



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: July 23, 2026 Staff Member/Dept: Robyn Mattison, City Engineer

Agenda Item: Recommendation to Right-of-Way Encroachment Agreement Amendment #24913A between the City of Ketchum and Bruce G Vitarisi Trustee of the 219 E Canyon Run Trust Dated 5/27/21.

Recommended Motions:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement Amendment #24913A between the City of Ketchum and Bruce G Vitarisi Trustee of the 219 E Canyon Run Trust Dated 5/27/21.

Reasons for Recommendation:

- City Council previously approved ROW Encroachment agreement #24913 in June 2024 to allow placement of driveway pavers within the city right-of-way for a new residence.
- The applicant now proposes to install a 21kw solar energy generation system and a driveway snowmelt system.
- Under the new snowmelt ordinance council approved in December 2025, the renewable energy generation system offsets the costs of carbon generated by the driveway snowmelt system therefore is permitted to be installed in the city right-of-way, under conditions outlined within the ordinance, with the ROW usage fee reduced to \$0. The applicant has paid the ROW snowmelt permit application fee.
- The applicant proposed revised language to terms #2, #3, and #6 of the city's ROW encroachment agreement. Revisions have been reviewed and approved by the City Administrator. Final agreement is shown as Attachment 1. Revisions to the agreement terms are highlighted in Attachment 2.
- 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):

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 encroachment in the E. Canyon Run right-of-way.

Sustainability Impact:

None OR state impact here: With the installation of the renewable energy generation system the city's ROW usage fee calculator (excel spreadsheet) shows an overall reduction in annual CO₂ emissions of 5,838 lbs, or

approximately 3 tons per year. This figure accounts for the CO₂ emissions estimated to be generated by the snowmelt system.

Financial Impact:

None OR Adequate funds exist in account:	None
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Attachments:

- | |
|---|
| 1. Right-of-Way Encroachment Agreement 24913A with Exhibit "A" |
| 2. Right-of-Way Encroachment Agreement 24913A with Exhibit "A" – Track changes mode showing revised language to terms #2, #3, and #6. |

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 24913A

THIS AGREEMENT, made and entered into this ____ day of _____, 2026, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Bruce G Vitarisi Trustee of the 219 E Canyon Run Trust Dated 5/27/21, ("Owner"), whose mailing address is Post Office Box 6935, Ketchum, Idaho, 83340.

RECITALS

WHEREAS, Owner is the owner of real property located at 219 E. Canyon Run and legally described as Sun Valley Subdivision Lot 12A ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner entered into RIGHT-OF-WAY ENCROACHMENT AGREEMENT 24913 with Ketchum dated June 17, 2024 ("Original Agreement") related to installation of driveway pavers ("Original Improvements") within Ketchum's right of way adjacent to the Subject Property.

WHEREAS, Owner wishes to permit placement of a heated paver driveway on E. Canyon Run Blvd. 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;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

TERMS AND CONDITIONS

1. The Original Agreement is hereby terminated and fully replaced by this Agreement.
2. Ketchum shall permit Owner to install a paver driveway with snowmelt system identified in Exhibit "A" within the public right-of-way on E. Canyon Run Ave. (the "Improvements"). Ketchum may require removal of the Improvements only upon a good-faith determination that removal is reasonably necessary for a public purpose, including but not limited to public safety, street construction, or utility installation or maintenance. In such event, Ketchum shall provide Owner no less than one hundred eighty (180) days' prior written notice, except in the case of a bona fide emergency threatening public health or safety or utility service, in which case Ketchum may provide such shorter notice as is reasonably practicable under the circumstances. Owner shall initiate the removal process within the notice period, at Owner's expense, and shall thereafter diligently pursue completion of removal; provided that actual commencement and completion of

removal shall be subject to the reasonable availability and scheduling of qualified contractors. Owner shall restore the surface of the right-of-way to a condition reasonably comparable to its condition prior to removal. Owner may, at its option and upon written notice to Ketchum, remove the Improvements at any time.

3. Owner shall be responsible for the maintenance of said Improvements and shall initiate repairs of said Improvements within 48 hours upon notice from Ketchum that repairs are needed, and shall thereafter diligently pursue completion of such repairs; provided that actual commencement and completion of repairs shall be subject to the reasonable availability and scheduling of qualified contractors. Any modification to the improvements identified in Exhibit "A" shall be approved by the City of Ketchum prior to any modifications taking place.

4. Snowmelt systems installed in the public right-of-way shall be installed and operated during the winter according to the following:

- The system shall accurately measure surface and ambient temperatures and shall accurately detect snowfall, ice, and precipitation on the surface.
- The system shall include automatic controls programmed to shut off the system when the pavement temperature is greater than 50 degrees Fahrenheit and precipitation is not falling and programmed to shut off the system when the outdoor temperature is greater than 40 degrees Fahrenheit.
- The system shall be insulated below and around the perimeter with insulation approved by the City Engineer.
- Drainage shall be retained onsite, designed to eliminate standing water, and drain in a manner that results in no icing on adjacent non-snowmelted hard surfaces in the right -of-way, such as asphalt, concrete, or pavers.
- The boiler shall have an annual fuel utilization efficiency rating of 87% or greater for oil boilers and 90% or greater for gas boilers.

5. Owner shall be responsible for restoring the landscaping that is altered due to the construction and installation of the Improvements to original condition, to the satisfaction of the Director of Streets and Facilities.

6. 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, except to the extent such claims arise from the gross negligence or willful misconduct of Ketchum, its officers, employees, or agents. 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 reasonably acceptable 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, except claims arising from the gross negligence or willful misconduct of Ketchum, its officers, employees, or agents.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

15. 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.

CITY OF KETCHUM:

By: _____
Peter Prekeges
Its: Mayor

STATE OF _____,)
County of _____.) ss.

On this _____ day of _____, 2026, before me, the undersigned Notary Public in and for said State, personally appeared BRUCE G VITARISI, 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 _____

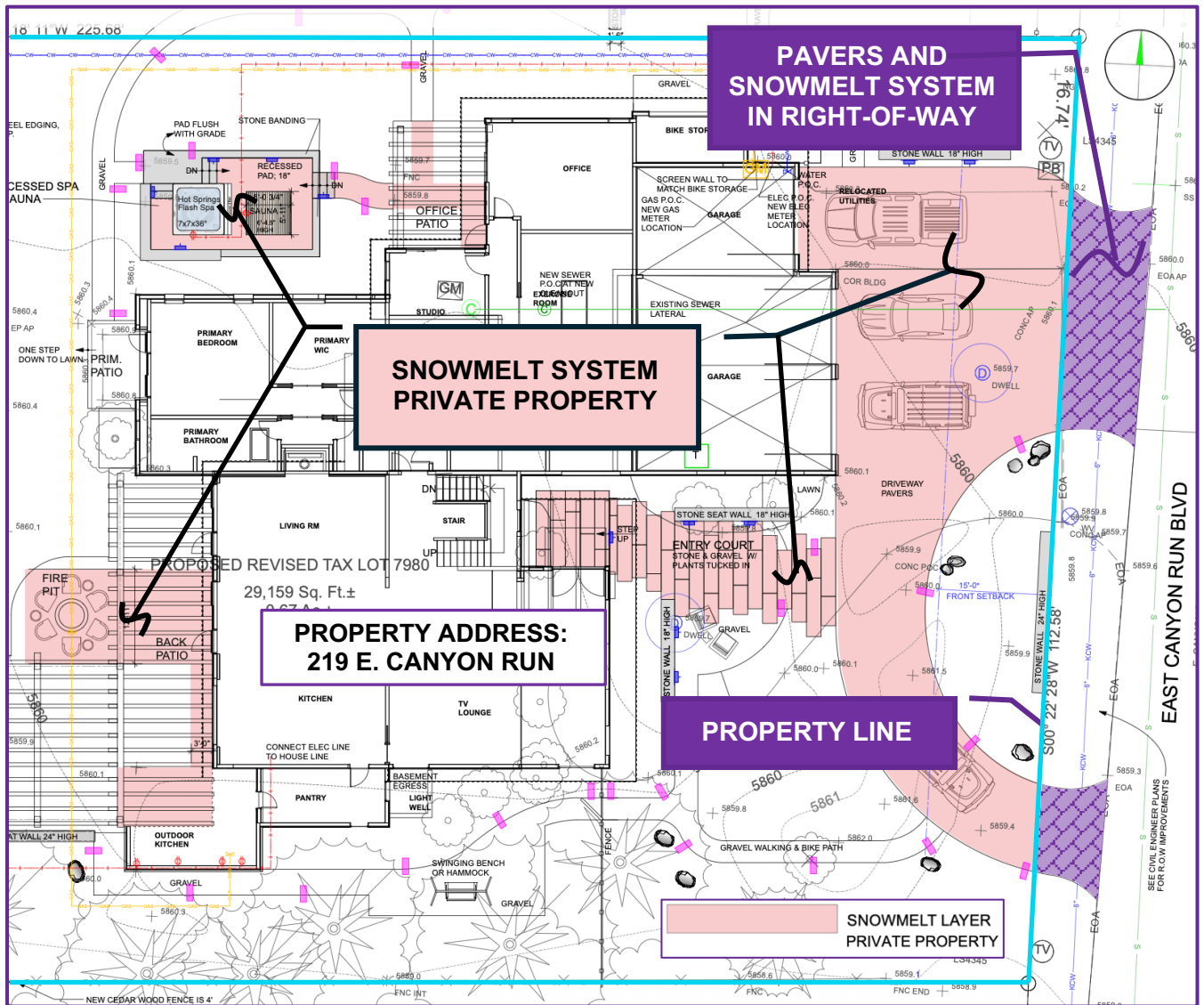
STATE OF _____,)
County of _____.) ss.

On this ____ day of _____, 2026, before me, the undersigned Notary Public in and for said State, personally appeared PETER PREKEGES, 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 affixed my official seal the day and year first above written.

Notary Public for _____
Residing at _____
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EXHIBIT "A"



Base figure provided by applicant, prepared by Darci Reimund Designs / W.E.S Landscape Architecture – Dated 9/17/2024. Figure annotated with purple textboxes by City Engineer Robyn Mattison to clarify improvements included in Right-Of-Way Encroachment Agreement No. 24913A.

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claims in respect thereof against Ketchum, except claims arising from the gross negligence or willful misconduct of Ketchum, its officers, employees, or agents.

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OWNER:

CITY OF KETCHUM:

By: _____
Bruce G. Vitarisi, Trustee
219 E Canyon Run Trust Dated 5/27/21

By: _____
Peter Prekeges
Its: Mayor

STATE OF _____,)
County of _____,) ss.
County of _____,)

On this _____ day of _____, 2026, before me, the undersigned Notary Public in and for said State, personally appeared BRUCE G VITARISI, 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 _____

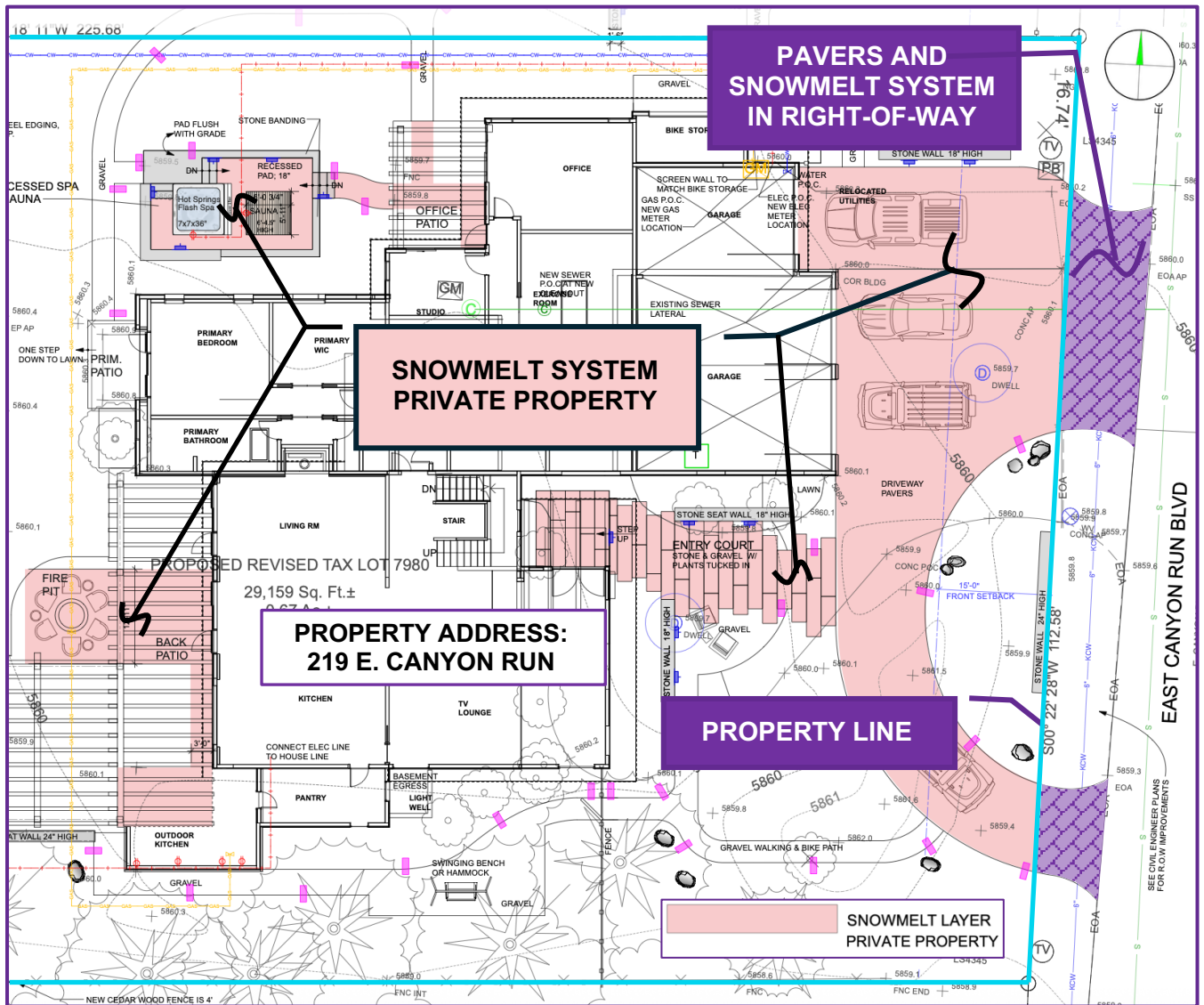
STATE OF _____,)
County of _____.) ss.

On this ____ day of _____, 2026, before me, the undersigned Notary Public in and for said State, personally appeared PETER PREKEGES, 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 affixed my official seal the day and year first above written.

Notary Public for _____
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EXHIBIT "A"



Base figure provided by applicant, prepared by Darci Reimund Designs / W.E.S Landscape Architecture – Dated 9/17/2024. Figure annotated with purple textboxes by City Engineer Robyn Mattison to clarify improvements included in Right-Of-Way Encroachment Agreement No. 24913A.