

City of Ketchum

February 21, 2023

Mayor Bradshaw and City Councilors City of Ketchum Ketchum, Idaho

Mayor Bradshaw and City Councilors:

# Recommendation to Approve Right-of-Way Encroachment Agreement 22826 for the placement of a paver driveway in the public right-of-way at 230 Picabo Street.

#### Recommendation and Summary

Staff recommends the Ketchum City Council approve the attached Right-of-Way Encroachment Agreement 22826 and adopt the following motion:

"I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 22826 with Ken Rizzotti."

The reasons for the recommendation are as follows:

- The improvements will not impact the use or operation of Picabo Street.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.

#### Introduction and History

The City of Ketchum received a building permit application on March 14<sup>th</sup>, 2022, for the construction of a new single-family residence and detached accessory dwelling unit (ADU) at 230 Picabo St. The application was approved on June 14<sup>th</sup>, 2022, with an asphalt driveway. The applicant has proposed a modification to the driveway materials, changing from asphalt to pavers, thus requiring a Right-of-Way Encroachment Agreement.

A public right-of-way is defined as improved or unimproved public property dedicated or deeded to the City for the purpose of providing vehicular, pedestrian, and public use. In Ketchum, the public rights-of-way consist of roadways, curbs, gutters, sidewalks, signage, and drainage facilities. The public rights-of-way are also used for public parking, wintertime snow storage, and conveyance of utilities, such as water, sewer, electricity, telephone, and cable.

### <u>Analysis</u>

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment of the public right-of-way where a permanent fixture to the ground or a building will occur. The associated Right-of-Way Encroachment Agreement is 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. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum Municipal Code §12.12.060. The encroachments proposed for the 230 Picabo St (Rizzotti) Residence project comply with all standards.

#### <u>Sustainability</u>

The ROW Encroachment Permit does not limit the ability of the city to reach the goals of the Ketchum Sustainability Action Plan – 2020.

<u>Financial Impact</u> There is no financial requirement from the city for this action.

<u>Attachments</u> ROW Encroachment Agreement 22826

#### 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)

#### **RIGHT-OF-WAY ENCROACHMENT AGREEMENT 22826**

THIS AGREEMENT, made and entered into this \_\_\_\_\_day of \_\_\_\_, 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and KEN RIZZOTTI, ("Owner"), whose mailing address is Post Office Box 433 Sun Valley, ID 83353 and who owns real property located at 230 Picabo Street, Ketchum, ID 83340 ("subject property").

#### RECITALS

WHEREAS, Owner wishes to permit the placement of a paver driveway adjacent to the subject property from the property line to the edge of asphalt on Picabo Street. 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 rightof-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 public right-of-way adjacent to 230 Picabo Street until notified by Ketchum to remove the infrastructure at which time Owner shall remove 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 and 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. OWNER:

CITY OF KETCHUM:

By:

Ву: \_\_\_\_\_

Ken Rizzotti Owner

Neil Bradshaw Its: Mayor

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned Notary Public in and for said State, personally appeared Ken Rizzotti, 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	6

STATE OF IDAHO ) ) ss. County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, 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	

City of Ketchum accepts this Affidavit from Ken Rizotti

ATTEST, CITY CLERK

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## **EXHIBIT A**

# CONSTRUCTION NOTES

- 1. ALL CONSTRUCTION SHALL BE IN CONFORMANCE WITH THE MOST 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 AND CITY OF KETCHUM STANDARDS 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 A MINIMUM OF 48 HOURS IN ADVANCE OF EXCAVATION.
- 3. CONTRACTOR SHALL COORDINATE RELOCATIONS OF DRY UTILITY FACILITIES (POWER, CABLE, PHONE, TV) WITH THE APPROPRIATE UTILITY FRANCHISE.
- 4. 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.
- 5. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS PRIOR TO CONSTRUCTION (THIS MAY INCLUDE ENCROACHMENT PERMITS AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) CONSTRUCTION GENERAL PERMIT (CGP) PERMIT COVERAGE).
- 6. ALL CLEARING & GRUBBING SHALL CONFORM TO ISPWC SECTION 201.
- 7. ALL EXCAVATION & EMBANKMENT SHALL CONFORM TO ISPWC SECTION 202. SUBGRADE SHALL BE EXCAVATED AND SHAPED TO LINE, GRADE, AND CROSS-SECTION SHOWN ON THE PLANS. THE SUBGRADE SHALL BE COMPACTED TO 95% OF MAXIMUM DENSITY AS DETERMINED BY ASTM D-698. THE CONTRACTOR SHALL WATER OR AERATE SUBGRADE AS NECESSARY TO OBTAIN OPTIMUM MOISTURE CONTENT. IN-LIEU OF DENSITY MEASUREMENTS, THE SUBGRADE MAY BE PROOF-ROLLED TO THE APPROVAL OF THE ENGINEER.
- <u>PROOF-ROLLING</u>: AFTER EXCAVATION TO THE SUBGRADE ELEVATION AND PRIOR TO PLACING COURSE GRAVEL, THE CONTRACTOR SHALL PROOF ROLL THE SUBGRADE WITH A 5-TON SMOOTH DRUM ROLLER, LOADED WATER TRUCK, OR LOADED DUMP TRUCK, AS ACCEPTED BY THE ENGINEER. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER OF UNSUITABLE SUBGRADE MATERIAL AREAS, AND/OR AREAS NOT CAPABLE OF COMPACTION ACCORDING TO THESE SPECIFICATIONS. UNSUITABLE OR DAMAGED SUBGRADE IS WHEN THE SOIL MOVES, PUMPS AND/OR DISPLACES UNDER ANY TYPE OF PRESSURE INCLUDING FOOT TRAFFIC LOADS.
- IF, IN THE OPINION OF THE ENGINEER, THE CONTRACTOR'S OPERATIONS RESULT IN DAMAGE TO, OR PROTECTION OF, THE SUBGRADE, THE CONTRACTOR SHALL, AT HIS OWN EXPENSE, REPAIR THE DAMAGED SUBGRADE BY OVER-EXCAVATION OF UNSUITABLE MATERIAL TO FIRM SUBSOIL, LINE EXCAVATION WITH GEOTEXTILE FABRIC, AND BACKFILL WITH PIT RUN GRAVEL.
- 8. 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.
- 9. 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.
- 10. 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.
- 11. ASPHALT SAWCUTS SHALL BE AS INDICATED ON THE DRAWINGS, OR 24" INCHES FROM EDGE OF EXISTING ASPHALT, IF NOT INDICATED OTHERWISE SO AS TO PROVIDE A CLEAN PAVEMENT EDGE FOR MATCHING. NO WHEEL CUTTING SHALL BE ALLOWED.
- 12. TRAFFIC CONTROL SHALL BE PER THE TRAFFIC CONTROL PLAN. CONTRACTOR WILL NEED TO MAINTAIN ACCESS TO ALL PRIVATE PROPERTIES, UNLESS OTHERWISE COORDINATE WITH THE PROPERTY OWNER THROUGH THE CITY ENGINEER.
- 13. ALL CONCRETE WORK SHALL CONFORM TO ISPWC SECTIONS 701, 703, AND 705. ALL CONCRETE SHALL BE 3,000 PSI MINIMUM, 28 DAY, AS DEFINED IN ISPWC SECTION 703, TABLE 1. IMMEDIATELY AFTER PLACEMENT PROTECT CONCRETE BY APPLYING MEMBRANE-FORMING CURING COMPOUND, TYPE 2, CLASS A PER ASTM C 309-94. APPLY CURING COMPOUND PER MANUFACTURER'S INSTRUCTIONS AND SPECIFICATIONS.
- 14. 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.
- 15. 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.
- 16. CONSTRUCTION OF THE WATER SERVICE 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.
- 17. 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.
- 18. ALL WATER SUPPLY FIXTURES, FITTINGS, PIPING, AND ALL RELATED APPURTENANCES SHALL BE ANSI/NSF STD. 61 COMPLIANT AND SHALL COMPLY WITH THE LOW LEAD ACT REQUIRING ALL MATERIALS TO HAVE A LEAD CONTENT EQUAL TO OR LESS THAT 0.25%.
- 19. ALL WATER SUPPLY FIXTURES, FITTINGS, PIPING, AND ALL RELATED APPURTENANCES.
- 20. THE CONTRACTOR SHALL USE ANSI/NSF STANDARD 60 CHEMICALS AND COMPOUNDS DURING INSTALLATION & DISINFECTION OF POTABLE WATER MAIN.
- 21. THE CONTRACTOR SHALL BE RESPONSIBLE FOR HIRING A MATERIALS TESTING COMPANY DURING CONSTRUCTION TO VERIFY ALL COMPACTION AND MATERIAL PLAN AND SPECIFICATION REQUIREMENTS ARE MET. QUALITY CONTROL DOCUMENTATION OF TESTING FOR WORK IN RIGHT-OF-WAY MEETING CITY OF KETCHUM CODE SECTION 12.04.040 (CONCRETE, AGGREGATE BASE COMPACTION, ASPHALT COMPACTION) WILL BE NECESSARY FOR CERTIFICATE OF OCCUPANCY.
- 22. TOPOGRAPHIC, SITE, AND BOUNDARY SURVEY SHOWN HEREON WAS CONDUCTED BY BENCHMARK AND ASSOCIATES, 10/2021.
- 23. LOW GROUND COVER DROUGHT TOLERANT PLANT MATERIAL TO BE PLANTED BETWEEN GRAVEL AREA AND PROPERTY LINE.









