



## City of Ketchum

November 2, 2020

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to approve Right-of-Way Encroachment Agreement 20551 for placement of snowmelt in the City Right-of-Way.**

#### Recommendation and Summary

Staff is recommending Council approve the attached Encroachment Agreement and adopt the following motion:

**"I move to authorize the Mayor to sign Encroachment Agreement 20551 with Cortland and Laura Blackburn."**

The reasons for the recommendation are as follows:

- The improvements will not impact the use or operation of the residential street
- The improvements will not impact drainage within the City ROW

#### Introduction and History

Laura Blackburn submitted a Right-of-Way Encroachment Permit application for the accessory dwelling (ADU) and garage for 425 N. Canyon Run. The encroachment request is for a subsurface snowmelt system within the City's Right-of-Way on Penny Drive which access the ADU.

Right-of-Way standards were developed to achieve goals of drainage, parking, snow storage, access for emergency vehicles, and provide materials that can be reasonably maintained by the city. Snowmelt systems are not maintained by the City but may be approved through an encroachment agreement.

City code requires a right-of-way encroachment permit for any permanent encroachment in the public right-of-way. These agreements are intended to help protect the City in the event the proposed encroachments were to ever pose an issue requiring repair, relocation, or removal of the encroachment.

#### Analysis

The proposed encroachments were determined not to impact public access or city operations.

#### Financial Impact

There is no financial impact resulting from approval of this encroachment agreement.

Attachments:

Encroachment Agreement 20551

**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 20551**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 2020, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (“Ketchum”), whose address is Post Office Box 2315, Ketchum, Idaho and CORTLANDT BLACKBURN AND LAURA BLACKBURN, (collectively referred to as “Owner”), whose address is PO BOX 1168, KETCHUM, ID 83340.

*RECITALS*

WHEREAS, Owner is the owner of real property described as 425 N Canyon Run (“Subject Property”), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of a snowmelt system within the right-of-way on Penny Drive. 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. Ketchum shall permit Owner to maintain the improvements identified in Exhibit “A” within the public right-of-way of Penny Lane Ketchum, Idaho, until notified by Ketchum to remove the improvements at which time Owner shall remove improvements at Owner’s expense.

2. Owner shall be responsible for the maintenance of said Improvements. Any modification to the improvements identified in Exhibit “A” shall be approved by the City of Ketchum prior to any modifications taking place.

3. 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.

4. 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.

5. 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.

6. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties and the respective heirs, personal representatives, successors and assigns of the parties hereof.

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: \_\_\_\_\_  
Cortlandt Blackburn

By: \_\_\_\_\_  
Neil Bradshaw  
Its: Mayor

By: \_\_\_\_\_  
Laura Blackburn

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

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned Notary Public in and for said State, personally appeared Cortlandt Blackburn, 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 \_\_\_\_\_, 2020, before me, the undersigned Notary Public in and for said State, personally appeared Laura Blackburn, 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 \_\_\_\_\_



**EXHIBIT "A"**

