



## City of Ketchum

September 3, 2019

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation To Approve Alley Maintenance Agreement 20392 with Anette and Thad Farnham**

#### Recommendation and Summary

Staff is recommending the Council approve Agreement 20392 and adopt the following motion:

I move to authorize the Mayor to sign Agreement 20392.

The reasons for the recommendation are as follows:

- There are two units proposed to be constructed at 371 W. 7<sup>th</sup> Street with vehicle access from the alley. Because the City does not maintain alleys in residential districts, a project condition of approval required the applicant to enter into an alley maintenance agreement.
- The proposed agreement is acceptable to the applicant and the City.

#### Introduction and History

Residential alleys are not maintained by the City. Snow removal and general maintenance responsibilities rest with the adjacent property owners. When new development is proposed, and the development proposes primary access from a residential alley, the City requires the developer to enter into an alley maintenance agreement. This agreement ensures the alley is accessible and maintained by future owners.

#### Analysis

Each alley maintenance agreement is tailored for the specific project and location. This Agreement is for the alley between 7<sup>th</sup> and 8<sup>th</sup> Street and 3<sup>rd</sup> and 4<sup>th</sup> Avenues. As proposed, the alley will be open in the summer and partially open during the winter. This has been the historic condition for this alley. The proposed Agreement has been reviewed and approved by all parties.

#### Financial Impact

There is no financial impact associated with the Agreement.

Attachments:

Alley Maintenance Agreement 20392

Recording Requested By and  
When Recorded Return to:

City of Ketchum  
P.O. Box 2315  
480 East Ave. N.  
Ketchum, ID 83340

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For Recording Purposes Do  
Not Write Above This Line

**GRANT OF LICENSE AND ALLEY MAINTENANCE AGREEMENT 20392**

This maintenance agreement ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, the ("Effective Date") by and between the CITY OF KETCHUM, and Idaho municipal corporation ("the City"), who is the owner of the alley between 7<sup>th</sup> Street and 8<sup>th</sup> Street between 4<sup>th</sup> Avenue and 3<sup>rd</sup> Avenue as more specifically delineated on Exhibit "A" (hereinafter "Alley") attached hereto, and Thad and Anette Farnham who are the owners of that certain parcel of real property (herein "Owner") as more specifically delineated on Exhibit "B" attached hereto and referred to as "Development".

1. **Grant of License** - The City hereby grants to Owner and its agents, employees, contractors, subcontractors, (collectively "Agents"), subject to the conditions and covenants set forth in this Agreement as of \_\_\_\_\_ 2019, (hereinafter the "Commencement Date"), a revocable license over and right of entry on and use of the Alley for the purposes of vehicular and pedestrian ingress, egress and access to the Development, including installation of road mix, and for the maintenance, snow removal and repair of the Alley. The Alley shall always be open and available to the public, except in winter when a portion of the Alley is used for snow storage, and the City shall have exclusive authority with respect to all parking restrictions and enforcement.
2. **License Revocable** - This Agreement and the rights to use the Alley granted hereunder are revocable. City shall provide Owner with 60 days notice if the Agreement is to be terminated. Owner understands and agrees that by entering into this Agreement Owner obtains no claim or interest in said City property which is adverse to that of the City, that Owner obtains no exclusive right to said City property nor any other right to use the City property not specifically described herein.
3. **Prior Rights** - This grant is made subject to and subordinate to the prior and continuing rights and obligations of the City, its successors and assigns, and the general public, to use the Alley in the performance of its municipal operations; provided, however, that such use shall not materially interfere with the use of the Alley by the Owner for the Permitted Use. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect the Alley as of the Effective Date, and the word "grant" shall not be construed as a covenant against

the existence of any of the foregoing.

4. **Term** - The term of the Agreement shall commence on the Commencement Date and shall be in effect until the City provides notice the Agreement is terminated.
5. **Permits, Licenses and Approvals** -As a condition to Owner's right to use the Alley for the Permitted Use, Owner shall obtain any required permits, licenses and approvals from the City and any other governmental agencies having jurisdiction over Owner's use of the Alley. Owner shall maintain such permits, licenses, ordinances and approvals in force throughout the term of this Agreement. Owner shall be solely responsible for any and all fees, charges, or other expenses that may be imposed by any regulatory agencies in connection with Owner's use or enjoyment of the Alley.
6. **Condition of Property** - The City makes no warranty or representation of any kind concerning the condition of the Alley or the fitness of the Alley for the Permitted Use, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties hereto that Owner has personally inspected the Alley, knows its condition and accepts it as is.
7. **Alterations, Repair and Maintenance**
  - a) Owner installed 4 inches of road mix at a width of 20 feet for the length of the Development parcel which was inspected and approved by the City.
  - b) Owner agrees, at its sole cost and expense, to keep the Alley in reasonably safe, clean and sightly condition, reasonably free from waste and snow to the reasonable satisfaction of the City. Owner agrees, at its sole cost and expense, to perform snow removal for the portion of the alley adjacent to the Development for a width of 20 feet and to place all removed snow at the northern portion of the Alley as identified in Exhibit A. Only snow removed by the Owner shall be permitted to be stored in the Alley. In the event the City determines the Alley must be open during the winter, Owner shall identify an alternative snow storage area. Owner shall perform all repairs and maintenance to the Alley covered by this Agreement.
  - c) The Owner shall perform maintenance and snow removal in accordance with this Agreement. The City shall not be responsible for maintenance, repairs and snow removal in the Alley. If Owner fails to keep the Alley in the condition required under this Section 7, then the City may, after ten (10) days written notice to Owner and a five (5) day opportunity to cure said problem, perform the necessary work at the expense of Owner, which expense Owner agrees to pay to the City upon written demand.
  - d) All alterations, maintenance and repairs by Owner upon the Alley shall be performed in a good manner reasonably satisfactory to the City.
  - e) Any open holes shall be satisfactorily covered at all times when Owner's Agents are not physically working in the vicinity of such holes. Upon completion of work, all such

holes shall be filled in to meet the surrounding ground level and the Alley shall be left in a neat and safe condition reasonably satisfactory to the City.

- f) Owner shall not suffer any mechanic's or materialman's liens of any kind to be enforced against the Alley for any work done or materials furnished at Owner's request. If any such liens are filed, Owner shall bond or remove them within sixty (60) days of learning of the same, at Owner's expense, and shall pay any judgment which may be entered in connection therewith.
  - g) Should Owner fail, neglect or refuse to do so, the City, after giving Owner twenty (20) business days written notice, shall have the right to pay any amount required to release any such liens or to defend any action brought and to pay any judgment entered. Owner shall be liable to the City for all costs, damages, reasonable attorney's fees and any amounts expended in defending any proceedings or in payment of any of said liens or judgment. The City may post and maintain upon the property notices of non-responsibility as provided by applicable law.
8. **Permitted Uses and Restriction on Use** – The Owner may use the alley for the purposes of vehicular and pedestrian ingress, egress and access to the Development, including installation of road mix and for the maintenance, snow removal and repair of the Alley. The Alley shall be open and available to the public at all times, except in winter when a portion of the Alley is used for snow storage, and the City shall have exclusive authority with respect to all parking restrictions and enforcement. Owner agrees not to conduct any activities on or about the Alley that constitute waste or nuisance or any activities which constitute a continuing or repeated and unreasonable annoyance of which the City is notified by the owners or occupants of neighboring property or other members of the public.
9. **Indemnification**- In consideration of City allowing Owner to construct and maintain the Improvements on City property, Owner agrees to indemnify and hold harmless City 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 on City property. Owner shall further indemnify and hold City 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 City by reason of such claim, Owner, upon notice from City, shall defend City at Owner's expense by counsel satisfactory to City. Owner, as a material part of the consideration to City, hereby assumes all risk of damages to property or injury to persons in, upon or about the Improvements constructed, installed and maintained on City property arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against City.
10. **Compliance with Laws** - The Permitted Use of the Alley shall conform to all applicable zoning laws and regulations. Owner shall comply, at Owner's expense with all applicable

laws, regulations, rules and orders with respect to the use of the Alley, regardless of when they become or became effective, including, without limitation, those relating to construction, grading, signage, health, safety, noise, environmental protection, hazardous materials, waste disposal and water and air quality, and shall furnish reasonably satisfactory evidence of such compliance upon the written request of the City.

11. **Notices**-All notices required or permitted to be given under this Agreement shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or by overnight courier, to the appropriate address indicated below or at such other place or places as either party may from time to time designate in written notice given to the other. Notices shall be deemed sufficiently served four days after the date of mailing or upon personal delivery.

The City:

City of Ketchum  
Post Office Box 2315  
Ketchum, Idaho 83340

To Owner:

Thad and Annette Farnham  
PO Box 3535  
Ketchum, Idaho 83340

12. **Assignment** - Owner shall have the right to assign and transfer this Agreement to any party who purchases one hundred (100%) of the Development, upon receiving the written consent of the City, which consent to assign shall not be unreasonably withheld or delayed. The City and any subsequent assignee may not consent to subsequent modifications to this License with assignees, sublessors or successors of Owner without notifying Owner and obtaining Owner's consent thereto.
13. **No Waiver**- No waiver of any default or breach of any covenant of this Agreement by either party shall be implied from any omission by either party to take action on account of such default other than the default specified in the waiver, and then the waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term or condition by either party shall not be construed as waivers of any subsequent breach of the same covenant, term or condition. The consent or approval by either party to or for any act by either party requiring further consent or approval shall not be deemed to waiver or render unnecessary that party's consent or approval to or of any subsequent similar acts.
14. **Severability** - Each provision of this Agreement is intended to be severable. If any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.
15. **Attorney's Fees/Jury Waiver** - If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties

under this Agreement, the party in the proceeding shall receive, in addition to all court costs, reasonable attorney's fees.

16. **No Costs to the City** - Except as expressly set forth in this Agreement to the contrary, Owner shall bear all costs and expenses of any kind or nature in connection with Owner's use of the Alley.
17. **Waiver of Liability**-Neither the City nor any of its council members, commissions, departments, boards, officers, agents or employees, when acting of the City behalf, shall be liable for any damage to the property of Owner or its Agents, or for any bodily injury or death to such persons resulting or arising from the condition of the Alley or its use by Owner, or if such damage occurs before the Effective Date, unless caused by the intentional acts of the City nor any of its council members, commissions, departments, boards, officers, agents or employees.
18. **Non-Discrimination** - Owner shall not, in the operation and use of the Alley, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, or disability.
19. **Governing& Law** - The rights and liability of the parties under this Agreement shall be interpreted in accordance with the laws of the State of Idaho. The Venue shall be in the Idaho 5<sup>th</sup> Judicial District, Blaine County, Idaho.
20. **Taxes** - Any and all real property tax or any other form of tax assessed or imposed against the Alley arising out of or attributable to Owner's use shall be borne by Owner.
21. **Utilities** - Owner shall pay for all water, gas, heat, light, power, telephone, and other utilities and services applied to the Alley and used by Owner or its Agents, together with any taxes thereon.
22. **Successors and Assigns** - This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
23. **Interpretation/Amendment**-This Agreement constitutes the complete expression of the agreement between the parties hereto and supersedes any prior agreements, whether written or oral, concerning the subject of this Agreement which are not fully expressed herein. Any addition to, deletion from, termination' extension or any other modification or to this Agreement must be in writing signed by the party against whom such modification operates.
24. **Recordation** - Upon execution of this Agreement, the City shall duly record the Agreement in the public records of Blaine County, Idaho and shall thereafter promptly submit a conformed copy of the same to Owner.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the day

and year first written above by their duly authorized representatives.

OWNER:

CITY OF KETCHUM:

By:\_\_\_\_\_

By:\_\_\_\_\_

By:\_\_\_\_\_

Neil Bradshaw, mayor

Thad and Anette Farnham

ATTEST:

\_\_\_\_\_  
Robin Crotty  
City Clerk

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

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned Notary Public in and for said State, personally THAD FARNHAM 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 \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned Notary Public in and for said State, personally ANETTE FARNHAM 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 \_\_\_\_\_, 2018, 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

