

# City of Ketchum

## CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: April 3, 2023 Staff Member/Dept: Sherri Newland/Public Works			
Agenda Item: Recommendation to Approve Right-of-Way Encroachment Agreement #22843 with Idaho			
Power for an underground transmission line duct bank in the City Right-of-Way.			
Recommended Motion:			
I move to authorize the Mayor to sign Encroachment Agreement 22843 with Idaho Power.			
Reasons for Recommendation:			
<ul> <li>Installing the duct bank concurrently with the Sun Valley Road construction will minimize future pavement damage and saw cuts.</li> </ul>			
The new underground transmission line duct will have no impact on pedestrian or public access.			
The encroachment will provide an underground power duct for a future redundant transmission line.			
Policy Analysis and Background (non-consent items only):			
Idaho Power is proposing to install approximately 300' of a transmission line duct for a future redundant line within			
the City's ROW beginning at the Spruce Ave. intersection and extending east to the city limits. A second			
encroachment permit will be submitted at a later date for the remaining portion of the duct to be installed within the city's streets. This encroachment will permit Idaho Power to install the transmission line duct while Sun Valley Road is			
under construction and will limit future saw cuts and asphalt damage.			
City Municipal code 12.12.040.C requires a right-of-way encroachment permit for any permanent 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 or relocation of the encroachment.			
Sustainability Impact:			
None OR state impact here: none			
Financial Impact:			
None OR Adequate funds exist in account: None			
Attachments:			
Right-of-Way Encroachment Agreement 22843			
2. Exhibit "A"			

#### WHEN RECORDED, PLEASE RETURN TO:

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

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#### **RIGHT-OF-WAY ENCROACHMENT AGREEMENT 22843**

THIS AGREEMENT, made and entered into this	_day of	_, 2023, by and
between the CITY OF KETCHUM, IDAHO, a municipal corporation ("	'Ketchum"),	whose address
is Post Office Box 2315, Ketchum, Idaho and	, repre	esenting IDAHO
POWER COMPANY, (collectively referred to as "Owner"), whose ac	ddress is 12	221 West Idaho
St., Boise, ID 83702.		

#### RECITALS

WHEREAS, Owner wishes to permit placement of an underground transmission line in the right-of-ways of Spruce Avenue and Sun Valley 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 underground power infrastructure identified in Exhibit "A" within the public right-of-way, until notified by Ketchum to remove the infrastructure at which time Owner shall remove infrastructure 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 vault, 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 eh 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, )				
On this day of, 2023, 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, 2023, 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 certificate first above written.	set my hand and seal the day and year in this			
	Notary Public for Residing at Commission expires			

### **EXHIBIT "A"**



