



## City of Ketchum

April 19, 2021

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to approve Right-of-Way Encroachment Agreement 20593 with Idaho Power for underground power lines in the City Right-of-Way.**

#### Recommendation and Summary

Staff is recommending the Council approve the attached Encroachment Agreement 20593 and adopt the following motion:

**"I move to authorize the Mayor to sign Encroachment Agreement 20593 with Idaho Power."**

The reasons for the recommendation are as follows:

- The encroachment is necessary to provide power to Tax Lot 8491
- The encroachment will have no impact on pedestrian or public access

#### Introduction and History

Idaho Power would like to install approximately 130 ft. of underground conduit and conductors north of the existing edge of pavement within the City's Right-of-Way Easement on Topaz Street adjacent to Lot 1. The encroachment request will extend underground power to Tax Lot 8491.

City code requires a right-of-way encroachment permit for any encroachment in public right-of-way or right of way easements. These agreements are 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.

#### Analysis

Staff has reviewed the layout of the proposed utilities. In consideration of future projects and current operations, the proposed encroachments were determined not to impact public access or maintenance.

#### Financial Impact

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

Attachments:

Encroachment Agreement 20593

**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 20593**

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 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 underground electrical power lines in the public right-of-way along Tax Lot 1. 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 a power infrastructure identified in Exhibit "A" within the public right-of-way of Topaz Street along Tax Lot 1, 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 facilities, 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 \_\_\_\_\_, 2021, 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     )

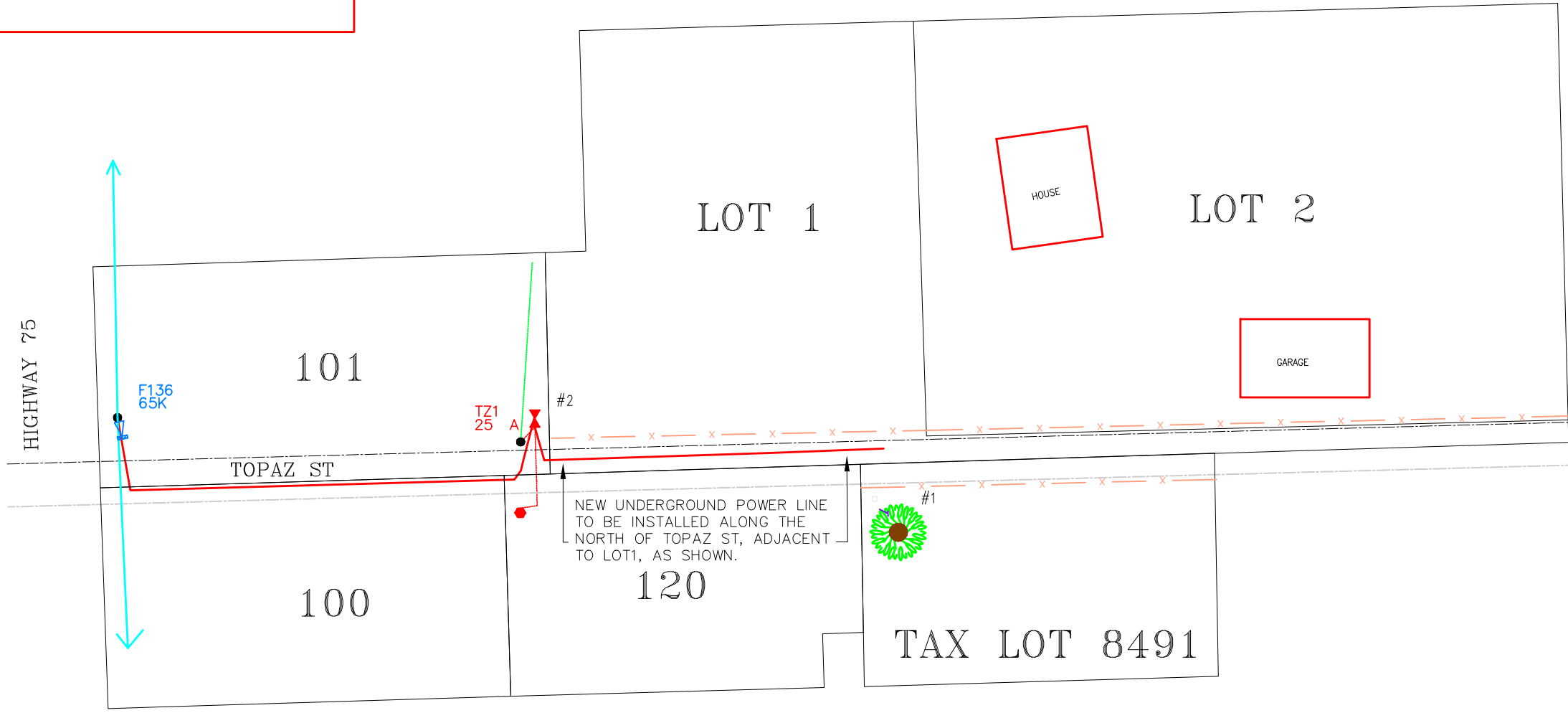
On this \_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public in and for said State, personally appeared NEIL BRADSHAW, known or identified to me to be the Mayor of the CITY OF KETCHUM, IDAHO, and the person who executed the foregoing instrument on behalf of said municipal corporation 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"**

**PT#1** EXTEND NEW UNDERGROUND POWER ALONG NORTH OF TOPAZ ST ADJACENT TO LOT 1 FROM EXISTING TRANSFORMER TZ1.  
**PT#2** REPLACE CONCRETE PAD WITH FIBERGLASS BASEMENT TO ACCOMMODATE NEW PRIMARY OUT OF THIS DEVICE, EXISTING SECONDARY CONNECTIONS AND STUB OUT ONE 3" SERVICE STUB, PLUG AND MARK FOR LOT 1.



UNDERGROUND CABLE NOTES											
POINT NUMBER	FROM	TO	CONDUCTOR CU	CABLE SIZE	CABLE LENGTH	TRENCH LENGTH	CONDUIT CU	CONDUIT SIZE	CONDUIT LENGTH	COMPACTION LENGTH	BORE LENGTH
1	TZ1		DCP10	1/0 A	180	130	DDB2	2	130	130	30
1	TZ13	SERV STUB				5	DSRDB3	3	5		



**No Avian Protection Restriction**

Job Title: <b>HAEMMERLE, FRITZ - TOPAZ TO GARNET ST/KET</b>		Feeder Map File Name: <b>KCHM1102</b>		Surveyed or GPS: <b>GPS</b>		FDR By: ----		Designer: <b>CDC0468</b>			
Additional Description: <b>INSTALL NEW UNDERGROUND LINE EXTENSION TO TAX LOT 8491.</b>		Qua: <b>1</b> TwN: <b>04N</b> Rng: <b>18E</b> Sec: <b>18</b> BM: <b>BM</b>		Joint Use Attachment: <b>NO</b>		Date: ----		Design No: <b>0000145588</b>			
Additional Description: <b>INSTALL PADMOUNT TRANSFORMER ON PROPERTY AT NW PROPERTY CORNER.</b>		State: <b>ID</b> County: <b>Blaine</b>		Pre-Built Date: ----		ArcFM By: ----		Work Order No: <b>27564110</b>			
SWPP: ----				TIMES SCALE 0 1 2 3 4				Customer: _____		Date: _____	