



City of Ketchum

May 23, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Approve Access Easement Agreement with Church of Jesus Christ of Latter-Day Saints

Recommendation and Summary

Staff is recommending the Council approve the attached access easement agreement with the Church of Jesus Christ of Latter-Day Saints which will facilitate a new bike path connection from Sun Valley Road along Spruce Street to Fourth Street. The project would be completed as part of the current Sun Valley Road rehabilitation project.

"I move to approve the access easement with the Church of Jesus Christ of Latter-Day Saints in order to facilitate to a new bike path connection."

Introduction and History

This bike connection improvement (attached) was identified during the design phase of the Sun Valley Road rehabilitation project. Specifically, the city desires bicyclists to utilize the 4th Street corridor through the downtown core as opposed to Sun Valley Road. This new path connection reinforces that desired behavior.

Financial Impact

There is no cost associated with this access easement agreement other than the costs for Galena Engineering to complete the survey work and create legal description.

Attachments

- Visual of new path connection
- Access Easement Agreement

When Recorded, Mail To:

City of Ketchum
P.O. Box 2315
191 5th Street West
Ketchum, ID 83340

With A Copy To:

The Church of Jesus Christ of Latter-Day Saints
Attn.: _____
50 East North Temple, Suite _____
Salt Lake City, Utah 84150

(space above for Recorder's use only)

ACCESS EASEMENT AGREEMENT
[PN: 503-9029]

This ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is made this ____ day of May, 2022, (the “**Effective Date**”) by and between THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole (“**Grantor**”), and CITY OF KETCHUM, an Idaho body politic (“**Grantee**”). Grantor and Grantee are sometimes referred to herein individually as a “**Party**,” and collectively as the “**Parties**.”

R E C I T A L S

A. Grantor is the owner of certain real property located in Ketchum, Blaine County, Idaho, more particularly described on Exhibit A (“**Grantor Property**”).

B. Grantee desires to obtain an access easement on, over, across, under and through certain portions of the Grantor Property more particularly described on Exhibit B and depicted on Exhibit C, attached hereto and incorporated herein by this reference (the “**Easement Area**”), for the purposes set forth in this Agreement.

C. Grantor is willing to grant such easement to Grantee, subject to the terms and conditions set forth in this Agreement.

A G R E E M E N T

NOW, THEREFORE, in consideration of the mutual covenants and obligations expressed herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto make the following grants, agreements, and covenants:

1. Grant of Easement. Grantor hereby conveys to Grantee, without warranty, a perpetual, non-exclusive access easement (the “**Easement**”) on, over, and across the Easement Area for the purposes of providing pedestrian and bicycle access over and across the Easement Area and the right to construct improvements within the Easement that are reasonable and necessary for the Grantee’s use (the “**Improvements**”).

2. Access. Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, “**Grantee’s Agents**”) shall have the right to enter upon the Easement Area

solely for the purposes permitted by this Agreement. Grantee shall enter upon the Easement Area from existing roads and public walkways at its sole risk and hazard, and Grantee and its successors and assigns, hereby release Grantor from any and all claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee and Grantee's Agents. In the event Grantee needs to access the Easement Area to perform any maintenance, repair, or restoration work on the Easement Area, Grantee shall (i) use reasonable efforts to minimize any interference or disruption to Grantor's use and occupancy of the Easement Area and (ii) except in the case of an emergency, perform such work on days other than Sunday (and in the event of any emergency on Sunday, work will only be performed to the minimum extent necessary to cure or remediate such emergency).

3. Condition of the Easement Area. Grantee accepts the Easement Area and all aspects thereof in their "AS IS," "WHERE IS" condition, without warranties, either express or implied, "WITH ALL FAULTS," including but not limited to both latent and patent defects, the existence of hazardous materials, if any, and any other easements, rights, or other encumbrances affecting the Easement Area. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Easement Area, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the Easement Area is granted to Grantee subject to: (a) any state of facts which an accurate ALTA/ASCM survey (with Table A items) or physical inspection of the Easement Area might show, (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity. Grantee must obtain any and all consents, approvals, permissions, and agreements to cross, encumber or encroach upon any other easements or rights of others related to its use and improvement of the Easement Area.

4. Right to Relocate. Grantor may, at Grantor's sole cost and expense, relocate the Easement, Easement Area, and the Improvements to any other location on the Grantor Property after providing Grantee with at least sixty (60) days' advance written notice describing the proposed location, provided that the relocated easement provides Grantee substantially the same access rights to and from the Grantee Property. Grantor will comply with all applicable ordinances, rules and regulations and all applicable state laws and regulations when performing the relocation. Following the relocation, the parties agree to execute and record an amendment to this Agreement identifying the new Easement Area and releasing those portions of the Grantor Property no longer required for the Easement.

5. Reservation by Grantor. Notwithstanding anything to the contrary stated herein, Grantor hereby reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use of the Easement Area. Without limiting the above, Grantor reserves the right to grant additional rights, easements or encumbrances to other third parties to use or occupy the Easement Area (or the surface of the Grantor Property above same). Grantee hereby understands and agrees that this Easement is granted on a non-exclusive basis and that other third parties have been, and/or may be in the future, granted the right by Grantor to use the Easement Area and/or surrounding areas in a way that does not materially prevent or impair the use or exercise of the easement rights granted hereby.

6. Maintenance and Restoration. Grantee, at its sole cost and expense, shall maintain the Easement Area and repair the Improvements and any and all related improvements installed by Grantee, in good order and condition. Grantee shall promptly repair any damage to the Grantor Property and Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, fences, signs, lighting, buildings, etc.) caused by Grantee and/or Grantee's Agents, and shall restore the Grantor Property and the improvements thereon to the same or better condition as they existed prior to any entry onto or work

performed on the Grantor Property by Grantee and Grantee's Agents. Grantee's restoration responsibilities shall also include, but not be limited to: (i) removal of all improvements, equipment or materials other than the Improvements which it has caused to be placed upon the Grantor Property; (ii) mounding of the same topsoil which was originally removed in the excavation process, in all areas excavated by Grantee such that the mounded areas shall settle to the approximate depth of the surrounding surface after the construction activities; (iii) the filling in and repairing of all other portions of the Grantor Property which are damaged, rutted or otherwise disturbed as a result of Grantee's operations with the same topsoil existing prior to said construction activities as necessary such that all disturbed areas are ready for re-vegetation; (iv) compacting the soil after it is backfilled to a density acceptable to Grantor; (v) grading the areas in which the soils were removed and relocated; and (vi) leaving the Grantor Property in a condition which is clean, free of debris and hazards which may be caused by Grantee's activities, and subject to neither, environmental hazards, nor liens caused by Grantee's activities.

7. Construction of the Improvements. Grantee will conduct all construction activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future. Upon completion of the Improvements, Grantee shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

8. Compliance with Laws. Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

9. Hazardous Materials. Except for motor fuels used by vehicles and construction equipment, which may be used on the Easement Area in compliance with all applicable Hazardous Waste Laws (defined below), Grantee agrees not to transport, generate, store, dispose of, release, or use any Hazardous Substances on the Easement Area. As used in this Agreement, the term "Hazardous Substances" means all hazardous and toxic substances, wastes or materials, including without limitation, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable materials, explosives, urea formaldehyde insulation, radioactive materials, biologically hazardous substances, PCBs, pesticides, herbicides, and any other kind and/or type of pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents and/or any other similar substances or materials which, because of toxic, flammable, ignitable, explosive, corrosive, reactive, radioactive, or other properties may be hazardous to human health or the environment and/or are included under, subject to or regulated by any Hazardous Waste Laws. Grantee agrees to immediately notify Grantor of any leaking or spillage of Hazardous Substances on the Easement Area or Grantor Property. Grantee shall be exclusively liable for all cleanup and remediation costs thereof.

As used in this Agreement, the term "Hazardous Waste Laws" means any and all present and future applicable (i) federal, state and local statutes, laws, rules or regulations governing Hazardous Substances; (ii) judicial or administrative interpretations thereof, including any judicial or administrative orders or judgments; and (iii) ordinances, codes, plans, injunctions, decrees, permits, demand letters, concessions, grants, franchises, licenses, agreements, notices, or other governmental restrictions, relating to the protection of the public health, welfare, and the environment, or to any actual, proposed or threatened storage, holding, existence, release, emission, discharge, spilling, leaking, pouring, pumping, injection, dumping, discarding, burying, abandoning, generation, processing, abatement, treatment, removal, disposition, handling, transportation or other management of any Hazardous Substance or any other activity or occurrence that causes or would cause any such event to exist.

10. Sole Responsibility. Grantee assumes sole responsibility for any loss, damage, injury, accident, fire, or other casualty, liability, claim, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property (collectively the "Claims", or a "Claim") from or by any unaffiliated third party, Grantee, and/or Grantee's Agents, arising from or relating to (i) any use of the Easement Area and/or adjacent areas by Grantee or Grantee's Agents, (ii) any act or omission of Grantee or any of Grantee's Agents, (iii) any bodily injury, property damage, accident, fire or other casualty to or involving Grantee or Grantee's Agents and its or their property on the Easement Area and/or adjacent areas, (iv) any violation or alleged violation by Grantee or Grantee's Agents of any law or regulation now or hereafter enacted, (v) the failure of Grantee to maintain the Easement Area and/or the Improvements in a safe condition, (vi) any loss or theft whatsoever of any property or anything placed or stored by Grantee or Grantee's Agents on or about the Easement Area and/or adjacent areas, (vii) any breach by Grantee of its obligations under this Agreement, and (viii) any enforcement by Grantor of any provision of this Agreement and any cost of removing Grantee or Grantee's Agents or its or their property or equipment from the Easement Area or restoring the same as provided herein; provided, however, that the foregoing shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been caused by gross negligence or willful misconduct of the Grantor.

11. Insurance.

11.1. Grantee's Insurance. Grantee will obtain, or cause its contractors to obtain, the following insurance and provide evidence thereof as described below prior to commencement of activities on or relative to the Easement Area: (i) Workers Compensation Insurance satisfying any statutory limits; (ii) Employers Liability Insurance with coverage and minimum limits of the greater of (a) bodily injury by accident (\$100,000.00 each accident); (b) bodily injury by disease (\$500,000 policy limit); and (c) bodily injury by disease (\$100,000 each employee); (iii) commercial general liability insurance providing coverage on an occurrence basis with limits of not less than Two Million Dollars (\$2,000,000.00) each occurrence for bodily injury and property damage combined, Two Million Dollars (\$2,000,000.00) annual general aggregate, and Two Million Dollars (\$2,000,000.00) products and completed operations annual aggregate. Grantee's liability insurance policy or policies shall include broad form contractual liability coverage.

11.2. Evidence of Insurance. Before commencement of any work on the Easement Area or entry upon the Grantor Property, Grantee will provide evidence of insurance to Grantor by delivering to Grantor a Certificate of Insurance, on ACORD 25-S (1/95) Form or equivalent listing Grantor as a Certificate Holder and containing a cancellation clause of the certificate amended to read: "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days prior written notice to the certificate holder names to the left." Grantor will be endorsed as an additional insured on such policy on ISO Form CG 20 10 (10/93) or its equivalent.

12. Liens. Grantee shall keep the Grantor Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee, and shall indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Grantor Property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of Grantee's Agents. Any such liens must be released of record within thirty (30) days of written notice to Grantee of the existence of such a lien. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

13. Notices. Except as otherwise required by law, any notice, demand or request given in connection with this Agreement shall be in writing and shall be given by personal delivery, overnight courier service, electronic mail, or United States certified mail, return receipt requested, postage or other delivery charge prepaid, addressed to Grantor or Grantee at the following addresses (or at such other address as Grantor or Grantee or the person receiving copies may designate in writing given in accordance with this Section):

GRANTOR: The Church of Jesus Christ of Latter-Day Saints
Attn.: _____
50 East North Temple, Suite _____
Salt Lake City, Utah 84150

GRANTEE: City of Ketchum
P.O. Box 2315 _____
191 5th Street West
Ketchum, ID 83340

14. No Public Use/Dedication. The Grantor Property is and shall at all times remain the private property of Grantor. The use of the Grantor Property is permissive and shall be limited to the express purposes contained herein by Grantee. Neither Grantee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to the Grantor Property beyond the express terms and conditions of this Agreement.

15. Miscellaneous.

15.1. **Interpretation.** Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. The parties acknowledge and agree that all of the terms and conditions of this Agreement are contractual in nature and shall be interpreted under any applicable law as contractual obligations, and each party waives any claims or defenses to the contrary.

15.2. **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the Idaho. Venue shall be in Blaine County, Idaho.

15.3. **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No covenant, representation, or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provision hereof. Any amendment or modification to this Agreement shall be in writing and signed by authorized agents or officers of the parties.

15.4. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any rights or remedy for a breach of this Agreement shall constitute a waiver of any such breach or of such right or remedy or of any other covenant, agreement, term, or condition.

15.5. **Rights and Remedies.** The rights and remedies of any of the parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy,

but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

15.6. Enforceability and Litigation Expenses. If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

15.7. Authorization. Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the party for which he/she signs.

15.8. Counterparts. The parties may sign this Agreement in multiple identical counterparts, all of which taken together shall constitute one and the same Agreement. Further, the parties shall treat a copy of an original signature to this Agreement for all purposes as an original signature. The parties shall consider a copy of the signed Agreement for all purposes as an original of the Agreement to the maximum extent permitted by law, and no party to this Agreement shall have any obligation to retain a version of this Agreement that contains original signatures in order to enforce this Agreement, or for any other purpose.

[signatures and acknowledgements to follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

GRANTOR:

THE CHURCH OF JESUS CHRIST
OF LATTER-DAY SAINTS,
a Utah corporation sole

By: _____
Name: _____
Its: Authorized Agent

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this ____ day of _____, 2022, personally appeared before me _____, personally known to me to be an Authorized Agent of THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, who acknowledged before me that he signed the foregoing instrument as Authorized Agent for THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole; and that said instrument is the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said corporation and that said corporation executed the same.

WITNESS my hand and official seal.

Notary Public for the State of Utah

[signature and acknowledgement to follow]

GRANTEE:

CITY OF KETCHUM,
an Idaho body politic

By: _____
Name: _____
Its: _____

STATE OF IDAHO)
 : ss
COUNTY OF BLAINE)

This instrument was ACKNOWLEDGED before me on the _____ day of _____,
2022 by _____, the _____ of CITY OF KETCHUM, an
Idaho body politic, on behalf of said company.

NOTARY PUBLIC

Residing at: _____

My commission expires _____.

EXHIBIT A

Legal Description of the Grantor Property

Lot 1A of LDS CHURCH SUBDIVISION, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded as Instrument No. 401725, records of Blaine County, Idaho, that resides within the City of Ketchum city limits.

EXHIBIT B

Legal Description of the Easement Area

GALENA ENGINEERING, INC.

CIVIL ENGINEERING & LAND SURVEYING

Legal Description for an Access Easement on Lot 1A, LDS Church Subdivision

**Section 18, Township 4 North, Range 18 East
Boise Meridian, City of Ketchum, Blaine County, Idaho**

A legal description for a parcel of land situated within Lot 1A, LDS Church Subdivision, Section 18, Township 4 North, Range 18 East, Boise Meridian, City of Ketchum, Blaine County, Idaho; more particularly described as follows:

Commencing at the Southwest property corner of Lot 1A, LDS Church Subdivision, from which the property corner of said Lot 1A at the Right of Way intersection of Fourth Street and Spruce Street, lies N44°44'46"W, 209.53' distant, and said point being the TRUE POINT OF BEGINNING;

Thence N44°44'46"W, 39.77 feet, along the Easterly Right of Way of Spruce Street, to a point;

Thence 50.38 feet along a curve to the left, with a radius of 49.00 feet, a delta of 58°54'42", a tangent length of 27.67 feet, and a chord length of 48.19 feet that bears S81°44'18"E, to a point along the Northerly Right of Way of Sun Valley Road;

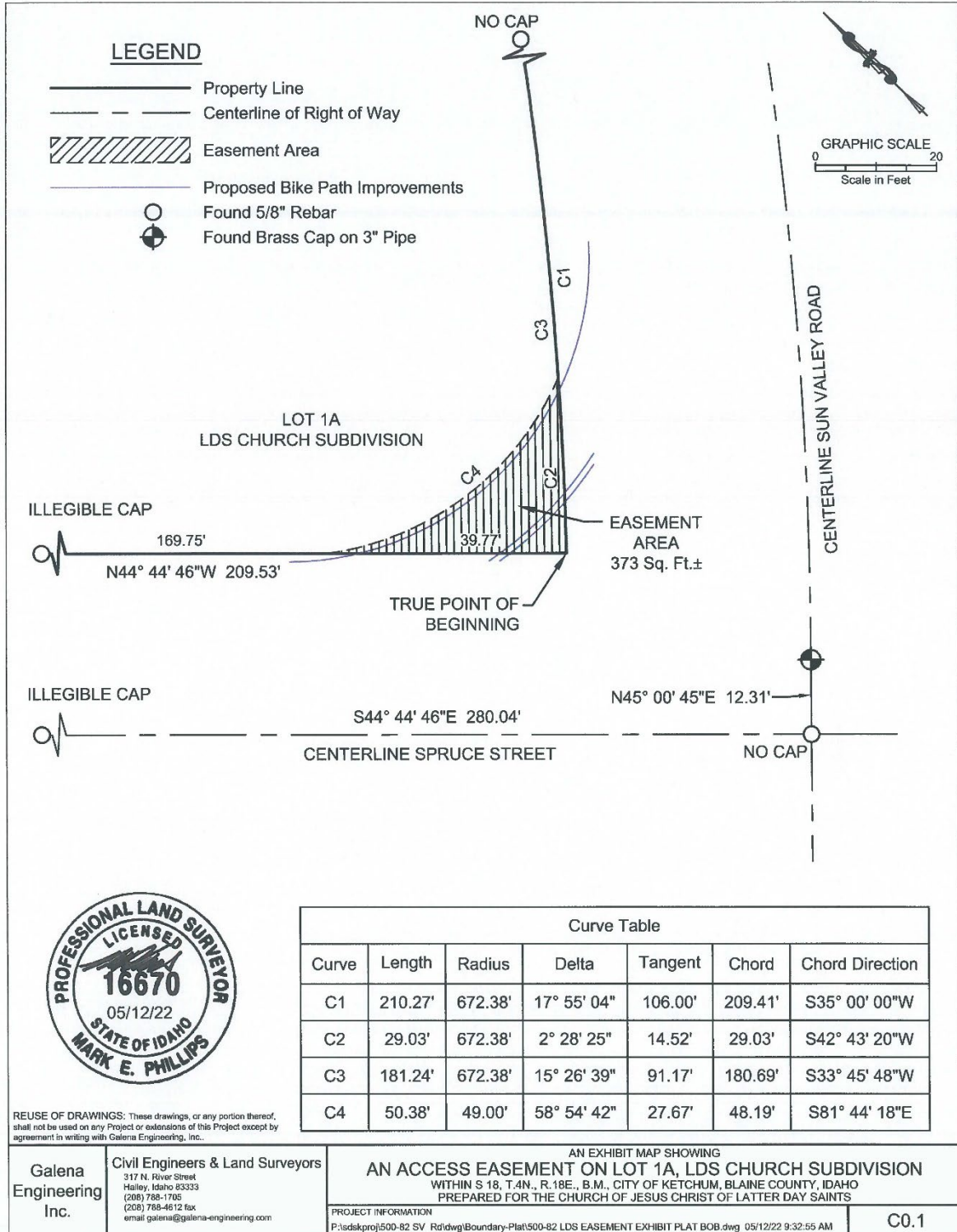
Thence 29.03 feet along a curve to the right, with a radius of 672.38 feet, a delta of 2°28'25", a tangent length of 14.52 feet, and a chord length of 29.03 feet that bears S42°43'20"W, to the TRUE POINT OF BEGINNING, containing 373 Sq. Ft., more or less, as determined by computer methods.

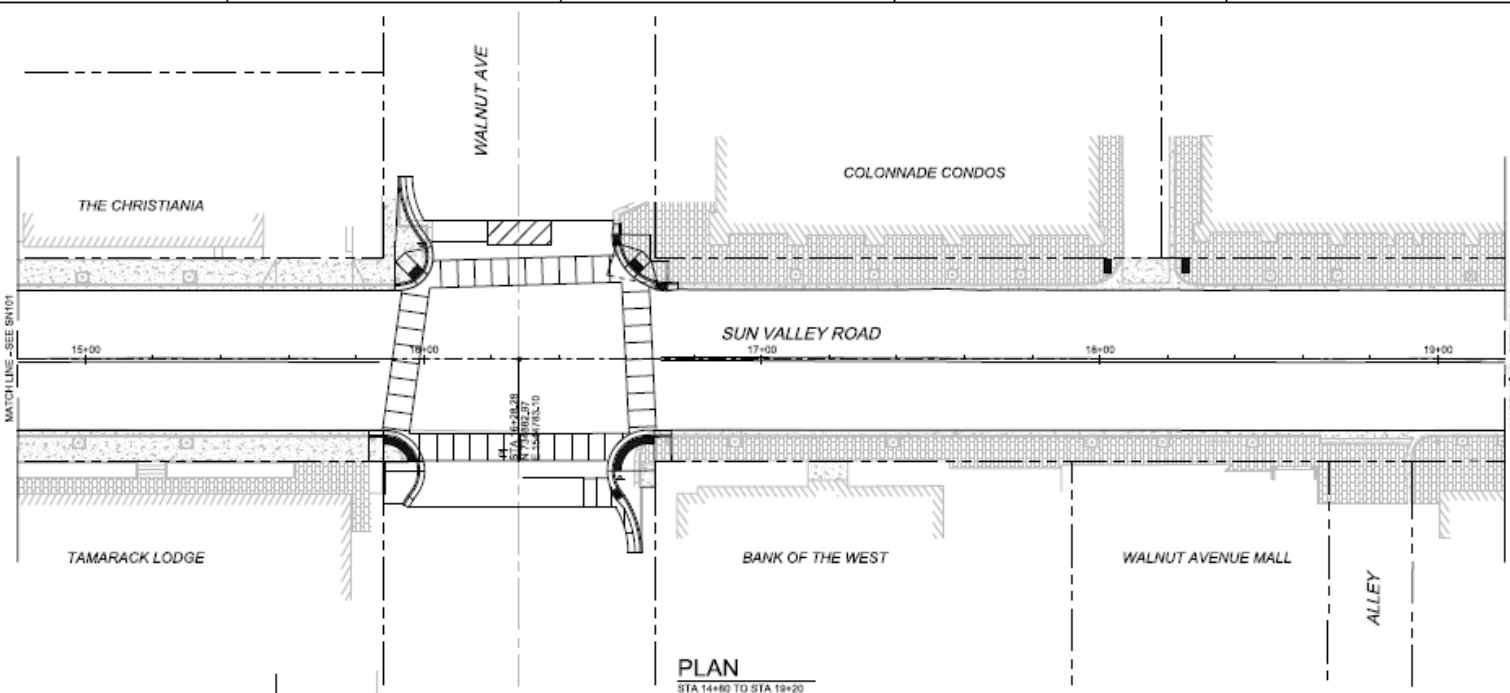


317 N. RIVER STREET • HAILEY, IDAHO • TELEPHONE (208) 788-1705 • FAX (208) 788-4612

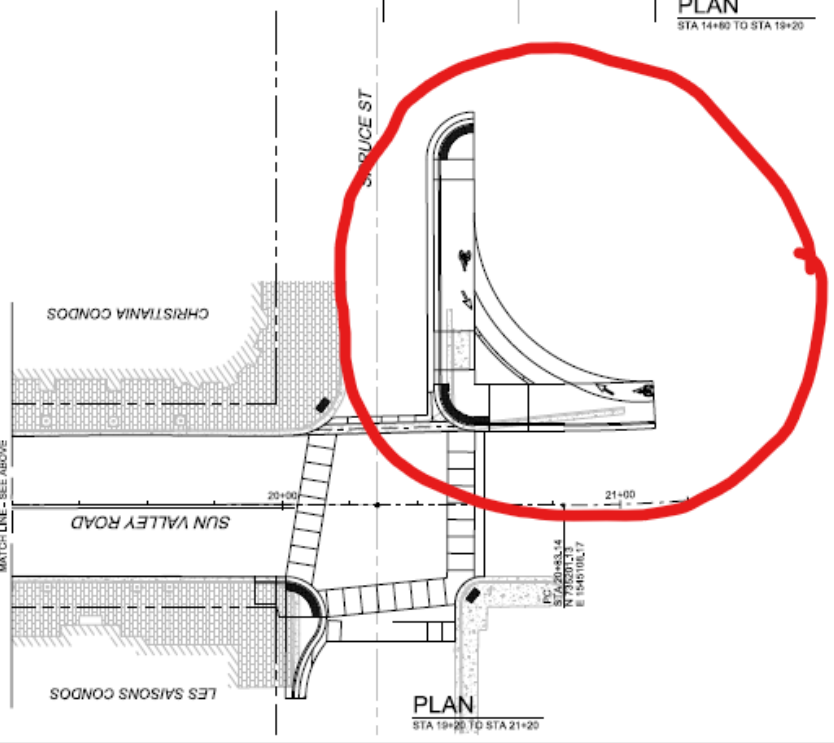
EXHIBIT C

Depiction of the Easement Area





PLAN
STA 14+80 TO STA 19+20



PLAN
STA 19+20 TO STA 21+20

- GENERAL NOTES**
1. STRIPING PLAN USED FOR QUANTIFYING BID ITEMS ONLY.
 2. VERIFY AND MATCH EXISTING STRIPING WIDTHS AND LOCATION FOR CENTER LINES, PARKING STALLS, NO PARKING ZONES, AND WHERE TYING INTO EXISTING.
 3. PROVIDE NEW CROSSWALK STRIPING TO ALIGN WITH NEW ADA RAMP.
 4. SEE SN201 FOR SUN VALLEY RD STRIPING NORTH OF SPRUCE AVE.
- SHEET KEYNOTES**
- 80. 4" WIDE DOUBLE YELLOW
 - 81. 6" WIDE YELLOW
 - 82. 4" WIDE WHITE
 - 83. 12" WIDE WHITE
 - 84. 24" WIDE WHITE
 - 85. 24" WIDE STOP BAR
 - 86. 4" WIDE YELLOW DASHED
 - 87. BICYCLE WITH ARROW MARKING
 - 88. GREEN PAVEMENT
 - 89. 4" YELLOW CENTERLINE STRIPING (LENGTH OF PATHWAY)

NO.	DATE	DR	REVISION	BY	APP'D

2022 SUN VALLEY ROAD REHABILITATION
KETCHUM AND SUN VALLEY, IDAHO

JACOBS

2022 SUN VALLEY ROAD REHABILITATION
SUN VALLEY ROAD
STRIPING PLAN
STA 14+80 TO STA 21+20

VERIFY SCALE

DATE: FEBRUARY 2022
 PROJ: 03489600
 DWG: SN102
 SHEET: 11 of 30



REUSE OF DOCUMENTS: THIS DOCUMENT AND THE DATA AND GRAPHICAL INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF JACOBS AND MUST BE USED IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF JACOBS. © 2022 JACOBS. ALL RIGHTS RESERVED. B. ROBERTS