



City of Ketchum

**CITY COUNCIL MEETING AGENDA MEMO**

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| Meeting Date: | July 25, 2024 | Staff Member/Dept: | Genoa Beiser, Zoning Technician<br>Planning and Building Department |
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| Agenda Item: | Recommendation to review and approve Right-of-Way Encroachment Agreement #24923 between the City of Ketchum and John C Grossman & Virginia Caye Anderson. |
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Recommended Motion:

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| I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement #24923 between the City of Ketchum and John C Grossman & Virginia Caye Anderson. |
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Reasons for Recommendation:

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| <ul style="list-style-type: none"> <li>The building permit (File Number No. 24-KET-00093) for 207 Bird Drive is currently under review and the applicant is proposing to place driveway pavers within the city right-of-way.</li> <li>The improvements will not impact drainage or snow removal within the public right-of-way.</li> <li>Snowmelt is not proposed within the right-of-way.</li> <li>The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.</li> </ul> |
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Policy Analysis and Background (non-consent items only):

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Sustainability Impact:

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

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| None OR Adequate funds exist in account. | There is no financial requirement from the city for this action. |
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Attachments:

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| 1. ROW Encroachment Agreement #24923 with exhibits |
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**RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:**

City Clerk, City of Ketchum  
PO Box 2315  
Ketchum Idaho, 83340

(Space Above Line For Recorder's Use)

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**RIGHT-OF-WAY ENCROACHMENT AGREEMENT 24923**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 2024, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and John C Grossman & Virginia Caye Anderson, ("Owner"), whose mailing address is 7272 E Indian School Road Suite 200, Scottsdale, Arizona, 85251 and who owns real property located at 207 Bird Drive, Ketchum, Idaho 83340 ("subject property") legally described as Ketchum FR SESE TL 8223 Section 13 4N 17E.

*RECITALS*

WHEREAS, Owner wishes to permit the placement of driveway pavers within the right-of-way adjacent to 207 Bird Drive. 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 207 Bird Drive, 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-of-way 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.



**EXHIBIT "A"**



**Poster**  
**Construction**  
INCORPORATED

POSTER CONSTRUCTION

