indemnify and defend CPU from any such claim, loss, penalty, or expense. The terms of this section shall survive the termination of this Agreement.

10. AMENDMENTS. This Agreement shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto.
11. ASSIGNMENT. No Party hereto shall assign its rights or obligations under this Agreement without the prior written consent of the other Party hereto.
12. NOTICES. All communications, notices and demands of any kind which are required by this Agreement shall be in writing and shall be deemed given when deposited in the U.S. mail, first class postage prepaid, to the following addresses or to such other addresses as the Parties shall from time to time give notice to the other Parties:

If to the County:
Clark County
Attn: Troy Pierce
P.O. Box 9810
Vancouver, WA 98666-9810

If to CPU:
Clark Public Utilities
Attn: Jonathan Pilling
P.O. Box 8900
Vancouver, WA 98668

13. COUNTERPARTS. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
14. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.
15. FILING. Executed copies of this Agreement shall be filed as required by RCW 39.34.040 or alternatively listed on the Party's respective web sites or other electronically retrievable public source.
16. SEVERABILITY. Any provision of this Agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforcement of such provisions.
17. RATIFICATION. Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

18. GOVERNING LAW. This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. The contractor shall have legal authority to enter into this agreement and be at least 18 years of age. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement on the dates indicated below.

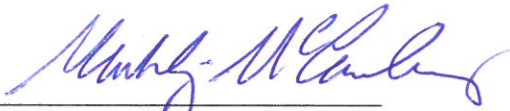
For the **COUNTY**:

CLARK COUNTY, WA

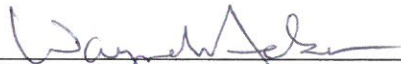
For **CPU**:

CLARK PUBLIC UTILITIES

A municipal corporation

By: 

Mark McCauley, County Manager

By: 

Wayne Nelson, General Manager

DATED: 3/15/17

DATED: 2-23-17

Approved as to Form:

Anthony F. Golik

Approved as to Form:

By: 

Christopher Horne
Deputy Prosecuting Attorney

By: 

John Eldridge
CPU Legal Counsel

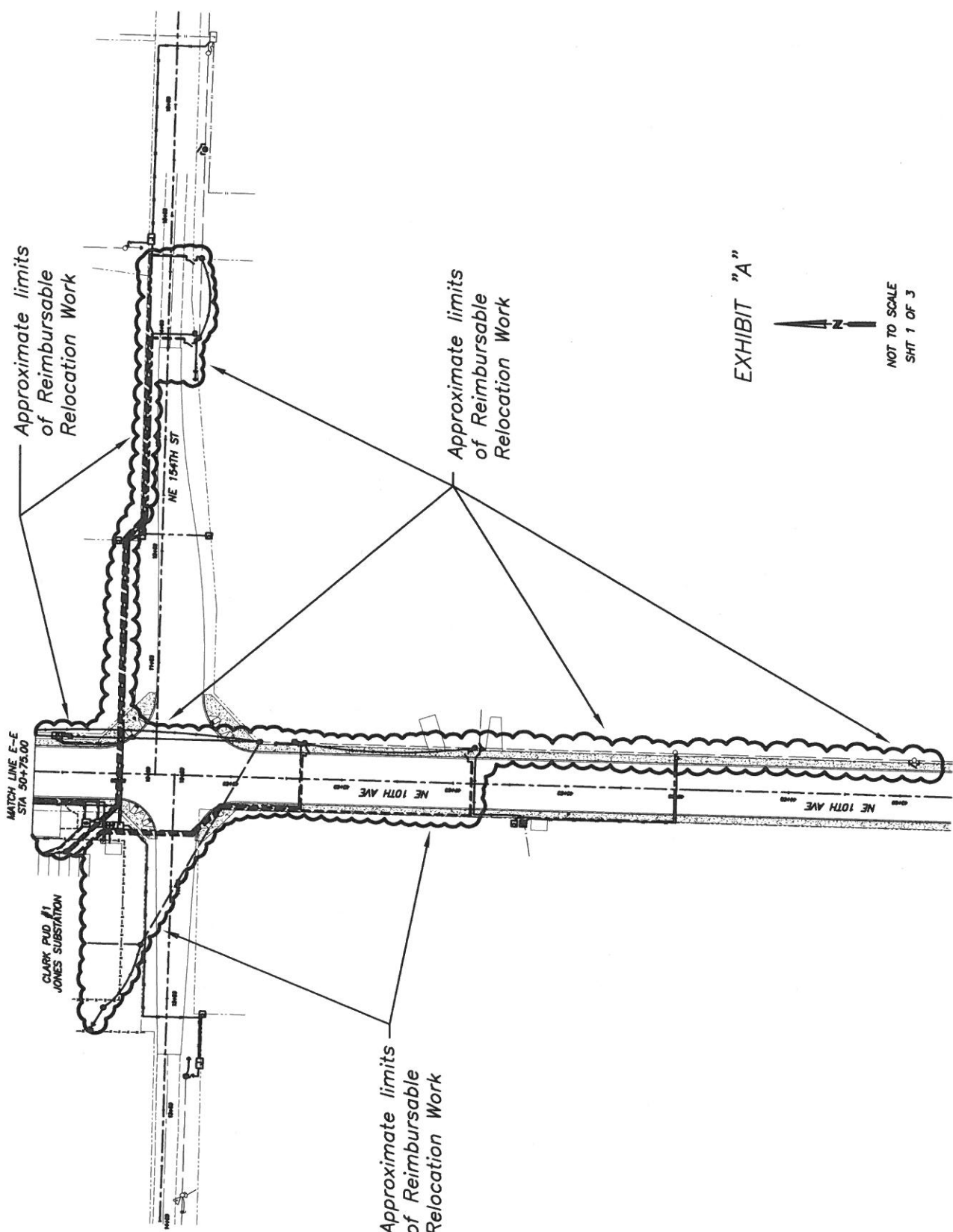


EXHIBIT "A"



NOT TO SCALE
SHT 1 OF 3

EXHIBIT "A"



NOT TO SCALE
SHT 2 OF 3

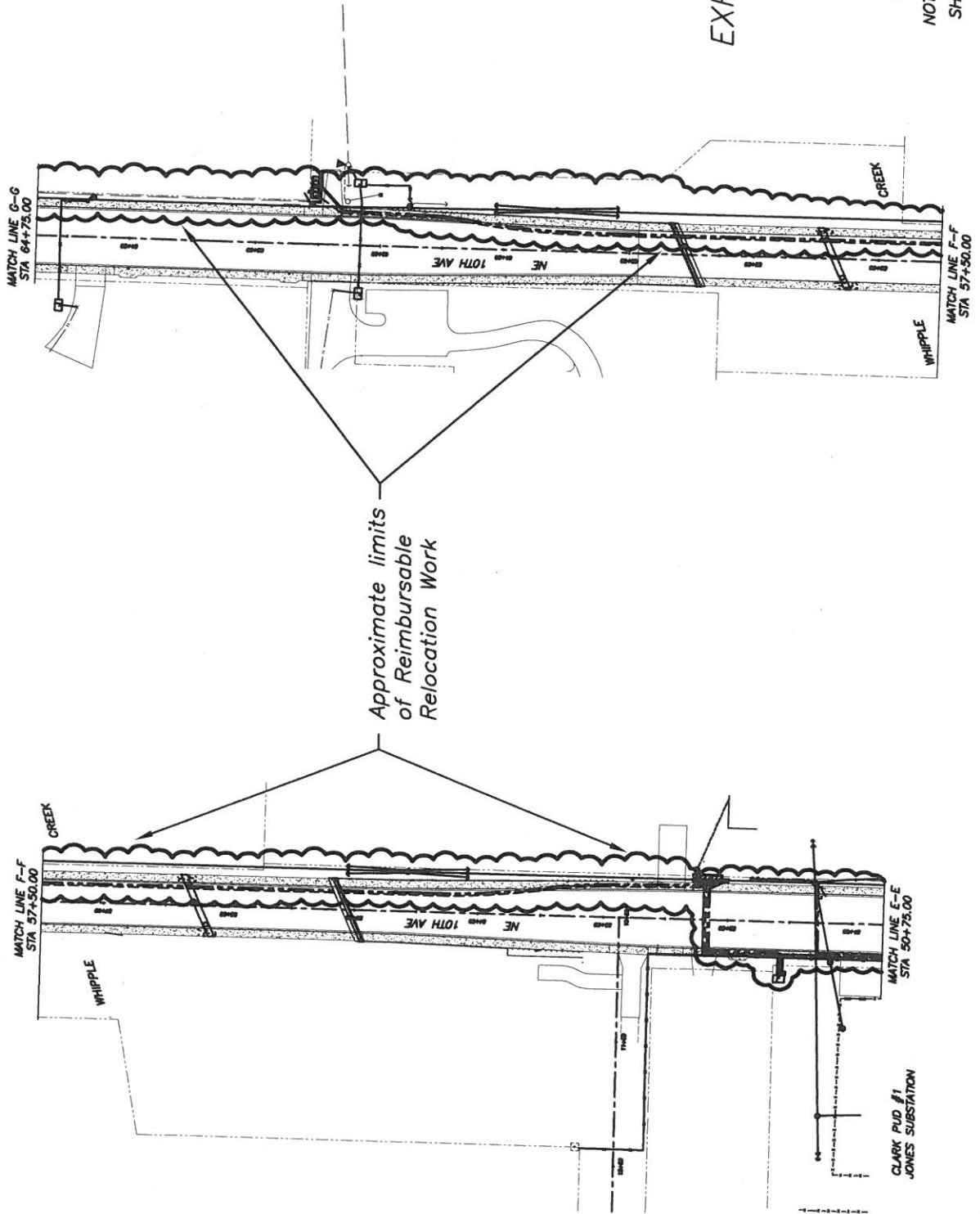


EXHIBIT "A"



NOT TO SCALE
SHT 3 OF 3

