



City of Ketchum

October 19, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 20536 with Idaho Power for a temporary sector box and underground power lines in the City Right-of-Way.

Recommendation and Summary

Staff is recommending the Council approve the attached Encroachment Agreement 20536 and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20536 with Idaho Power."

The reasons for the recommendation are as follows:

- The encroachment is necessary to facility construction of the property
- Construction the encroachment will have no impact on pedestrian or public access
- The duration of the temporary sector box permitted will be 24 months from execution of the agreement.

Introduction and History

To facilitate construction of the mixed-use building located at 391 N First Ave., also referred to as First and Fourth, Idaho Power would like to relocate the existing underground power lines and install a temporary three phase sector box in the alley between 4th and Sun Valley Road west of 1st Ave. The overall project involves tying into the existing underground powerlines in 4th Street, relocating approximately 120 feet of underground power in a 4" conduit within the alley, and installing a temporary sector box. The temporary sector box is an above ground structure 30" tall x 66" long x 22" wide in and proposed to be placed in the alley ROW until construction of the building has progressed to permit relocation of the sector box adjacent to the new building. The underground power lines and conduit will continue to remain in place following relocation of the sector box.

City code requires a right-of-way encroachment permit for any encroachment in the public right-of-way. These agreements are intended to help protect the City in the event the proposed encroachments were to ever pose an issue requiring repair, relocation, or removal of the encroachment. In this case the sector box is a temporary encroachment necessary for construction and permitted for a maximum of 24 months.

Analysis

Staff has reviewed the layout of the proposed utilities. Though the sector box is placed within the City alley ROW the City does not maintain this portion of the alley during winter months and it will not impact operations.

Financial Impact

There is no financial impact resulting from approval of this encroachment agreement.

Attachments:

Encroachment Agreement 20536

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20536

THIS AGREEMENT, made and entered into this ____ day of ____, 2020, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and _____, representing IDAHO POWER COMPANY, (collectively referred to as "Owner"), whose address is 1221 West Idaho St., Boise, ID 83702

RECITALS

WHEREAS, Owner wishes to permit placement of a temporary sector box and underground electrical power lines in the public alley right-of-way between 3rd St. and 4th St. west of 1st Ave. These improvements are shown in Exhibit "A" attached hereto and incorporated herein (collectively referred to as the "Improvements"); and,

WHEREAS, Ketchum finds that said Improvements will not impede the use of said public right-of-way at this time subject to the terms and provisions of this Agreement;

WHEREAS, the Owner will restore the sidewalk, street, curb and gutter and any landscaping back to the original condition acceptable to the Streets and Facilities Director;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. Ketchum shall permit Owner to install a temporary sector box and power infrastructure identified in Exhibit "A" within the public alley right-of-way between between 3rd St. and 4th St. west of 1st Ave., until notified by Ketchum to remove the infrastructure at which time Owner shall remove infrastructure at Owner's expense. Placement of the temporary sector box is permitted for a maximum of 24 months from the date of execution of this agreement at which time the sector box will need to be relocated to private property or removed at Owner's expense.

2. Owner shall be responsible for the maintenance of said Improvements and shall repair said improvements within 48 hours upon notice from Ketchum that repairs are needed.

3. Owner shall be responsible for restoring the sidewalk, curb and gutter and landscaping that is altered due to the construction and installation of the facilities, to the satisfaction of the Director of Streets and Facilities.

4. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against

any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed and maintained in the public right-of-way. Owner shall further indemnify and hold Ketchum harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Owner's part to be performed under this Agreement, or arising from any negligence of Owner or Owner's agents, contractors or employees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such action or proceeding brought thereon. In the event any action or proceeding is brought against Ketchum by reason of such claim, Owner, upon notice from Ketchum, shall defend Ketchum at Owner's expense by counsel satisfactory to Ketchum. Owner, as a material part of the consideration to Ketchum, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained in the public right-of-way arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.

5. Ketchum shall not be liable for injury to Owner's business or loss of income therefrom or for damage which may be sustained by the person, goods, wares, merchandise or property of Owner, its tenants, employees, invitees, customers, agents or contractors or any other person in or about the Subject Property caused by or resulting from the Improvements constructed, installed, removed or maintained in the public right-of-way.

6. Owner understands and agrees that by maintaining the Improvements in the public right-of-way pursuant to this Agreement, Owner obtains no claim or interest in said public right-of-way which is adverse to that of Ketchum and that Owner obtains no exclusive right to said public right-of-way nor any other right to use the public right-of-way not specifically described herein.

7. In the event either party hereto retains an attorney to enforce any of the rights, duties and obligations arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney's fees at the trial and appellate levels and, whether or not litigation is actually instituted.

8. This Agreement shall be governed by, construed, and enforced in accordance with the laws and decisions of the State of Idaho. Venue shall be in the District Court of the fifth Judicial District of the State of Idaho.

9. Subject to Section 13 below, this Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.

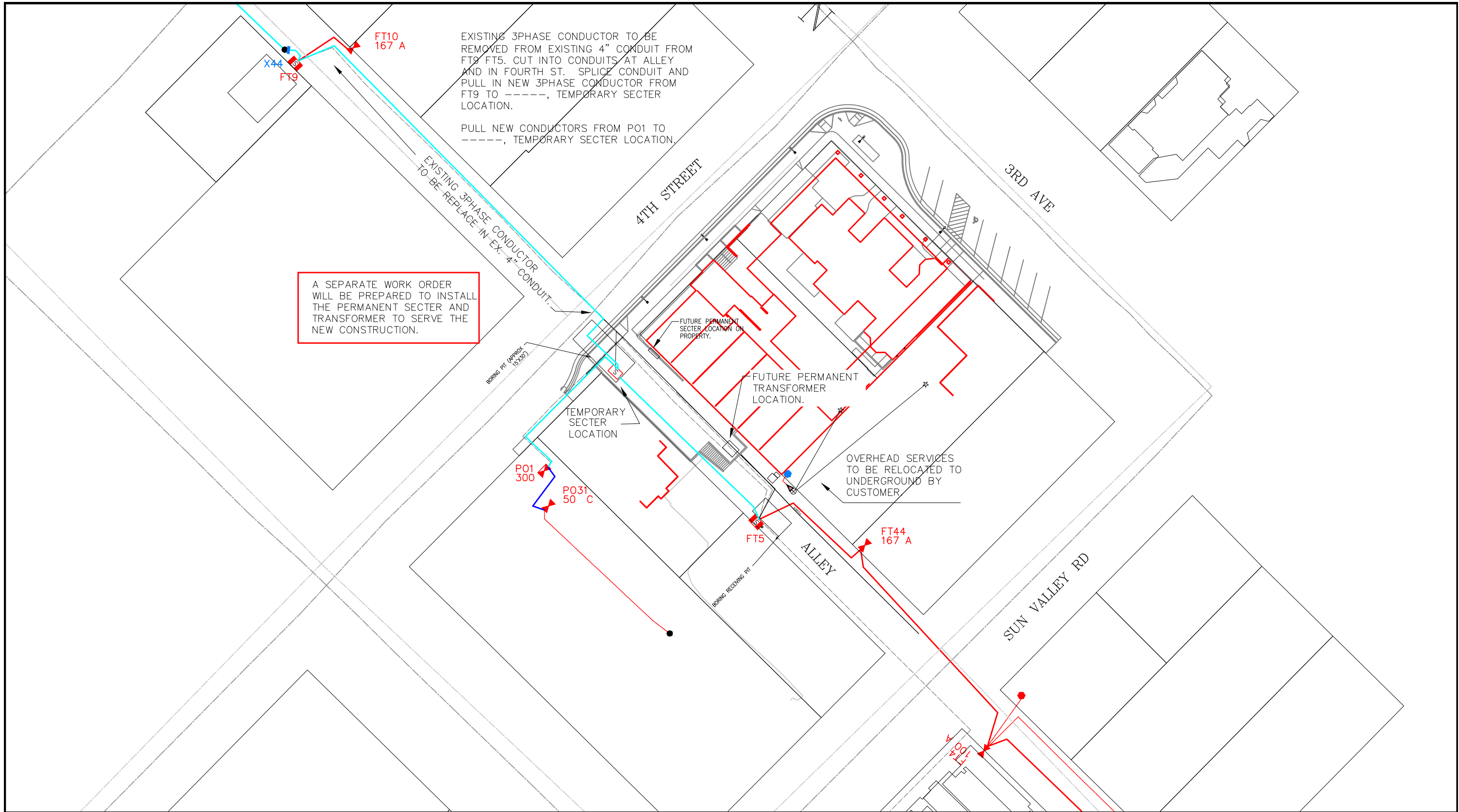
10. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of this document.

11. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

12. The parties fully understand all the provisions of this Agreement, and believe them to be fair, just, adequate and reasonable, and accordingly accept the provisions of this Agreement freely and voluntarily.

13. Notwithstanding any other provision of this Agreement, this Agreement shall be subject in all respects to the terms of the Franchise Agreement between Owner and Ketchum set forth in Ketchum Ordinance No. 1092 adopted by Ketchum on May 7, 2012, as such Franchise Agreement may be amended, extended or replaced by a new franchise agreement in the future ("Franchise Agreement"), and in the event of any conflict or uncertainty between the terms of this Agreement and the Franchise Agreement, the Franchise Agreement shall control.

EXHIBIT "A"



Job Title: FIRST & 4TH HOUSING-391 N 1ST AVE/KET UG FAC FOR MIXED USE PROJ		Feeder Map File Name: KCHM1103		Surveyed or GPS: SURVEYED		FDR By: ----		Designer: CDC0468	
Additional Description: RECONSTRUCT EXISTING UNDERGROUND 3PHASE POWER FOR CONSTRUCTION		Qua 1	Twn 04N	Rng 17E	Sec 13	BM BM	Date: ----	Design No: 0000142918	
Additional Description: OF NEW MIXED USE BUILDING.		State ID	County Blaine			Operating Voltage: 12.5kV	ArcFM By: ----	Work Order No: 27555550	
SWPP: ---- TIMES SCALE 0 1 2 3 4 Customer: _____ Date: _____							SCALE: 1" = 50		Sheet <u>1</u> of <u>1</u>