



## City of Ketchum

September 21, 2020

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to approve Right-of-Way Encroachment Agreement 20502 for placement of concrete pavers and snowmelt in the City Right-of-Way at 511 River Street**

#### Recommendation and Summary

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

**"I move to authorize the Mayor to sign Encroachment Agreement 20502 with Joseph and Carolyn Reece."**

The reasons for the recommendation are as follows:

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

#### Introduction and History

Magleby Construction, on behalf of Joseph and Carolyn Reece, submitted a Right-of-Way Encroachment Permit application for a paver driveway and subsurface snowmelt system within the Right-of-Way on E. River St.

Right-of-Way standards for residential streets were developed to achieve goals of drainage, parking, snow storage, access for emergency vehicles, and provide materials that can be reasonably maintained by the city. Concrete pavers and snowmelt systems are not maintained by the City but may be approved through an encroachment agreement.

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 20502

**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 20502**

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 JOSEPH REECE AND CAROLYN REECE, (collectively referred to as "Owner"), whose address is PO BOX 284 SUN VALLEY, ID 83353.

*RECITALS*

WHEREAS, Owner is the owner of real property described as 511 River Street ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of driveway pavers and snow melt, eight (8) feet of roadmix, seven (7) feet grass pavers with drought resistance grass, and the remaining area in the city right consists of drought tolerant landscaping and below grade irrigation in the right-of-way on 511 River 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 511 River Street, located adjacent to the real property described as 511 River Street 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 modifications to the improvements identified in Exhibit A shall be approved by the City of Ketchum prior to any modification 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.



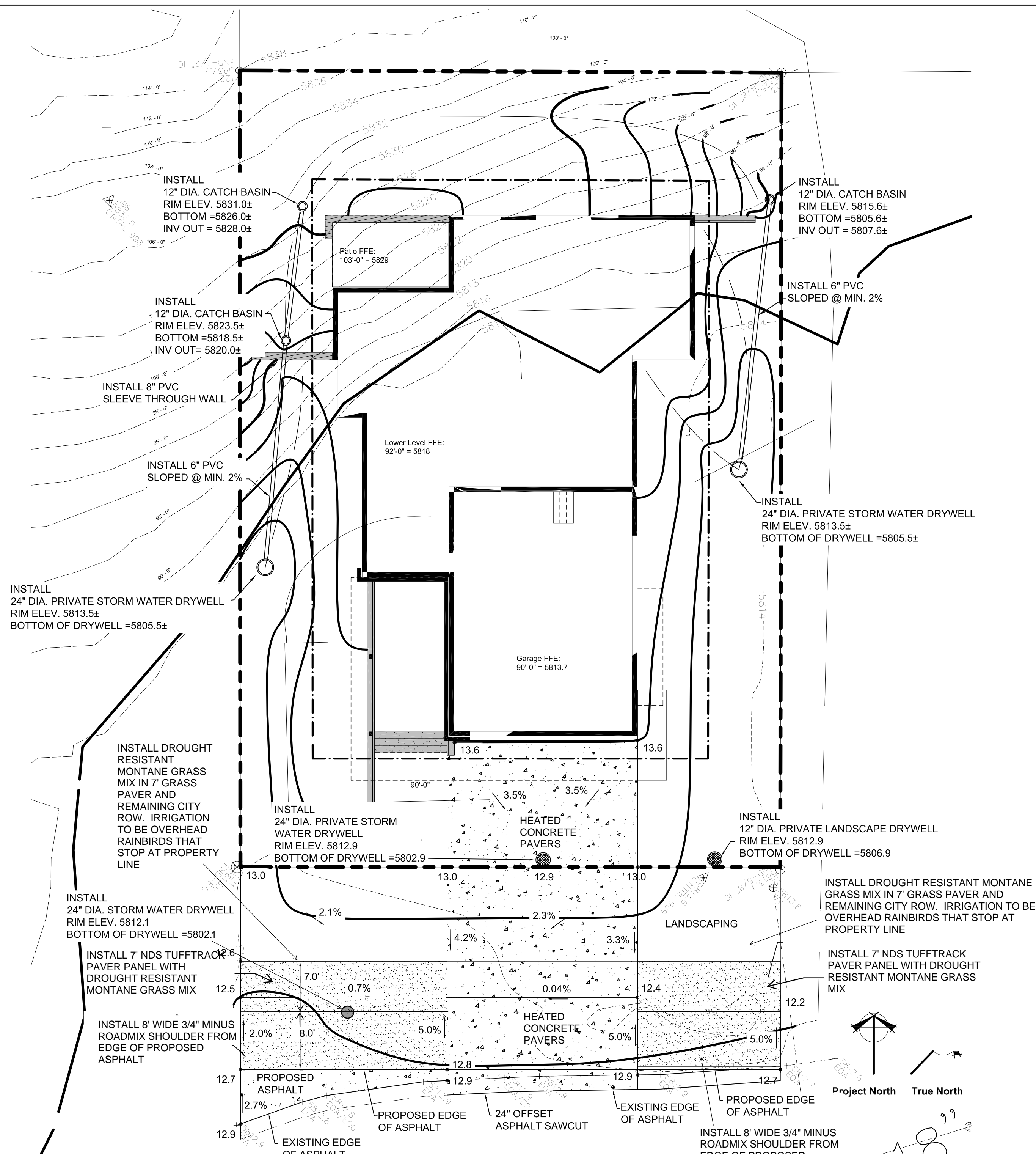
STATE OF IDAHO )  
 ) ss.  
County of Blaine )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, 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.

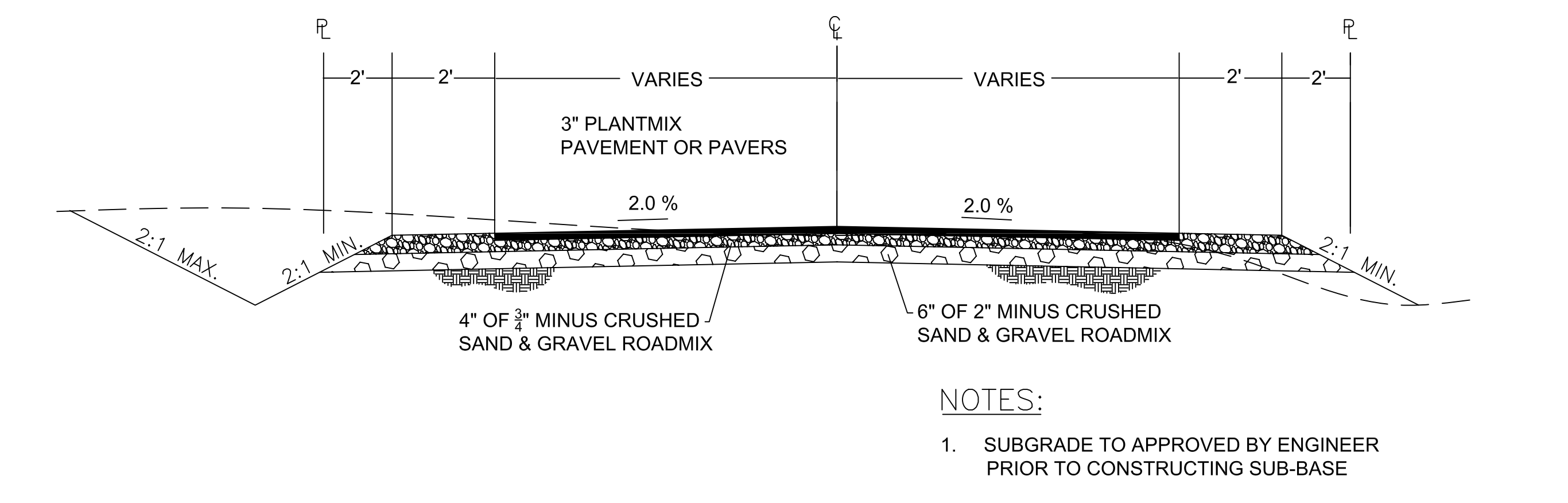
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

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

**EXHIBIT "A"**



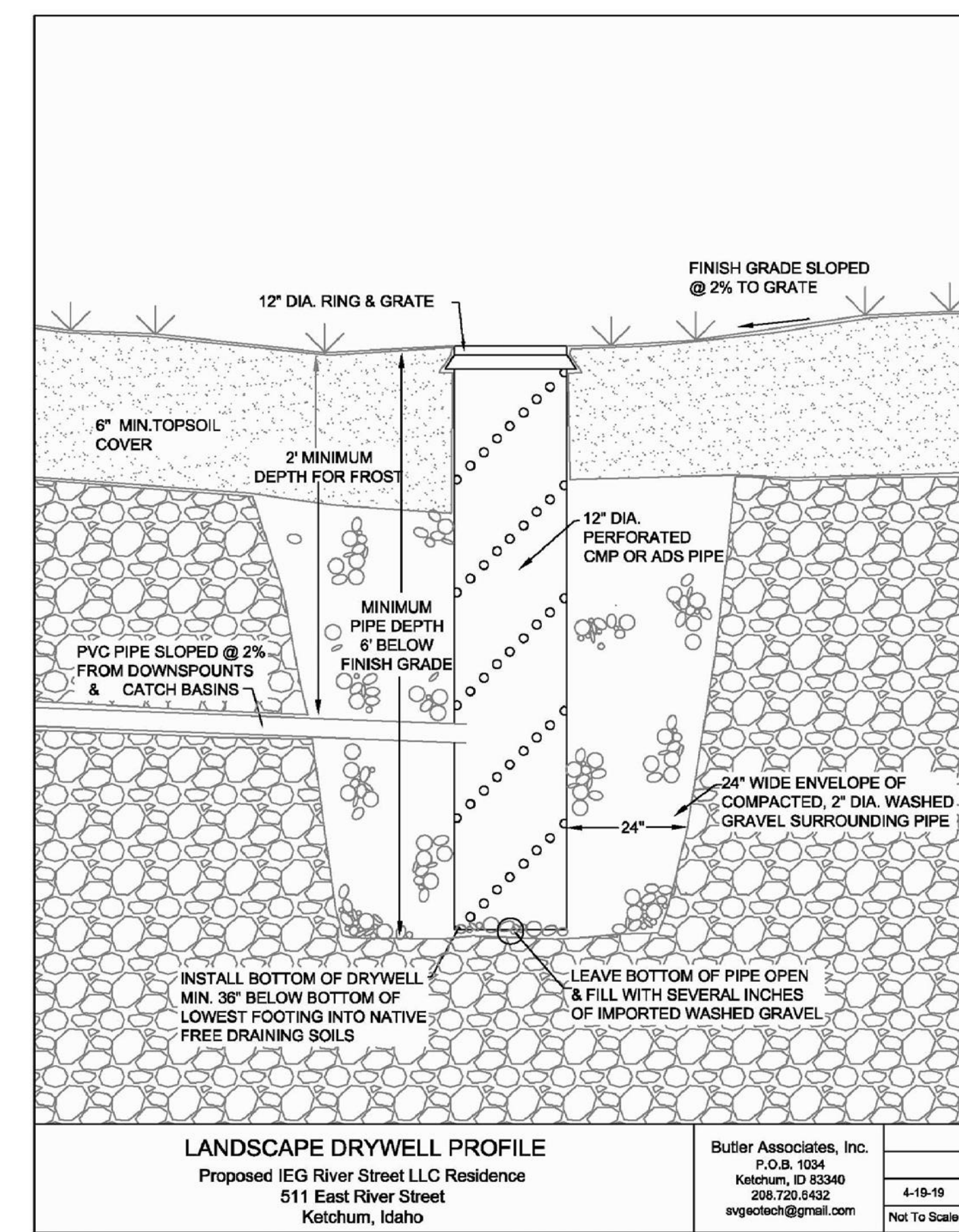
**GRADING SITE PLAN**  
Scale 1" = 10'



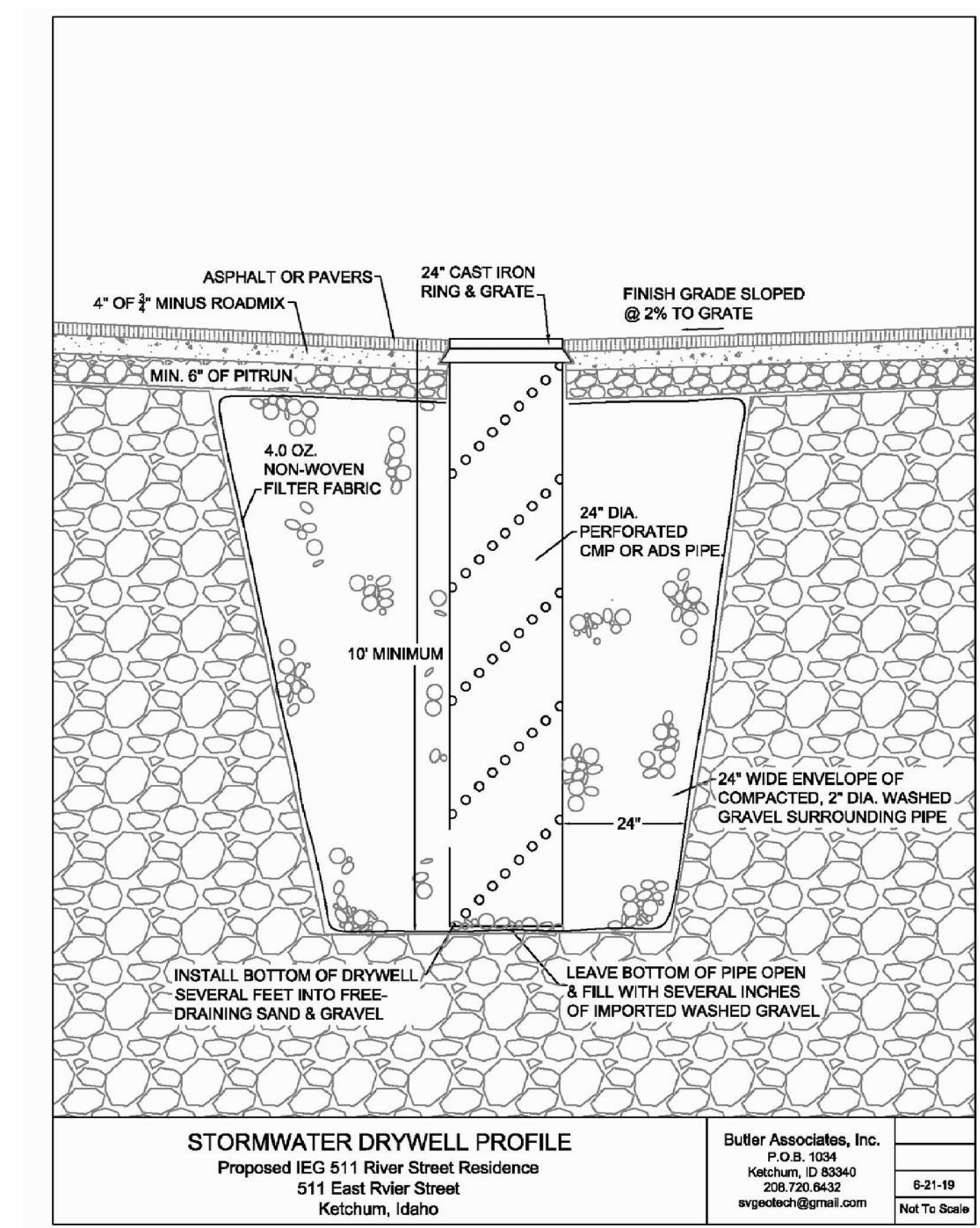
- NOTES:**
- SUBGRADE TO APPROVED BY ENGINEER PRIOR TO CONSTRUCTING SUB-BASE

**TYPICAL DRIVEWAY STRUCTURAL CROSS SECTION**  
Not To Scale

- GRADING PLAN NOTES**
- The contractor is responsible for contacting DIGLINE to locate existing utilities in order to protect all utilities.
  - All drywells shall be located at least 10 feet from existing water mains.
  - Any revisions to the grading plan shall be reviewed by the architect and engineer.
  - The contractor shall contact the Ketchum Street Department before commencing with any work in the right-of-way.
  - All drywells shall extend through fine grain surficial soils and terminate into native free-draining sand and gravel soils.
  - All site surface runoff shall be captured and directed to on-site drywells.
  - 12" Drywells shall be constructed of perforated ADS pipe and capped with a plastic green grate.
  - Drywells shall be terminated at least 2 feet below the lowest footing in native free-draining sand and gravel.
  - The driveway subgrade soils shall be approved by engineer prior to constructing structural road section.
  - All structural fill shall be compacted to at least 95% of the maximum dry density of the material according to ASTM D-698.
  - All trees shall be removed from the right-of-way.
  - The Ketchum Street Department requested the proposed edge of asphalt to be 28' from the property line despite what is indicated on the survey.



**LANDSCAPE DRYWELL PROFILE**  
Proposed IEG River Street LLC Residence  
511 East River Street  
Ketchum, Idaho



**STORMWATER DRYWELL PROFILE**  
Proposed IEG 511 River Street Residence  
511 East River Street  
Ketchum, Idaho

**C-1**

**GRADING & DRAINAGE PLAN**  
for the  
**IEG RIVER STREET LLC RESIDENCE**  
located on  
511 East River Street  
Prepared for IEG River Street LLC

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**BUTLER ASSOCIATES, INC.**  
Geotechnical & Civil Engineering & Land Planning Consulting  
P.O. Box 1034  
Ketchum, ID 83340  
Office: (208) 720-6432  
Email: svgeotech@gmail.com

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Sheet 1 of 1	NO	DATE	BY				
PROJECT PATH AND PRINT DATE 511 River Street-Grading & Drainage							

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Butler Associates, Inc.  
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Ketchum, ID 83340  
208.720.6432  
svgeotech@gmail.com  
4-19-19  
Not To Scale