

City of Ketchum

#### **CITY COUNCIL MEETING AGENDA MEMO**

Meeting Date:	May 25, 2024	Staff Member/Dept:	Abby Rivin, Senior Planner Planning and Building Department

Agenda Item:Recommendation to Approve Amended Right-of-Way Encroachment Agreement 22837Afor the 380 N 1st Avenue Mixed-Use Building.

#### **Recommended Motion:**

I move to authorize the Mayor to sign Amended Right-of-Way Encroachment Agreement 22837A with Corey
Street Mass LLC.

#### Reasons for Recommendation:

- Following City Council's review and approval of the 380 N 1<sup>st</sup> Avenue Right-of-Way Encroachment 22837 on March 27, 2023, the applicant requested revisions to the agreement language. The changes proposed by the applicant include minor clarifications to the agreement language and extending the timeframes that the property owner must remove or repair the improvements in the right-of-way upon notice from 48 hours to 10 business days or a timeframe as otherwise agreed upon by the parties.
- The applicant's proposed changes to the Right-of-Way Encroachment Agreement language have been reviewed by the City Attorney, City Engineer, Streets Department, and Planning Department. The City Attorney, City Engineer, Streets Department, and Planning Department have no concerns with the changes reflected in the attached Amended Right-of-Way Encroachment Agreement 22837A.
- The project requires a Right-of-Way Encroachment Permit for the snowmelt system and pavers proposed for the new sidewalks and bulb out along 1<sup>st</sup> Avenue and 4<sup>th</sup> Street. The encroachments proposed for the 380 N 1st Avenue Mixed-Use Building comply with all standards for permanent right-of-way encroachments specified in Ketchum Municipal Code §12.12.060.

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

Sustainability Impact:

None OR state impact here: The proposed snowmelt system for the right-of-way improvements associated with the 380 N 1<sup>st</sup> Avenue Mixed-Use Building project meets the City's energy code and installation requirements for commercial projects.

Financial Impact:

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

Attachments:

1. Amended Right-of-Way Encroachment Agreement 22837A

#### 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 22837A**

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 COREY STREET MASS LLC, an Idaho limited liability company ("Owner"), whose address is 11361 Farlin Street, Los Angeles, California 90049.

#### RECITALS

WHEREAS, Owner is the owner of real property described as 380 N 1<sup>st</sup> Avenue ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit the placement of a hydronic snowmelt system and pavers that are required for the development of the 380 N 1<sup>st</sup> Avenue Mixed-Use Building project within the public rights-of-way along 1<sup>st</sup> Avenue and 4<sup>th</sup> 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 in accordance with the Ketchum approved plan;

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

#### TERMS AND CONDITIONS

1. Ketchum herebypermits Owner to install a hydronic snowmelt system and pavers identified in Exhibit "A" within the public rights-of-way on 1<sup>st</sup> Avenue and 4<sup>th</sup> Street until notified by Ketchum to remove the infrastructure. Within a reasonable time after such notice, or in a timeframe as otherwise agreed upon by the parties, Owner shall remove the infrastructure at Owner's expense.

2. Owner shall be responsible for the maintenance of said Improvements and shall repair said improvements within 10 business days or a timeframe as otherwise agreed upon by the parties 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.

In consideration of Ketchum allowing Owner to maintain the Improvements in the 5. 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, except for those claims caused by the actions of Ketchum. 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-ofway arising from the construction, installation and maintenance of said Improvements and Owner hereby waives all claims in respect thereof against Ketchum, except for those claims caused by the actions of 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. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

13. 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: Corey Street Mass LLC

By: \_\_\_\_\_ Neil Bradshaw Its: Mayor

William J. McMorrow Its: Managing Member

STATE OF \_\_\_\_\_, ) ) ss. County of \_\_\_\_\_. )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned Notary Public in and for said State, personally appeared WILLIAM J. MCMORROW, known to me to be the Managing Member of COREY STREET MASS LLC and 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.

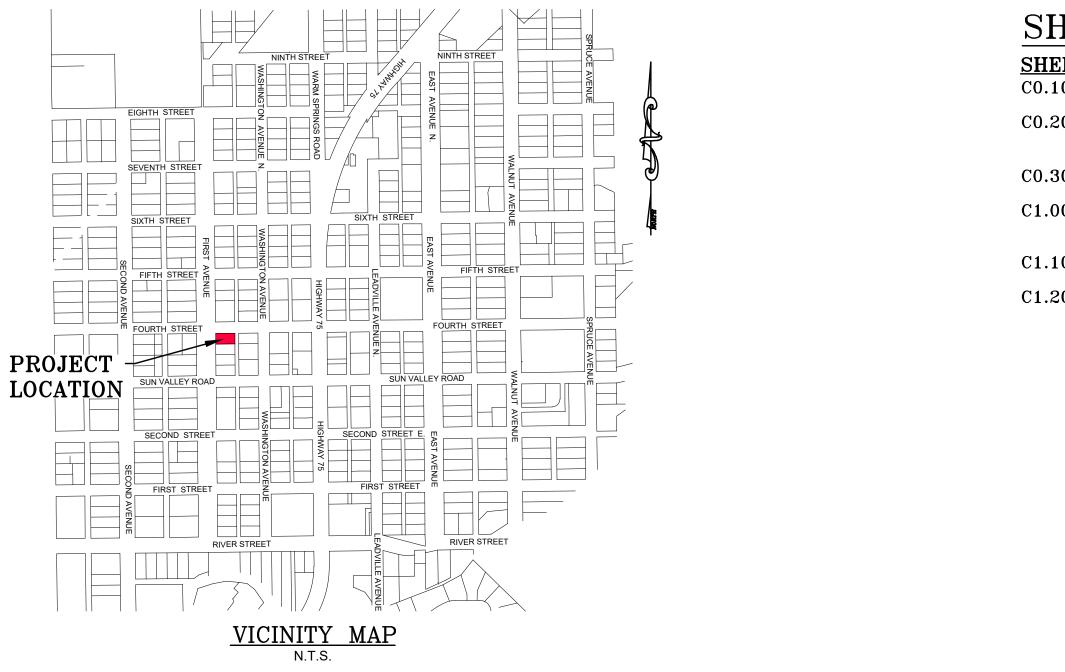
Notary Public for \_\_\_\_\_ Residing at \_\_\_\_\_ Commission expires \_\_\_\_\_

### EXHIBIT "A"

## CONSTRUCTION NOTES

- I. 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).
- 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
- 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 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. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING TRAFFIC CONTROL PER THE CURRENT EDITION OF THE US DEPARTMENT OF TRANSPORTATION MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). 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. ALL CONCRETE SHALL BE TITAN MIX FROM IMC., OR APPROVED EQUAL.
- 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 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.
- 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.
- 19. 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%.
- 20. THE CONTRACTOR SHALL USE ANSI/NSF STANDARD 60 CHEMICALS AND COMPOUNDS DURING INSTALLATION & DISINFECTION OF POTABLE WATER MAIN.
- 21. EXISTING SITE CONDITIONS SHOWN HEREON ARE PER A FIELD SURVEY BY GALENA ENGINEERING DATED 09/17/21.

# 380 N. 1ST AVE. MIXED-USE BUILDING FEBRUARY 2023



## LEGEND

#### EXISTING ITEMS Property Line

\_\_\_\_\_ P/L \_\_\_\_ — Adjoiner's Lot Line — — Right of Way Centerline — · · — · · — Setback

— — — EOA— — — — EOA— —

Parking Stripe

 $\overline{\mathbf{O}}$ 

Fiber Optic Line Gas Service Buried Telephone Line

PH Telephone Riser

----- Buried Power Line 

> 🔆 Light -O- Power Pole

------s ------ Sewer Main ------ss------ Sewer Service

 $(\mathbf{D})$ 

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Sewer Manhole \_\_\_\_\_SD\_\_\_\_\_ Storm Drain

Catch Basin

Dry Well

Curb & Gutter

Asphalt

Sign

Concrete Sidewalk

Spot Elevation

——KCW——12"—— Ketchum City Water Line (12") KSW 4" Ketchum Spring Line (4") Water Service Water Valve

AP = Angle Point BEG = Beginning BOW = Back of Walk BR = Bottom of Ramp CC = Curb Cut CLUST = Cluster EOA = Edge of Asphalt EOC = Edge of Concrete EOP = Edge of Pavers FF = Finished Floor FL = Flow Line GB = Grade Break HW = Headwall IC = Illegible Cap LIP = Lip of Gutter NC = No Cap NG = Natural Ground PVC = Polyvinyl Chloride Pipe TA = Top of Asphalt TBC = Top Back of Curb TOE = Toe of Slope TOP = Top of Slope TR = Top of Ramp TW = Top of Wall WM = Watermain

## PROPOSED ITEMS

Concrete Sidewalk Road/Parking Striping No Parking Striping \_\_\_\_ Typical Sign CMP = Corrugated Metal Pipe — — — — Asphalt Sawcut 6" Vertical Curb And Gutter Typical Curb Transition (rolled to zero reveal) Zero Reveal Curb And Gutter  $\xrightarrow{\times\times\times\times\times}$  Typical Curb Transition (rolled to 6" vertical) Detectable Warning Plate TP 27.36 Spot Elevation 1<u>75%</u> Grade

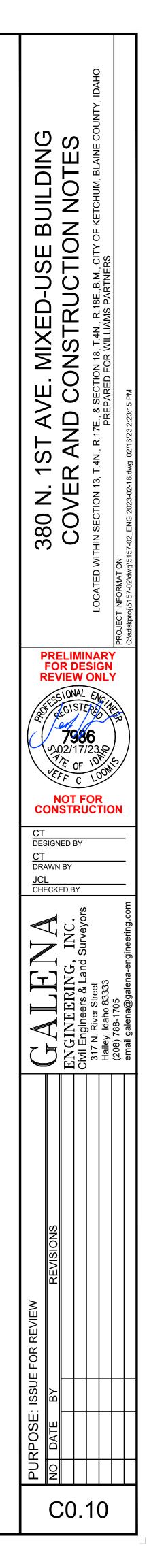
Asphalt

ADA Parking Striping ADA Parking Symbol

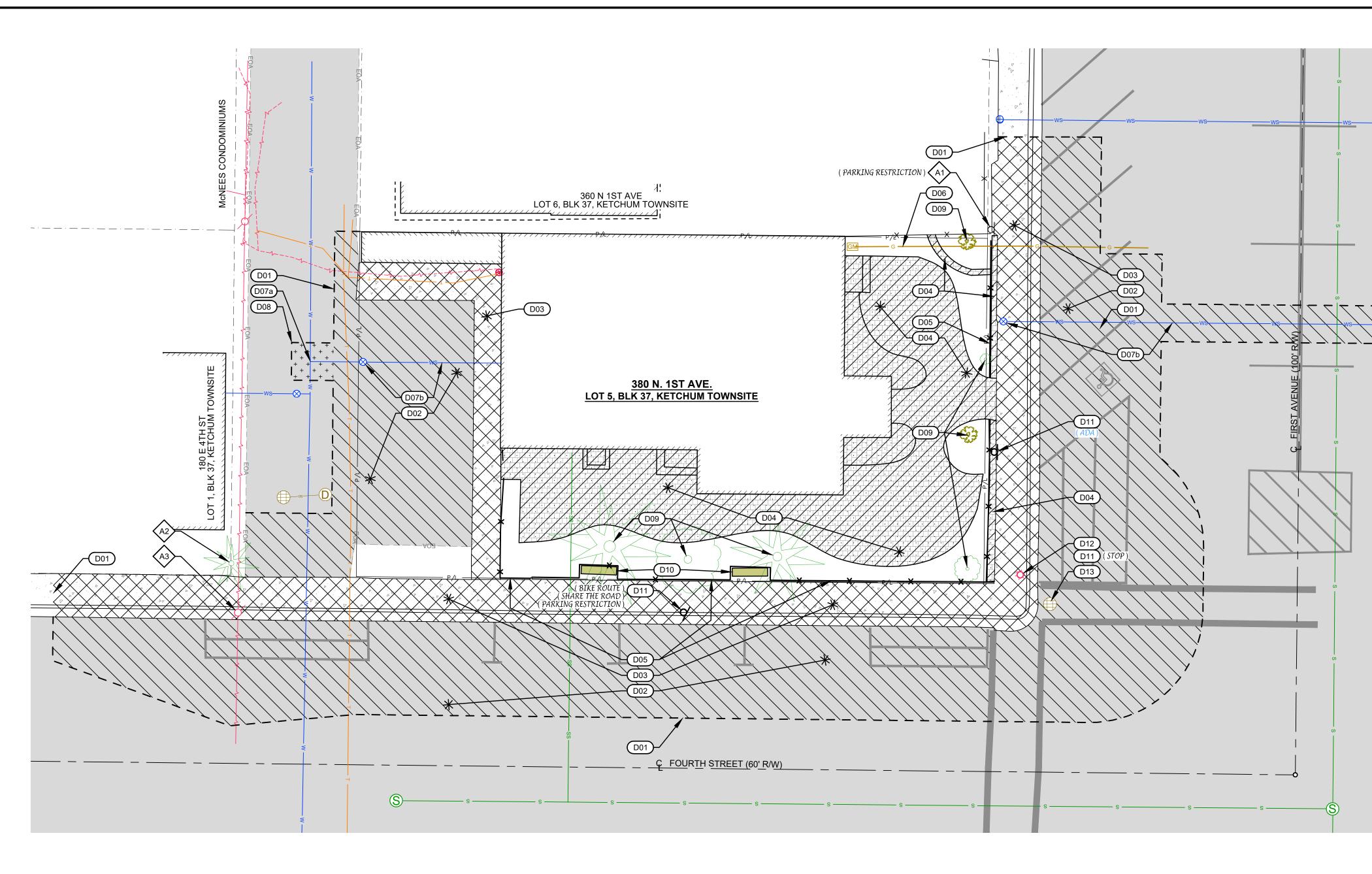
## SHEET INDEX

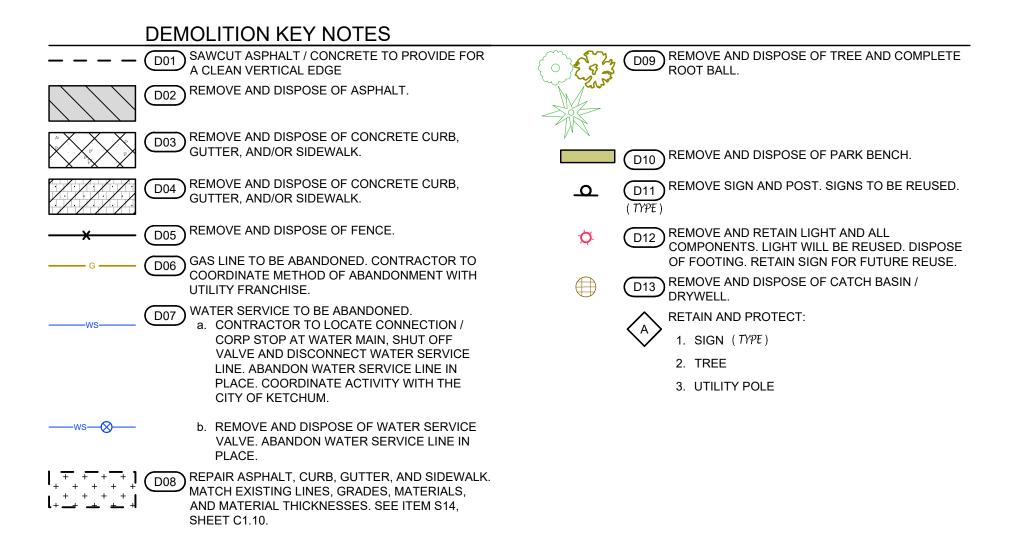
EET# 10	DESCRIPTION COVER SHEET
20	EXISTING SITE CONDITIONS (TOPOGRAPHIC MAP)
30	DEMOLITION PLAN
00	SITE GEOMETRY AND SNOWMELT AREA PLAN
10	GRADING AND DRAINAGE PLAN
20	DETAIL SHEET

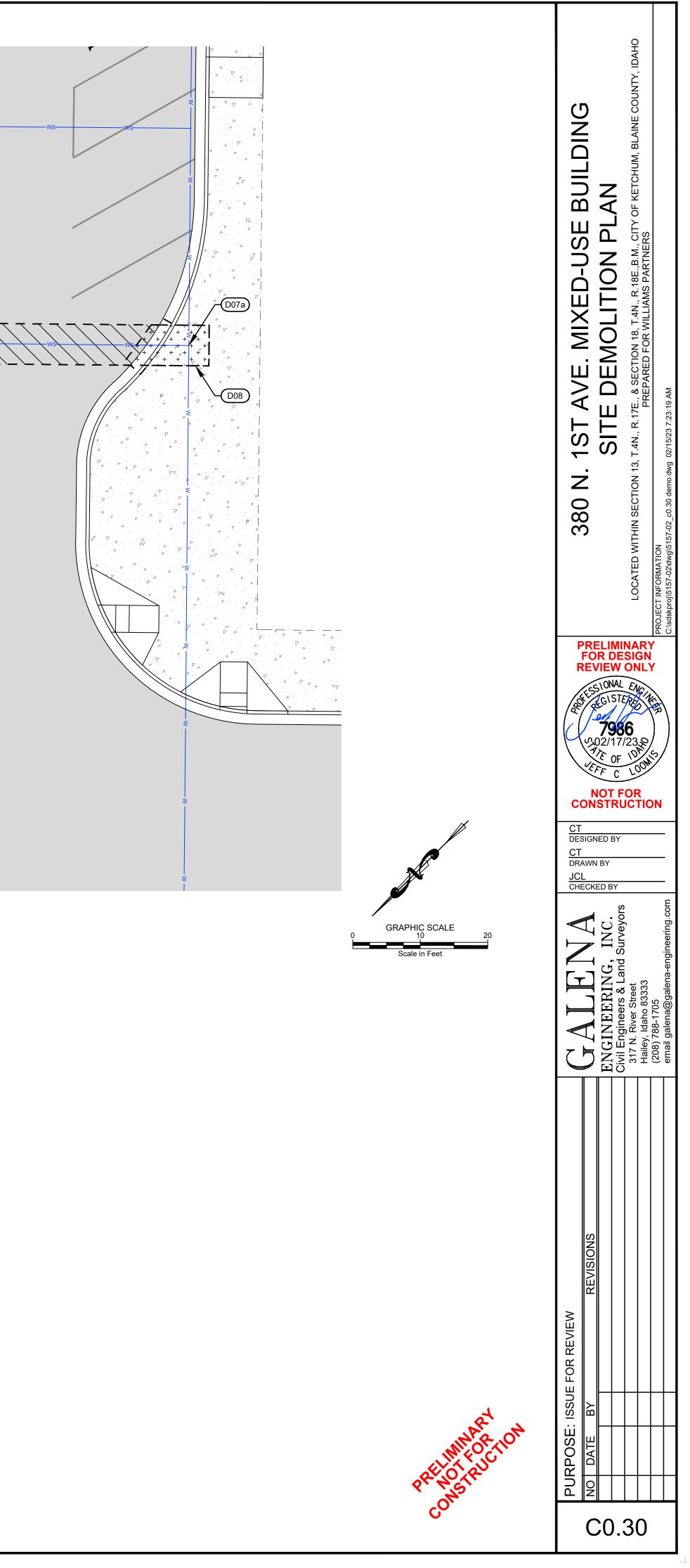
	Drywell
	Catch Basin
—SD	Storm Drain Line
	Tree Well, See Landscape Plan
	Street Light
	Paver Sidewalk
BENCH	Bench, See Landscape Pla
	Channel Drain, See Landscape Plan

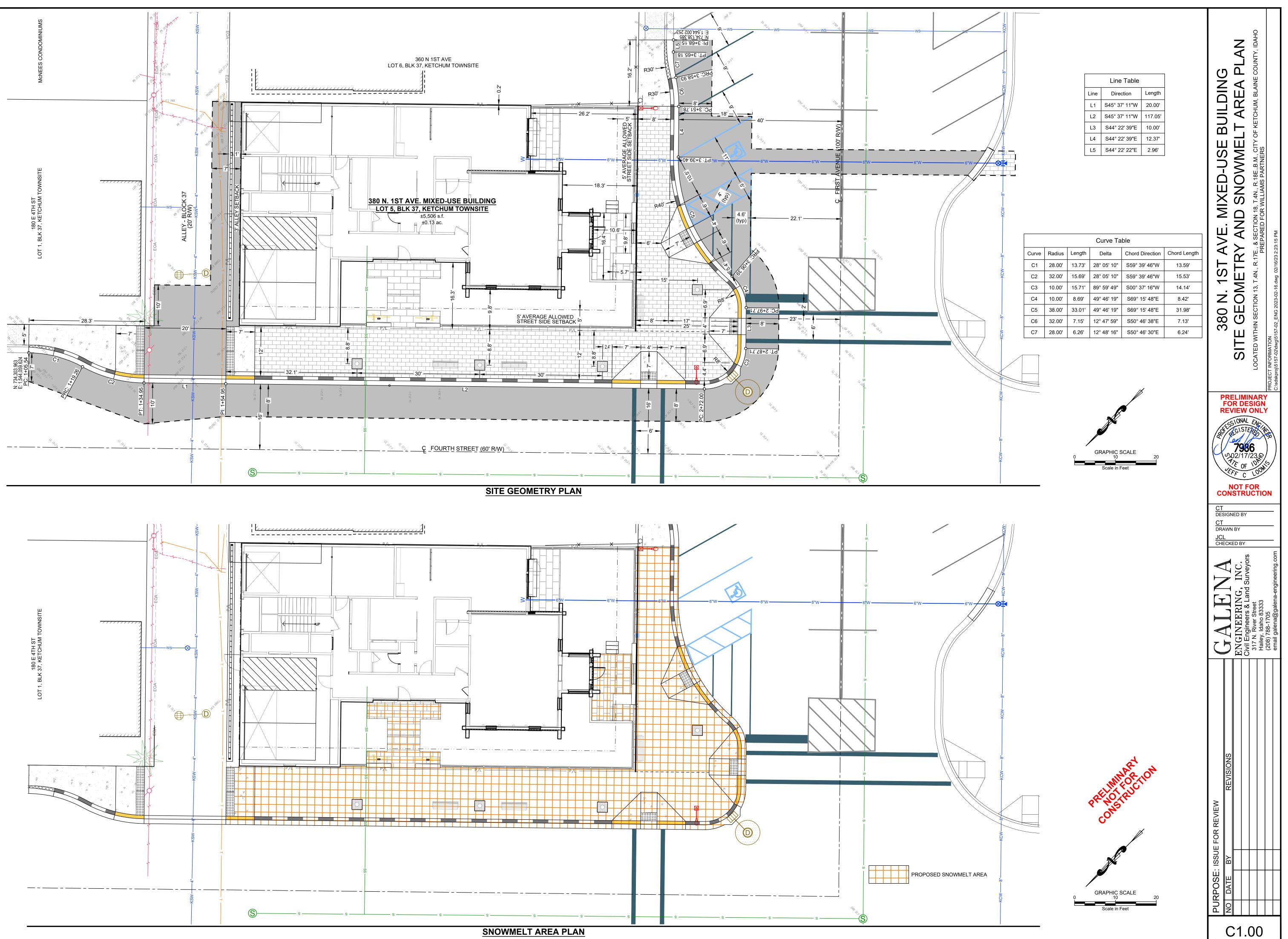


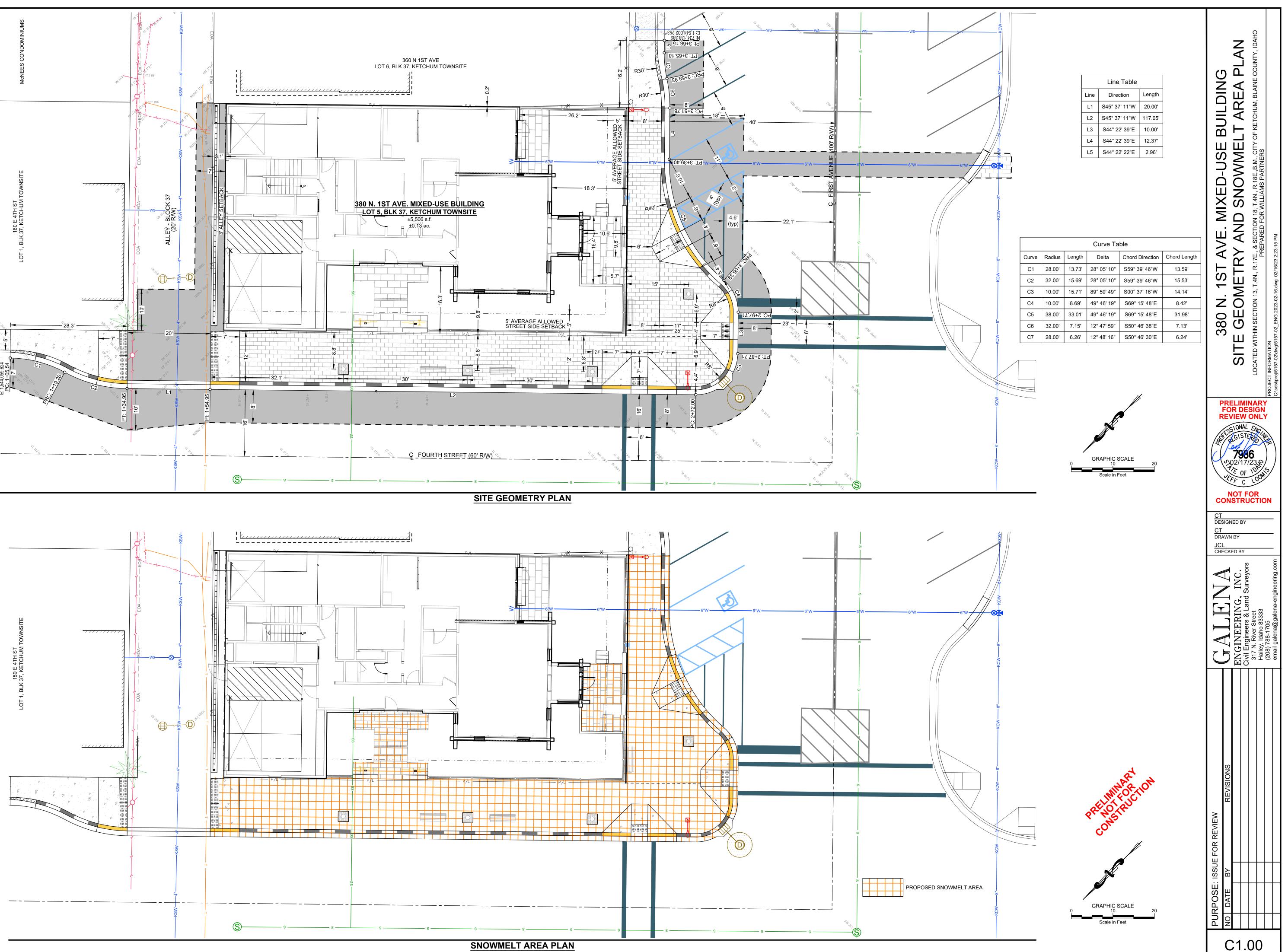
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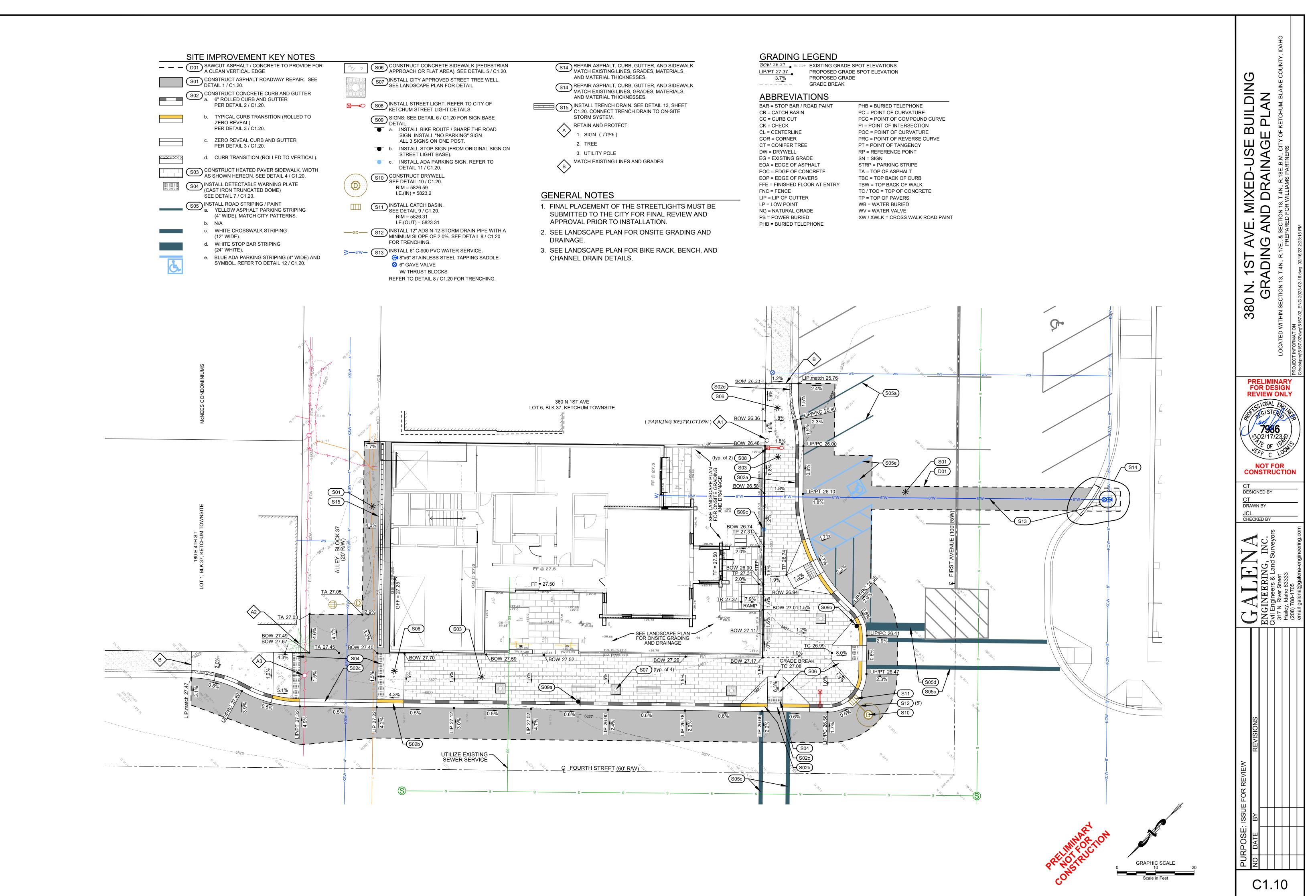




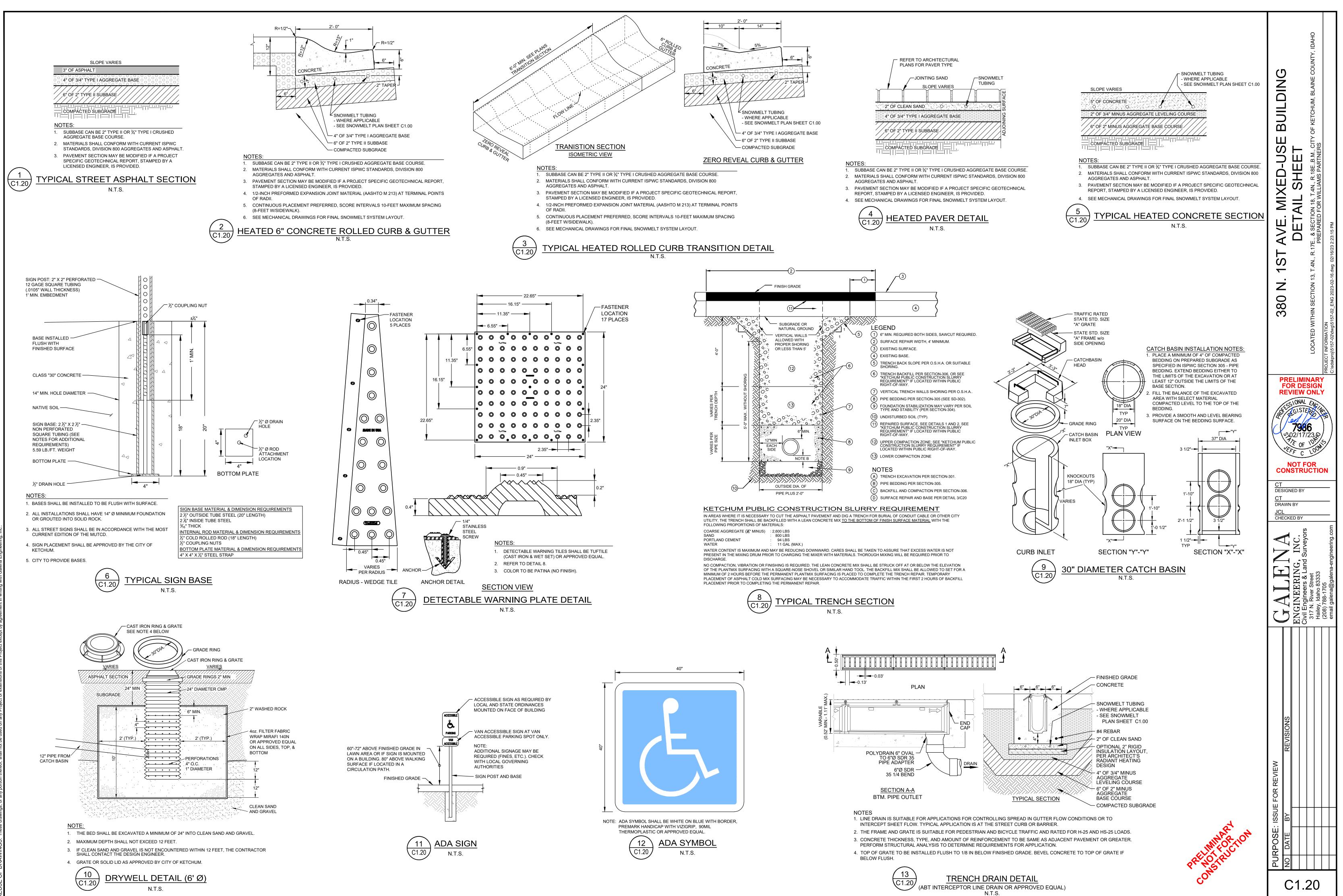








BAR = STOP BAR / ROAD PAINT	PHB = BURIED TEL
CB = CATCH BASIN	PC = POINT OF CUP
CC = CURB CUT	PCC = POINT OF CO
CK = CHECK	PI = POINT OF INTE
CL = CENTERLINE	POC = POINT OF CU
COR = CORNER	PRC = POINT OF RE
CT = CONIFER TREE	PT = POINT OF TAN
DW = DRYWELL	RP = REFERENCE F
EG = EXISTING GRADE	SN = SIGN
EOA = EDGE OF ASPHALT	STRP = PARKING S
EOC = EDGE OF CONCRETE	TA = TOP OF ASPH
EOP = EDGE OF PAVERS	TBC = TOP BACK O
FFE = FINISHED FLOOR AT ENTRY	TBW = TOP BACK C
FNC = FENCE	TC / TOC = TOP OF
LIP = LIP OF GUTTER	TP = TOP OF PAVE
LP = LOW POINT	WB = WATER BURI
NG = NATURAL GRADE	WV = WATER VALV
PB = POWER BURIED	XW / XWLK = CROS



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