



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: October 20, 2025 Staff Member/Dept: Robyn Mattison, City Engineer

Agenda Item: Recommendation to Approve Right-of-Way Encroachment Agreement #24926 for the placement of a heated sidewalk and driveway in the public right-of-way at 3211 Warm Springs Rd.

Recommended Motion:

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement #24926 with Heidi & John Jacobi.

Reasons for Recommendation:

- The improvements will not impact the use or operation of Warm Springs Road.
- 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.
- This project received a building permit with residential snowmelt prior to the Council's determination in April 2023 that residential snowmelt systems would no longer be permitted.

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

The new single family home development located at 3211 Warm Springs Rd within the Tourist - 3000 (T-3000) Zoning District requires a Right-of-Way Encroachment Permit for a sidewalk & driveway snowmelt system within the City's right-of-way along Warm Springs Rd. Sidewalks are required for new development in the T-3000 zone. The proposed encroachment complies with all standards for permanent right-of-way encroachments specified in Ketchum Municipal Code §12.12.060.

During the April 3, 2023, City Council meeting, the Council informed staff that they will no longer permit residential snowmelt systems within the public right-of-way, unless recommended by the Streets or Fire Department for safety or maintenance reasons. At that time, the Council recognized that applications for snowmelt encroachment for residential projects that had already received a building permit prior to the April 3, 2023 determination would be approved under the previous policy. The subject Encroachment Agreement for a residential snowmelt system within the right-of-way is included as one of the projects with a previously issued building permit (prior to April 2023) that the Council has agreed to approve.

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment within the public right-of-way where a permanent fixture in the ground or attached to a building will occur. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum Municipal Code §12.12.060. The City Council has the authority to review and approve all permanent encroachments within the public right-of-way associated with a development project

pursuant to Ketchum Municipal Code §17.96.030.C. 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 agreement also obligates the property owner to install, maintain, and repair the permanent encroachments.

Sustainability Impact:

On April 3, 2023 the City Council has determined that residential snowmelt systems within the public right-of-way hinder the City's ability to meet the Sustainability Action Plan – 2020 and asserted that they will no longer approve these encroachments moving forward. The subject Right-of-Way Encroachment Agreement for a residential snowmelt system had a building permit issued prior to this determination, therefore, the Council has agreed to approve of it.

Financial Impact:

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

1. ROW Encroachment Agreement #24926 with Exhibit "A"

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 24926

THIS AGREEMENT, made and entered into this ____ day of ____ 2025, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose mailing address is Post Office Box 2315, Ketchum, Idaho and John Jacobi & Heidi Jacobi, ("Owner"), whose mailing address is 2573 N Pleasant Hill Way, Boise, Idaho 83702.

RECITALS

WHEREAS, Owner is the owner of real property described as 3211 Warm Springs Rd and legally described as WARM SPRINGS VILLAGE SUB LOT 3 BLK 3 ("Subject Property"), located within the City of Ketchum, State of Idaho, and;

WHEREAS, Owner wishes to permit placement of a snowmelt system for new heated concrete sidewalk and driveway along Warm Springs Road. 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, the Owner will restore the sidewalk, street, curb and gutter and any landscaping back to the original condition 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 a snowmelt system for a new heated concrete sidewalk and driveway identified in Exhibit "A" within the public right-of-way on Warm Springs Road, 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 of Ketchum prior to any modifications taking place.

3. Snowmelt systems installed in the public right-of-way shall be installed and operate at all times during the winter according to the following:

- The system shall meet the requirements of the International Energy Conservation Code (2018 IECC, 403.12.2)
- The system shall have an electronic main control board to operate the system that is programmable and optimizes the way the system functions.
- Installation of in-ground control sensors linked to the main control board that detect snow and ice on the surface, monitor the sidewalk or driveway temperature, and automatically activates the system to be turned on or off based on the snow condition and air temperature.

4. Owner shall be responsible for restoring the sidewalk, 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Successors and Assigns - This Agreement shall be binding upon and inures to the benefit of each of the parties hereto and their respective successors and assigns.

13. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

14. 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: _____

By: _____

John Jacobi, Owner

Neil Bradshaw
Its: Mayor

By: _____

Heidi Jacobi, Owner

STATE OF _____,)
) ss.
County of _____.)

On this ____ day of _____, 2025, before me, the undersigned Notary Public in and for said State, personally appeared John Jacobi, 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 _____,)
County of _____.) ss.

On this ____ day of _____, 2025, before me, the undersigned Notary Public in and for said State, personally appeared Heidi Jacobi, 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 _____, 2025, 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"

