

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF VANCOUVER AND
CLARK PUBLIC UTILITIES**

Overhead Electric Line Relocation – SE 1st St Phase 1 Road Project

This Interlocal Agreement (the “Agreement”) (MOU) is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between the City of Vancouver (the “City”), a municipal corporation with an address of P.O. Box 1995, Vancouver, WA 98668, 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 City 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 City has concluded that construction of road improvements to widen SE 1st Street between NE 162nd Avenue and SE 177th Avenue (the “Project Area”) is necessary in order to provide an acceptable level of road and pedestrian safety; and

WHEREAS, CPU owns certain facilities adjacent to the project area roadway, located on easements, which must be relocated in order to complete the road improvements to widen SE 1st Street; and

WHEREAS, the City desires these facilities be relocated elsewhere in order to allow the road improvements to widen SE 1st Street to proceed; and

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

WHEREAS, both the City 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 City 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, 2021, or until the relocation work has been

completed by CPU, and accepted by the City (in a timely manner) and the City has paid CPU in full, 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. Either Party may choose to terminate this Agreement by notifying the other Party upon thirty (30) days written notice. Should this Agreement be terminated prior to completion of the relocation work by CPU, the City agrees to compensate CPU for the relocation costs incurred up to that date.
5. SCOPE OF WORK.
 - a. CPU agrees to relocate existing electrical facilities on behalf of the City to accommodate construction of road improvements to widen SE 1st Street between NE 162nd Avenue and SE 177th Avenue, as described on the project map attached as Exhibit 'A' (the "City Relocation Work"), which is incorporated herein by this reference.
 - b. As part of this work, CPU agrees to relocate overhead distribution lines including all poles, framing, conductors, guying, anchors, risers, upright pedestals, transformers, equipment, cable in conduit, etc. as necessary to complete the relocation of a portion of the existing east/west line alignment further to the south and north, and the relocation of a portion of the north/south line alignment further to the west to accommodate construction of road improvements to widen SE 1st Street between NE 162nd Avenue and SE 177th Avenue.
 - c. All materials provided by CPU subject to reimbursement by the City are to be Buy America compliant, except those materials CPU is unable to procure as such and for which CPU will provide to the City the necessary information in order for the City to document for governing authorities.
 - d. The City, as the recipient of FHWA grant funding, will be responsible for documenting all non-compliant materials to be installed by CPU in performing the reimbursable relocation work. The City acknowledges that it may be necessary to use some non-compliant material during construction and directs CPU to proceed with construction using non-compliant materials where no alternative is available. The City agrees to reimburse to CPU 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 City for such costs following any mandated reconstruction.
 - e. CPU currently has agreements with communications companies and allows joint use contacts along the existing pole alignment. The City 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 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 City Relocation Work.
- b. City agrees to provide reimbursement to CPU for the actual direct and related indirect costs of the City Relocation Work, as identified in Exhibit 'A', currently estimated to be Three Hundred Fifty Nine Thousand, Six Hundred and Ninety Nine Dollars and Ninety Seven Cents (\$359,699.97 USD).
- c. CPU shall invoice the City and provide supporting documentation therefore, and the City agrees to pay CPU within thirty (30) calendar days of receipt of an invoice.

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

- a. The City Manager of the City 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 City Manager of the City 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 City 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 City 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 City or CPU, and provided further, that nothing herein shall require the City 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 City is directing CPU to install materials that may not be compliant with the Buy America requirement, CPU shall not be responsible to the City for any loss, claim, penalty, or expense attributed to a violation of the Buy America requirements and the City 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 City:
 City of Vancouver
 Attn: Leslie Degenhart
 P.O. Box 1995
 Vancouver, WA 98668

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 Parties' 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 Amendment on the dates indicated below.

For the **CITY**:

CITY OF VANCOUVER, WA
A municipal corporation

DocuSigned by:



75A9183485CA467...

Eric Holmes, City Manager

DATED: 9/16/2020

For **CPU**:

CLARK PUBLIC UTILITIES
A municipal corporation

DocuSigned by:



B954A3862E8849F...

Lena Wittler, General Manager

DATED: October 6, 2020

Attest:

DocuSigned by:



BCF6734E40E94AE...

Natasha Ramras, City Clerk

Approved as to Form:

DocuSigned by:



9A7DC2E31F5694A2...

Jonathan Young, City Attorney

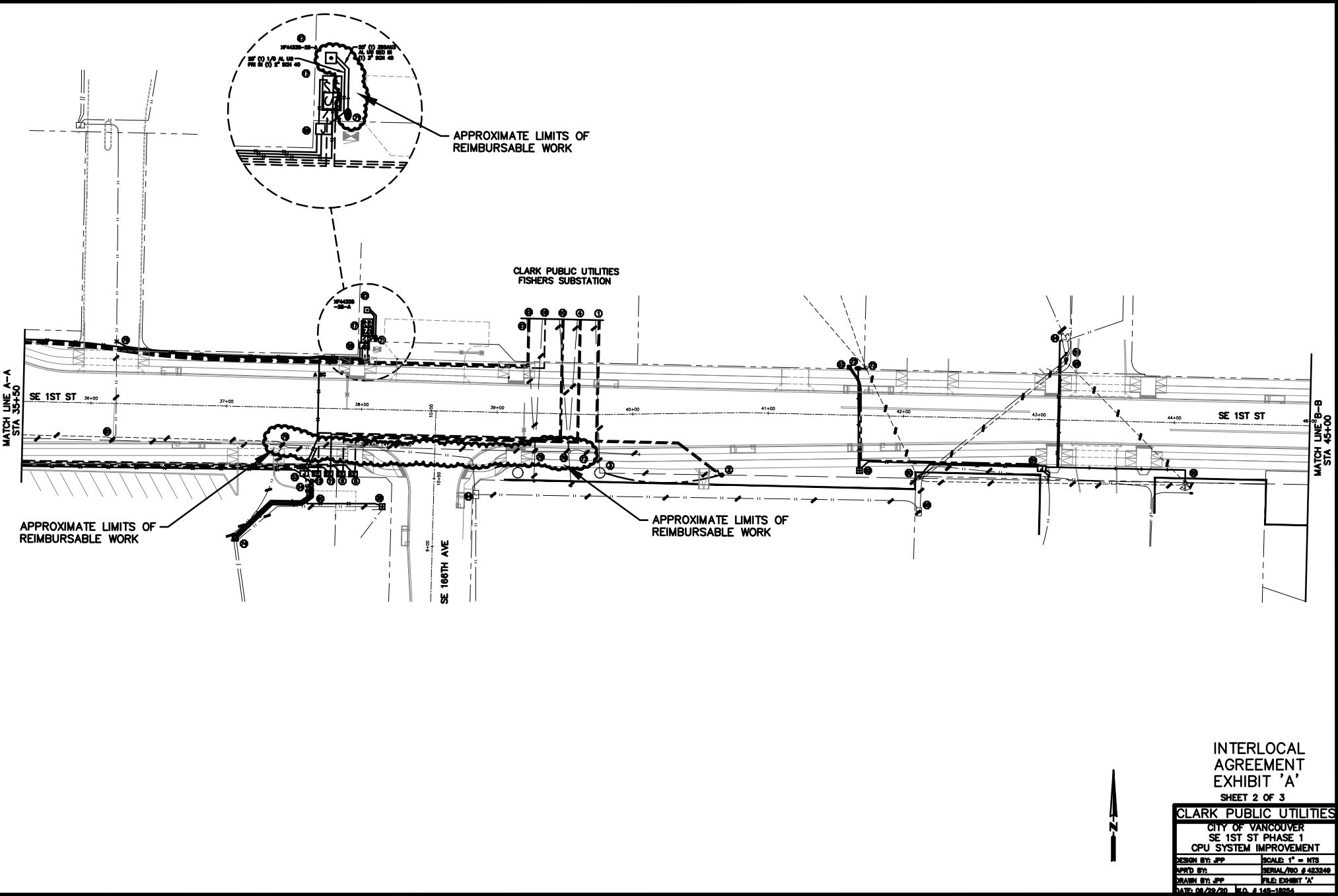
Approved as to Form:

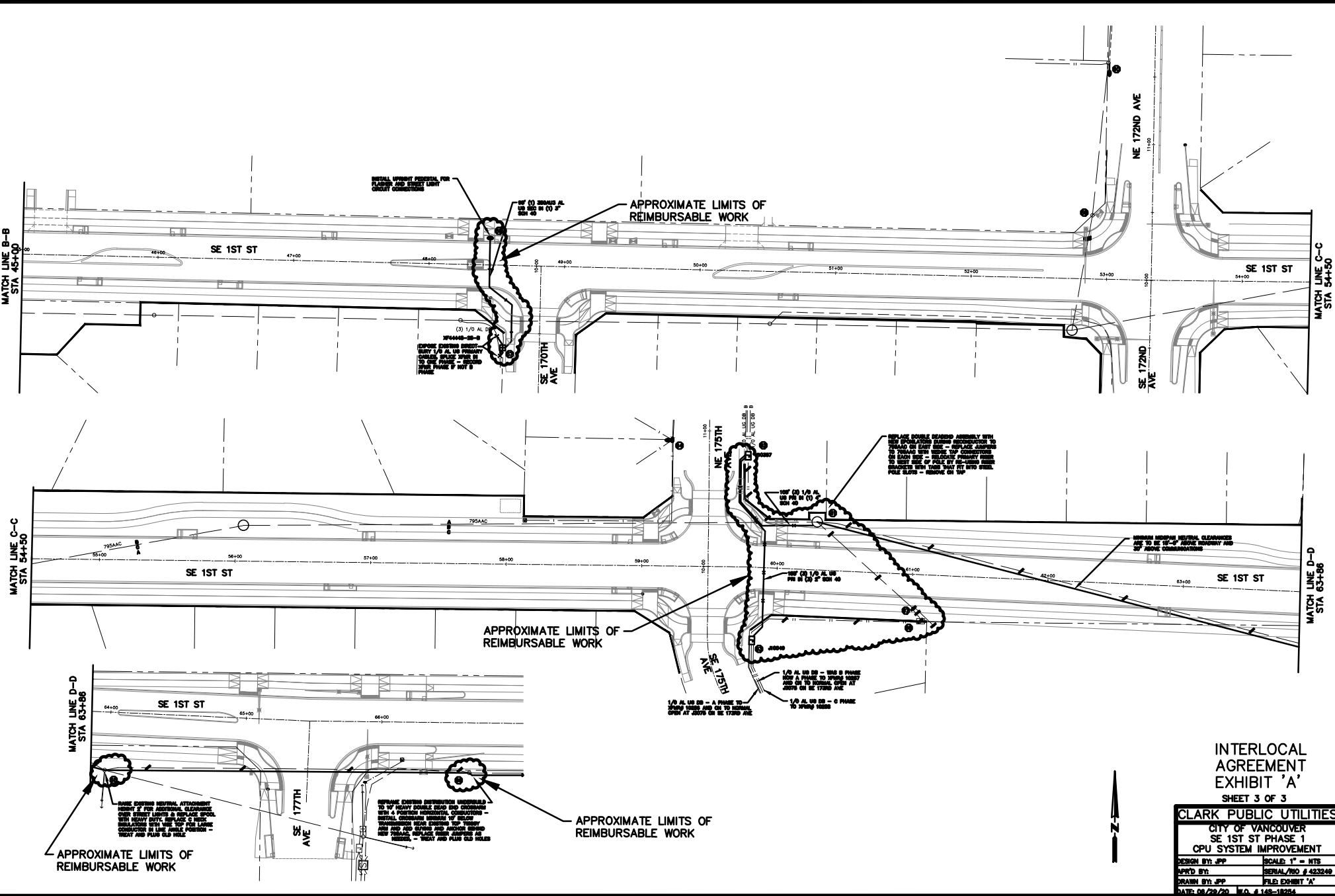
DocuSigned by:



7F643C7B4B14441...

John Eldridge, CPU Legal Counsel





INTERLOCAL
AGREEMENT
EXHIBIT 'A'
SHEET 3 OF 3

CLARK PUBLIC UTILITIES	
CITY OF VANCOUVER	
SE 1ST ST PHASE 1	
CPU SYSTEM IMPROVEMENT	
DESIGN: BTJ-JPP	SCALE: 1" = 100'
APPROVED BY: BTJ	SERIAL/NO: 453249
DRAWN BY: JPP	FIELD EXHIBIT 'A'
DATE: 08/29/20 W.D. 4-145-18224	