



## City of Ketchum

### CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: **September 15, 2025** Staff Member/Dept: **Robyn Mattison/City Engineer**

Agenda Item: **Recommendation to Review and Provide Direction Regarding Right-of-Way Encroachment Application for Snowmelt and Pavers at 520 N Walnut Avenue.**

#### Recommended Motions:

**Motion Option #1:** I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 25982 between the City and Robert and Stacey Chess, owners of 520 N Walnut Ave, for heated pavers in the right-of-way.

**Motion Option #2:** I move to decline the application to install snowmelt in the right-of way and direct staff to revise Right-of-Way Encroachment Agreement 25982 to exclude snowmelt and authorize the Mayor to sign the revised agreement for pavers in the right-of-way.

#### Reasons for Recommendations:

- On August 18<sup>th</sup> City Council approved a proposed right-of-way snowmelt policy and directed staff to draft the ordinance. The ordinance currently in development by staff.
- Snowmelt in the right-of-way is not necessary for fire apparatus access.
- The improvements will not impact the use or operation of N Walnut 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):

A building permit for this project was issued in October 2022. The approved plans did not include pavers or a snowmelt system within the public right-of-way (ROW). In August 2025, the applicant submitted a ROW encroachment application seeking approval to install heated pavers within the ROW. The driveway centerline slope in the ROW is 7 percent, which approaches the threshold at which staff would recommend snowmelt for safety. The project is nearing completion; deferring a decision on the snowmelt installation will postpone right-of-way improvements and, in turn, delay issuance of the Certificate of Occupancy.

Although the City Council has approved a proposed right-of-way snowmelt policy, the implementing ordinance has not yet been adopted. Staff requests that the City Council review the application and provide direction.

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment of the public right-of-way where a permanent fixture to the ground or a building will occur. The associated Right-of-Way Encroachment Agreement is 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. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum

Municipal Code §12.12.060. The encroachments proposed for the N. Walnut Ave project complies with all standards.

**Sustainability Impact:**

None OR state impact here: For approximately 320 square feet of snowmelt in the ROW, CO2 emissions are estimated to be 571-857 lbs per year for a typical Ketchum winter snowfall assuming a heat flux of in the range of 100 to 150 BTU/hr\*sف.

**Financial Impact:**

None OR Adequate funds exist in account:	None
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**Attachments:**

1. Right-of-Way Encroachment Agreement 25982 with Exhibit "A"

**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 25982**

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 Robert Chess, Trustee and Stacey Chess, Trustee ("Owner") whose mailing address is 2430 Hyde St San Francisco, CA 94109.

*RECITALS*

WHEREAS, Owner is the owner of real property located at 520 N Walnut Avenue and legally described as KETCHUM LOT 2A BLK 90 ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of heated pavers and a valley gutter with snowmelt system in the public right-of-way on N. Walnut Avenue. 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 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 install heated pavers and a valley gutter with snowmelt system identified in Exhibit "A" within the public right-of-way on N. Walnut 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 of Ketchum 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 sidewalk, curb and gutter and landscaping that is altered due to the construction and installation 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.



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

On this \_\_\_\_ day of \_\_\_\_\_, 2025, 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 \_\_\_\_\_

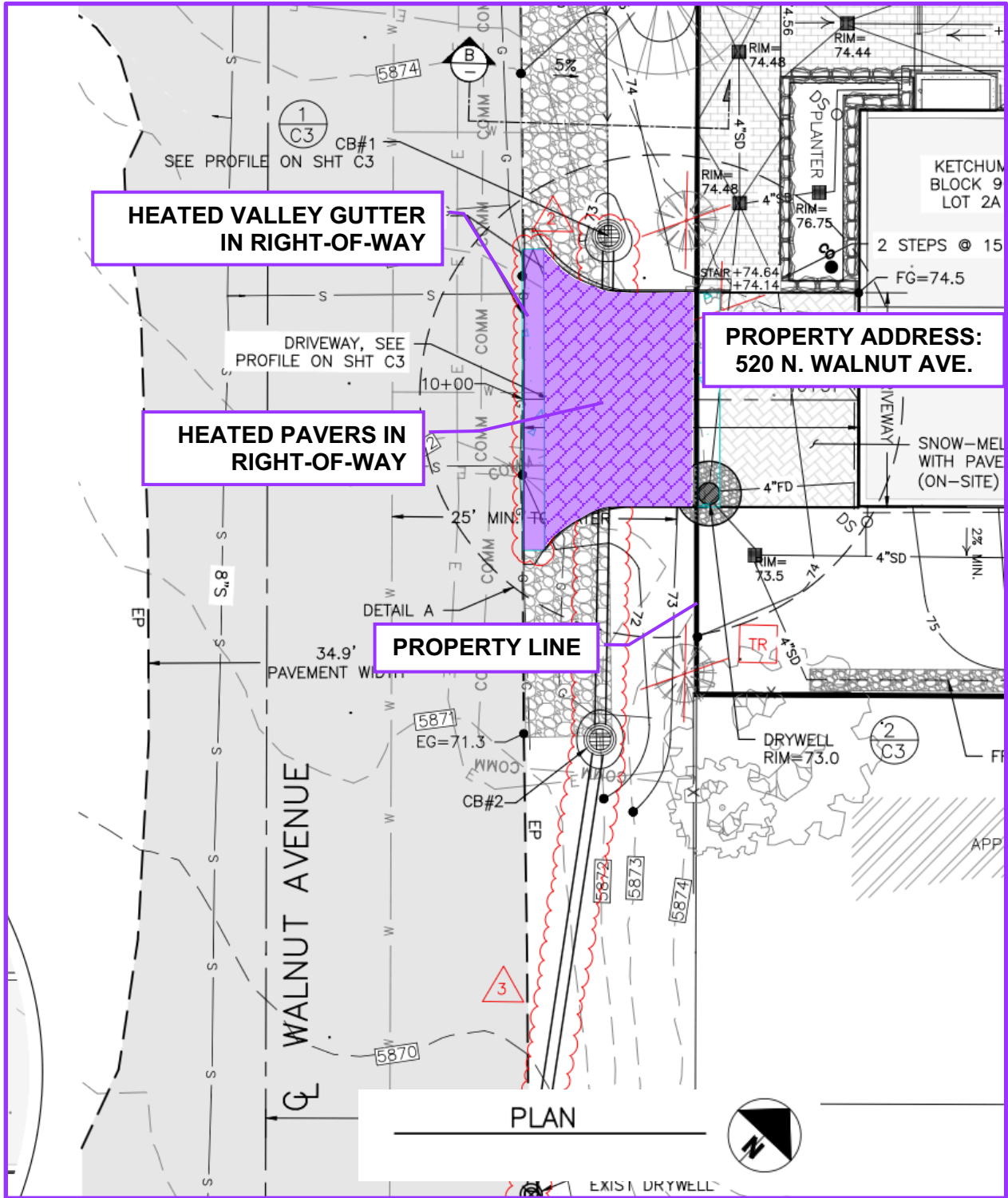
STATE OF IDAHO     )  
                                      ) ss.  
County of Blaine     )

On this \_\_\_\_ day of \_\_\_\_\_, 2025, 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”**



Base figure provided by applicant, prepared by Benchmark Associates, Sheet C1, dated 9/1/2022  
Figure annotated with purple textboxes by City Engineer Robyn Mattison to clarify improvements included in  
Right-Of-Way Encroachment Agreement No. 25982