



City of Ketchum

September 20, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 20709 with Intermountain Gas Company for underground gas distribution lines within the City Rights-of-Way.

Recommendation and Summary

Staff is recommending the Council approve the attached Encroachment Agreement 20709 and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20709 with Intermountain Gas Company."

The reasons for the recommendation are as follows:

- The encroachment is necessary to provide natural gas services to the new Warm Spring Ranch subdivision
- The encroachment will have no impact on pedestrian or public access

Introduction and History

Intermountain Gas would like to install approximately 50 ft. of underground gas distribution line within the public Right-of-Way of Warm Springs Road and approximately 535 ft. of underground gas distribution lines within the public Right-of-Way of the new Bald Mountain Road. Underground gas distribution lines not located with public Rights-of-Way will be located within private utility easements.

City code 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 of the encroachment or relocation.

Analysis

Engineering has reviewed the layout of the proposed utilities. No above grade facilities are proposed within the City's Right-of-Way and as proposed do not impact public access or maintenance.

Sustainability Impact

None

Financial Impact

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

Attachment:

Encroachment Agreement 20709

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 20709

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 INTERMOUNTAIN GAS COMPANY, (collectively referred to as "Owner"), whose address is 555 S Cole Road, Boise, ID 83713.

RECITALS

WHEREAS, Owner wishes to permit placement of underground gas lines in the public right-of-way of Warm Springs Road and 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 gas 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 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. 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.

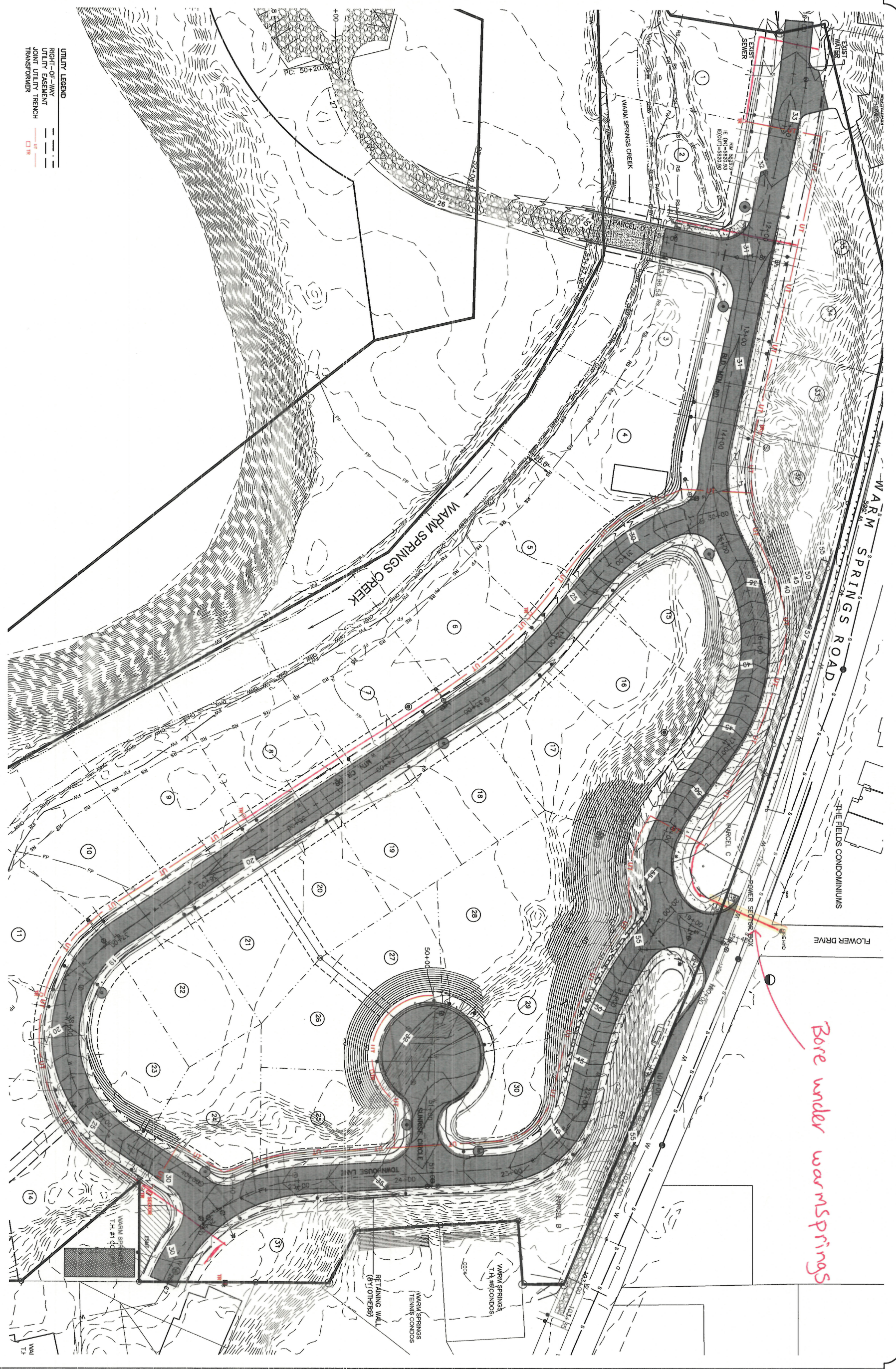
11. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

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.

EXHIBIT "A"

IGC Redline Utility Plan

Bore under warm springs



UTILITY LEGEND
 RIGHT-OF-WAY
 UTILITY EASEMENT
 JOINT UTILITY TRENCH
 TRANSFORMER

UTILITY PLAN
 SCALE IN FEET
 0 40 80 120

REVISIONS			
No.	DESCRIPTION	DATE	BY



PREPARED BY:
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 WWW.BMARS.COM
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UTILITY PLAN
 WARM SPRINGS RANCH, BL 1
 T4N, R17E, SEC 12, B.M., CITY OF KETCHUM, IDAHO
 PREPARED FOR: BRENNAN HOLDINGS, LLC.

DRAWN BY: PLJ
 DESIGNED BY: PLJ
 CHECKED BY: CL
 DATE: 6/8/2021
 PROJECT NO.: 200971
 DRAWING NO.: UT7