



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

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-

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

Sustainability Impact:

Financial Impact:

Attachments:

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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 24922

THIS AGREEMENT, made and entered into this ____ day of _____, 2026, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and 755 S Broadway LLC ("Owner"), whose mailing address is 2667 S Tacoma Way, Tacoma, Washington 98409.

RECITALS

WHEREAS, Owner is the owner of real property located at 200 N Leadville Avenue and legally described as KETCHUM LOT 1 BLK 23 5500S ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of hydronic snowmelt system for new heated concrete sidewalks and pavers along Leadville Avenue and Second 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, 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 hydronic snowmelt system for new heated concrete sidewalks and pavers along Leadville Avenue and Second Street identified in Exhibit "A" within the public right-of-way, 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 during the winter according to the following:

- The system shall accurately measure surface and ambient temperatures and shall accurately detect snowfall, ice, and precipitation on the surface.
- The system shall include automatic controls programmed to shut off the system when the pavement temperature is greater than 50 degrees Fahrenheit and precipitation is not falling and programmed to shut off the system when the outdoor temperature is greater than 40 degrees Fahrenheit.
- The system shall be insulated below and around the perimeter with insulation approved by the City Engineer.
- Drainage shall be retained onsite, designed to eliminate standing water, and drain in a manner that results in no icing on adjacent non-snowmelted hard surfaces in the right-of-way, such as asphalt, concrete, or pavers.
- For systems that elect to use a boiler, the boiler shall have an annual fuel utilization efficiency rating of 87% or greater for oil boilers and 90% or greater for gas boilers.

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.

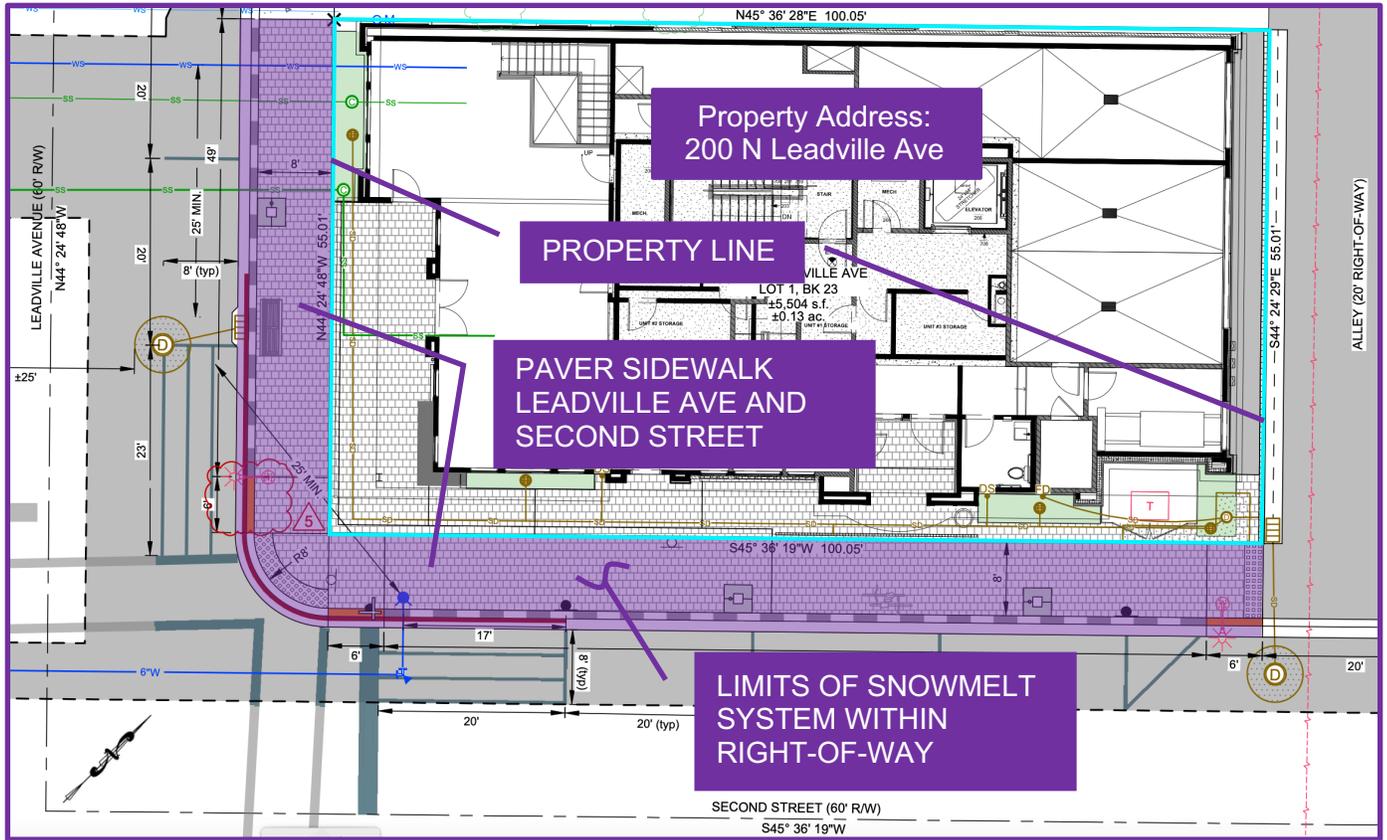
5. In consideration of Ketchum allowing Owner to maintain the Improvements in the public right-of-way, Owner agrees to indemnify and hold harmless Ketchum from and against any and all claims of liability for any injury or damage to any person or property arising from the Improvements constructed, installed 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.

EXHIBIT "A"



BASE FIGURE PROVIDED BY APPLICANT.
PREPARED BY GALENA-BENCHMARK ENGINEERING 12.31.2025
ANNOTATED BY CITY ENGINEER ROBYN MATTISON (PURPLE TEXT BOXES) TO CLARIFY
IMPROVEMENTS INCLUDED IN RIGHT-OF-WAY AGREEMENT NO. 24922