



City of Ketchum

October 5, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to provide direction and action on Right-of-Way Encroachment Agreement 20528 with Idaho Power for placement of underground power lines in Little Park or in the City Right-of-Way

Recommendation and Summary

Staff is requesting Council direction and action on one of two options related to Encroachment Agreement 20528 and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20528 with Idaho Power subject to the decision made at the October 5, 2020 meeting."

The reasons for the recommendation are as follows:

- An encroachment into city property or right of way is necessary to facilitate an upgrade to the property at 511 Walnut.
- Currently there is an underground line across Little Park servicing 511 Walnut with no agreement in place
- Two options exist for facilitating the upgrade to 511 Walnut, one option is across Little Park, another is within the city right of way.

Introduction and History

The property at 511 Walnut Street is undergoing a remodel that requires an upgrade to the electrical service to the property. Currently, there is a line connecting the property to the Idaho Power system that traverses Little Park along the north property line of the Park (Attachment A). There is no record of any agreement between the City, Idaho Power or 511 Walnut authorizing the connection line to be in Little Park.

There are two options to facilitate the electrical upgrade to the property:

- Reconstruct the power line traversing Little Park locating the line 5' from the north property line. The scope of work would require upgrading the existing padmount transformer to add capacity and then trenching a two-foot wide trench at 32" minimum depth within the north 5' of the property to 511 Walnut property and installing new service conductors. This would cost \$10,000 (Attachment C).
- Provide power from the north of 511 Walnut. The scope of work would require a 3" bore under Walnut at 42" in depth for a distance of 145', trenching along the street right of way to the power source and into the new meter location and pulling in new secondary and service conductors. This would cost \$17,000 (Attachment D).

Analysis

Staff is requesting Council direction on the preferred option for providing power to the project at 511 Walnut. Allowing trenching and power connections to private property through a city park is unusual and could limit future improvements in the park. The typical method for installing Idaho Power connections occurs within the

public right of way. The difference in cost between trenching in Little Park and trenching in the public right of way is \$7,000. The property owner would incur the cost of the work.

Staff is requesting Council direction on the preferred approach. Depending on the Council decision, the Agreement will be modified to reflect the decision.

Financial Impact

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

Attachments:

Attachment A: Vicinity Map

Attachment B: Encroachment Agreement 20528

Attachment C: Option 1: Trenching in Little Park

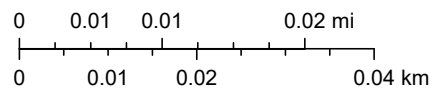
Attachment D: Option 2: Trenching in Right of Way

Parcel Information Map



September 30, 2020

1:852



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 20528

THIS AGREEMENT, made and entered into this ____ day of ____, 2020, 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 **describe improvements**. 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 **describe location**, 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 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 _____, 2020, 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 _____

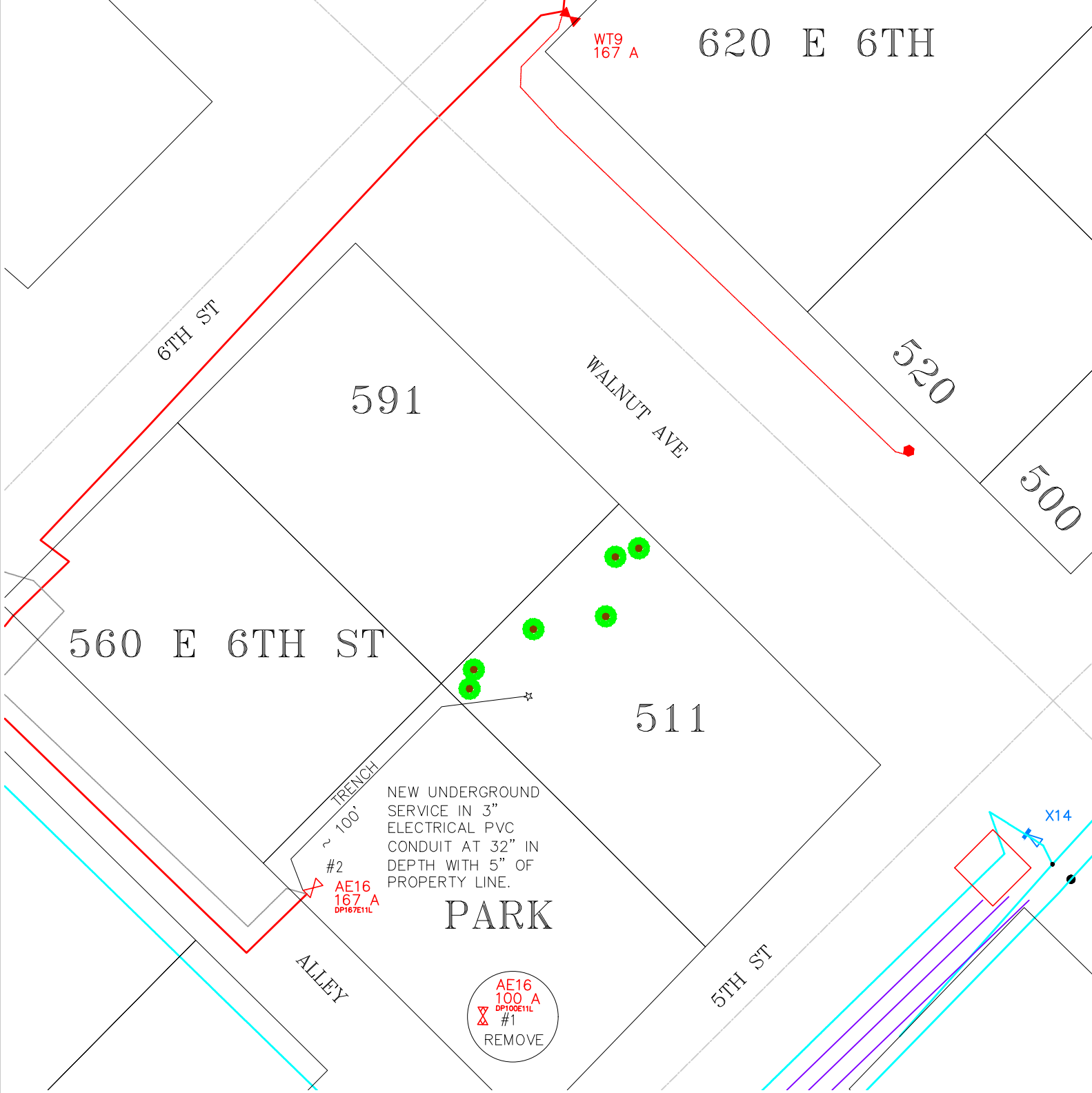
STATE OF IDAHO)
) ss.
County of Blaine)

On this ___ day of _____, 2020, 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.

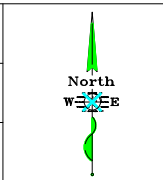
Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"



Customer: _____ Date: _____

Job Title: **511 WALNUT LLC - 511 N WALNUT AVE/KET NEW UG SECONDARY & SVC**
 Additional Description: **INSTALL UNDERGROUND SERVICE IN 3" CONDUIT FROM TRANSFORMER AE16**
 Additional Description: **TO NEW METER LOCATION ON ADDITION AT HOME.**

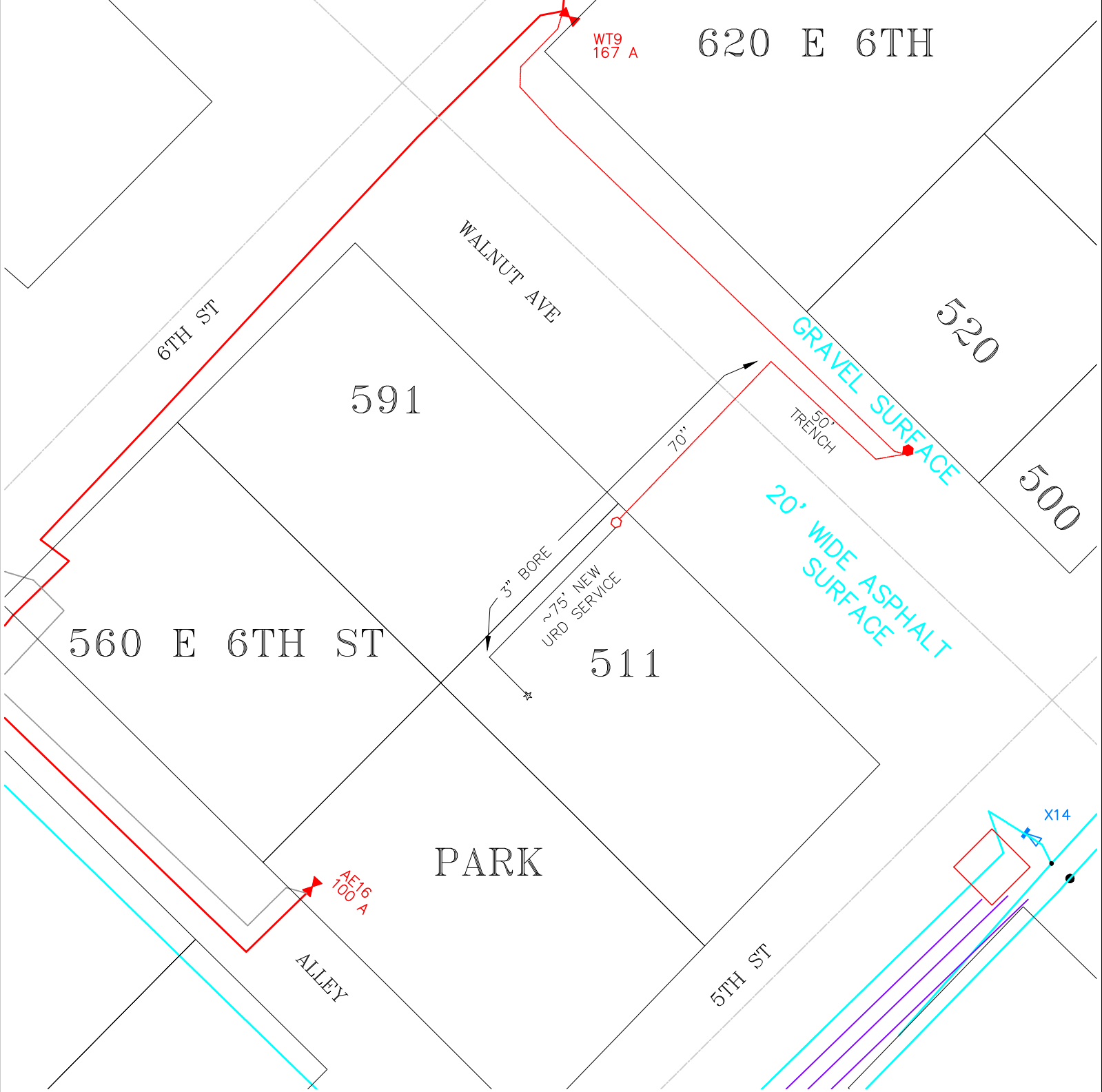


Feeder Map File Name: KCHM1301				
Qua	Twn	Rng	Sec	Mer
1	04N	18E	18	BM
State	County			
ID	Blaine			

Surveyed or GPS: **GPS**
 Joint Use Attachment: **NO**
 Pre-Built Date: ----
 Built as Designed: ----
 Construction Date: ----
 Operating Voltage: **7.2kV**

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

Designer: **CDC0468**
 Design No: **0000145468**
 Work Order No: **27563664**



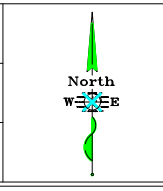
TIMES SCALE 0 1 2 3 4

Customer: _____ Date: _____

Job Title: **511 WALNUT LLC - 511 N WALNUT AVE/KET NEW UG SECONDARY & SVC**

Additional Description: **INSTALL UNDERGROUND SECONDARY CONDUCTOR IN 3" CONDUIT ACROSS WALNUT TO 511 WALNUT @ 42" MINIMUM DEPTH VIA BORING.**

Additional Description: **WALNUT TO 511 WALNUT @ 42" MINIMUM DEPTH VIA BORING.**



Feeder Map File Name: KCHM1301				
Qua	Twn	Rng	Sec	Mer
1	04N	18E	18	BM
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ID	Blaine			

Surveyed or GPS: **GPS**
 Joint Use Attachment: **NO**
 Pre-Built Date: **----**
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