



## City of Ketchum

September 19, 2022

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to Approve Right-of-Way Encroachment Agreement 22801 for the placement of driveway pavers in the public right-of-way at 106 Aspen Drive.**

#### Recommendation and Summary

Staff recommends the Ketchum City Council approve the attached Right-of-Way Encroachment Agreement 22801 and adopt the following motion:

“I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 22801 with James & Sandra Figge.”

#### The reasons for the recommendation are as follows:

- The improvements will not impact the use or operation of Aspen Drive.
- 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 property owner submitted a Right-of-Way Encroachment Permit application for driveway pavers within the City’s right-of-way along Aspen Drive. The driveway accesses an existing home located at 106 Aspen Drive within the City’s General Residential Low Density (GR-L) Zoning District.

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.

#### Analysis

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 Figge Residence located at 106 Aspen Drive comply with all standards.

Sustainability

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

Financial Impact

There is no financial requirement from the city for this action.

Attachments

ROW Encroachment Agreement 22801

**WHEN RECORDED, PLEASE RETURN TO:**

**OFFICE OF THE CITY CLERK  
CITY OF KETCHUM  
POST OFFICE BOX 2315  
KETCHUM, IDAHO 83340**

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**RIGHT-OF-WAY ENCROACHMENT AGREEMENT 22801**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_, 2022, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and JAMES FIGGE and SANDRA FIGGE, (collectively referred to as "Owner"), whose address is Post Office Box 4995, Ketchum, Idaho 83340.

*RECITALS*

WHEREAS, Owner is the owner of real property described as 106 Aspen Drive ("Subject Property"), located within the City of Ketchum, State of Idaho, and;

WHEREAS, Owner wishes to permit the placement of a paver driveway within the right-of-way on Aspen Drive. 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 street, alley, sidewalk, 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 the Improvements identified in Exhibit A within within the public right-of-way on 106 Aspen Drive 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 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.

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.



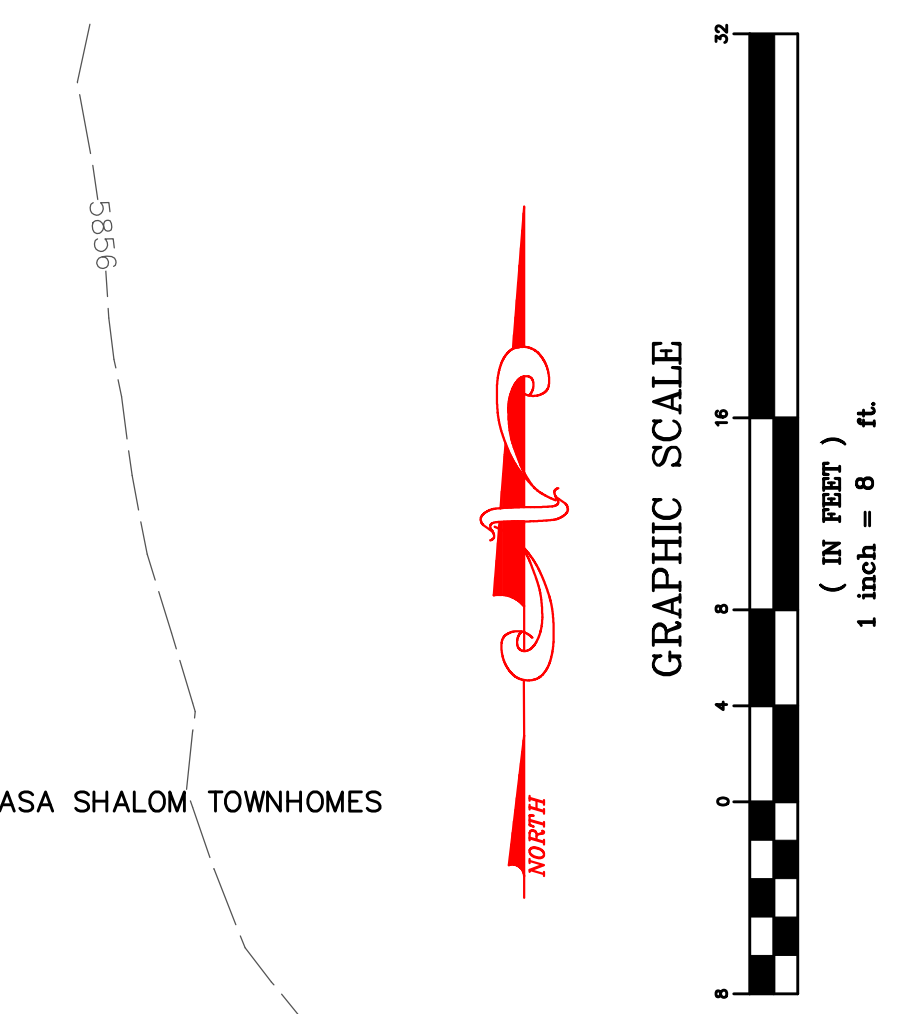
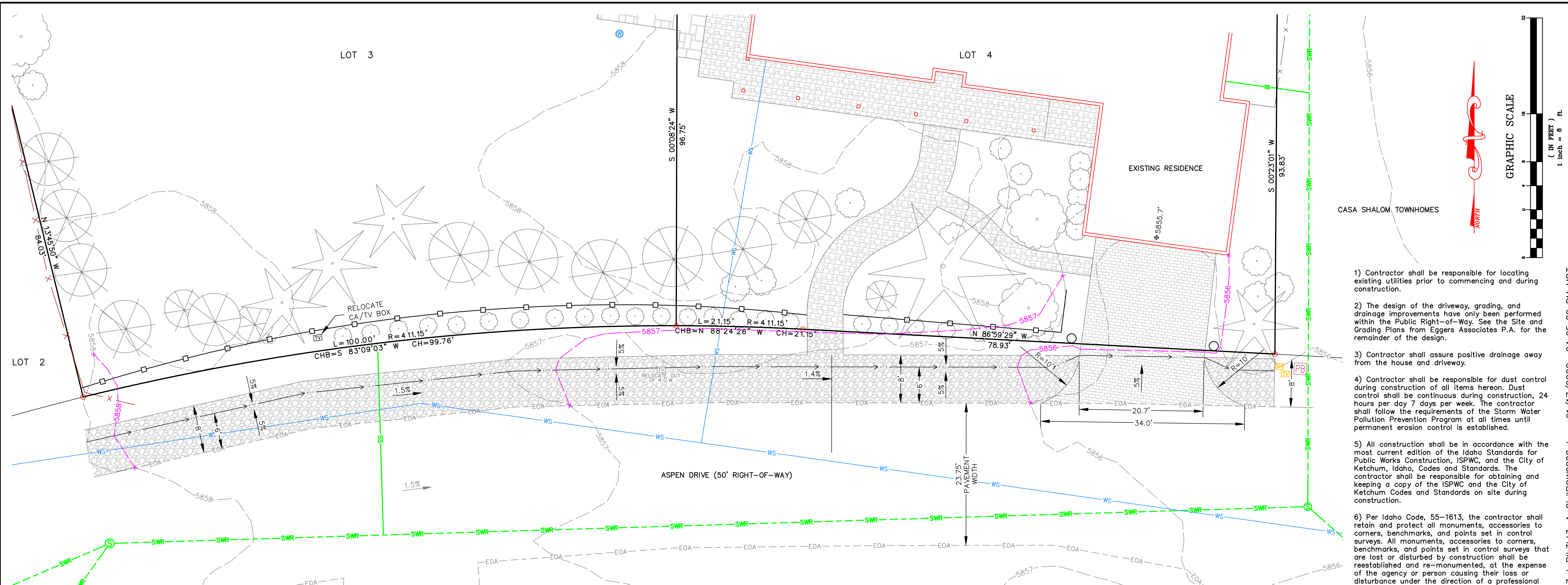
STATE OF IDAHO    )  
                                  ) ss.  
County of Blaine    )

On this \_\_\_ day of \_\_\_\_\_, 2022, 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.

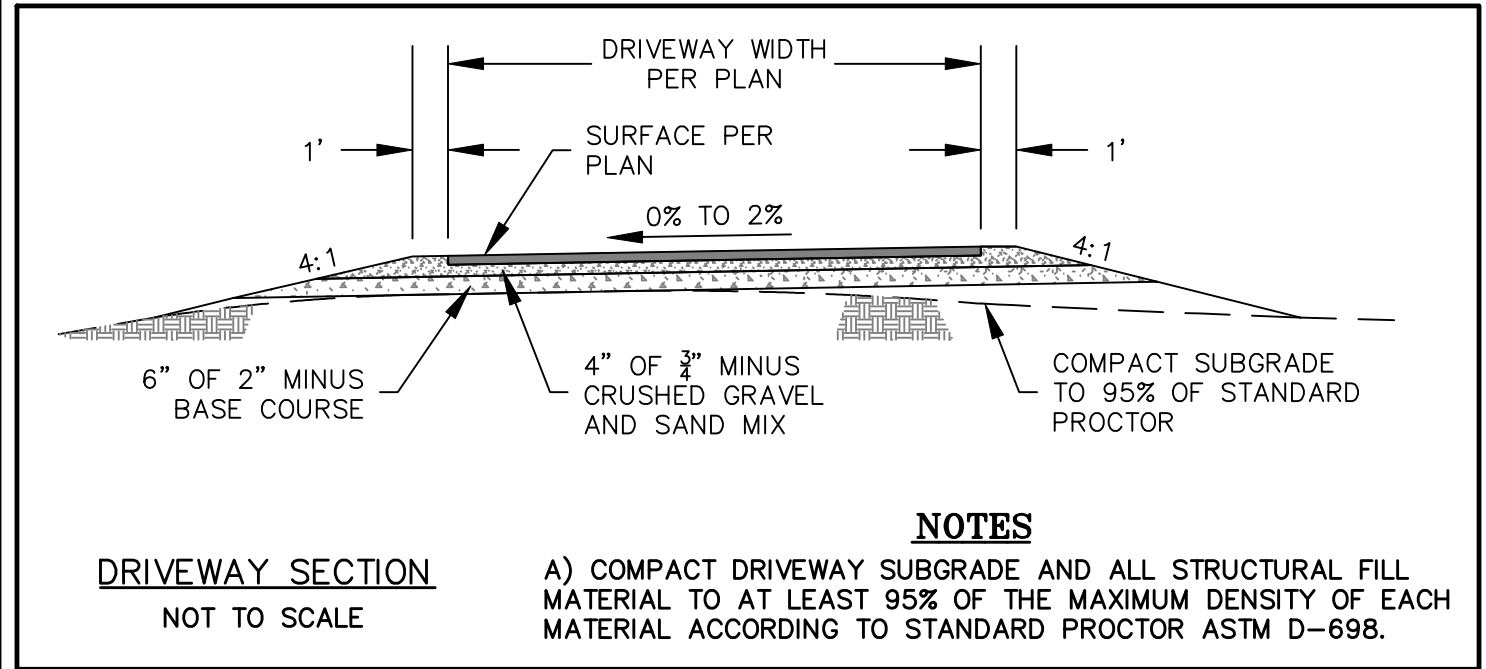
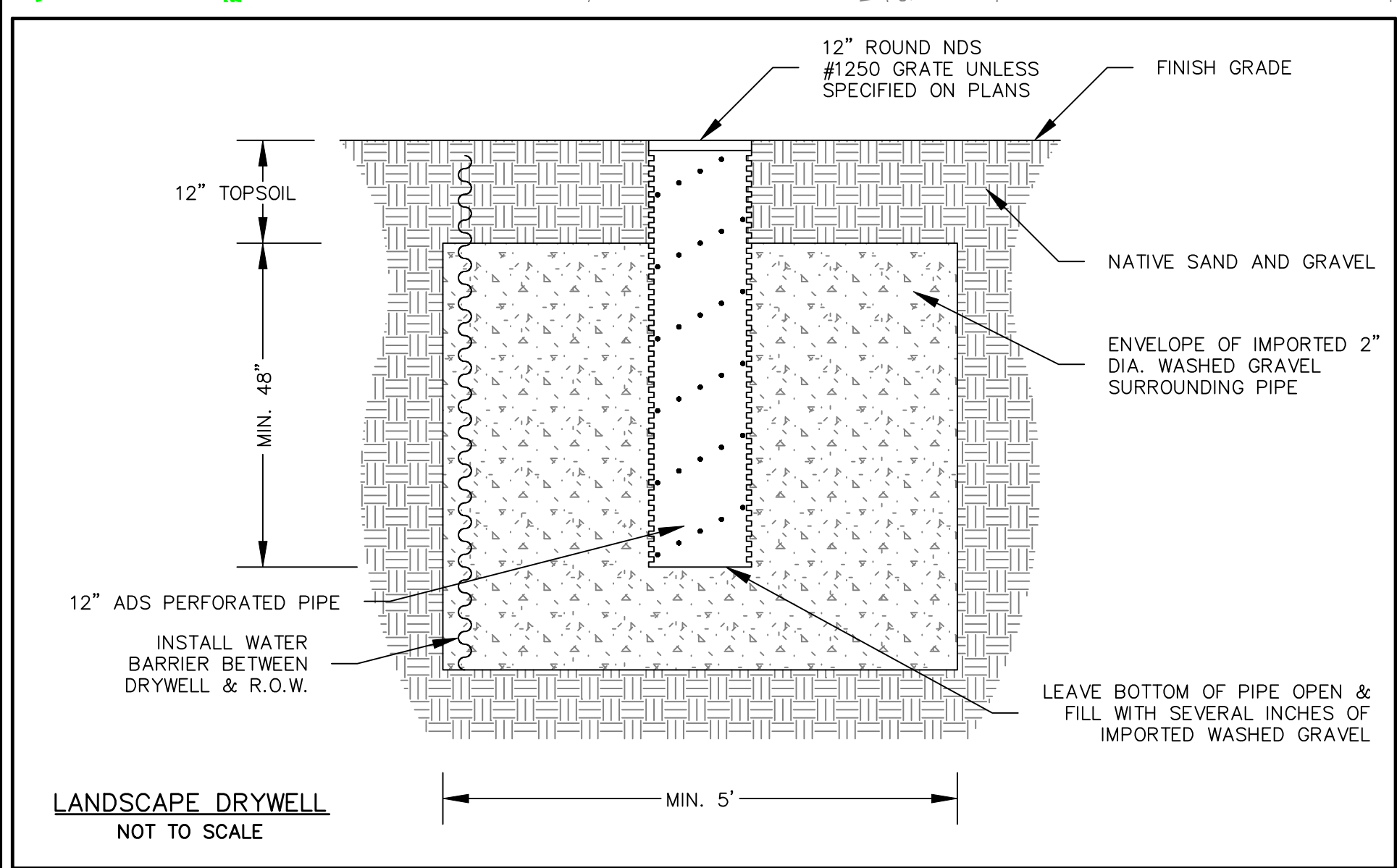
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

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

## EXHIBIT A

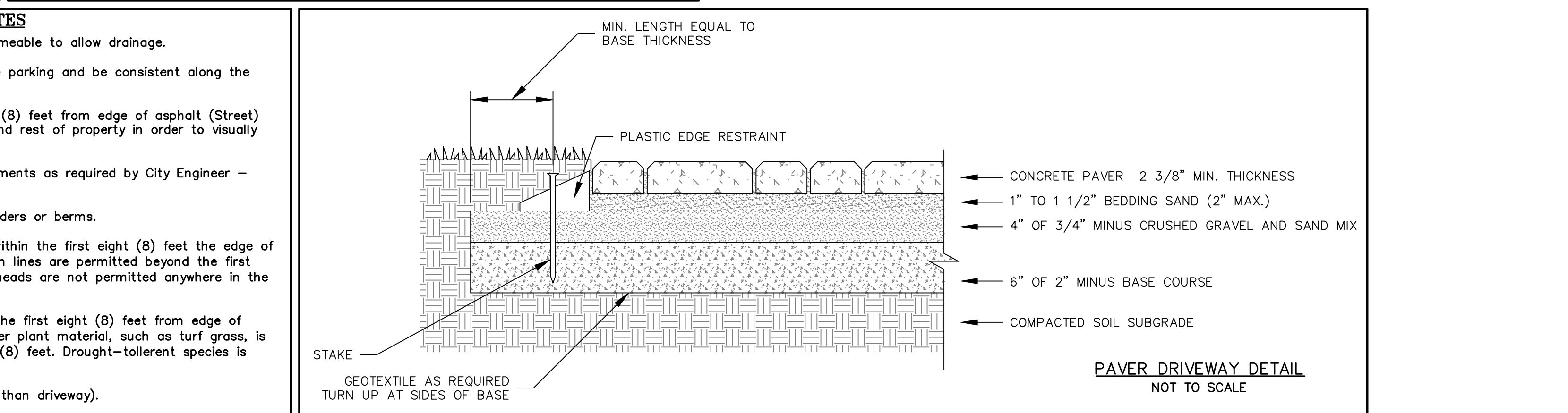
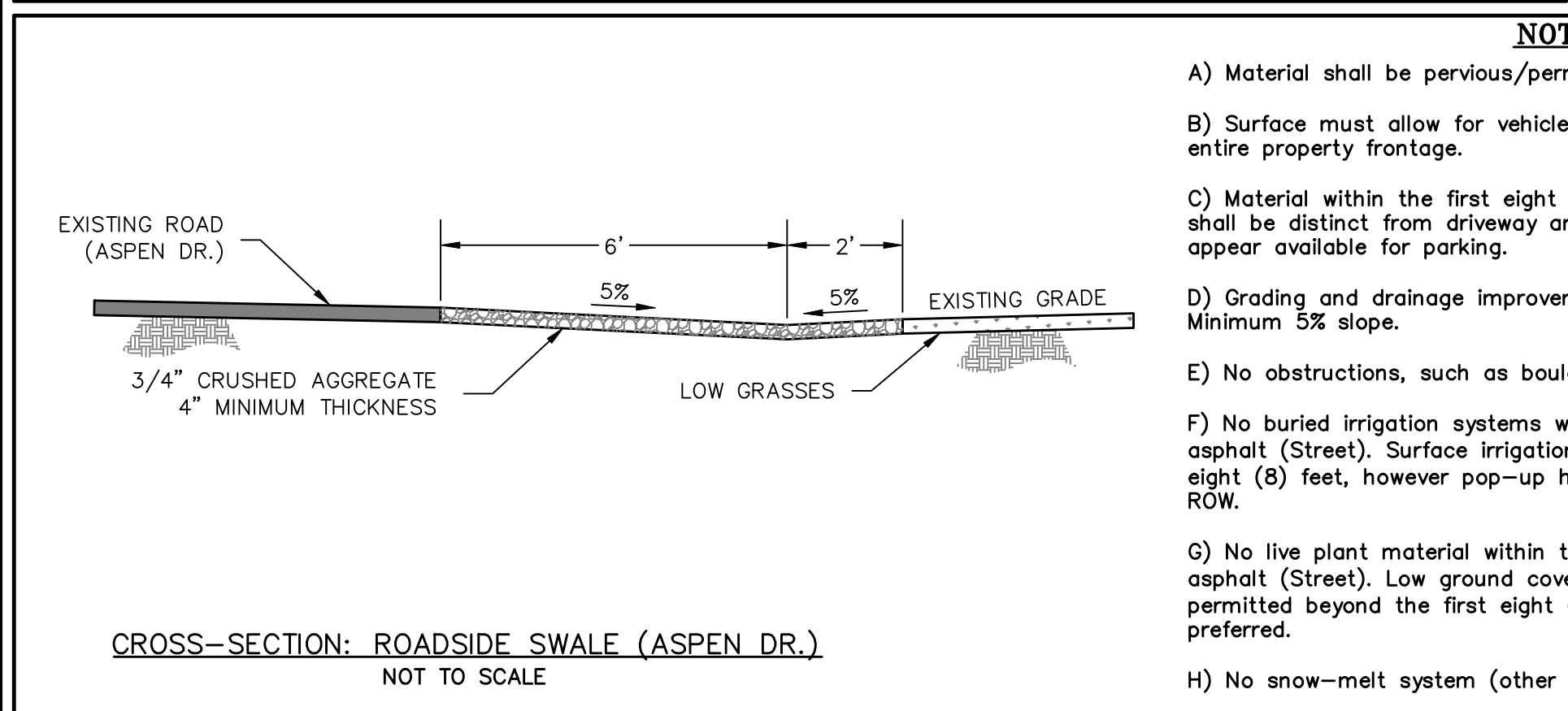


- Contractor shall be responsible for locating existing utilities prior to commencing and during construction.
- The design of the driveway, grading, and drainage improvements have only been performed within the Public Right-of-Way. See the Site and Grading Plans from Eggers Associates P.A. for the remainder of the design.
- Contractor shall assure positive drainage away from the house and driveway.
- Contractor shall be responsible for dust control during construction of all items hereon. Dust control shall be continuous during construction, 24 hours per day 7 days per week. The contractor shall follow the requirements of the Storm Water Pollution Prevention Program at all times until permanent erosion control is established.
- All construction shall be in accordance with the most current edition of the Idaho Standards for Public Works Construction, ISPMC, and the City of Ketchum, Idaho, Codes and Standards. The contractor shall be responsible for obtaining and keeping a copy of the ISPMC and the City of Ketchum Codes and Standards on site during construction.
- 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 re-established and re-monumented, at the expense of the agency or person causing their loss or disturbance under the direction of a professional land surveyor.
- 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 be required to obtain all the necessary permits prior to construction and shall check with the City of Ketchum for permits the owner may have already obtained.
- Trenches shall be backfilled and compacted to a minimum of 95% of maximum density as determined by AASHTO T-99.
- All clearing and grubbing shall conform to ISPMC Section 201 and City of Ketchum standards of excavation and backfill.
- All excavation and embankment shall conform to ISPMC Section 202 and City of Ketchum standards for excavation and backfill. Excavated subgrade shall be compacted and all unsuitable sections removed and replaced with structural fill as determined by the engineer per ISPMC Section 204. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
- All 2" minus aggregate shall be placed in conformance with ISPMC Section 802. It shall be compacted per ISPMC Section 202 and the City of Ketchum standards. 2" minus crushed aggregate material shall conform to ISPMC Section 802 Type II and to the City of Ketchum specifications. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
- All 3/4" minus aggregate shall be placed in conformance with ISPMC Section 802. It shall be compacted per ISPMC Section 202 and the City of Ketchum standards. 3/4" minus crushed aggregate for leveling course shall conform to ISPMC Table 802 Type I and to the City of Ketchum specifications. Minimum compaction of placed material shall be 95% of maximum laboratory density as determined by AASHTO T-99 or IDT T-91.
- 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).
- Alpine Enterprises Inc. is not responsible for any deviation from these plans, unless such changes have been authorized in writing.
- Boundary Information is from a 2020 Survey conducted by Benchmark Associates.



**LEGEND**

	Subject Boundary		1/2" Rebar
	Adjoiners Boundary		Power Box
	Existing Structure		Phone Box
	Edge of Asphalt		CA/TV Box
	Proposed Paver Driveway		Proposed CA/TV Box
	Proposed Gravel		Proposed Landscape Drywell
	Proposed Landscape Pavers		Sewer Manhole
	Proposed Wooden Fence		Well
	Existing Wooden Fence		Deciduous Tree
	Proposed Drainage Swale		Conifer Tree
	1" Minor Contour		Spruce Tree
	5" Major Contour		Proposed Grade
	Proposed 1" Minor Contour		Existing Grade
	Sewer Main		Proposed Spot Elevation
	Sewer Service		
	Water Main		
	Water Service		



- NOTES**
- Material shall be pervious/permeable to allow drainage.
  - Surface must allow for vehicle parking and be consistent along the entire property frontage.
  - Material within the first eight (8) feet from edge of asphalt (Street) shall be distinct from driveway and rest of property in order to visually appear available for parking.
  - Grading and drainage improvements as required by City Engineer - Minimum 5% slope.
  - No obstructions, such as boulders or berms.
  - No buried irrigation systems within the first eight (8) feet the edge of asphalt (Street). Surface irrigation lines are permitted beyond the first eight (8) feet, however pop-up heads are not permitted anywhere in the ROW.
  - No live plant material within the first eight (8) feet from edge of asphalt (Street). Low ground cover plant material, such as turf grass, is permitted beyond the first eight (8) feet. Drought-tolerant species is preferred.
  - No snow-melt system (other than driveway).