



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: July 7, 2025 Staff Member/Dept: Robyn Mattison/City Engineer

Agenda Item: Recommendation to Approve Right-of-Way Encroachment Agreement 25976 for the placement of a transformer in the public right-of-way on N 1st Avenue.

Recommended Motion:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 25976 between the City and Idaho Power.

Reasons for Recommendation:

- The improvements will not impact the use or operation of N 1st Avenue.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.

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

The project proposes to install a pad mount transformer within the public right-of-way on N 1st Avenue, adjacent to 181 N 1st Ave. The purpose of the project is to reroute power service from the alley to the front of 181 N 1st Ave to provide power to a new construction project located at 140 W 2nd St.

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment of the public right-of-way where a permanent fixture to the ground or a building will occur. The associated Right-of-Way Encroachment Agreement is 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. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum Municipal Code §12.12.060. The encroachments proposed for the N 1st Avenue project complies with all standards.

Sustainability Impact:

None OR state impact here: None

Financial Impact:

None OR Adequate funds exist in account: None

Attachments:

1. Right-of-Way Encroachment Agreement 25976 with Exhibit "A"
- 2.

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 25976

THIS AGREEMENT, made and entered into this ____ day of _____, 2025, 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 pad mounted transformer within the right-of-way adjacent to 181 N 1st 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 a pad mounted transformer identified in Exhibit "A" within the public right-of-way adjacent to 181 N 1st 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. Successors and Assigns - This Agreement shall be binding upon and inures to the benefit of each of the parties hereto and their respective successors and assigns.

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

13. 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: _____

Printed Name: _____

By: _____

Neil Bradshaw

Its: Mayor

Attest: _____

Trent Donat, City Clerk

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

On this ____ day of _____, 2025, 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.

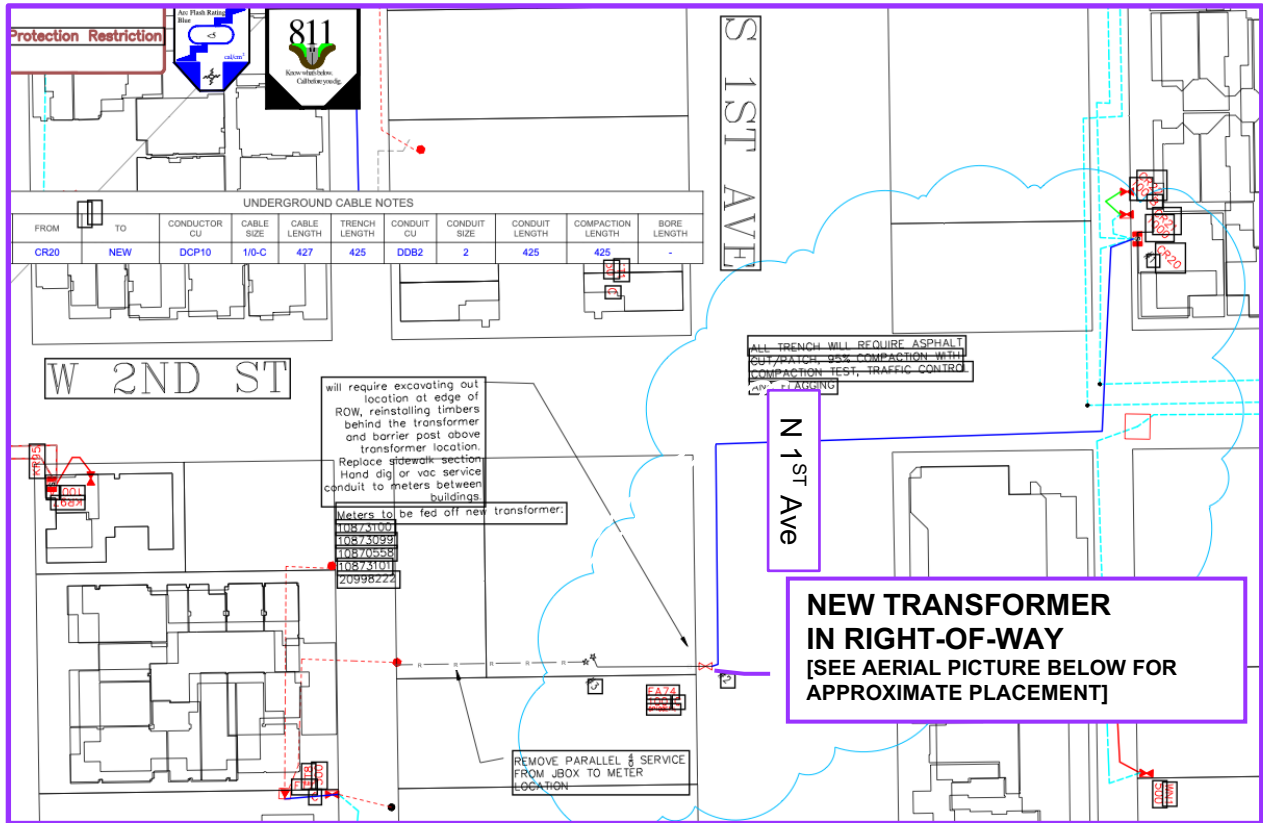
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for _____

Residing at _____

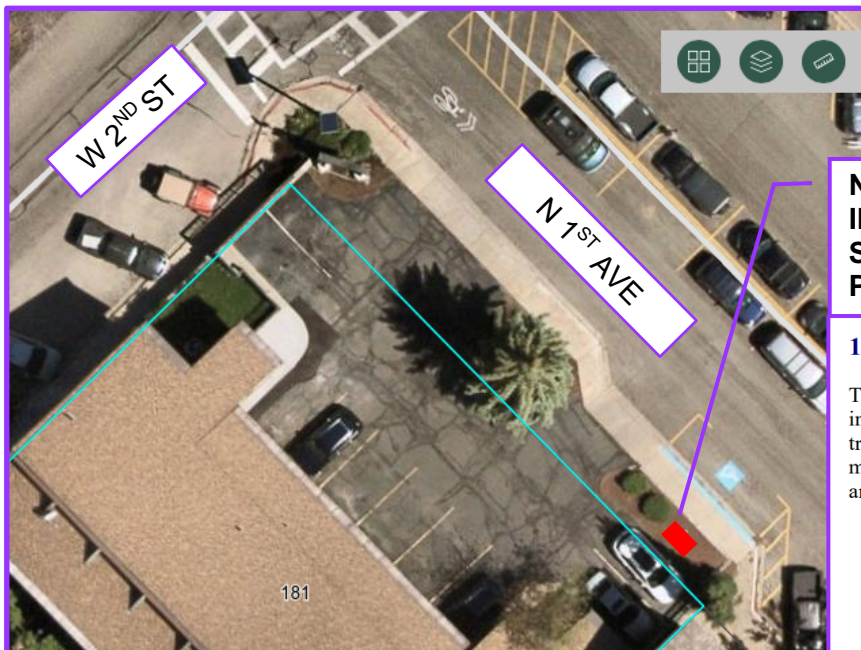
Commission expires _____

EXHIBIT "A"



Base figure provided by applicant, prepared by Idaho Power [WO No. 27669247]

Figure annotated with purple textboxes by City Engineer Robyn Mattison to clarify improvements included in Right-Of-Way Encroachment Agreement No. 25976



NEW TRANSFORMER IN RIGHT-OF-WAY SET ON TRANSFORMER PAD [DIMENSIONS BELOW]

1-Ø Transformer Box Pad

The 38×42×20 inch fiberglass box pad is used instead of a concrete pad for 14.4kV and 19.9kV transformers and for 7.2kV transformers with more than 6 secondary/service conduits (3 inch and larger conduits count as two).

