



City of Ketchum

September 21, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Cutter Right-of-Way Encroachment Agreement 20507

Recommendation and Summary

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

"I move to authorize the Mayor to sign Encroachment Agreement 20507 with Edward Cutter."

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 within the City ROW
- The improvements provide public benefit for snow storage and parking

Introduction and History

Bashista Construction, on behalf of Edward Cutter, submitted a Right-of-Way Encroachment Permit application for a dry stack retaining wall, paver driveway, subsurface snowmelt system and a drywell within the Right-of-Way on N Walnut Avenue.

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.

Retaining walls are not included in the city's current Right-of-Way standards, staff recommends approval of the improvements due to the steep topography of the site. The retaining wall was located for public benefit by providing room for parking, drainage, and snow storage.

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 20507

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 20507

THIS AGREEMENT, made and entered into this ____ day of ____, 2020, by the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho, and EDWARD CUTTER, (collectively referred to as "Owner"), whose address is PO BOX 7330 KETCHUM, ID 83340.

RECITALS

WHEREAS, Owner is the owner of real property described as 820 N Walnut Avenue ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit placement of a concrete paver driveway, subsurface snowmelt system, drystack retaining wall, and a drywell within the right-of-way on N Walnut Avenue. 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 820 N Walnut Avnue, 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.

OWNER:

CITY OF KETCHUM:

By: _____

By: _____
Neil Bradshaw
Its: Mayor

STATE OF _____,)
) ss.
County of _____.

On this ____ day of _____, 2020, before me, the undersigned Notary Public in and for said State, personally appeared _____, known to me to be the 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 _____

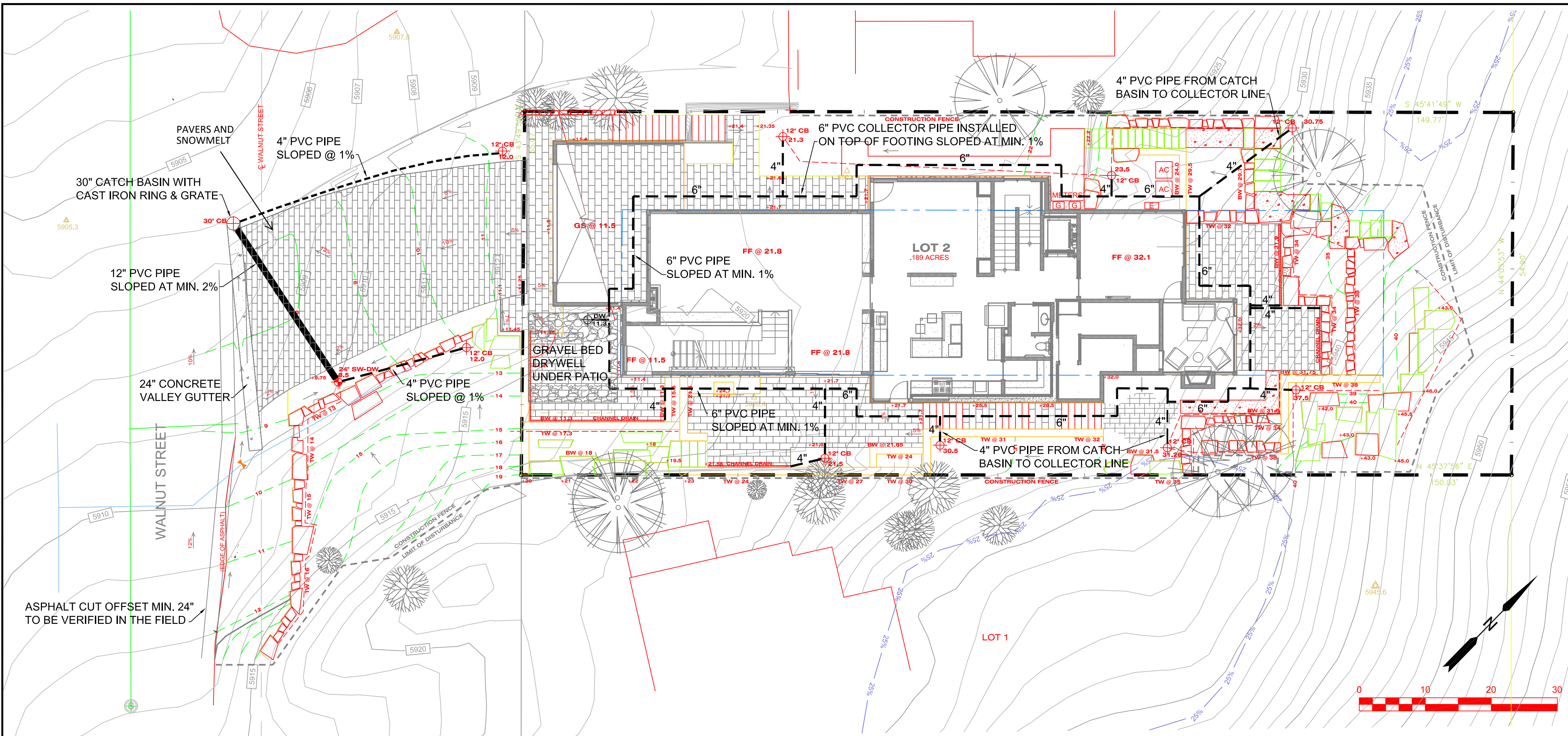
STATE OF IDAHO)
) ss.
County of Blaine)

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 City Administrator 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.

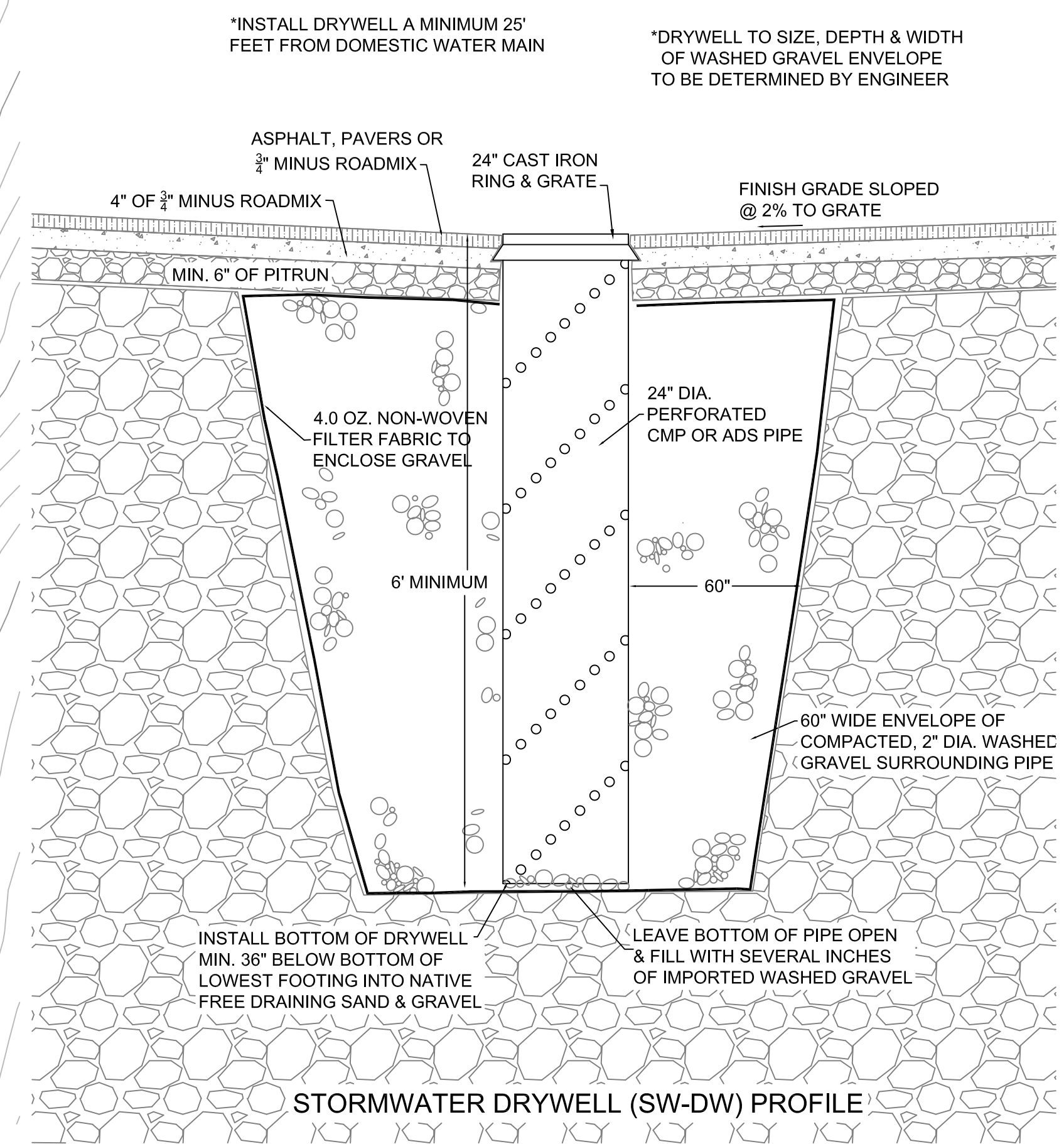
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"

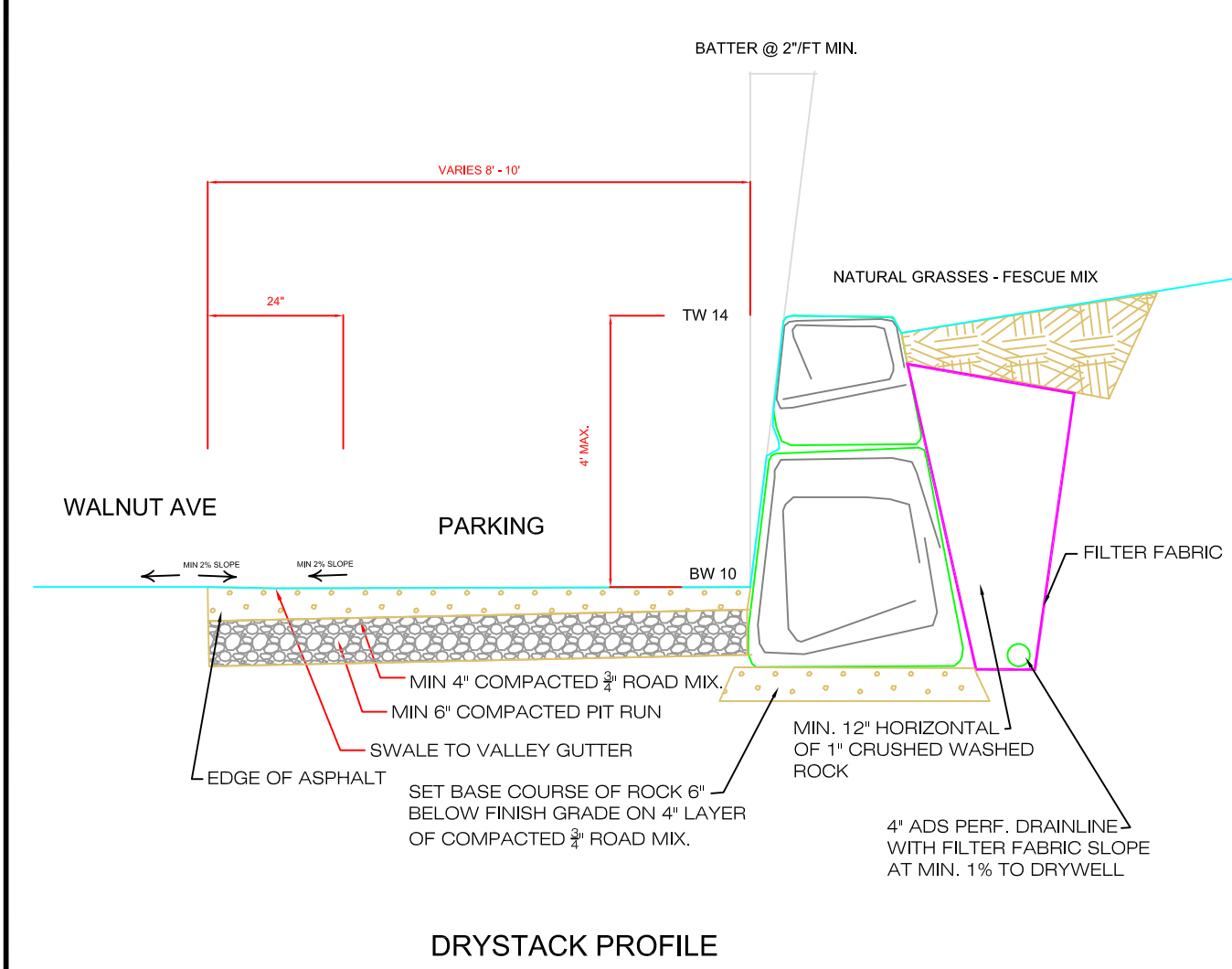


SITE PLAN



STORMWATER DRYWELL (SW-DW) PROFILE

- GRADING & DRAINAGE NOTES**
- The impervious areas consist of patios, walkways and the roof and totals approximately 8,242 s.f.
 - Due to the bedrock encountered during the geotechnical report subsurface investigation all surface runoff shall be collected by catch basins and trench drains and piped to a drywell located under the patio adjacent to the garage.
 - A 6" solid PVC collector pipe shall be installed on top of footing or at least 2 feet below finish grade around the entire structure to collect runoff from catch basins & trench drains. The pipe shall be sloped at a min. of 1% and terminate in the patio drywell.
 - The 13.5' x 13.5' patio drywell shall be constructed at least 5 feet below the patio surface. 3' of soil or structural fill will cover the top of the drywell to support the patio or plantings.
 - See the "Patio Drywell Infiltration System Sizing Worksheet" for drywell dimensions.
 - Runoff from the driveway and Walnut Street right-of-way runoff shall be directed to catch basins that terminate in a stormwater drywell located on the south side of the driveway within the right-of-way.
 - See the "Stormwater Drywell Profile" for drywell dimensions.
 - The contractor is responsible for contacting DigiLine Utility Locate to mark all existing utilities in order to protect all utilities.
 - Any revision during installation of the drainage plan should be reviewed by the engineer.
 - The paver driveway is snowmelted by a hydronic heating system.



DRystack PROFILE

Catch Basins

30" Catch Basin /w Inlet ISO View

Oldcastle Precast
2240 S. Yellowstone Hwy, Idaho Falls, Idaho 83402
Phone: 208-322-6150 Fax: 208-322-9701
www.oldcastleprecast.com

File Name: 23079CB01
Issue Date: 3/2018
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VALLEY GUTTER

Standard Drawing NO. SD-708

IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION

Patio Drywell Infiltration System Sizing Worksheet

The proposed infiltration system consists of a drywell to infiltrate stormwater from 9,214 s.f. of impervious surface including roofs and driveways. The assumed storm duration is 1 hour.

Onsite Native Soil Infiltration		Assumed T _i : 15 min	
Soil Infiltration Rate:	90 in/hr	Intensity (25-yr, 15 min):	0.43 in/hr
Factor of Safety:	1.5	Intensity (25-yr, 1 hr):	1.72 in/hr
Design Infiltration Rate:	60 in/hr		

Total Site Infiltration Sizing

Proposed Impervious Area:	9214 sf
Proposed Impervious Area:	0.21 ac
Runoff Coefficient:	1
25-Year Design Runoff:	0.36 cfs

Drywell Structure Dimensions

Drywell Manhole Diameter:	24 in
Drain Rock Thickness:	78 in
Drain Rock Void Ratio:	0.4
Drywell Rim Elevation:	11.00
Lowest Inlet Invert Elevation:	8.00
Depth to Bottom of Drywell:	5.0 ft
Bottom Elevation:	6.00

Drywell Stage-Storage-Discharge

Drywell Stage (ft)	Water Surface Depth (ft)	Elevation (ft)	Storage in MH (cf)	Storage in Drain Rock (cf)	Total Storage (cf)	Bottom Wetted Area (sf)	Side Wetted Area (sf)	Total Wetted Area (sf)	Drywell Infiltration Flow Rate (cfs)
0.00	5.00	6.00	0.0	0.0	0.0	176.7	0.0	176.7	0.245
0.20	4.80	6.20	0.6	13.9	14.5	176.7	9.4	186.1	0.259
0.40	4.60	6.40	1.3	27.8	29.0	176.7	18.8	195.6	0.272
0.60	4.40	6.60	1.9	41.7	43.5	176.7	28.3	205.0	0.285
0.80	4.20	6.80	2.5	55.5	58.1	176.7	37.7	214.4	0.298
1.00	4.00	7.00	3.1	69.4	72.6	176.7	47.1	223.8	0.311
1.20	3.80	7.20	3.8	83.3	87.1	176.7	56.5	233.3	0.324
1.40	3.60	7.40	4.4	97.2	101.6	176.7	66.0	242.7	0.337
1.60	3.40	7.60	5.0	111.1	116.1	176.7	75.4	252.1	0.350
1.80	3.20	7.80	5.7	125.0	130.6	176.7	84.8	261.5	0.363
2.00	3.00	8.00	6.3	138.9	145.1	176.7	94.2	271.0	0.376

Drywell Design
BY: SB DATE: 12/11/17