



City of Ketchum

May 2, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to approve Right-of-Way Encroachment Agreement 22770 for placement of concrete pavers and snowmelt within the City Right-of-Way.

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 22770 with James and Sandra Figge."

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

Kurt Eggers on behalf of James and Sandra Figge submitted a Right-of-Way Encroachment Permit application to install a concrete paver driveway with snowmelt within the City's Right-of-Way along 106 Aspen Drive.

Right-of-Way standards were developed 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 22770

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 22770

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 and James and Sandra Figge, (collectively referred to as “Owner”), whose address is PO Box 4995 Ketchum, ID 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 placement of concrete pavers and a snowmelt system 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;

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 Aspen Drive 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: _____
James Figge

By: _____
Neil Bradshaw
Its: Mayor

By: _____
Sandra Figge

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

On this ____ day of _____, 2022, before me, the undersigned Notary Public in and for said State, personally appeared James and Sandra Figge, known or identified to me to be the owner(s) of 106 Aspen Drive, a person who executed the foregoing instrument on behalf of said limited liability company and acknowledged to me that said limited liability company 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 _____

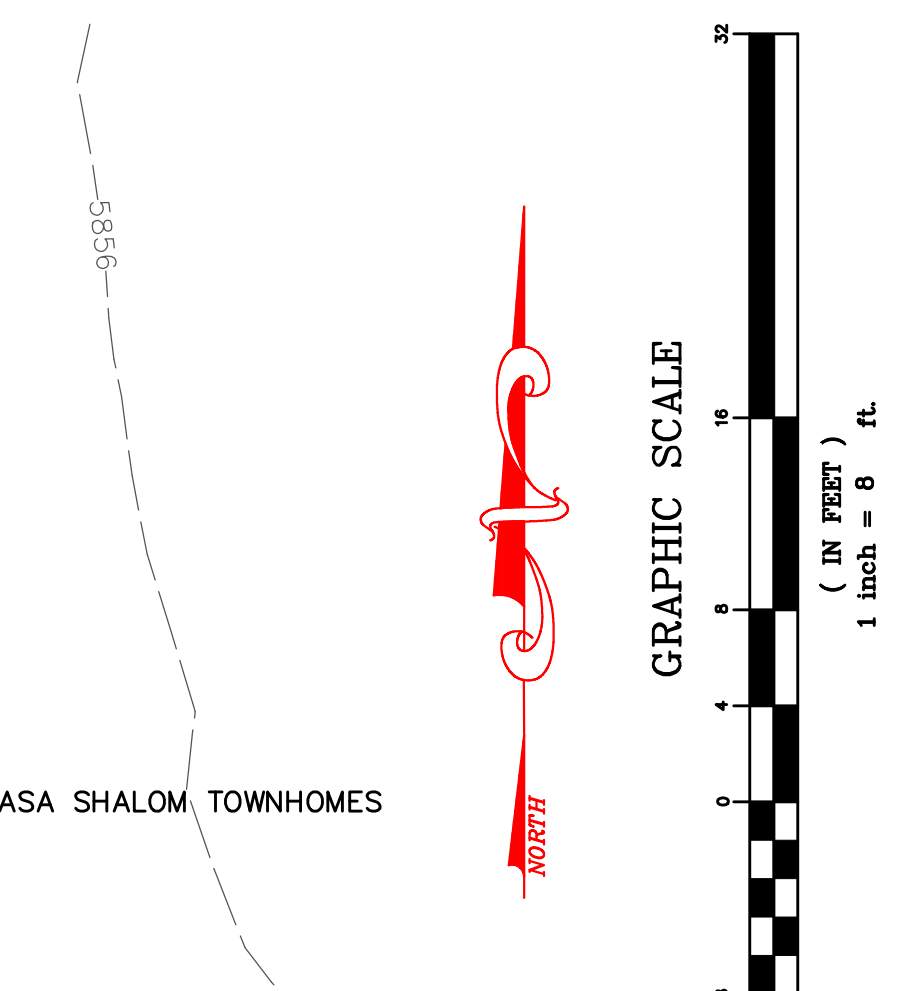
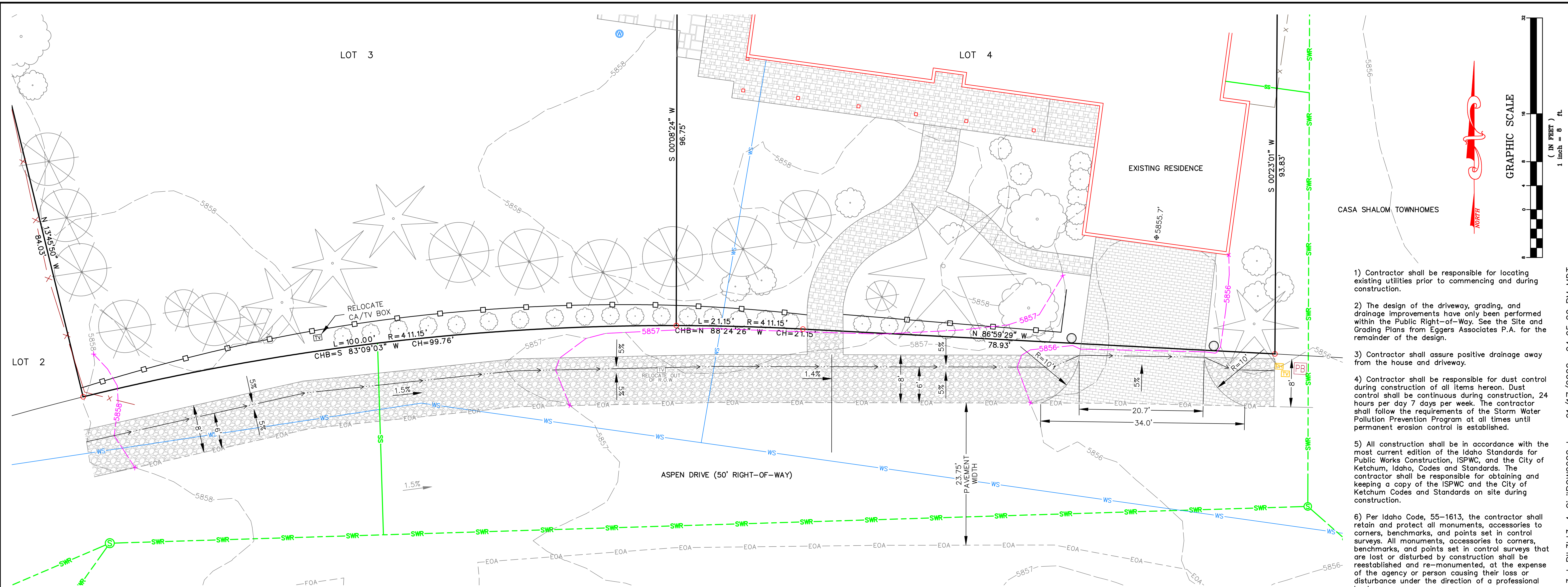
STATE OF IDAHO)
) ss.
County of Blaine)

On this ___ day of _____, 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.

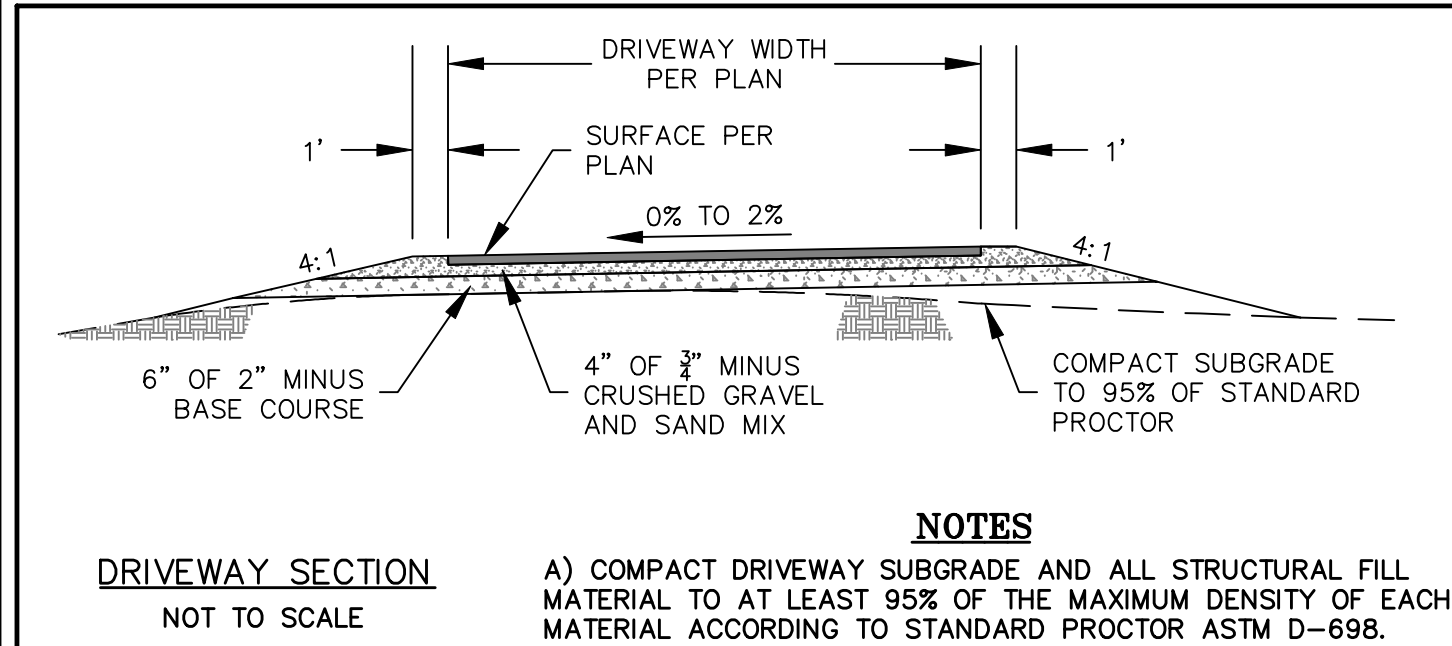
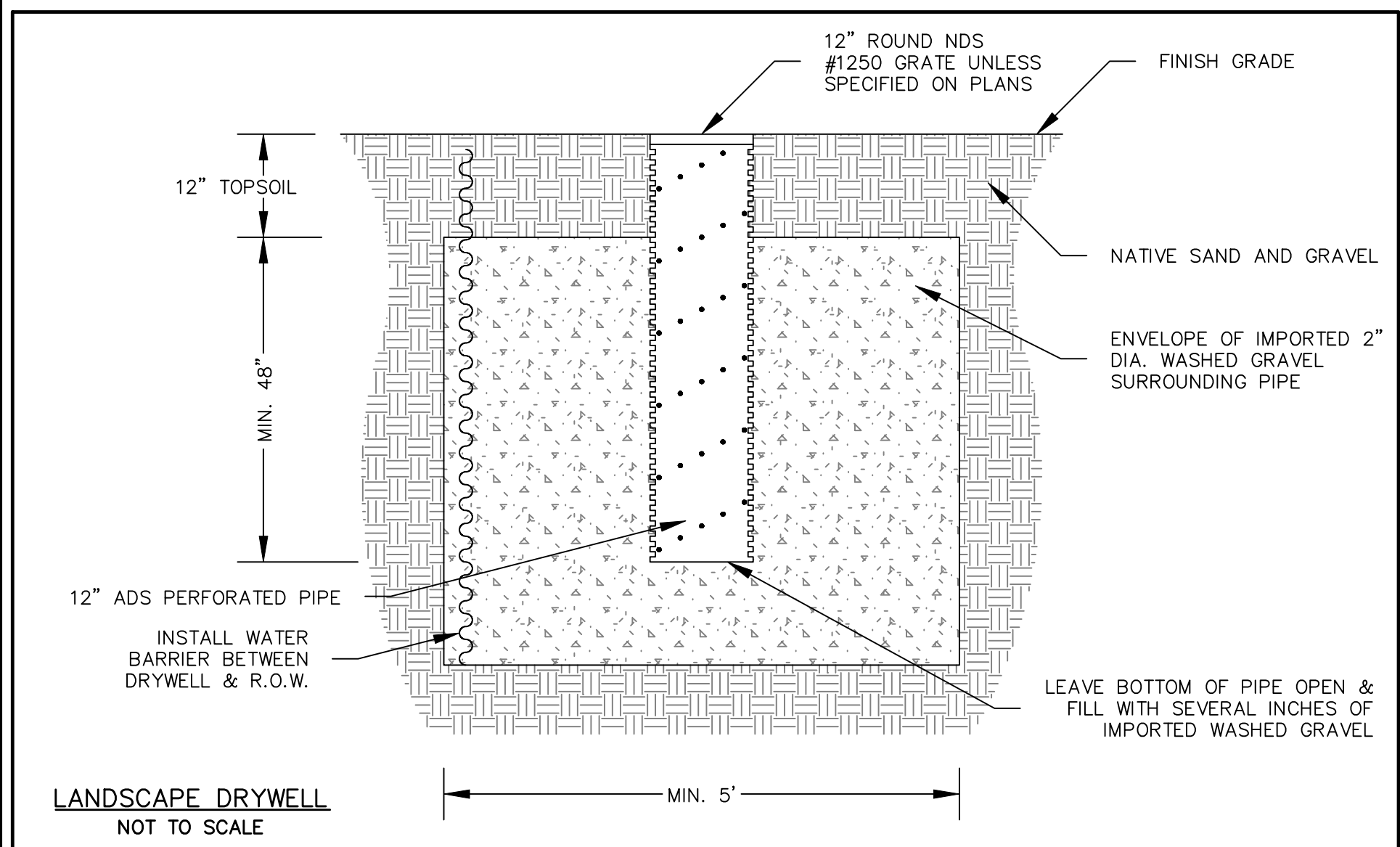
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for _____
Residing at _____
Commission expires _____

EXHIBIT "A"

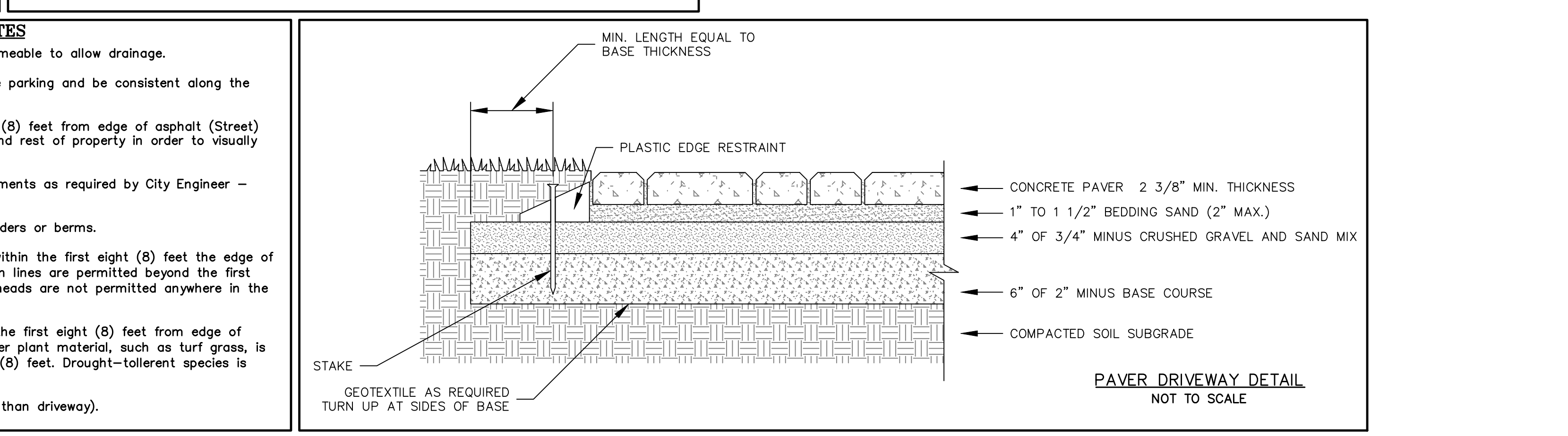
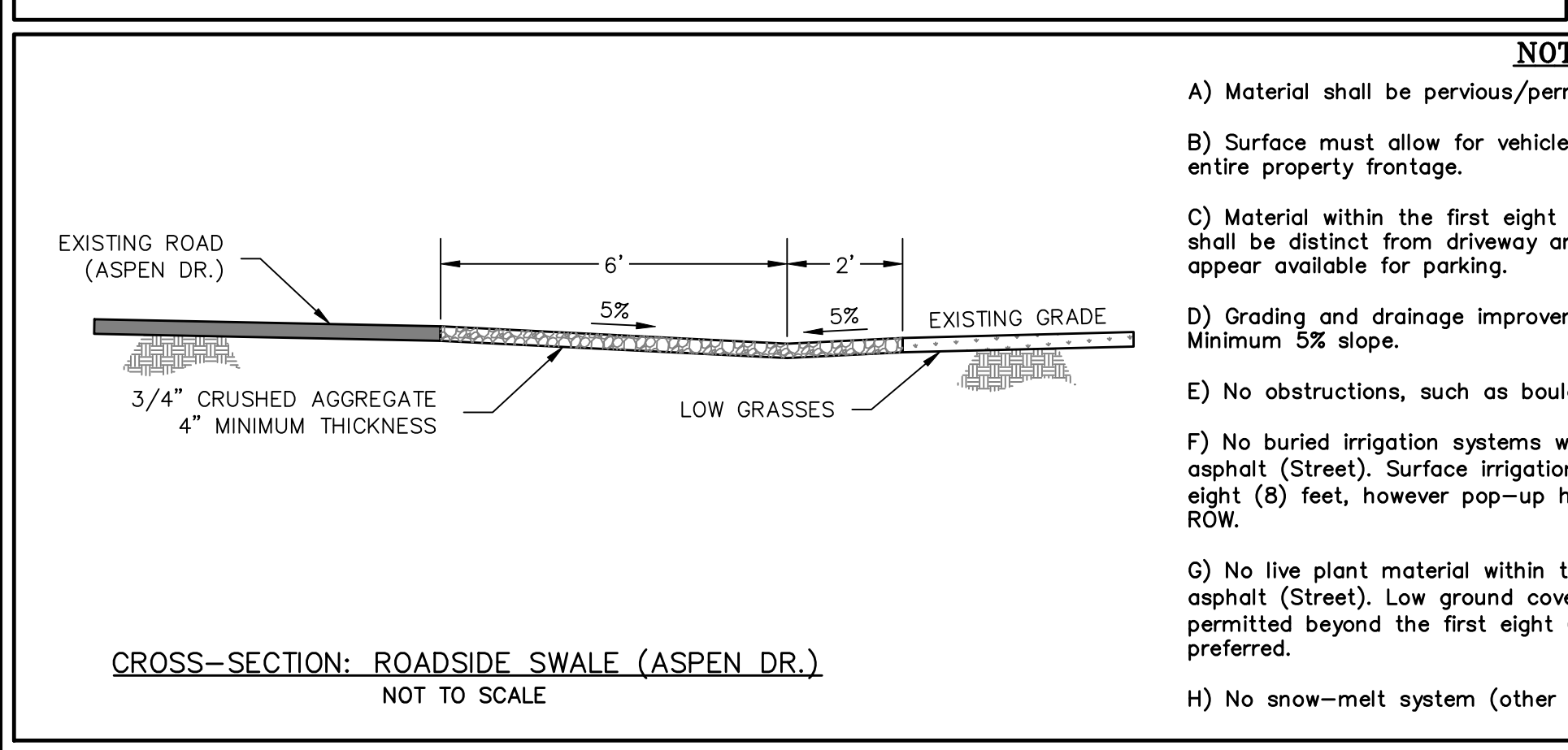


- 1) Contractor shall be responsible for locating existing utilities prior to commencing and during construction.
- 2) The design of the driveway, grading, and drainage improvements have only been performed within the Public Right-of-Way. See the Site and Grading Plans from Eggers Associates P.A. for the remainder of the design.
- 3) Contractor shall assure positive drainage away from the house and driveway.
- 4) 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.
- 5) 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.
- 6) 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 under the direction of a professional land surveyor.
- 7) 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.
- 8) 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.
- 9) Trenches shall be backfilled and compacted to a minimum of 95% of maximum density as determined by AASHTO T-99.
- 10) All clearing and grubbing shall conform to ISPMC Section 201 and City of Ketchum standards of excavation and backfill.
- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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).
- 15) Alpine Enterprises Inc. is not responsible for any deviation from these plans, unless such changes have been authorized in writing.
- 16) Boundary Information is from a 2020 Survey conducted by Benchmark Associates.



LEGEND

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



- NOTES**
- A) Material shall be pervious/permeable to allow drainage.
 - B) Surface must allow for vehicle parking and be consistent along the entire property frontage.
 - C) 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.
 - D) Grading and drainage improvements as required by City Engineer - Minimum 5% slope.
 - E) No obstructions, such as boulders or berms.
 - F) 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.
 - G) 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.
 - H) No snow-melt system (other than driveway).