

## City of Ketchum

October 19, 2020

Mayor Bradshaw and City Councilors City of Ketchum Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 20527 for placement of a concrete paver sidewalk and snowmelt in the City Right-of-Way at 180 W. 2<sup>nd</sup> Street.

#### **Recommendation and Summary**

Staff is recommending Council approve the attached Encroachment Agreement and adopt the following motion:

"I move to authorize the Mayor to sign Encroachment Agreement 20527 with KKL, LLC."

The reasons for the recommendation are as follows:

- The improvements will not impact the use or operation of the street
- The improvements will not impact drainage and snow removal within the City ROW

#### Introduction and History

Kirsten Ritzau on behalf of KKK, LLC submitted a Right-of-Way Encroachment Permit application to install concrete paver sidewalks and snowmelt within the City's Right-of-Way along Second Avenue and Second Street at 180 W. 2<sup>nd</sup> Street.

Right-of-Way standards were developed in the Community Core to achieve goals of pedestrian mobility, drainage, parking and provide materials that can be reasonably maintained by the city. Because the sidewalk paver materials and snowmelt system cannot be reasonably maintained by the city, the property owner will be responsible for repair and maintenance.

City code requires a right-of-way encroachment permit for any permanent encroachment in the public right-of-way. These agreements are 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.

#### **Analysis**

The proposed encroachments were determined not to impact public access or city operations.

#### **Financial Impact**

There is no financial impact resulting from approval of this encroachment agreement.

### Attachments:

**Encroachment Agreement 20527** 

### 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 20527**

THIS AGREEMENT, made and entered into this \_\_\_\_\_day of \_\_\_\_, 2020, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho and KKL, LLC, (collectively referred to as "Owner"), whose address is 216 EAST SPRUCE, HAILEY ID 83333.

#### RECITALS

WHEREAS, Owner is the owner of real property described as 180 W 2<sup>nd</sup> Street ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of concrete pavers and snowmelt system within the right-of-way on Second 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;

NOW, THEREFORE, in contemplation of the above stated facts and objectives, it is hereby agreed as follows:

### TERMS AND CONDITIONS

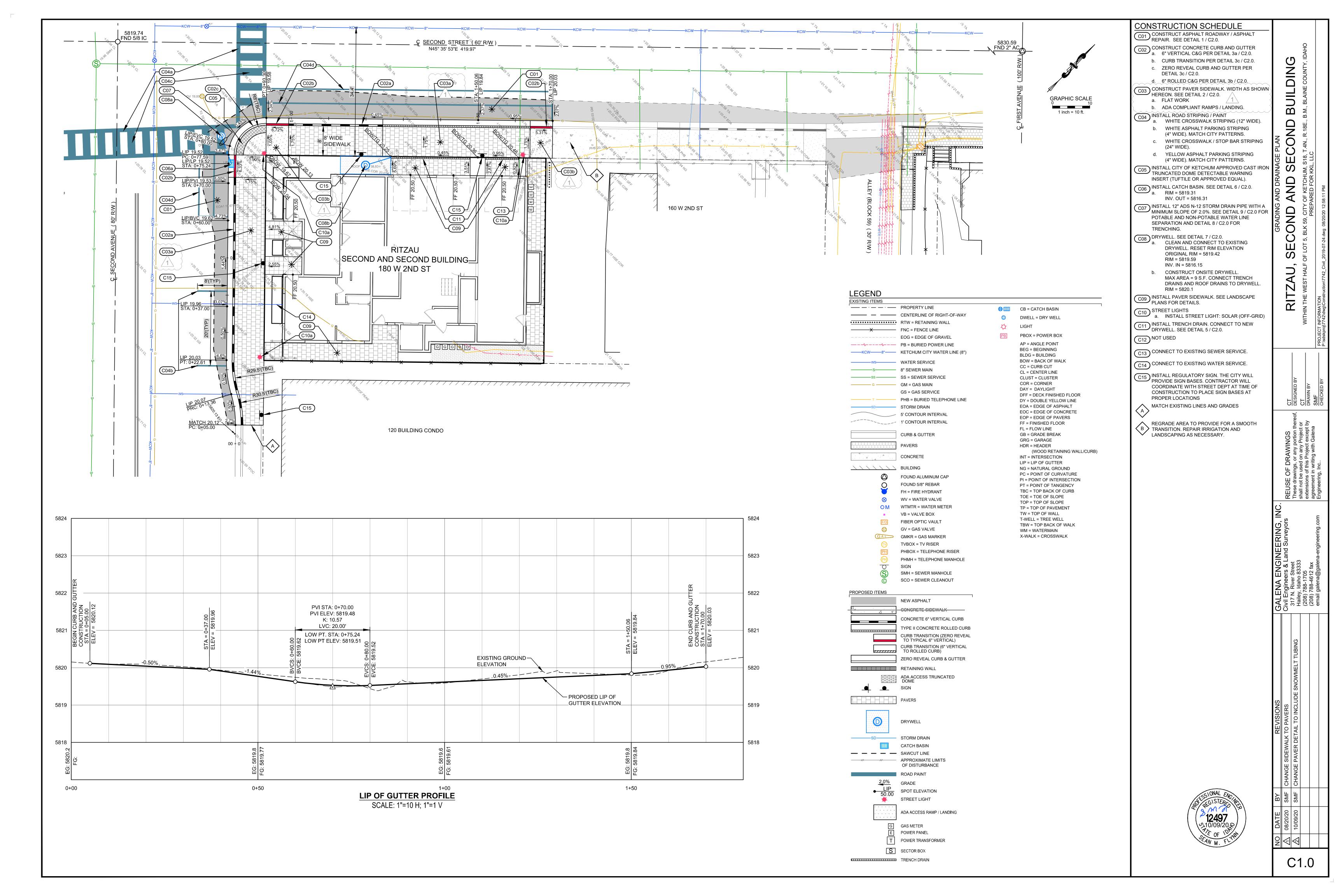
- 1. Ketchum shall permit Owner to maintain the improvements identified in Exhibit "A" within the public right-of-way of Second Avenue and Second Street in Ketchum, Idaho, until notified by Ketchum to remove the improvements at which time Owner shall remove improvements at Owner's expense.
- 2. Owner shall be responsible for the maintenance of said Improvements. Any modification to the improvements identified in Exhibit "A" shall be approved by the City of Ketchum prior to any modifications taking place.
- 3. 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.

- 4. 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.
- 5. 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.
- 6. This Agreement shall be a covenant running with the Subject Property and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties and the respective heirs, personal representatives, successors and assigns of the parties hereof.
- 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: Kirsten Ritzau, Managing Member	By: Neil Bradshaw Its: Mayor
STATE OF, )	
On this day of, 2020, and for said State, personally appeared Kirsten managing member of KKL, LLC, a person who exsaid limited liability company and acknowledge executed the same.	recuted the foregoing instrument on behalf of
IN WITNESS WHEREOF, I have hereunto day and year first above written.	set my hand and affixed my official seal the
	Notary Public for Residing at Commission expires
STATE OF IDAHO ) ) ss. County of Blaine )	
On this day of, 2020, I and for said State, personally appeared NEIL BRAMayor of the CITY OF KETCHUM, IDAHO, ar instrument on behalf of said municipal corporation corporation executed the same.	nd the person who executed the foregoing
IN WITNESS WHEREOF, I have hereunto certificate first above written.	set my hand and seal the day and year in this
	Notary Public for Residing at Commission expires

# **EXHIBIT "A"**



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.

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.

CONTRACTOR SHALL COORDINATE RELOCATIONS OF DRY UTILITY FACILITIES (POWER, CABLE, PHONE, TV) WITH THE APPROPRIATE UTILITY FRANCHISE.

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.

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).

ALL CLEARING & GRUBBING SHALL CONFORM TO ISPWC SECTION 201.

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.

PROOF-ROLLING: 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

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.

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.

0. 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.

I. 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

2. 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.

3. 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.C. 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.

4. 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.

5.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.

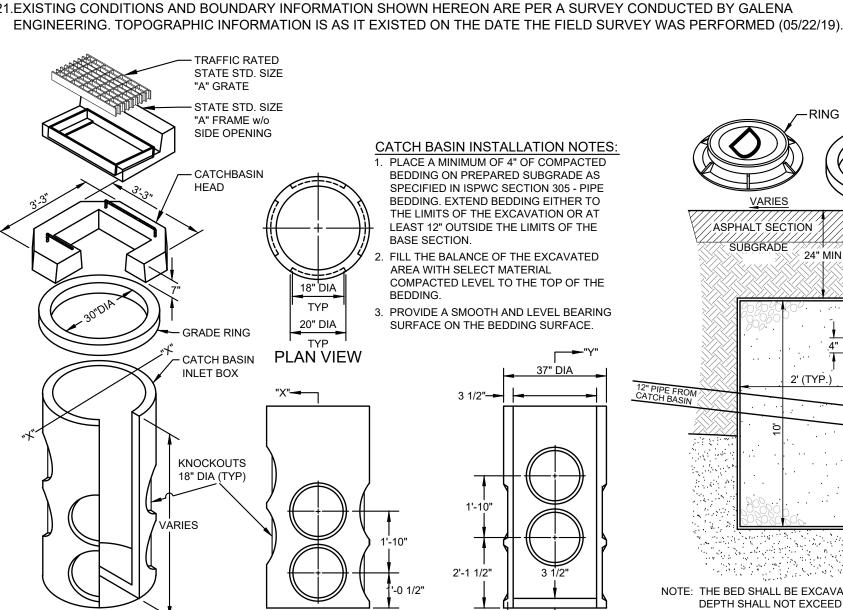
S.CONSTRUCTION OF WATER MAINS AND ALL OTHER RELATED APPURTENANCES SHALL BE IN ACCORDANCE WITH THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPWC), IDAPA 58.01.08, IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS AND THE CITY OF KETCHUM UTILITIES DEPARTMENT STANDARDS.

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.

8. ALL WATER SUPPLY FIXTURES, FITTINGS, PIPING, AND ALL RELATED APPURTENANCES SHALL BE ANSI/NSF STD. 61 COMPLIANT.

ALL WATER SUPPLY FIXTURES, FITTINGS, PIPING, AND ALL RELATED APPURTENANCES SHALL COMPLY WITH THE LOW LEAD ACT REQUIRING ALL MATERIALS TO HAVE A LEAD CONTENT EQUAL TO OR LESS THAT 0.25%.

0.THE CONTRACTOR SHALL USE ANSI/NSF STANDARD 60 CHEMICALS AND COMPOUNDS DURING INSTALLATION & DISINFECTION OF POTABLE WATER MAIN.

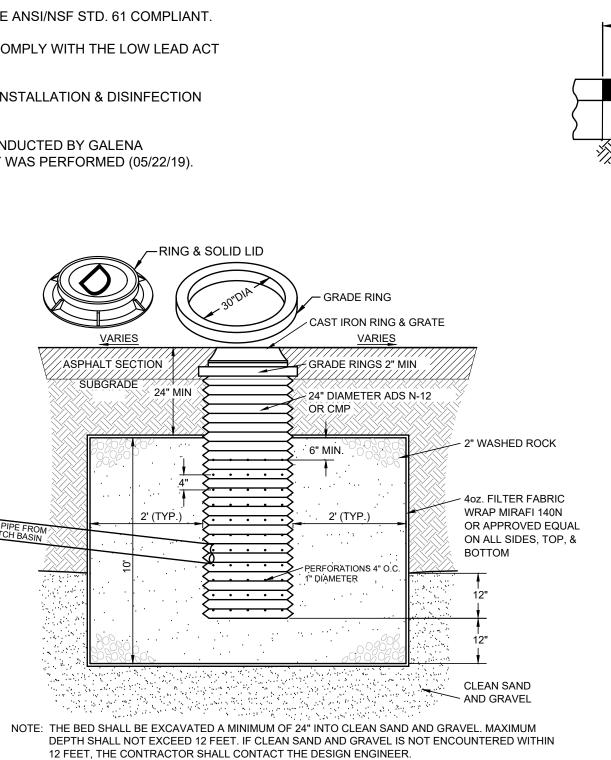


SECTION "X"-"X"

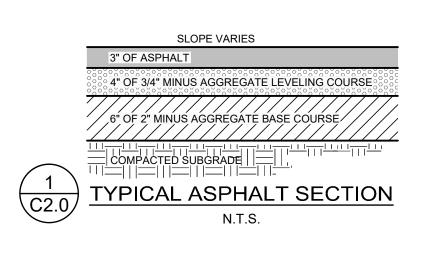
SECTION "Y"-"Y"

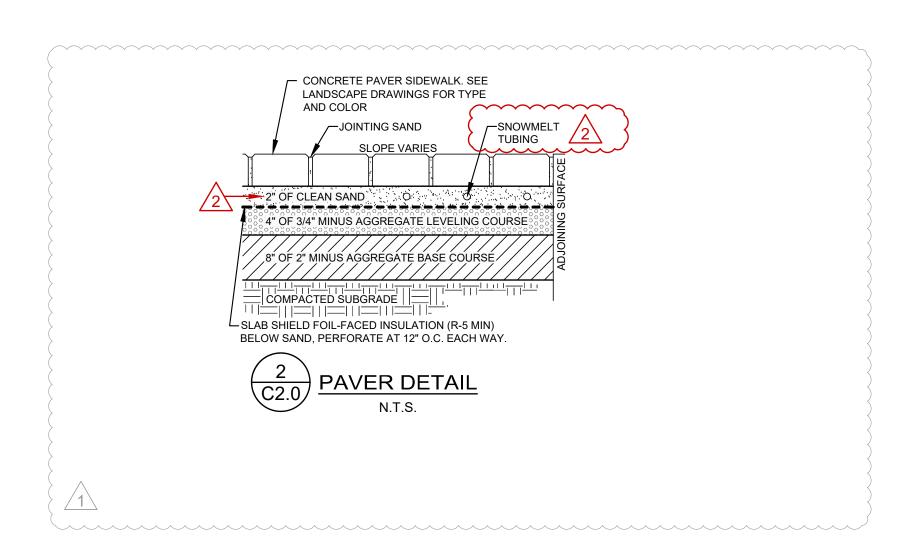
30" DIAMETER CATCH BASIN

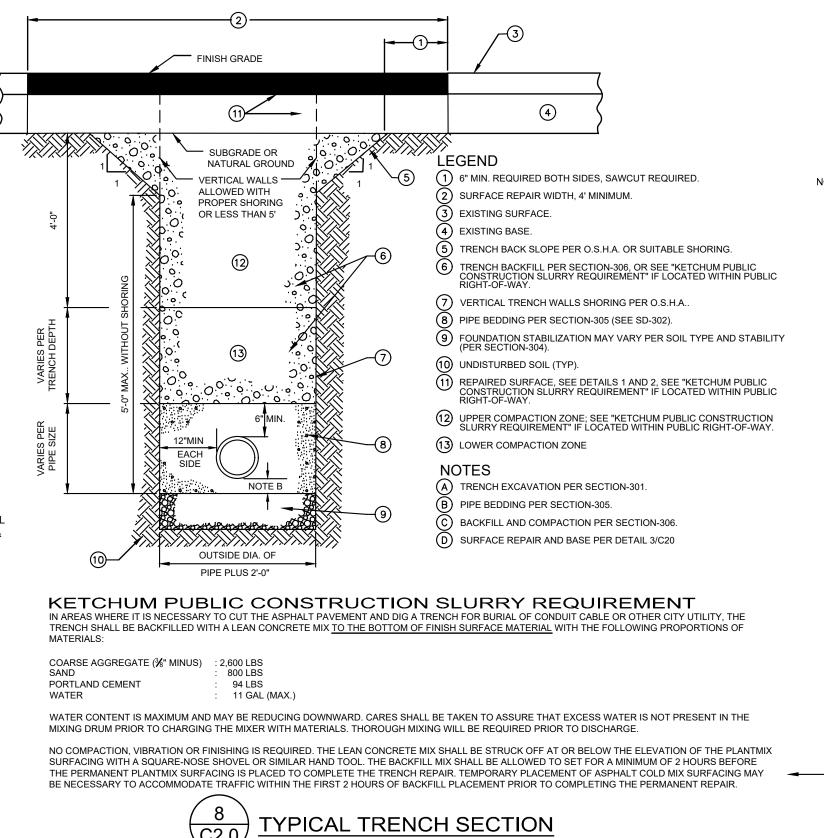
**CURB INLET** 

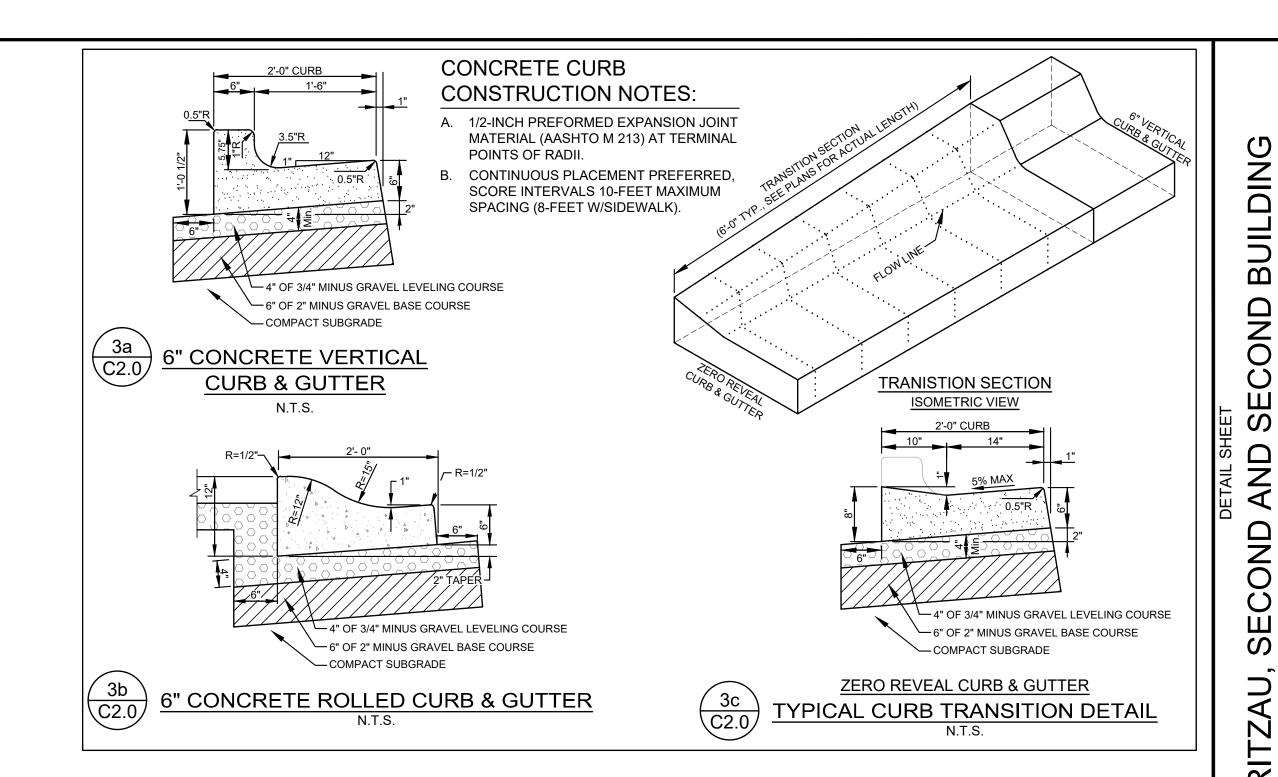


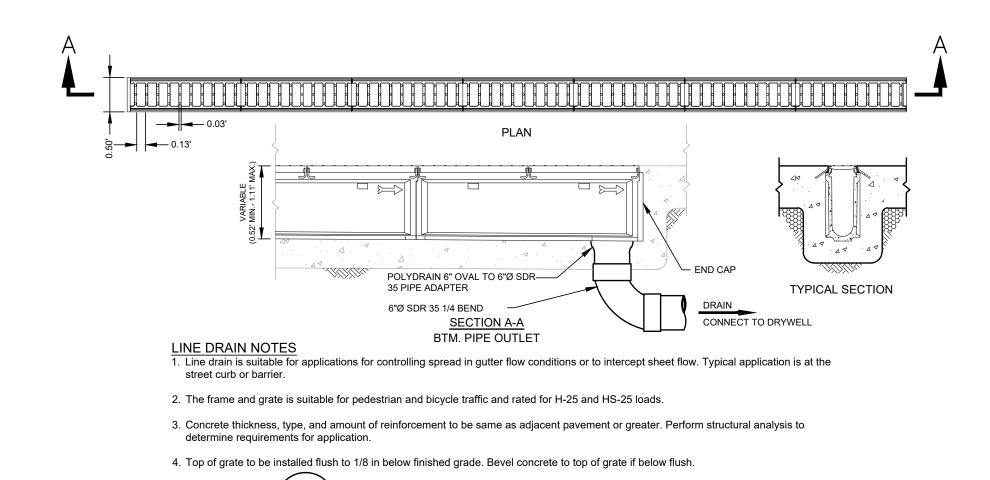
DRYWELL DETAIL (6'X6')











TYPICAL TRENCH DRAIN DETAIL ABT INTERCEPTOR LINE DRAIN OR APPROVED EQUAL)

