City of Ketchum

## CITY COUNCIL MEETING AGENDA MEMO

| Meeting Date: | July 25, 2024 | Staff Member/Dept:Paige Nied, Associate Planner <br> Planning and Building Department |
| :---: | :--- | :--- |
| Agenda Item: | Recommendation to approve Right-of-Way Encroachment Agreement \#24915 and <br> Sidewalk In Lieu Agreement \#24917 between the City of Ketchum and Amy Martin. |  |

Recommended Motion:
I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement \#24915 and Sidewalk In Lieu Agreement \#24917 between the City of Ketchum and Amy Martin.

Reasons for Recommendation:

- The building permit for 940 N Leadville Ave is currently under review and the applicant is proposing to place an underground retaining wall footer within the city right-of-way.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- Snowmelt is not proposed within the right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.
- The Planning and Zoning Commission approved the 940 N Leadville Design Review application (File No. P22-011) on June 14, 2022. As a condition of Design Review approval, the owner shall submit a design plan and cost estimate for the required sidewalk improvements that conform to city standards for review by the City Engineer.
- Pursuant to Ketchum Municipal Code §17.96.060.B, the City Engineer may waive the requirements for sidewalks if it is found that sidewalks are not necessary because of existing geographic limitations, pedestrian traffic on the street does not warrant a sidewalk, and a sidewalk would not be beneficial to the general welfare and safety of the public.
- The City Engineer waived the sidewalk requirement and approved the sidewalk design plan and estimated cost of construction. The applicant proposes to satisfy the sidewalk improvement requirement by paying an in-lieu fee totaling $\$ 10,890$ at time of building permit issuance.

Policy Analysis and Background (non-consent items only):

Sustainability Impact:
None OR state impact here: None, no snowmelt is proposed within the city's right-of-way.

Financial Impact:

| None OR Adequate funds exist in account. | Sidewalk in-lieu fee contributions must be separated by the <br> City and not used for any purpose other than sidewalk <br> construction. Payment of this in-lieu fee will provide <br> funding for city sidewalk improvements. |
| :--- | :--- |

Attachments:

1. ROW Encroachment Agreement \#24915 with exhibits
2. Sidewalk In Lieu Agreement \#24917 with exhibits

## RECORDING REQUESTED BY AND WHEN

 RECORDED RETURN TO:City Clerk, City of Ketchum

PO Box 2315
Ketchum Idaho, 83340

## RIGHT-OF-WAY ENCROACHMENT AGREEMENT 24915

THIS AGREEMENT, made and entered into this $\qquad$ day of $\qquad$ , 2024, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and Amy Martin, ("Owner"), whose mailing address is Post Office Box 2505, Ketchum, Idaho, 83340 and who owns real property located at 940 N Leadville Ave, Ketchum, Idaho 83340 ("subject property") legally described as Ketchum Townsite Lot 3 Block 30.

RECITALS
WHEREAS, Owner wishes to permit the placement of an underground retaining wall footer within the right-of-way adjacent to 940 N Leadville Ave. 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, following construction of the Improvements, the Owner will restore the right-of-way, as shown in Exhibit "A", 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 the Improvements identified in Exhibit "A" within the right-of-way off N Leadville Ave, until notified by Ketchum to remove the 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 prior to any modifications taking place.
3. Owner shall be responsible for restoring the street, curb, 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.
4. 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-ofway arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum.
5. 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.
6. 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.
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:
By:
Amy Martin, Owner

## CITY OF KETCHUM:

By: $\qquad$
Neil Bradshaw, Mayor

Attest:
By: Trent Donat, City Clerk

STATE OF $\qquad$ , )
) ss.
County of $\qquad$ . )

On this $\qquad$ day of $\qquad$ , 2024, before me, the undersigned Notary Public in and for said State, personally appeared AMY MARTIN, known or identified 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 $\qquad$

EXHIBIT "A"

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(3) $\frac{\text { CROSS-SECTION: ROADSIDE SWALE (R.O.W. N. LEADVLLE AVE.) }}{\text { NOT TO SCALE }}$
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 Di) (irading ond droinge improvements as required by City Engineer E) No obstructions, such as boulders or berms.


 H) No snow-mett system (other than drivenos)

Sidewalk In Lieu Agreement 24917

## Parties:

| City of Ketchum | "City" | P.O. Box 2315, $1515^{\mathrm{TH}}$ Ave W, <br> Ketchum, Idaho 83340 |
| :--- | :--- | :--- |
| Amy Martin | "Owner" | P.O. Box 2505 <br> Ketchum, ID 83340 |

This Sidewalk In Lieu Payment Agreement ("Agreement") is entered into as of the $\qquad$ day of $\qquad$ 2024, by and between the City of Ketchum, an Idaho municipal corporation ("City") and Amy Martin ("Owner").

## RECITALS

A. The Owner is the owner of real property located at 940 N Leadville Ave, Ketchum, ID 83340, Parcel Number RPK00000300030 (the "subject property").
B. The Planning and Zoning Commission approved the Design Review application (File No. P22-011) on June 14, 2022.
C. As a condition of Design Review approval, the owner shall submit a design plan and cost estimate for the required sidewalk improvements that conform to city standards for review by the City Engineer.
D. A building permit application (File No. 24-KET-00140) was submitted for 940 N Leadville and is currently under review.
E. The subject property is located within the Light Industrial No. 1 (LI-1) zoning district which requires sidewalks, curbs and gutters to be designed and installed by the applicant when there is new construction per Ketchum Municipal Code 17.124.140.
F. Pursuant to Ketchum Municipal Code 17.124.140.A.1, any person required to install sidewalk, curb and gutter may submit to the Administrator, as part of the design review or building permit process, a request for consideration of in lieu payment.
G. The City Engineer recommends this property not be subject to the above-mentioned requirement because sidewalks are not necessary because of existing geographic limitations, pedestrian traffic on the street does not warrant a sidewalk, and a sidewalk would not be beneficial to the general welfare and safety of the public. Instead, 8 ' of gravel adjacent to the existing asphalt shall be installed.
H. The Owner has followed City Engineer direction and requested consideration to provide a sidewalk in lieu payment for the required sidewalk improvements.

THEREFORE, in consideration of the mutual agreement herein contained and subject to the terms and conditions stated, it is hereby understood and agreed upon by the Parties as follows:

1. The City received a design plan for construction of sidewalk curb and gutter, together with the estimated cost of construction as outlined in Exhibit A.
2. Acceptance by City Engineer of cost of construction estimate. The design plan estimates that the cost of construction is $\$ 9,900$. Pursuant to Ketchum Municipal Code 17.96.060.B.6, the contribution amount shall be 110 percent of the estimated costs of concrete sidewalk and drainage improvements. The Owner shall satisfy the sidewalk improvement requirement by paying the in-lieu fee totaling $\$ 10,980$.
3. Payment. The Owner shall provide a sidewalk in-lieu payment in the amount of $\$ 10,980$ at the time of building permit issuance.
4. Amendments. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing executed by the parties in the manner the Agreement was approved.
5. Binding Effect. This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
6. Attorney Fees and Costs. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.
7. Notices. Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.
8. Partial Invalidity. Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
$\qquad$ DAY OF $\qquad$ 2024.

Owner

Amy Martin

Attest:

Trent Donat, City Clerk

STATE OF $\qquad$ , ) ) ss
County of $\qquad$ . )

On this $\qquad$ day of $\qquad$ , 2024, before me, the undersigned Notary Public in and for said State, personally appeared AMY MARTIN, known or identified 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.

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## Exhibit "A"



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## Estimate

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TOTAL


[^0]:    Notary Public for $\qquad$ Residing at $\qquad$
    Commission expires $\qquad$

