

**GENERAL SERVICES COMMITTEE  
STAFF REPORT**

**DATE:** May 22, 2013

**FROM:** Mike Gridley – City Attorney

**SUBJECT:** Pedestrian tunnel easement for 401 Front Avenue

---

**DECISION POINT:**

Should the city approve an underground easement for the construction and maintenance of a pedestrian tunnel under the Front Avenue sidewalk right-of-way to access the property at 401 Front Avenue?

**HISTORY:**

The reconstruction of Front Avenue has had an impact on the property located at 401 Front Avenue (currently the Bank of America building). One way to mitigate the impact is to allow the owner of the property, Blackridge Properties, LLC, to construct a pedestrian tunnel from the new McEuen Park parking garage to the property. The tunnel would be similar to the tunnel that the city allowed under Ironwood Drive. The tunnel and all associated costs would be borne by the owner of the property. There would be no impact to Front Avenue or the sidewalk as the tunnel would be constructed before the street and sidewalk are installed.

**FINANCIAL ANALYSIS:**

There is no financial impact to the city. All costs are borne by the property owner.

**PERFORMANCE ANALYSIS:**

Citizens parking in the new garage will benefit by having underground access to the property. There is no cost to the city and the tunnel may help mitigate the impact of the street reconstruction on the property.

**DECISION POINT/RECOMMENDATION:**

Council should approve the easement for an underground tunnel at 401 Front Avenue.

## EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **CITY OF COEUR D'ALENE**, Kootenai County, State of Idaho, a municipal corporation under and pursuant to the laws of the State of Idaho, by and through its Mayor and Clerk, hereinafter referred to as the "Grantor," and **BLACKRIDGE PROPERTIES, LLC**, hereinafter referred to as the "Grantee.

WITNESSETH:

### I.

For good and valuable consideration, the Grantor does hereby grant, assign, and set over to the Grantee, its successors and assigns, a perpetual underground easement for the construction and maintenance of a pedestrian tunnel under the Front Avenue sidewalk right-of-way, more particularly described as a Tunnel for the uses and purposes of foot travel and foot traffic to the 401 Front building, a building owned by the grantee, from the McEuen Park parking garage that is contemplated to be erected upon the adjoining land, said tunnel to be 9' in height, 2' below the surface and extend under the street and sidewalk on Front Street at the following location:

*INSERT LEGAL DESCRIPTION*

### II.

The Grantee does hereby agree to save, hold harmless, and indemnify the Grantor from any and all liability, loss, or damage that may arise as a result of any actions, claims, damage, costs, and expense from the construction, use, maintenance or operation of the pedestrian tunnel easement.

### III.

1. The Grantee shall be responsible for all costs of construction and maintenance of the pedestrian tunnel and accessories.
2. The Grantee agrees to construct the tunnel in a manner approved by the City of Coeur d'Alene Engineering Director and in compliance with all existing codes then adopted by the City of Coeur d'Alene. The Grantee shall have the right to utilize the surface as may be necessary for the purposes of constructing the tunnel, subject to the Grantee returning the surface of said property after construction to a condition that is acceptable unto the Engineering Department of the City of Coeur d'Alene, for and on behalf of the Grantor, City of Coeur d'Alene.

3. The Grantee does further agree to release the Grantor from any claim for damages or replacement cost of said pedestrian tunnel which may be occasioned by any future reconstruction of Front Street.
4. In the event there is a need for surface reentry for the purposes of maintenance of the tunnel, the CITY grants such conditional right of entry from the surface for said purpose, subject to the CITY approving by and through its appropriate Department, the Plans and Specifications therefor, and including the Plans and Specifications for the restoration of the surface upon completion thereof.
5. The Grantee does further agree and covenant with the Grantor to perform said work in a satisfactory and workmanlike manner, and in a manner which will not damage adjoining property, whether real or personal, and will at all times conduct the operation in such a manner as to preserve the lateral support for adjoining property.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand the day and year first above written.

**CITY OF COEUR D'ALENE,  
GRANTOR**

\_\_\_\_\_  
Sandi Bloem, Mayor

ATTEST

\_\_\_\_\_  
Renata McLeod, City Clerk

**BLACKRIDGE PROPERTIES, LLC  
GRANTEE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, a Notary Public, personally appeared **Sandi Bloem** and **Renata McLeod**, known to me to be the Mayor and City Clerk, respectively, of the City of Coeur d'Alene that executed the foregoing instrument and acknowledged to me that said City of Coeur d'Alene executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

\*\*\*\*\*

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, a Notary Public, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, of **BLACKRIDGE PROPERTIES, LLC**, and the person who executed the foregoing instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_