



City of Ketchum

May 3, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 20620 with Idaho Power for placement of underground power lines in the City Right-of-Way

Recommendation and Summary

Staff is recommending the Council approve the attached Encroachment Agreement 20620 and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20620 with Idaho Power."

The reasons for the recommendation are as follows:

- The encroachment is necessary to underground power distribution lines
- The encroachment will have no impact on pedestrian or public access
- The encroachment will not impact city infrastructure

Introduction and History

Idaho Power would like to install approximately 420 ft. of underground conduit and conductors within the City's Right-of-Way on Bald Mountain Road between Irene Street and Warm Springs Road. The proposed work will be a combination of underground boring at all pavement locations and trenching in gravel areas. The Water Department has confirmed there are no conflicts with placement of the proposed underground power lines along the north side of Bald Mountain Road. The encroachment request will facilitate undergrounding of approximately 340 ft. of overhead power lines.

Analysis

Engineering, Streets, the City Arborist, and the Water Department have reviewed the layout of the proposed utilities. In consideration of future projects and current operations, the proposed encroachment was determined not to impact public access or maintenance.

Financial Impact

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

Attachments:

Encroachment Agreement 20620

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 20620

THIS AGREEMENT, made and entered into this ____ day of ____, 2021, 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 underground electrical power lines in the public right-of-way along Bald Mountain Road. 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 power infrastructure identified in Exhibit "A" within the public right-of-way of Bald Mountain Road, until notified by Ketchum to remove the same.
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.

OWNER:

CITY OF KETCHUM:

By: _____

By: _____
Neil Bradshaw
Its: Mayor

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

On this ____ day of _____, 2021, 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)
) ss.
County of Blaine)

On this ___ day of _____, 2021, 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"

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

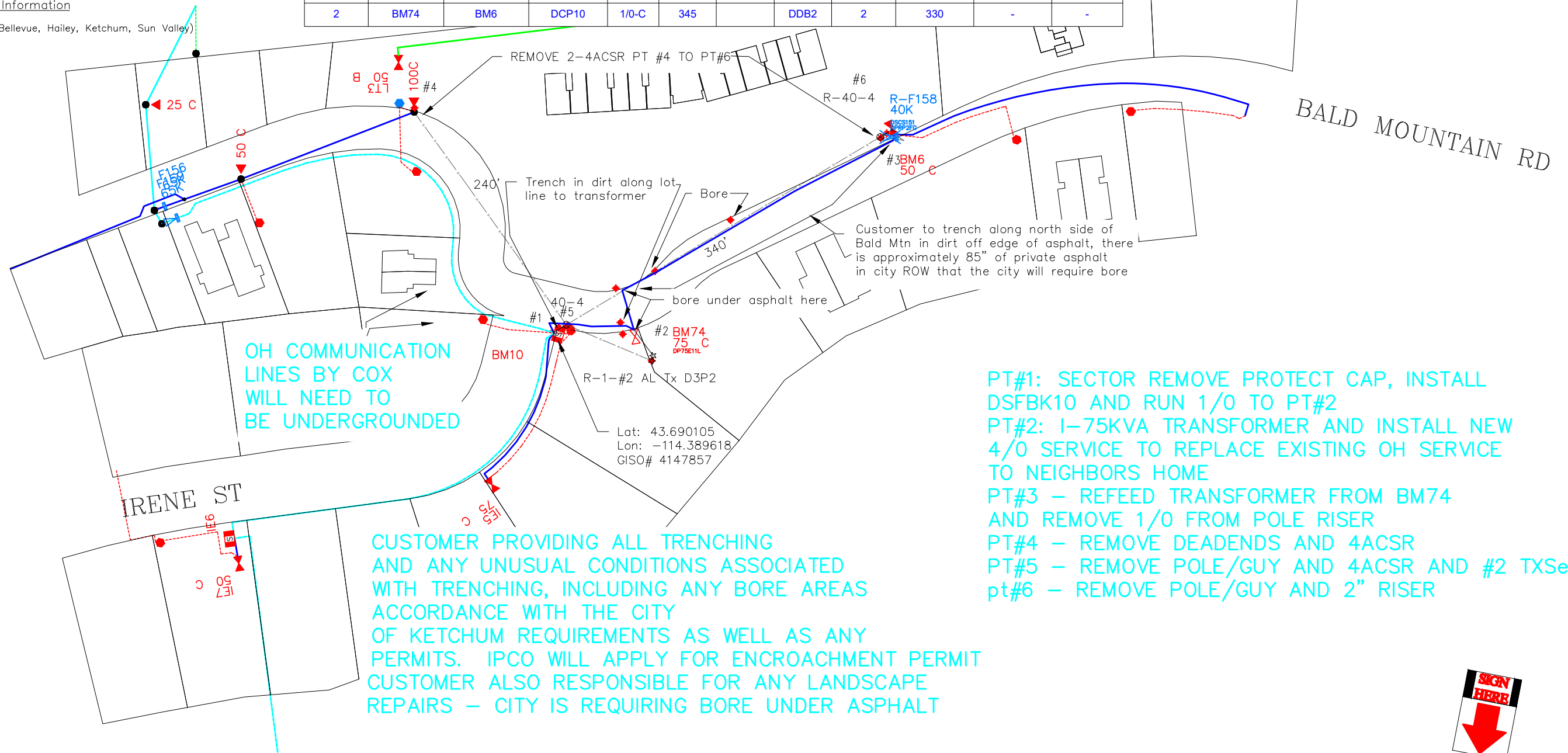
Company Contact Information

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



No Avian Protection Restriction

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	BM10	BM74	DCP10	1/0-C	105		DDB2	2	90	-	-
2	BM74	BM6	DCP10	1/0-C	345		DDB2	2	330	-	-



SWPP: Pending

TIMES SCALE 0 1 2 3 4

Customer:

Date:

Job Title: **DARCI REIMUND - 162 IRENE ST/KET UPGRADE XFMR & SECONDARY**

Additional Description: **INSTALL TRANSFORMER FOR NEW HOME AND NEIGHBOR'S OH SERVICE**

Additional Description: **UG REMAINING PRIMARY OH LINE**

Feeder Map File Name: **KCHM1804**

Qua **1** TwN **04N** Rng **17E** Sec **11** BM

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

Surveyed or GPS: **GPS**
Joint Use Attachment: **YES**
Pre-Built Date: **4/11/2021**
Built as Designed: **----**
Construction Date: **----**
Operating Voltage: **7.2kV**



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

Designer: **CLP8023**
Design No: **0000148249**
Work Order No: **27573621**