

City of Ketchum

September 7, 2021

Mayor Bradshaw and City Councilors City of Ketchum Ketchum, Idaho

Mayor Bradshaw and City Councilors:

#### Recommendation to approve Right-of-Way Encroachment Agreement 20694 with Cox Communications for placement of telecommunications infrastructure in the City Right-of-Way

#### **Recommendation and Summary**

Staff is recommending the Council approve the attached Encroachment Agreement 20694 and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20694 with Cox Communications."

The reasons for the recommendation are as follows:

- The encroachment is necessary to provide communication services to 180 N 2<sup>nd</sup> Ave.
- The encroachment will have no impact on pedestrian or public access.

#### Introduction and History

Cox Communications would like to install approximately 275 ft of coaxial cable and 2" conduit within the City's right-of-way beginning at an existing pedestal located in the alley east of 2<sup>nd</sup> Avenue and terminating at 180 N 2nd Avenue.

City code requires a right-of-way encroachment permit for any permanent encroachment in the public rightof-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.

#### <u>Analysis</u>

Staff has reviewed the layout of the proposed utilities. In consideration of future projects and current operations, the proposed new 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 20694

#### 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 20694**

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 Cox Communications, (collectively referred to as "Owner"), whose address is 3031 N 120<sup>th</sup> St., Omaha, NE 68164.

### RECITALS

WHEREAS, Owner wishes to permit placement of an existing pedestal and new underground telecommunications improvements in the city right-of-way within the alley east of 2<sup>nd</sup> Avenue and on 2<sup>nd</sup> Street. 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 telecommunications infrastructure identified in Exhibit "A" within the public right-of-way within the alley east of 2<sup>nd</sup> Avenue and on 2<sup>nd</sup> Street, 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. 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 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:\_\_\_\_\_

By: <u>Neil Bradshaw</u> 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"

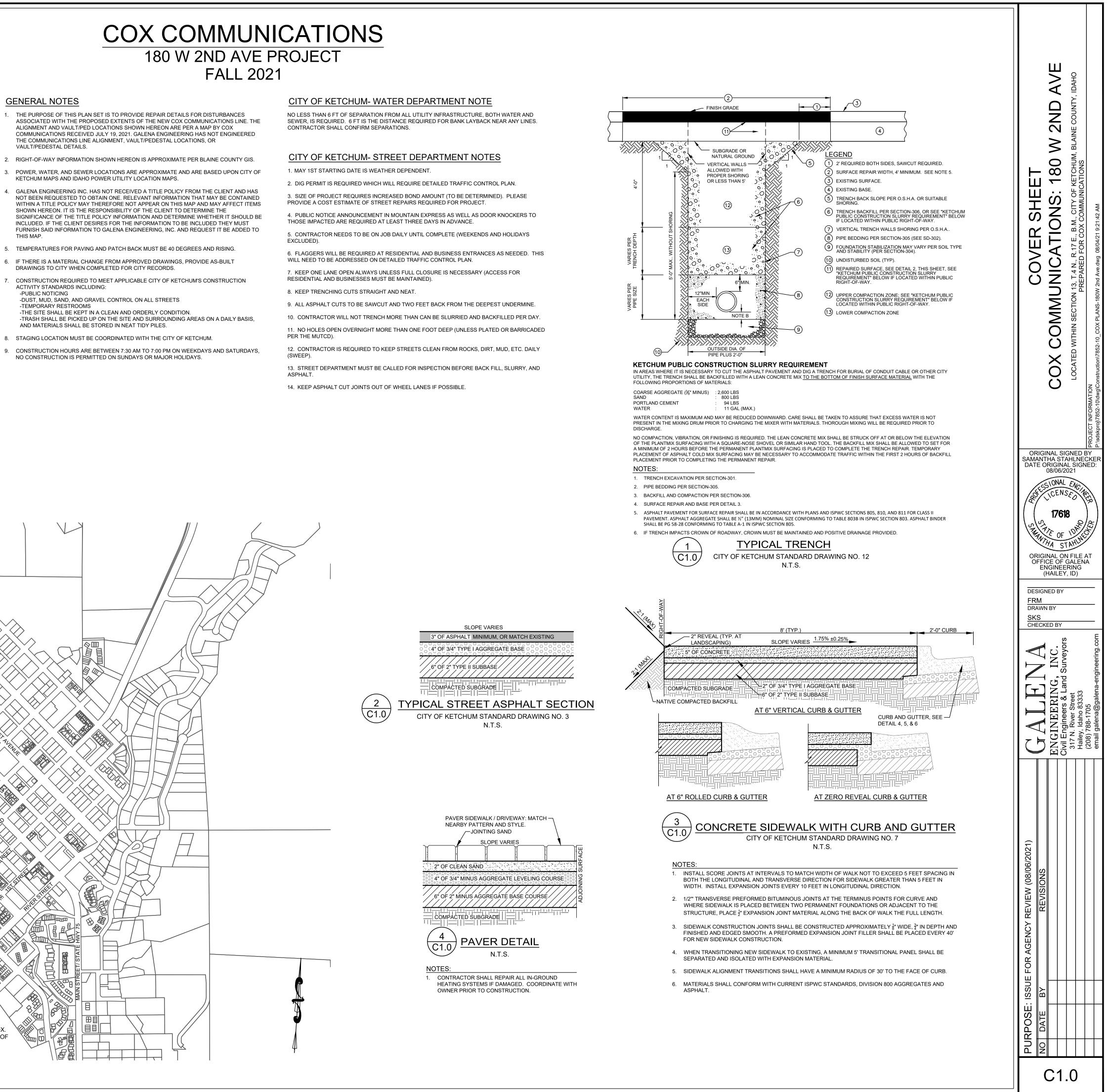
## CONSTRUCTION NOTES

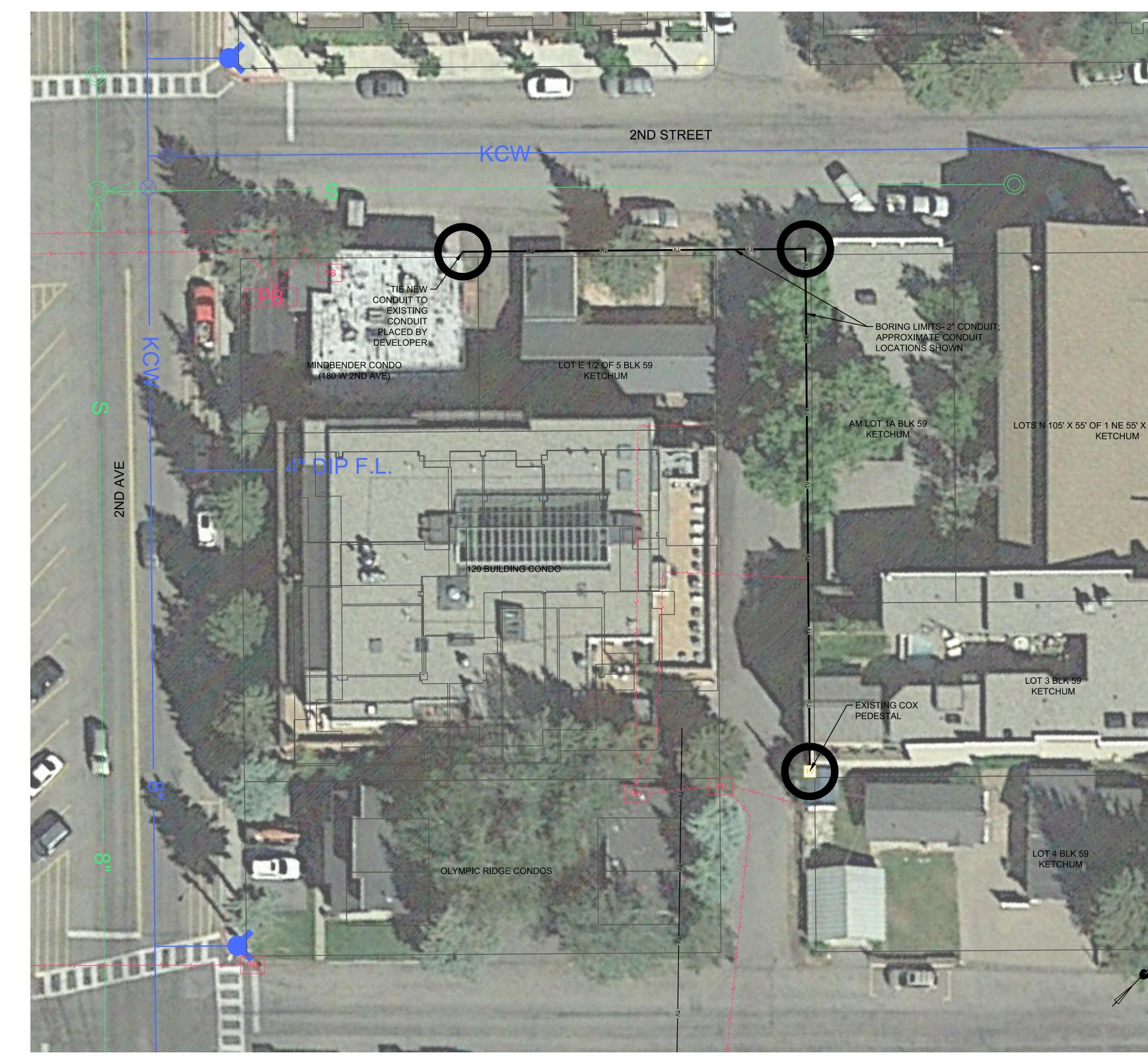
<ol> <li>ALL CONSTRUCTION SHALL BE IN CONFORMANCE WITH THE MOST CURRENT EDITION OF THE "IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION" (ISPWC) AND CITY OF KETCHUM STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND KEEPING A COPY OF THE ISPWC AND CITY OF KETCHUM STANDARDS ON SITE DURING CONSTRUCTION.</li> </ol>
2. THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN ON THE PLANS IN AN APPROXIMATE WAY. A SITE SURVEY OF EXISTING UTILITIES WAS NOT CONDUCTED FOR THIS PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING EXISTING UTILITIES PRIOR TO COMMENCING AND DURING THE CONSTRUCTION. THE CONTRACTOR AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH RESULT FROM HIS FAILURE TO ACCURATELY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES. CONTRACTOR SHALL CALL DIGLINE (1-800-342-1585) TO LOCATE ALL EXISTING UNDERGROUND UTILITIES A MINIMUM OF 48 HOURS IN ADVANCE OF EXCAVATION.
3. CONTRACTOR SHALL COORDINATE DRY UTILITY FACILITIES IMPACTS AND JOINT TRENCH CONSTRUCTION (POWER, CABLE, PHONE, TV) WITH THE APPROPRIATE UTILITY FRANCHISE.
4. THE CONTRACTOR SHALL CLEAN UP THE SITE AFTER CONSTRUCTION SO THAT IT IS IN A CONDITION EQUAL TO OR BETTER THAN THAT WHICH EXISTED PRIOR TO CONSTRUCTION.
<ol> <li>THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS PRIOR TO CONSTRUCTION (THIS MAY INCLUDE ENCROACHMENT PERMITS AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONSTRUCTION GENERAL PERMIT (CGP) PERMIT COVERAGE).</li> </ol>
6. ALL CLEARING & GRUBBING SHALL CONFORM TO ISPWC SECTION 201.
<ul> <li>ALL EXCAVATION &amp; EMBANKMENT SHALL CONFORM TO ISPWC SECTION 202. SUBGRADE SHALL BE EXCAVATED AND SHAPED TO LINE, GRADE, AND CROSS-SECTION SHOWN ON THE PLANS. THE SUBGRADE SHALL BE COMPACTED TO 95% OF MAXIMUM DENSITY AS DETERMINED BY ASTM D-698. THE CONTRACTOR SHALL WATER OR AERATE SUBGRADE AS NECESSARY TO OBTAIN OPTIMUM MOISTURE CONTENT. IN-LIEU OF DENSITY MEASUREMENTS, THE SUBGRADE MAY BE PROOF-ROLLED TO THE APPROVAL OF THE ENGINEER.</li> <li><u>PROOF-ROLLING</u>: AFTER EXCAVATION TO THE SUBGRADE ELEVATION AND PRIOR TO PLACING COURSE GRAVEL, THE CONTRACTOR SHALL PROOF ROLL THE SUBGRADE WITH A 5-TON SMOOTH DRUM ROLLER, LOADED WATER TRUCK, OR LOADED DUMP TRUCK, AS ACCEPTED BY THE ENGINEER. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER OF UNSUITABLE SUBGRADE MATERIAL AREAS, AND/OR AREAS NOT CAPABLE OF COMPACTION ACCORDING TO THESE SPECIFICATIONS. UNSUITABLE OR DAMAGED SUBGRADE IS WHEN THE SOIL MOVES, PUMPS AND/OR DISPLACES UNDER ANY TYPE OF PRESSURE INCLUDING FOOT TRAFFIC LOADS.</li> <li>IF, IN THE OPINION OF THE ENGINEER, THE CONTRACTOR'S OPERATIONS RESULT IN DAMAGE TO, OR PROTECTION OF, THE SUBGRADE, THE CONTRACTOR SHALL, AT HIS OWN EXPENSE, REPAIR THE DAMAGED SUBGRADE BY OVER-EXCAVATION OF UNSUITABLE MATERIAL TO FIRM SUBSOIL, LINE EXCAVATION WITH GEOTEXTILE FABRIC, AND BACKFILL WITH PIT RUN GRAVEL.</li> </ul>
<ol> <li>ALL 2" MINUS GRAVEL SHALL CONFORM TO ISPWC 802, TYPE II (ITD STANDARD 703.04, 2"), SHALL BE PLACED IN CONFORMANCE WITH ISPWC SECTION 801 AND COMPACTED PER SECTION 202. MINIMUM COMPACTION OF PLACED MATERIAL SHALL BE 90% OF MAXIMUM LABORATORY DENSITY AS DETERMINED BY AASHTO T-99.</li> </ol>
<ol> <li>ALL 3/4" MINUS CRUSHED GRAVEL SHALL CONFORM TO ISPWC 802, TYPE I (ITD STANDARD 703.04, 3/4" B), SHALL BE PLACED IN CONFORMANCE WITH ISPWC SECTION 802 AND COMPACTED PER SECTION 202. MINIMUM COMPACTION OF PLACED MATERIAL SHALL BE 95% OF MAXIMUM LABORATORY DENSITY AS DETERMINED BY AASHTO T-99 OR ITD T-91.</li> </ol>
10. ALL ASPHALTIC CONCRETE PAVEMENT WORK SHALL CONFORM TO ISPWC SECTION(S) 805, 810, AND 811 FOR CLASS II PAVEMENT. ASPHALT AGGREGATE SHALL BE 1/2" (13MM) NOMINAL SIZE CONFORMING TO TABLE 803B IN ISPWC SECTION 803. ASPHALT BINDER SHALL BE PG 58-28 CONFORMING TO TABLE A-1 IN ISPWC SECTION 805. ASPHALT REPLACEMENT SHALL CONFORM TO CITY OF KETCHUM STANDARD DRAWING NO. 3.
11. ASPHALT SAWCUTS SHALL BE AS INDICATED ON THE DRAWINGS, OR 24" INCHES FROM EDGE OF EXISTING ASPHALT, IF NOT INDICATED OTHERWISE SO AS TO PROVIDE A CLEAN PAVEMENT EDGE FOR MATCHING. NO WHEEL CUTTING SHALL BE ALLOWED.
<ol> <li>12. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING TRAFFIC CONTROL PER THE CURRENT EDITION OF THE US DEPARTMENT OF TRANSPORTATION MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD).</li> <li>13. ALL CONCRETE WORK SHALL CONFORM TO ISPWC SECTIONS 701, 703, AND 705. ALL CONCRETE SHALL BE 3,000 PSI MINIMUM, 28 DAY, AS DEFINED IN ISPWC SECTION 703, TABLE 1.</li> </ol>
IMMEDIATELY AFTER PLACEMENT PROTECT CONCRETE BY APPLYING MEMBRANE-FORMING CURING COMPOUND, TYPE 2, CLASS A PER ASTM C 309-94. APPLY CURING COMPOUND PER MANUFACTURER'S INSTRUCTIONS AND SPECIFICATIONS. CONCRETE REPLACEMENT SHALL CONFORM TO CITY OF KETCHUM STANDARD DRAWING NO. 7. 14. ALL TRENCHING SHALL CONFORM TO CITY OF KETCHUM STANDARD DRAWING NO. 12. TRENCHES SHALL BE BACKFILLED AND COMPACTED TO A MINIMUM OF 95% OF MAXIMUM
DENSITY AS DETERMINED BY AASHTO T-99. 15. PER IDAHO CODE § 55-1613, THE CONTRACTOR SHALL RETAIN AND PROTECT ALL MONUMENTS, ACCESSORIES TO CORNERS, BENCHMARKS AND POINTS SET IN CONTROL SURVEYS;
ALL MONUMENTS, ACCESSORIES TO CORNERS, BENCHMARKS AND PROTECT ALL MONUMENTS, ACCESSORIES TO CORNERS, BENCHMARKS AND POINTS SET IN CONTROL SURVEYS, ALL MONUMENTS, ACCESSORIES TO CORNERS, BENCHMARKS AND POINTS SET IN CONTROL SURVEYS THAT ARE LOST OR DISTURBED BY CONSTRUCTION SHALL BE REESTABLISHED AND RE-MONUMENTED, AT THE EXPENSE OF THE AGENCY OR PERSON CAUSING THEIR LOSS OR DISTURBANCE AT THEIR ORIGINAL LOCATION OR BY SETTING OF A WITNESS CORNER OR REFERENCE POINT OR A REPLACEMENT BENCHMARK OR CONTROL POINT, BY OR UNDER THE DIRECTION OF A PROFESSIONAL LAND SURVEYOR.
16. ALL REPAIRS MUST MATCH EXISTING LINES, GRADES, AND DRAINAGE PATTERNS. REPAIR AND REPLACE IN KIND ALL EXISTING FEATURE OR IMPROVEMENTS DAMAGED DURING CONSTRUCTION, INCLUDING LANDSCAPE AND IRRIGATION. ALL REPAIRS SHALL RESULT IN EQUAL OR BETTER QUALITY.
17. CONTRACTOR SHALL RESTRICT ALL CONSTRUCTION ACTIVITIES TO WITHIN EXISTING EASEMENTS AND RIGHT-OF-WAY.
18. CONTRACTOR SHALL COMPLETE A CONSTRUCTION MANAGEMENT PLAN CONSISTENT WITH CITY OF KETCHUM STANDARDS.

VICINITY MAP SCALE: 1"=500'

# 180 W 2ND AVE PROJECT FALL 2021

(SWEEP).





## <u>NOTES</u>

- 1. SEE SHEET C1.0 FOR ADDITIONAL NOTES.
- 2. AERIAL IMAGERY SHOWN HEREON PER GOOGLE EARTH.

3. AERIAL IMAGERY MAY NOT SHOW CURRENT CONDITIONS.

- 4. THE PURPOSE OF THIS PLAN SET IS TO PROVIDE REPAIR DETAILS FOR DISTURBANCES ASSOCIATED WITH PROPOSED EXTENTS OF THE NEW JOINT TRENCH COX COMMUNICATIONS LINE. THE ALIGNMENT AND VAULT/PED LOCATIONS SHOWN HEREON ARE PER A MAP BY COX COMMUNICATIONS RECEIVED JULY 19, 2021. GALENA ENGINEERING HAS NOT ENGINEERED THE COMMUNICATIONS LINE ALIGNMENT, VAULT/PEDESTAL LOCATIONS, OR VAULT/PEDESTAL DETAILS. SEE DETAILS 1-4, SHEET C1.0 FOR REPAIR DETAILS AS NECESSARY.
- 5. POWER, WATER, AND SEWER LOCATIONS ARE APPROXIMATE AND ARE BASED UPON CITY OF KETCHUM MAPS AND IDAHO POWER UTILITY LOCATION MAPS. COMMUNICATIONS UTILITY LOCATIONS ARE APPROXIMATE BASED UPON A MAP BY COX COMMUNICATIONS RECEIVED JULY 19, 2021.
- 6. ALL REPAIRS MUST MATCH EXISTING LINES, GRADES, AND DRAINAGE PATTERNS. DAMAGED LANDSCAPE AND IRRIGATION SHALL BE REPAIRED. CONTRACTOR SHALL REPAIR ALL IN-GROUND HEATING SYSTEMS IF DAMAGED AND COORDINATE WITH OWNER PRIOR TO CONSTRUCTION COMMENCEMENT. ALL REPAIRS SHALL RESULT IN EQUAL OR BETTER QUALITY.

#### PLAN VIEW 3RD AVE

V: RIVEI	R STREE	ET, 18	ST AVE	ΤO
0	GRAPHIC S	SCALE	40	
	Scale in F	eet		

LEGEND	
	- PROPERTY LINE PER BLAINE COUNTY GIS
	- EXISTING BURIED POWER LINE PER IDAHO P
РВ РВ	EXISTING POWER BOX
——KCW——	EXISTING WATER MAIN
<b>\</b>	EXISTING FIRE HYDRANT
$\otimes$	EXISTING WATER VALVE
S	EXISTING SEWER MAIN
$\bigcirc$	EXISTING SEWER MANHOLE
TV	- PROPOSED COMMUNICATIONS LINE
ТV	EXISTING COMMUNICATIONS PEDESTAL
Ο	POTENTIAL DISTURBED AREA; MATCH EXISTING LINES, GRADES, AND DRAII

	_
05' DF 2, BLK 58	PLAN SHEET PLAN SHEET COX COMMUNICATIONS: 180 W 2ND AVE LOCATED WITHIN SECTION 13, T.4 N., R.17 E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO PROJECT INFORMATION PROJECT INFORMATION PROJECT INFORMATION
	CHECKED BY SKS CHECKED BY SKS (208) 788-1705 email galena@galena-engineering.com (208) 788-1705 email galena@galena-engineering.com (208) 788-1705 email galena@galena-engineering.com (Particle of Galena (Particle of Galena (Part
IS 40 POWER	PURPOSE: ISSUE FOR AGENCY REVIEW (08/06/2021) NO DATE BY REVISIONS OCCONS