



City of Ketchum

September 21, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Direction and potential approval on Right-of-Way Encroachment Agreement 20494 with Idaho Power for undergrounding power lines in the city right-of-way and direction on associated city funding.

Recommendation and Summary

Staff is seeking direction from Council on encroachments associated with the undergrounding of power lines beginning at 7th St. and extending south of 8th St. in the alley west of Warm Springs Road and direction on funding a portion of the undergrounding work. This request was before the Council at the August 3, 2020 and September 8, 2020 meetings. At the last meeting, Council asked staff to explore eliminating the new pole proposed at the NW corner of 7th Street and the alley and shift the start of the undergrounding south of 7th Street. Staff has discussed this option with Idaho Power and information is provided below.

New Information

At the last meeting, Council requested staff explore the concept of eliminating the proposed new 45 foot high pole located at the NW corner of 7th Street and the alley and shift the beginning of the undergrounding south to the existing pole located at the SW corner of the 7th Street and alley. This would eliminate the need for the new pole.

Staff discussed the concept with Idaho Power and determined the existing pole at the SW corner cannot be used because it will require a downguy wire to extend 30 feet north of the existing pole into the 7th Street. However, staff did discuss an alternative with Idaho Power. The alternative would be to remove the existing SW pole and install a new pole further south along the alley to accommodate the downguy wire. This option would eliminate the new pole at the NW corner, eliminate the existing pole at the SW corner and include installation of a new 45 foot high pole south of 7th Street in the alley. The alternative is beneficial in several ways.

- The new location will not interfere with the operations of Moss Garden Center, the pole and downguy will be placed away from the gate.
- The proposed location is within an unimproved alley with a low likelihood of redevelopment in the near future.
- The new location will eliminate the proposed new pole at the NW corner that would impact alley maintenance and access. As properties on Warm Springs Road adjacent to the alley redevelop, access to the properties will occur from the alley. This is because access from Warm Springs Road is not feasible due to the slope of the street. Property owners have inquired with the Planning and Building Department about redeveloping their properties.
- The existing pole located at the SW corner will be removed. This pole is located in the sidewalk and impedes pedestrian movement.

Idaho Power has indicated the additional cost for this modification is \$40,000 and will require an exception to the City's limitations on digging in the right of way. Staff is supportive of granting a waiver to the dig limitations. There are sufficient funds in the budget to cover the additional undergrounding costs.

Council has several options:

- Provide additional funding to remove the existing pole at the SW corner and install a new 45 foot high pole south of 7th Street so that the start of the undergrounding occurs further south in the alley adjacent to Moss Garden Center.
- Approve the 2 new 45-foot high poles to be located in the right of way as originally proposed along with the underground infrastructure.
- Not allow any above grade infrastructure to be placed in the city right of way. All above grade infrastructure should be located on private property or underground. Only allow underground infrastructure to be placed in the city right of way.
- Consider if the city contribution should be reduced or remain the same.

Once the Council has determined the approach to take, the following motion is recommended:

"I move to authorize the Mayor to sign Encroachment Agreement 20494 with Idaho Power and funding as determined at the September 21, 2020 Council meeting.

Background

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 or relocation of the encroachment.

Since 2016, individuals can request city funding to assist with the engineering and construction cost associated with undergrounding power lines. The City and KURA have approved funding for a portion of the project relocation costs as outline below.

City Funding: \$30,319

KURA Funding (Max): \$24,000

The city has been working to remove power poles from alleys throughout the city. Though the city currently does not maintain this alley there have been inquiries about the City maintaining the alley as properties develop. The addition of poles in the 20' alley right of way would further impede maintenance and circulation in the alley and alley access to the adjacent properties.

The City agreed to provide \$30,139 of funding which was 25% of the full costs for undergrounding and require all infrastructure associated with the undergrounding to be located underground and on private property.

Financial Impact

There are no additional financial impacts to the City budget resulting from approval or modification of the encroachment agreement or funding request.

Attachments:

Attachment A: Encroachment Agreement 20494

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 20494

THIS AGREEMENT, made and entered into this ____ day of ____, 2020, by and between _____, representing IDAHO POWER COMPANY, (collectively referred to as "Owner"), whose address is 1221 West Idaho St., Boise, ID 83702 and the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho.

RECITALS

WHEREAS, Owner wishes to permit placement of power poles and underground electrical power lines in the public alley right-of-way between 7th St. and 8th St. west of Warm Springs. 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 power infrastructure identified in Exhibit "A" within the public alley right-of-way between 7th St. and 8th St. west of Warm Springs, 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 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 the terms of this Agreement and the Franchise Agreement, the Franchise Agreement shall control.

EXHIBIT "A"

UNDERGROUND CABLE NOTES										
POINT NUMBER	FROM	TO	CONDUCTOR CU	CABLE SIZE	CABLE LENGTH	TRENCH LENGTH	CONDUIT CU	CONDUIT SIZE	CONDUIT LENGTH	COMPACTION LENGTH
1	EX SPARE	X32				-	DDB4	4	215	-
1	X32	X50	DCP1K3	1100-3	415	335	DDB6	6	335	SLURRY
3	AC44	PRI STUB				20	DDB2	2	20	SLURRY
3	CC66	AC44	DCP10	1/0 A	225	210	DDB2	2	210	-
3	AC44	SECD STUB					DDB3S	3	60	
4	AC44	AC44A	D3SC35	350TxS	120	110	DDB3S	3	110	-
5	AC44	#791	D3SC35	350TxS	95	65	DDB3S	3	65	SLURRY
6	AC44	#731	D3SC35	350TxS	50	20	DDB3S	3	20	-
7	AC44	#271	D3SC35	350TxS	115	75	DDB3S	3	75	SLURRY

AØ			BØ			CØ		
STND OFF	Ø	Ø	STND OFF	Ø	Ø	STND OFF	Ø	Ø
SPARE	UTF36	CC88	SPARE	UTF36	CC88	SPARE	UTF36	CC88
Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø	Ø

CC66

EASEMENT REQUIRED

Date Obtained: _____
 To be Obtained: _____
 From _____



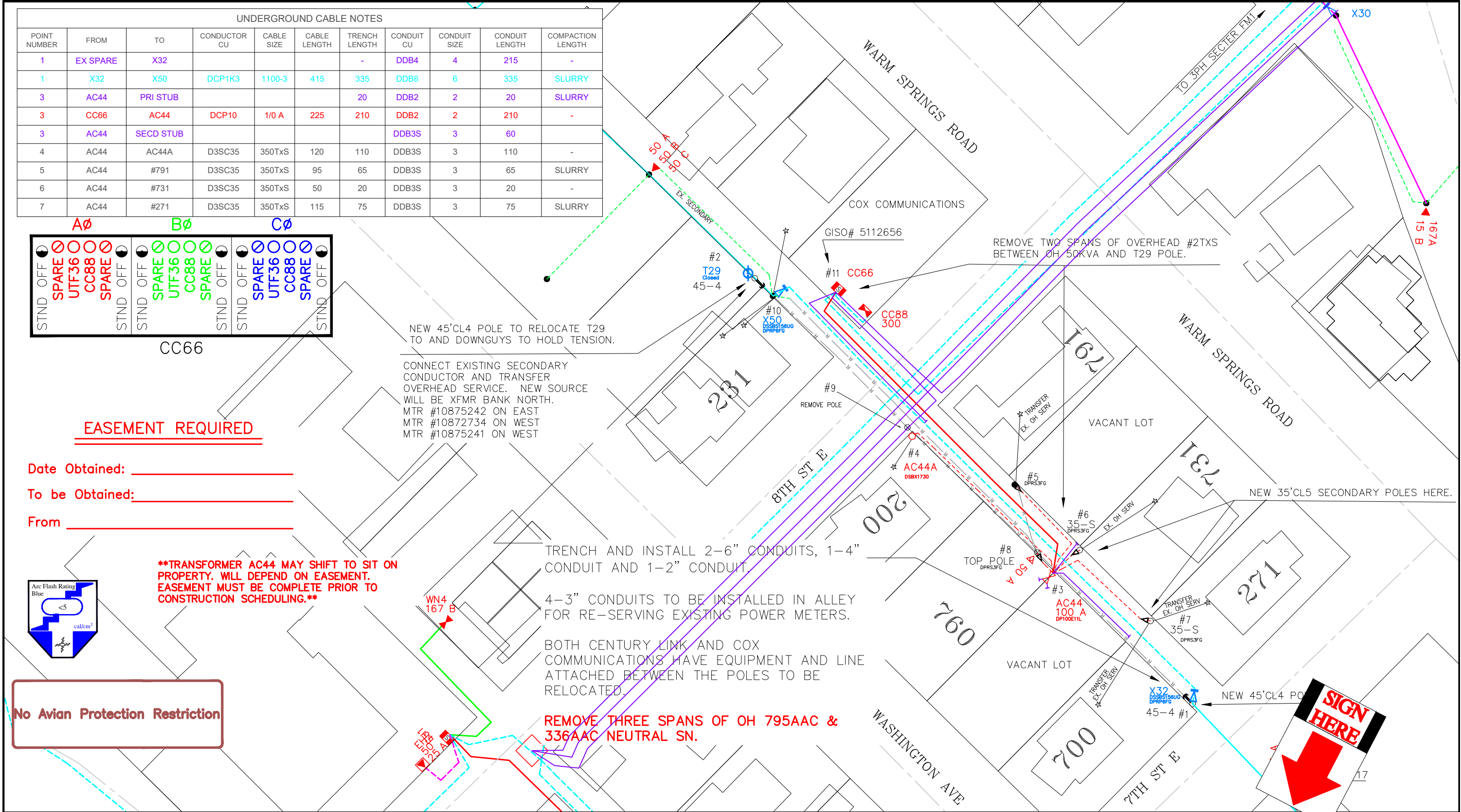
****TRANSFORMER AC44 MAY SHIFT TO SIT ON PROPERTY. WILL DEPEND ON EASEMENT. EASEMENT MUST BE COMPLETE PRIOR TO CONSTRUCTION SCHEDULING.****

No Avian Protection Restriction

NEW 45'CL4 POLE TO RELOCATE T29 TO AND DOWNGUYS TO HOLD TENSION.
 CONNECT EXISTING SECONDARY CONDUCTOR AND TRANSFER OVERHEAD SERVICE. NEW SOURCE WILL BE XFMR BANK NORTH.
 MTR #10875242 ON EAST
 MTR #10872734 ON WEST
 MTR #10875241 ON WEST

TRENCH AND INSTALL 2-6" CONDUITS, 1-4" CONDUIT AND 1-2" CONDUIT.
 4-3" CONDUITS TO BE INSTALLED IN ALLEY FOR RE-SERVING EXISTING POWER METERS.
 BOTH CENTURY LINK AND COX COMMUNICATIONS HAVE EQUIPMENT AND LINE ATTACHED BETWEEN THE POLES TO BE RELOCATED.

REMOVE THREE SPANS OF OH 795AAC & 336AAC NEUTRAL SN.



Job Title: CASTELLANO RESIDENCE-760 N WASHINGTON AVE/KETCOH TO UG RELC	Feeder Map File Name: KCHM1401	Surveyed or GPS: GPS Joint Use Attachment: YES	FDR By: ---- Date: ----	Designer: CDC0468
Additional Description: RELOCATE EXISTING OVERHEAD DISTRIBUTION FACILITIES TO UNDERGROUND DISTRIBUTION FACILITIES.	Qua: 1 Twn: 04N Rng: 17E Sec: 13 BM: BM	Pre-Built Date: ---- Built as Designed: ---- Construction Date: ---- Operating Voltage: 12.5 kV	ArcFM By: ---- Date: ----	Design No: 0000133452
State: ID County: Blaine	Customer: _____ Date: _____		Work Order No: 27549457	