

City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Septer	mber 2, 2025 Staff	Member/Dept: I	Robyn Mattison/City Engineer
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Agenda Item: Recommendation to Right-of-Way Encroachment Agreement #25979 between the City

of Ketchum and the owners of the property located at 340 S Leadville Avenue.

Recommended Motions:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 25979 between the City and Timothy and Jennifer Brosnan, the owners of the property located at 340 S. Leadville Ave.

Reasons for Recommendation:

- Due to site topography allowing the snowmelt system to extend into the public right-of-way is recommended by City staff for life safety purposes.
- The Fire Department, Planning Department, and City Engineer support the proposed request.
- The improvements will not impact the use or operation of S Leadville Avenue.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.

Policy Analysis and Background (non-consent items only):

The applicant proposes modifications to an existing driveway. The current width does not comply with fire code requirements and has a slope exceeding 20%. The proposed modifications include increasing the width to 20 feet to meet fire code standards, reducing the maximum slope to 18.8%, and installing a snowmelt system. The agreement also include owner continued maintenance of an existing tree in the right-of-way.

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent fixture or structure encroaching into the public right-of-way. The accompanying Right-of-Way Encroachment Agreement is designed to protect the City in the event that the proposed encroachment requires repair, relocation, or removal. The standards for issuing a Right-of-Way Encroachment Permit, as outlined in Ketchum Municipal Code §12.12.060, are met by the proposed encroachments for the S Leadville Ave project.

Sustainability Impact:

None OR state impact here: None

Financial Impact:

None OR Adequate funds exist in account: Nor	lone
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Attachments:

1. Right-of-Way Encroachment Agreement 25979 with Exhibit "A"

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 25979

THIS AGREEMENT, made and entered into this _____day of _____, 2025, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Timothy and Jennifer Brosnan (collectively referred to as "Owner"), whose address is 412 Signal Road, Newport Beach, CA 92663.

RECITALS

WHEREAS, Owner is the owner of real property described as 340 S Leadville Ave and legally described as LEADVILLE SUB LOT 11 9,152 SF ("Subject Property"), located within the City of Ketchum, State of Idaho, and;

WHEREAS, Owner wishes to permit placement of a snowmelted paver driveway with concrete border and valley gutter, and a retaining wall within the right of way on S Leadville Ave. Owner also wishes to maintain an existing conifer tree within the right of way on S Leadville Ave. 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 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 place a heated paver driveway with concrete border and valley gutter, a retaining wall, and maintain an existing conifer tree, as identified in Exhibit "A", within the public rights-of-way on S Leadville Avenue 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. Any modification to the improvements identified in Exhibit "A" shall be approved by the City prior to any modifications taking place.

- 3. Snowmelt systems installed in the public right-of-way shall be installed and operate at all times during the winter according to the following:
 - The system shall meet the requirements of the International Energy Conservation Code (2018 IECC, 403.12.2)
 - The system shall have an electronic main control board to operate the system that is programmable and optimizes the way the system functions.
 - Installation of in-ground control sensors linked to the main control board that detect snow and ice on the surface, monitor the sidewalk or driveway temperature, and automatically activates the system to be turned on or off based on the snow condition and air temperature.
- 4. Owner shall be responsible for restoring the landscaping that is altered due to the installation and removal of the Improvements, to the satisfaction of the Director of Streets and Facilities.
- 5. 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.
- 6. 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.
- 7. 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.
- 8. 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.
- 9. 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.

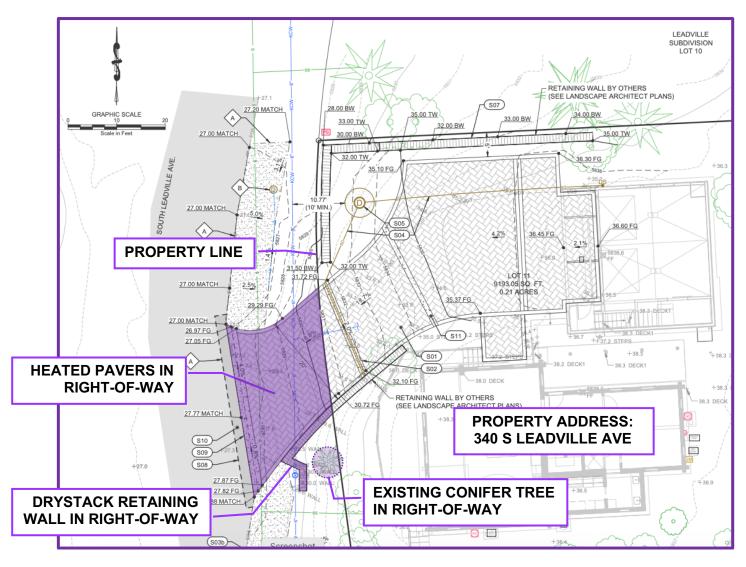
- 10. This Agreement sets forth the entire understanding of the parties hereto and shall not be changed or terminated orally. It is understood and agreed by the parties hereto that there are no verbal promises or implied promises, agreements, stipulations or other representations of any kind or character pertaining to the Improvements maintained in the public right-of-way other than as set forth in this Agreement.
- 11. 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.
- 12. Successors and Assigns This Agreement shall be binding upon and inures to the benefit of each of the parties hereto and their respective successors and assigns.
 - 13. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.
- 14. 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.

OWNERS:	CITY OF KETCHUM:
By: Timothy Brosnan By: Jennifer Brosnan	Its: Mayor
STATE OF,) ss. County of)	
On this day of and for said State, personally appeared the person who executed the foregoing i same.	, 2025, before me, the undersigned Notary Public in, known to me to be nstrument and acknowledged to me that he executed the
IN WITNESS WHEREOF, I have day and year first above written.	e hereunto set my hand and affixed my official seal the
	Notary Public for Residing at Commission expires

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STATE OF IDAHO County of Blaine)	
County of Blaine) ss.)	
for said State, perso of the CITY OF KE	onally appeared NEIL TCHUM, IDAHO, and icipal corporation and	2025, before me, the undersigned Notary Public in and BRADSHAW, known or identified to me to be the Mayor the person who executed the foregoing instrument on acknowledged to me that said municipal corporation
IN WITNESS certificate first abov	·	nereunto set my hand and seal the day and year in this
		Notary Public for
		Residing at Commission expires

EXHIBIT "A"



Base figures provided by applicant, prepared by Galena-Benchmark Engineering – July 2025 Figure annotated with purple textboxes by City Engineer Robyn Mattison to clarify improvements included in Right-Of-Way Encroachment Agreement No. 25979