



City of Ketchum

### CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:  Staff Member/Dept:

Agenda Item:

**Recommended Motion:**

**Reasons for Recommendation:**

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

**Sustainability Impact:**

**Financial Impact:**

**Attachments:**

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**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 22871**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Krista Simor (collectively referred to as "Owner"), whose address is Post Office Box 2502, Ketchum, Idaho 83340.

*RECITALS*

WHEREAS, Owner wishes to permit existing trees and placement of a paver driveway in the right of way adjacent to 960 Rocking Horse Road. These improvements are shown in Exhibit "A" and Exhibit "B" 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 keep existing trees as identified as Exhibit "A" and install a paver driveway as identified in Exhibit "B" within the public right-of-way adjacent to 960 Rocking Horse Road, 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" or Exhibit "B" shall be approved by the City prior to any modifications taking place.

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 paver driveway, 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: \_\_\_\_\_  
Neil Bradshaw  
Its: Mayor

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

On this \_\_\_ day of \_\_\_\_\_, 2023, 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 )  
County of Blaine ) ss.

On this \_\_\_ day of \_\_\_\_\_, 2023, 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"**

ROW Encroachment Agreement 22871 Exhibit "A"

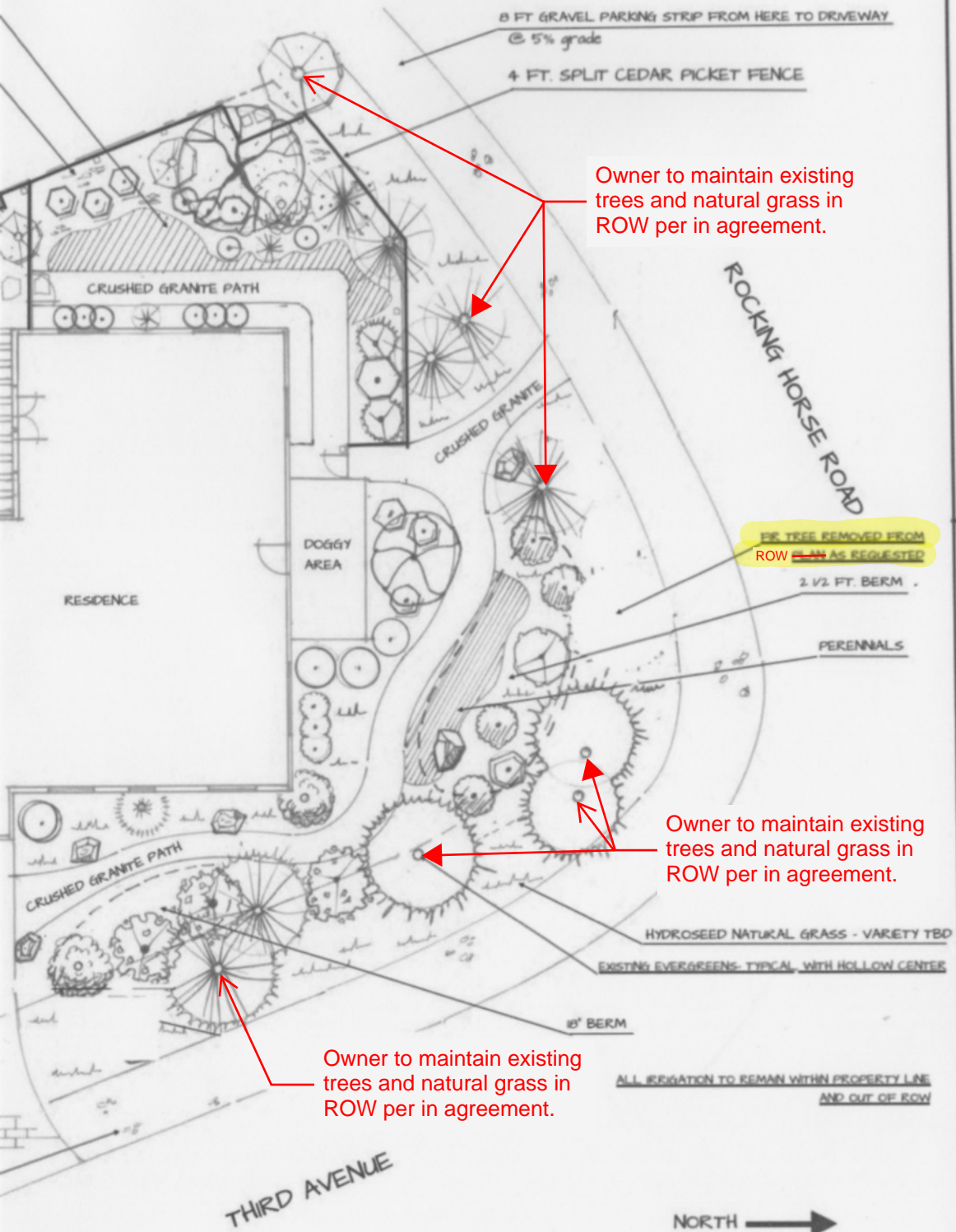
REV: 1-3-23  
7-2-23

DESIGNED BY GARDEN CREEK DESIGN  
92 EAST FORK ROAD HAILEY, IDAHO  
TELEPHONE: 208.309.0228

DESIGNED BY

SIMOR RESIDENCE

960 ROCKING HORSE ROAD KETCHUM IDAHO



NORTH →

SCALE: 1/8" = 1'-0"

H-22

1-1

**EXHIBIT "B"**



ROW Agreement  
Number 22871  
Exhibit "B"

GARAGE

ENTRY

CRUSHED GRANITE PATH

HYDROSEED NATURAL GRASS - VARIETY T

EXISTING EVERGREENS TYPICAL WITH HOLLOW CENTER

12' BERM

ALL VEGETATION TO REMAIN WITHIN PROPERTY LINE  
AND OUT OF ROW

THIRD AVENUE

PAVER DRIVEWAY

NORTH →

SCALE: 1/8" = 1'-0"

H-22

Paver driveway included in ROW  
Encroachment Agreement 22871