



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

-
-
-

Policy Analysis and Background (non-consent items only):

Sustainability Impact:

Financial Impact:

Attachments:

-
-

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 24925

THIS AGREEMENT, made and entered into this ____ day of _____, 2024, 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 (collectively referred to as "Owner"), whose address is 11831 Hwy 75, Hailey, Idaho 83333.

RECITALS

WHEREAS, Owner wishes to permit placement of a new above ground sector box and padmount transformer within the right-of-way on Spruce Avenue. The owner also wishes to permit placement of conduit and power cable below ground within the right-of-way on Spruce Avenue to 691 N Spruce Avenue. 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 public right-of-way 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 the Improvements identified in Exhibit "A" within the public right-of-way on Spruce Avenue, until notified by Ketchum to remove the Improvements, at which time Owner shall remove Improvements 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. Any modification to the Improvements identified in Exhibit "A" shall be approved by the City prior to any modifications taking place.
3. Owner shall be responsible for restoring the right-of-way that is altered due to the removal of the Improvements, 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. 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 of 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.

OWNER:

CITY OF KETCHUM:

By: _____

By: _____

Neil Bradshaw

Printed Name: _____

Its: Mayor

STATE OF _____,)
County of _____,) ss.

On this ____ day of _____, 2024, before me, the undersigned Notary Public in and for said State, personally appeared _____, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
Commission expires _____

STATE OF IDAHO)
County of Blaine) ss.

On this ____ day of _____, 2024, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"

**EXHIBIT "A"
RIGHT-OF-WAY
ENCROACHMENT
AGREEMENT NO. 24925**

EXHIBIT A NOTES:

NEW ROW ENCROACHMENTS INCLUDED IN RIGHT-OF-WAY AGREEMENT NO 24925 ARE SHOWN IN **PURPLE TEXT BOXES**

EXISTING ROW ENCROACHMENTS IN **PINK TEXT BOXES**

BASE FIGURE PROVIDED BY IDAHO POWER ANNOTATED BY CITY ENGINEER ROBYN MATTISON TO CLARIFY IMPROVEMENTS INCLUDED IN RIGHT-OF-WAY AGREEMENT NO. 24925

JOINT USE ATTENTION REQUIRED!

This work involves Joint Use facilities which may include transfers, new attachments and removals. When work is completed on your portion of the project, please provide name and work order number to one of the following:

Email: JointUseDept@idahopower.com
Phone: 208-388-2886

Company Contact Information

Cox Communications (Bellevue, Hailey, Ketchum, Sun Valley)
Al Kennedy
208-471-0028

Century Link (Idaho)
Eric Griffith
360-946-2890

NEW UNDERGROUND CONDUIT AND CABLE
* TO BE LOCATED IN TRENCH OFFSET FROM STORM DRAIN, SEWER AND WATER LINES

EXISTING POLE TO BE REMOVED

EXISTING OVERHEAD LINES TO BE REMOVED

EXISTING POLE TO REMAIN TO KEEP STREET LIGHT

NEW SECTOR (APPROX 3-FT X 4-FT) TO BE INSTALLED ADJACENT TO EXISTING TRANSFORMER IN ROW

EXISTING OVERHEAD LINES TO BE REMOVED

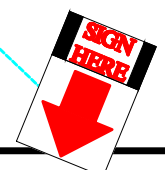
EXISTING POLE TO REMAIN

NEW TRANSFORMER (APPROX 3-FT X 4-FT) TO BE INSTALLED AT BASE OF POLE IN FRONT OF RETAINING WALL AS CLOSE AS POSSIBLE TO RETAINING WALL

UNDERGROUND CABLE NOTES											
POINT NUMBER	FROM	TO	CONDUCTOR CU	CABLE SIZE	CABLE LENGTH	TRENCH LENGTH	CONDUIT CU	CONDUIT SIZE	CONDUIT LENGTH	COMPACTION LENGTH	BORE LENGTH
1		SE?	DCP10	1/0 A	79	12	DDB2	2	12	-	-
2	SE?	SE?	DCP10	1/0 A	284	270	DDB2	2	270	-	-
2	SE?	F6	D3SC40	4/0TxS	87	20	DDB3S	3	20	-	-
3	SE?	SE?	DCP10	1/0 A	246	232	DDB2	2	232	-	-
6	SE24		D2SC6	6DxS	67	35	DDB1	1	35	-	-

THIS WORK ORDER DOES NOT INCLUDE YOUR UNDERGROUND SERVICE CHARGES. YOUR ACCOUNT WILL BE BILLED SEPARATELY ACCORDING TO THE "UNDERGROUND RESIDENTIAL CONDUIT INSTALLATION REQUIREMENTS" ONCE THE SERVICE WORK HAS BEEN COMPLETED.

CUSTOMER PROVIDED TRENCH
- PRIMARY TRENCH DEPTH REQUIRES 42" OF COVER
- SECONDARY & SERVICE TRENCH DEPTH REQUIRES 30" OF COVER
***PLEASE REVIEW "CUSTOMER PERFORMED CONSTRUCTION WORK AGREEMENT" FOR FURTHER DETAILS.**



SWPP: -----

TIMES SCALE 0 1 2 3 4

Customer: _____ Date: _____

Job Title: **SPRUCE AND 6TH LLC - 691 N SPRUCE AVE/KET - UG LX TO NEW HOME**

Additional Description: -----

Additional Description: -----

Feeder Map File Name: -----

Qua	Twn	Rng	Sec
-----	-----	-----	-----

State: **ID** County: **Blaine**

Surveyed or GPS: -----
Joint Use Attachment: -----
Pre-Built Date: -----
Built as Designed: -----
Construction Date: -----
Operating Voltage: -----

FDR By: -----
Date: -----
ArcFM By: -----
Date: -----

Designer: **CLP8023**
Design No: **0000164091**
Work Order No: **27630083**