

City of Ketchum

September 21, 2020

Mayor Bradshaw and City Councilors City of Ketchum Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 20518 for placement of concrete pavers and snowmelt in the City Right-of-Way at 311 First Avenue

Recommendation and Summary

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

["]I move to authorize the Mayor to sign Encroachment Agreement 20518 with Dave Wilson, Managing Member of Sun Valley and First LLC."

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 and snow removal within the City ROW

Introduction and History

The project located at 311 First Avenue is currently under construction. As part of the project, the applicant proposed, and the city approved, the placement of concrete pavers and snow melt within the sidewalk and bulb-out around the project. In addition, a bench is proposed at the corner bulb-out.

These improvements will improve pedestrian safety and access during the winter. Because the sidewalk materials and snowmelt cannot be reasonably maintained by the city, the property owner will be responsible for repair and maintenance. Concrete pavers and 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 rightof-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.

<u>Analysis</u>

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 20518

WHEN RECORDED, PLEASE RETURN TO:

OFFICE OF THE CITY ATTORNEY CITY OF KETCHUM POST OFFICE BOX 2315 KETCHUM, IDAHO 83340

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20518

THIS AGREEMENT, made and entered into this ____ day of 2020, by and between CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and Sun Valley & First, LLC, an Idaho limited liability company, (collectively referred to as "Owner"), whose address is P.O.Box 6770, Ketchum Idaho, 83340.

RECITALS

WHEREAS, Owner is the owner of real property described as 311 First Avenue ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to place pavers, snow melt and a bench within the public right-of-way, and such 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 install and maintain the Improvements identified in Exhibit "A" within the public rights-of-way of First Avenue and Sun Valley Road located adjacent to the real property described as 311 First Avenue, Ketchum, Idaho, for so long as Owner maintains said Improvements in a good repair and in a safe manner, and unless and until Ketchum requires the removal of all or some part of the Improvements to complete modifications to the public right of way.

2. In the event repairs are necessary to any of the Improvements (pavers, snow melt and the bench), Owners shall promptly complete such repairs and in any event shall commence repairs within 48 hours of the City requesting a repair be made.

3. Owner shall remove the bench during winter (November 1 to May 1, unless otherwise permitted by Ketchum) to ensure there is adequate pedestrian access and area for snow storage.

4. In the event (1) Owner fails to cure any breach in its obligation to maintain the Improvements as required herein after being provided written notice by Ketchum

specifically identifying the breach, within thirty days of such notice, or (2) Ketchum needs to make modifications to the public right of way which necessitate the remove of the Improvements, Ketchum may cancel or reduce the scope of this Agreement by providing written notice to Owner, in which event Owner shall commence removal of of the Improvements, or such portion of the Improvements as requested by Ketchum, at its sole expense.

In consideration of Ketchum allowing Owner to maintain the Improvements 5. 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-ofway. 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. 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. Ketchum acknowledges and agrees that Owner will assign its rights and obligations under this Agreement to the Owners Association created to maintain and operate the condominium development located on the Subject Property.

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

14. 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:

Sun Valley and First LLC

By:_____ Dave Wilson, Managing Member

By:_____ Neil Bradshaw, Mayor

ATTEST:

Robin Crotty City Clerk STATE OF _____,)) ss. County of _____.)

On this ______ day of ______, 2020, before me, the undersigned Notary Public in and for said State, personally appeared Dave Wilson, known or identified to me to be the managing member of Sun Valley & First, LLC, person who executed the foregoing instrument on behalf of said limited liability company and acknowledged to me that said limited liability company 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 ______, 2020, 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"



LEGEND







— — — — — — Roof Overhang $\overline{\mathbf{O}}$



FDAC = Found Aluminum Cap CNTRL = Survey Control 5' Contour Interval 1' Contour Interval Curb & Gutter BLDG = Building Asphalt Concrete Sidewalk

SGN = Sign GMTR = Gas Meter PHBOX = Telephone Riser Light PBOX = Power Box OPMTR = Power Meter -O- PP = Power Pole GUY = Guywire

SMH = Sewer Manhole DWELL = Dry Well WV = Water Valve

KSW 8" Ketchum Spring Line (8") ——KSW——4"—— Ketchum Spring Line (4") Hose Bib Road Paint

AP = Angle Point BEG = Beginning BOW = Back of Walk CC = Curb Cut COR = Corner EOA = Edge of Asphalt EOC = Edge of Concrete EOP = Edge of Pavers FFE = Finished Floor @ Entry LIP = Lip of Gutter NG = Natural Ground POC = Point on Curve PRC = Point of Reverse Curve TA = Top of Asphalt TBC = Top Back of Curb TBRC = Top Back of Rolled Curb



PROPOSED ITEMS

Asphalt Concrete Sidewalk Concrete 6" Vertical Curb 6" Concrete Rolled Curb Concrete Vertical Curb (Variable Reveal) Curb Transition ADA Access Truncated Dome Street Light Sign Drywell Catch Basin

Road Paint Grade Spot Elevation Tree and Tree Grate

Trench Drain

GRAPHIC SCALE inch = 10 f

CONSTRUCTION NOTES

- 1. ALL CONSTRUCTION SHALL BE IN CONFORMANCE WITH THE MOST CURRENT EDITION OF THE "IDAHO REGULATIONS FOR PUBLIC DRINKING WATER SYSTEMS," THE CURRENT EDITION OF THE "IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION" (ISPWC), AND CITY OF KETCHUM STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND KEEPING A COPY OF THE ISPWC ON SITE DURING CONSTRUCTION.
- 2. THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN ON THE PLANS IN AN APPROXIMATE WAY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING EXISTING UTILITIES PRIOR TO COMMENCING AND DURING THE CONSTRUCTION. THE CONTRACTOR AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH RESULT FROM HIS FAILURE TO ACCURATELY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES. CONTRACTOR SHALL CALL DIGLINE (1-800-342-1585) TO LOCATE ALL EXISTING UNDERGROUND UTILITIES. 3. THE CONTRACTOR SHALL CLEAN UP THE SITE AFTER CONSTRUCTION SO THAT IT IS IN A CONDITION EQUAL TO OR BETTER THAN THAT WHICH EXISTED PRIOR TO CONSTRUCTION, INCLUDING BUT NOT
- LIMITED TO, EPA'S NPDES CONSTRUCTION GENERAL PERMIT.
- 4. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS PRIOR TO CONSTRUCTION.
- 5. CONSTRUCTION OF WATER MAINS AND ALL OTHER RELATED APPURTENANCES SHALL BE IN ACCORDANCE WITH THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPWC), IDAPA 58.01.08, IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS AND THE CITY OF KETCHUM UTILITIES DEPARTMENT STANDARDS. 6. CONTRACTOR SHALL PRESSURE TEST, DISINFECT, AND CONDUCT BIOLOGICAL TESTING IN ACCORDANCE WITH THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPWC), AMERICAN
- WATER WORKS ASSOCIATION (AWWA) STANDARDS, AND THE PRESSURE TESTING, DISINFECTION, AND MICROBIOLOGICAL TESTING PROCEDURES.
- 7. ALL WATER SUPPLY FIXTURES, FITTINGS, PIPING, AND ALL RELATED APPURTENANCES SHALL BE ANSI/NSF STD. 61 COMPLIANT. 8. ALL WATER SUPPLY FIXTURES, FITTINGS, PIPING, AND ALL RELATED APPURTENANCES SHALL COMPLY WITH THE LOW LEAD ACT REQUIRING ALL MATERIALS TO HAVE A LEAD CONTENT EQUAL TO OR LESS THAT 0.25%.
- 9. THE CONTRACTOR SHALL USE ANSI/NSF STANDARD 60 CHEMICALS AND COMPOUNDS DURING INSTALLATION & DISINFECTION OF POTABLE WATER MAIN.
- 10. CONTRACTOR SHALL COORDINATE LOCATIONS OF DRY UTILITY FACILITIES (POWER, CABLE, PHONE, TV) NOT SHOWN ON THE DRAWING WITH IDAHO POWER.
- 11. ALL CLEARING & GRUBBING SHALL CONFORM TO ISPWC SECTION 201.
- 12. ALL EXCAVATION & EMBANKMENT SHALL CONFORM TO ISPWC SECTION 202. EXCAVATED SUBGRADE SHALL BE COMPACTED AND ALL UNSUITABLE SECTIONS REMOVED AND REPLACED WITH STRUCTURAL FILL AS DETERMINED BY THE ENGINEER. MINIMUM COMPACTION OF PLACED MATERIAL SHALL BE 95% OF MAXIMUM LABORATORY DENSITY AS DETERMINED BY AASHTO T-99 OR ITD T-91. 13. ALL 2" MINUS GRAVEL SHALL CONFORM TO ISPWC 802, TYPE II (ITD STANDARD 703.04, 2"), SHALL BE PLACED IN CONFORMANCE WITH ISPWC SECTION 801 AND COMPACTED PER SECTION 202. MINIMUM
- COMPACTION OF PLACED MATERIAL SHALL BE 90% OF MAXIMUM LABORATORY DENSITY AS DETERMINED BY AASHTO T-99.
- 14. ALL 3/4" MINUS CRUSHED GRAVEL SHALL CONFORM TO ISPWC 802, TYPE I (ITD STANDARD 703.04, 3/4" B), SHALL BE PLACED IN CONFORMANCE WITH ISPWC SECTION 802 AND COMPACTED PER SECTION 202. MINIMUM COMPACTION OF PLACED MATERIAL SHALL BE 95% OF MAXIMUM LABORATORY DENSITY AS DETERMINED BY AASHTO T-99 OR ITD T-91. 15. ALL ASPHALTIC CONCRETE PAVEMENT WORK SHALL CONFORM TO ISPWC SECTION(S) 805, 810, AND 811 FOR CLASS II PAVEMENT. ASPHALT AGGREGATE SHALL BE 1/2" (13MM) NOMINAL SIZE
- CONFORMING TO TABLE 803B IN ISPWC SECTION 803. ASPHALT BINDER SHALL BE PG 58-28 CONFORMING TO TABLE A-1 IN ISPWC SECTION 805. 16. ALL EDGES OF EXISTING ASPHALT PAVING SHALL BE SAW CUT 24" TO PROVIDE A CLEAN PAVEMENT EDGE FOR MATCHING. NO WHEEL CUTTING SHALL BE ALLOWED.
- 17. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING TRAFFIC CONTROL PER THE CURRENT EDITION OF THE US DEPARTMENT OF TRANSPORTATION MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). 18. ALL CONCRETE FORM WORK SHALL SHALL CONFORM TO ISPWC SECTION 701 AND 703. ALL CONCRETE SHALL BE 3,000 PSI MINIMUM, 28 DAY, AS DEFINED IN ISPWC SECTION 703, TABLE 1.C.
- 19. ALL TRENCHING SHALL CONFORM TO ISPWC STANDARD DRAWING SD-301. TRENCHES SHALL BE BACKFILLED AND COMPACTED TO A MINIMUM OF 95% OF MAXIMUM DENSITY AS DETERMINED BY
- AASHTO T-99. 20. TOPOGRAPHIC, SITE, AND BOUNDARY SURVEYS SHOWN HEREON WERE CONDUCTED BY GALENA ENGINEERING, 02/12/07. LOCATIONS OF WATER AND SEWER MAINS AND SERVICES SHOWN HEREON
- ARE PER THE OFFICIAL WATER AND SEWER SYSTEM MAPS PROVIDED BY THE CITY OF KETCHUM. 21. PER IDAHO CODE § 55-1613, THE CONTRACTOR SHALL RETAIN AND PROTECT ALL MONUMENTS, ACCESSORIES TO CORNERS, BENCHMARKS AND POINTS SET IN CONTROL SURVEYS; ALL MONUMENTS,
- ACCESSORIES TO CORNERS, BENCHMARKS AND POINTS SET IN CONTROL SURVEYS THAT ARE LOST OR DISTURBED BY CONSTRUCTION SHALL BE REESTABLISHED AND RE-MONUMENTED, AT THE EXPENSE OF THE AGENCY OR PERSON CAUSING THEIR LOSS OR DISTURBANCE AT THEIR ORIGINAL LOCATION OR BY SETTING OF A WITNESS CORNER OR REFERENCE POINT OR A REPLACEMENT BENCHMARK OR CONTROL POINT, BY OR UNDER THE DIRECTION OF A PROFESSIONAL LAND SURVEYOR.

S02 REMOVE AND DISPOSED OF EXIST GUTTER, & SIDEWALK. S03 CONSTRUCT/ REPAIR ASPHALT . C2.0. S04 CONSTRUCT CONCRETE CURB a. 6" CONCRETE VERTICAL CURE PER DETAIL 4 / C2.0. b. 6" CONCRETE ROLLED CURB PER DETAIL 5 / C2.0. c. CURB TRANSITION PER DETA [______], (typ.).

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