

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (Agreement) is made and entered into pursuant to Chapter 39.34 of the Revised Code of Washington, by and between the City of Kelso (Kelso), Washington, a municipal corporation of the State of Washington, and Public Utility District No. 1 of Cowlitz County, Washington, a municipal corporation of the State of Washington, ("Cowlitz PUD"), on the date the last party executes the agreement as set forth in the signature block below.

AGREEMENT

For and in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. DURATION. This Agreement shall commence as of the last date signed below and shall terminate upon completion of the project and payment for all work.
2. PURPOSE. The purpose of this Agreement is to formalize the responsibilities of the parties related to the relocation of Cowlitz PUD facilities, as described herein and depicted in Exhibit A hereto, necessary for Kelso's South Kelso Railroad Crossing Project ("Project"):

Private Property Work (Cowlitz PUD to be reimbursed by Kelso):

- Relocation of power pole on private land (to become city right-of-way) on the west side of the railroad tracks.
- Relocation of power pole in BNSF right-of-way on the east side of the railroad tracks, including removal of one overhead line to the south.
- Relocation of underground lines on north side of Douglas Street and customer-owned pole on south side of Douglas Street (Bopp property), including boring under S Pacific near the intersection with Douglas Street, if required.(Cowlitz PUD may be able to utilize the existing road crossing.).

Public Right-of-Way (ROW)Work (not reimbursable):

- Power poles on Hazel Street and Douglas Street within existing right-of-way to be relocated to accommodate street widening.
- Underground power to be installed along the new portion of 3rd Avenue.

This Project has received funding from the Washington State Department of Transportation (WSDOT) Connecting Washington Projects Package administered by the WSDOT Rail Office and Railway/Highway Crossing Program Federal Funding administered by WSDOT Local Programs.

3. DESIGN. Cowlitz PUD shall provide a design for all Cowlitz PUD utility work.
4. CONSTRUCTION. Cowlitz PUD will be responsible for constructing all portions of the electric utility work described above including the Private Property Work and the Public ROW Work. Cowlitz PUD shall provide all labor and materials for the utility work described in this Agreement.
5. CONTRACTOR COORDINATION. Cowlitz PUD shall coordinate its work with Kelso's

contractor and perform the work such that it does not impede work being performed Kelso's contractor.

6. PERMITS. Cowlitz PUD will be responsible for obtaining all electric utility permits required to accomplish its work and will be reimbursed for permits necessary for private property work described in paragraph 2. Kelso will, upon receipt and processing of complete and sufficient application, issue all permits within their jurisdiction that are necessary to complete all work described in paragraph 2.
7. PAYMENT. Work completed by Cowlitz PUD, including design and construction costs described in this Agreement as Private Property Work will be reimbursed by Kelso within 30 days of invoice with appropriate documentation showing breakdown of costs. Work described as Public Right-of-Way Work will be constructed at Cowlitz PUD's sole cost and expense. **Total reimbursement from Kelso to Cowlitz PUD for the work performed by Cowlitz PUD shall not exceed \$85,000 without prior written approval from Kelso.**
8. INDEMNIFICATION. To the extent authorized by law, Cowlitz PUD and Kelso shall indemnify and hold harmless one another and their employees, officers, contractors and agents, from and shall process and defend at their 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 or nature, brought against the 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, that if such claims are caused by or result from the concurrent negligence of (a) Cowlitz PUD and (b) Kelso, their respective employees, officers, contractors or agents, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Cowlitz PUD or Kelso, and provided further, that nothing herein shall require Cowlitz PUD or Kelso to hold harmless or defend the other or its employees, officers, contractors or agents from any claims arising from that Party's sole negligence or that of its employees, officers, contractors or agents. The terms of this section shall survive the termination of this Agreement.
9. TERMINATION. A party may terminate this Agreement only if the other party is in default under this Agreement and fails to correct the default with a reasonable period of time upon notice of the default, not to exceed 30 days. If the agreement is terminated, a final payment will be processed according to the terms and conditions outlined in Section 7 of this Agreement based on the amount of work completed. Cowlitz PUD will be responsible for any remaining work for design, temporary support, relocation and installation of electric utilities if this agreement is terminated.
10. 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. Nothing in this Agreement shall make any employee of Cowlitz PUD an employee of Kelso or any employee of Kelso an employee of Cowlitz PUD for any purpose, including but not limited to, 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.
11. ATTORNEYS FEES AND COSTS. The parties shall bear their own costs of enforcing the rights and responsibilities under this Agreement.

12. NO THIRD-PARTY BENEFICIARY. Cowlitz PUD and Kelso do not intend to assume any contractual obligations to anyone other than each other and do not intend that there be any third-party beneficiary to this Agreement.
13. WAIVER. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.
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. AMENDMENT. The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both parties, except as provided in previous sections.
16. DOCUMENT FILING. Kelso shall cause a copy of this Agreement to be posted on the City of Kelso website pursuant to RCW 39.34.040.
17. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.
18. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, Cowlitz PUD and Kelso have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the 1st day of December, 2021.

APPROVED this 1st day of December, 2021.

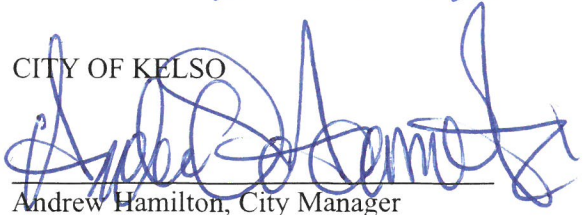
PUBLIC UTILITY DISTRICT NO. 1
OF COWLITZ COUNTY, WASHINGTON



Ray Johnson, Director of Engineering

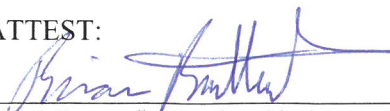
APPROVED this 1st day of December, 2021.

CITY OF KELSO



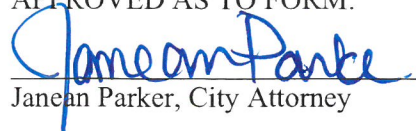
Andrew Hamilton, City Manager

ATTEST:



Brian Butterfield, City Clerk

APPROVED AS TO FORM:



Janean Parker, City Attorney

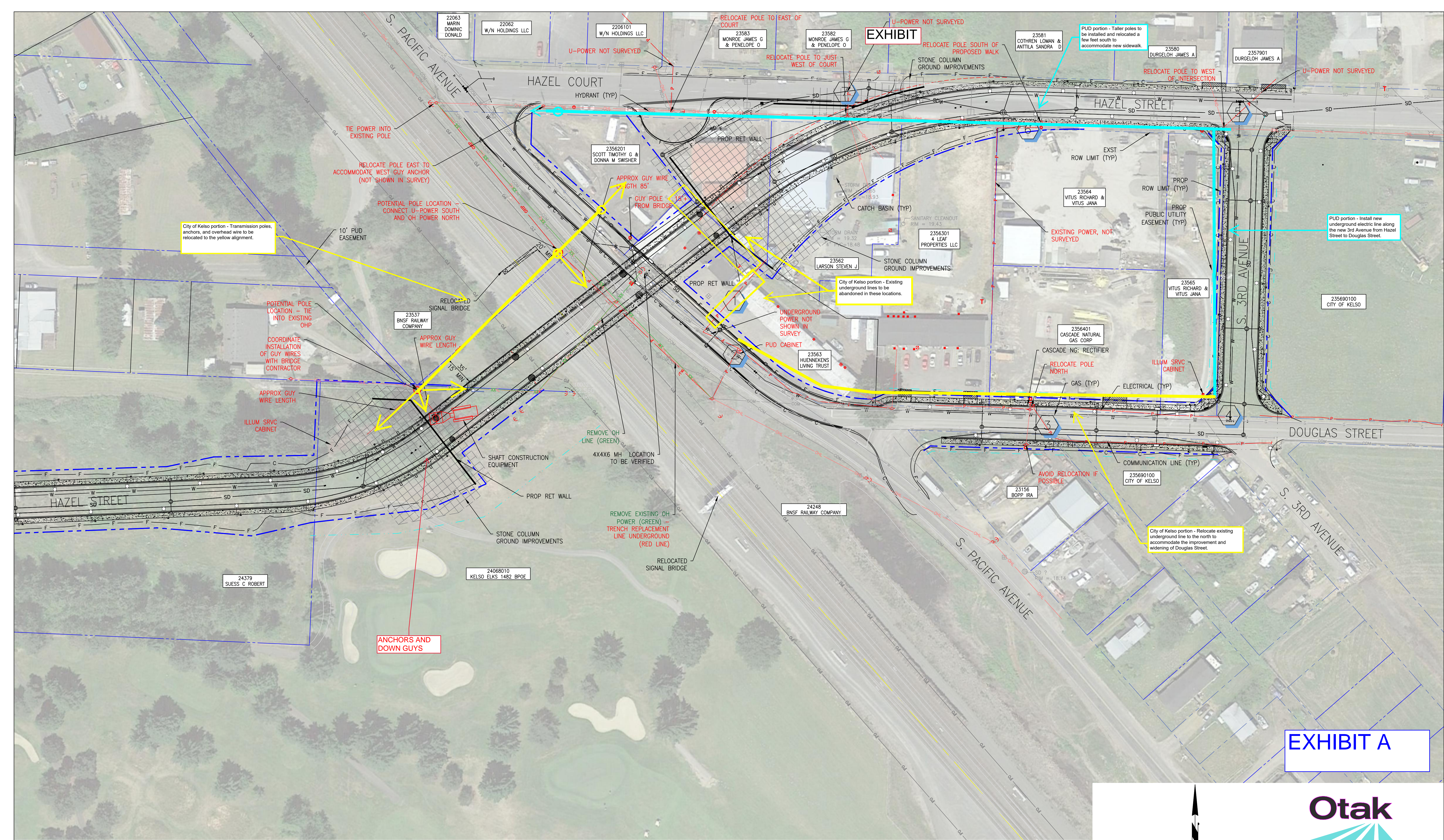
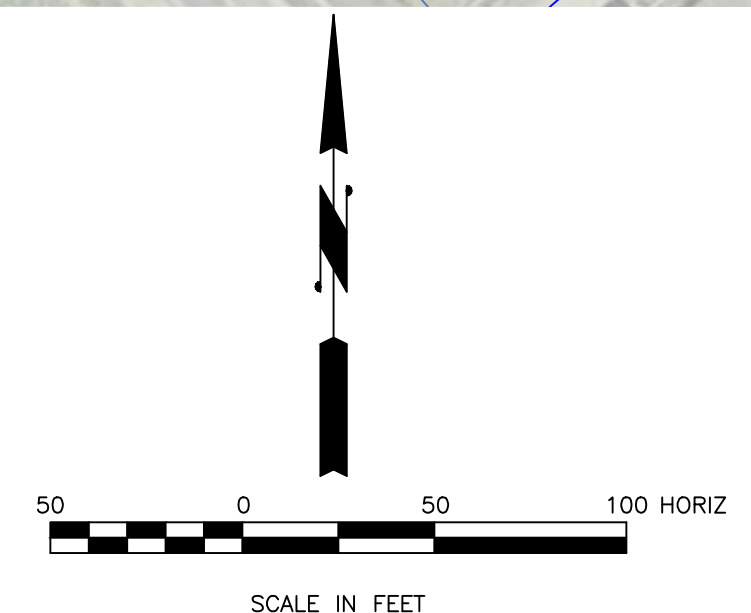


EXHIBIT A

PROPOSED TEST HOLE LOCATIONS

S. KELSO UTILITY EXHIBIT
DATE: October 30, 2020



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