



City of Ketchum

October 21, 2019

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Approve Encroachment Agreement 20421 With Giacobbi Square LLC

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 approve the Encroachment Agreement 20421 with Giacobbi Square LLC for improvements at the corner of East Avenue and the Giacobbi Square parking lot.

The reasons for the recommendation are as follows:

- The improvements were agreed to by the City and property owner and will improve pedestrian access in the winter.
- The property owner is responsible for installation, maintenance and repair of the asphalt and snow melt system in the public right-of-way.

Introduction and History

As part of the parking lot resurfacing for Giacobbi Square, the owner of the property requested, and the City approved, installation of a snow melt system in the crosswalk at the intersection of East Avenue and the parking lot exit. The property owner is responsible for maintaining and repairing the system. The obligation is documented through an encroachment agreement.

Analysis

As conditioned, the proposed snow melt system will be in working order during the winter. The system will limit the accumulation of snow and ice within the crosswalk. City staff is in support of the proposed snow melt system.

Financial Impact

There is no financial impact as a result of this encroachment.

Attachments:

Encroachment Agreement 20421

WHEN RECORDED, PLEASE RETURN TO:

**OFFICE OF THE CITY CLERK
CITY OF KETCHUM
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340**

RIGHT-OF-WAY ENCROACHMENT AGREEMENT 20421

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and GIACOBBI SQUARE, LLC AN IDAHO LIMITED LIABILITY COMPANY (collectively referred to as "Owner") who address is 101 Bullion Street, Suite 3C, hailey Idaho, 83333.

RECITALS

WHEREAS, Owner is the representative of real property described as Giacobbi Square ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to install a snow-melt system and asphalt in city right-of-way at the intersection of East Avenue and the Giacobbi Square parking lot. 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 install and maintain a snow melt system and asphalt identified in Exhibit "A" within the public right-of-way at the intersection of East Avenue and the Giacobbi Square parking lot in Ketchum, Idaho, until notified by Ketchum to remove the same. Ketchum agrees to provide 180 days prior written notice to Owner to remove the Improvements.

2. Owner shall be responsible for the maintenance, repair and replacement of the snow melt system and asphalt, said Improvements, due to failures from installation, the snow-melt system, and from other damage that may occur. Such maintenance, repair, and replacement shall occur upon notice by Ketchum.

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: _____
Charles R. Atkinson
For AMI Properties, LLC Member
Of Giacobbi Square, LLC

By: _____
Neil Bradshaw
Its: Mayor

STATE OF IDAHO,)
) ss.
County of Blaine.)

On this ____ day of _____, 2019, before me, the undersigned Notary Public in and for said State, personally appeared CHARLES R. ATKINSON, known or identified to me to be the representative of Giacobbi Square LLC, and 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 _____, 2019, 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"

