



CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

- The existing driveway grade does not conform to Fire Department standards, thereby limiting the ability of emergency services to respond quickly and efficiently in the event of an incident. The proposed snowmelt system will keep the driveway free of snow and ice during winter allowing an ambulance to safely access the home in case of an emergency and will enhance the existing driveway’s functionality and safety.
- The proposed driveway improvements will not impact drainage, snow removal, or city operations along 5th Street and complies with the standards for permanent right-of-way encroachments specified in Ketchum Municipal Code §12.12.060.
- During their meeting on April 11, 2023, the City Council provided policy direction that snowmelt systems for private driveways are prohibited from encroaching within residential public rights-of-way unless required by the Fire or Streets departments. The City Council commented that their policy direction would apply to new projects and that they would approve the Right-of-Way Encroachment Agreements for the 6 building permits that have been issued and are currently under construction. The snowmelt system for the existing driveway at 671 E 5th Street is both required by the Fire Department to accommodate ambulance access and is one of the 6 building permits that was issued prior to City Council’s policy direction prohibiting new snowmelt systems within residential rights-of-way.

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

Sustainability Impact:

Financial Impact:

None OR Adequate funds exist in account:	None
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Attachments:

- | |
|-------------------------------------|
| 1. ROW Encroachment Agreement 22825 |
|-------------------------------------|

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 22825

THIS AGREEMENT, made and entered into this _____ day of April, 2023, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and CHARLES STEVENSON, representing 671 E 5th Street Holdings LLC ("Owner"), whose address is 611 North Street, Greenwich, Connecticut 06830.

RECITALS

WHEREAS, Owner is the owner of real property described as 671 E 5th Street ("Subject Property"), located within the City of Ketchum, State of Idaho; and

WHEREAS, Owner wishes to permit the placement of a paver driveway and snowmelt system within the public right-of-way on East 5th 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 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 paver driveway and snowmelt system identified in Exhibit "A" within the public right-of-way on East 5th Street, 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 of Ketchum prior to any modifications taking place.

3. Snowmelt systems installed in the public right-of-way shall be installed as certified in Exhibit "B - Residential Snowmelt Installation Certificate" 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.

5. 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.

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.

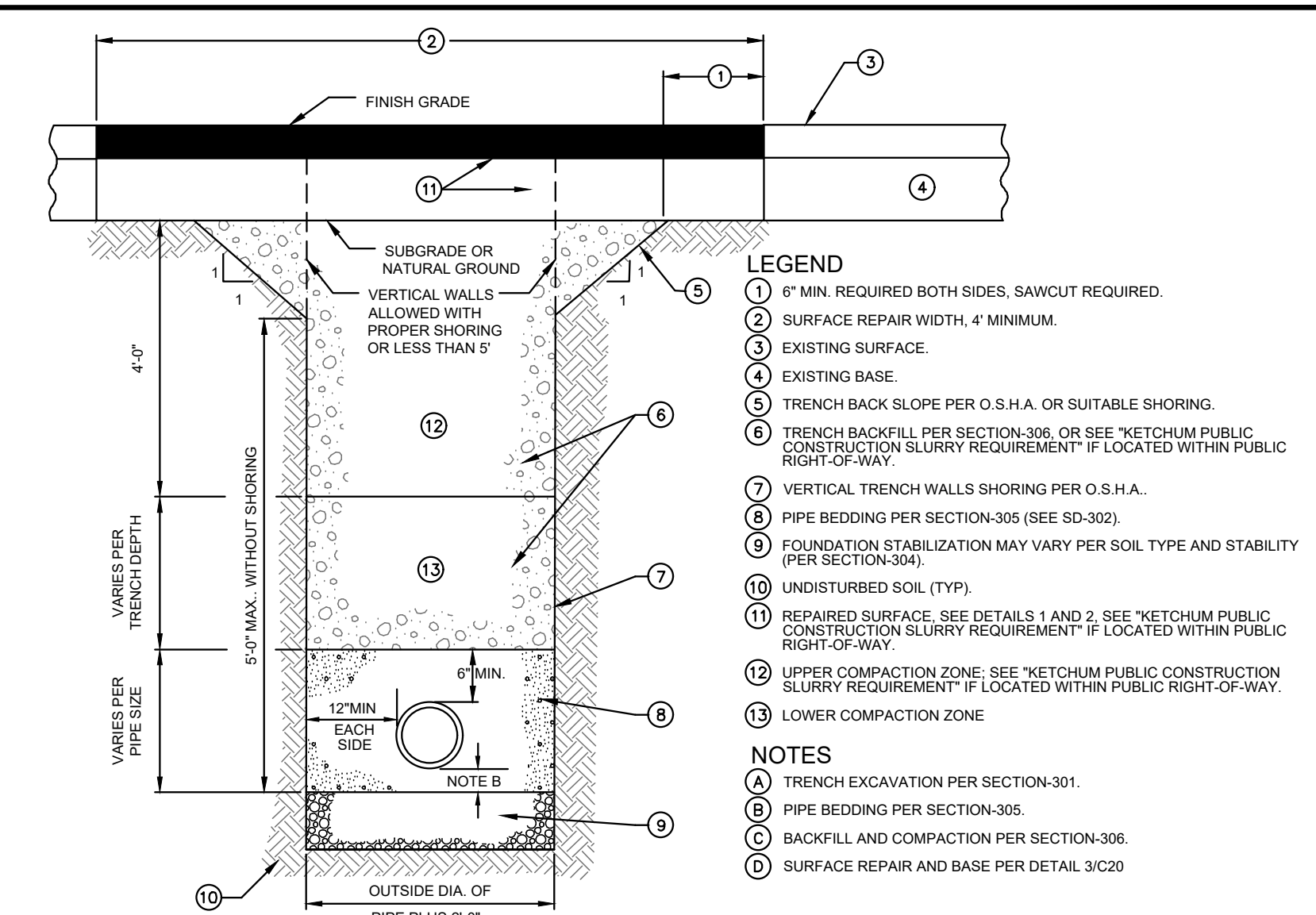
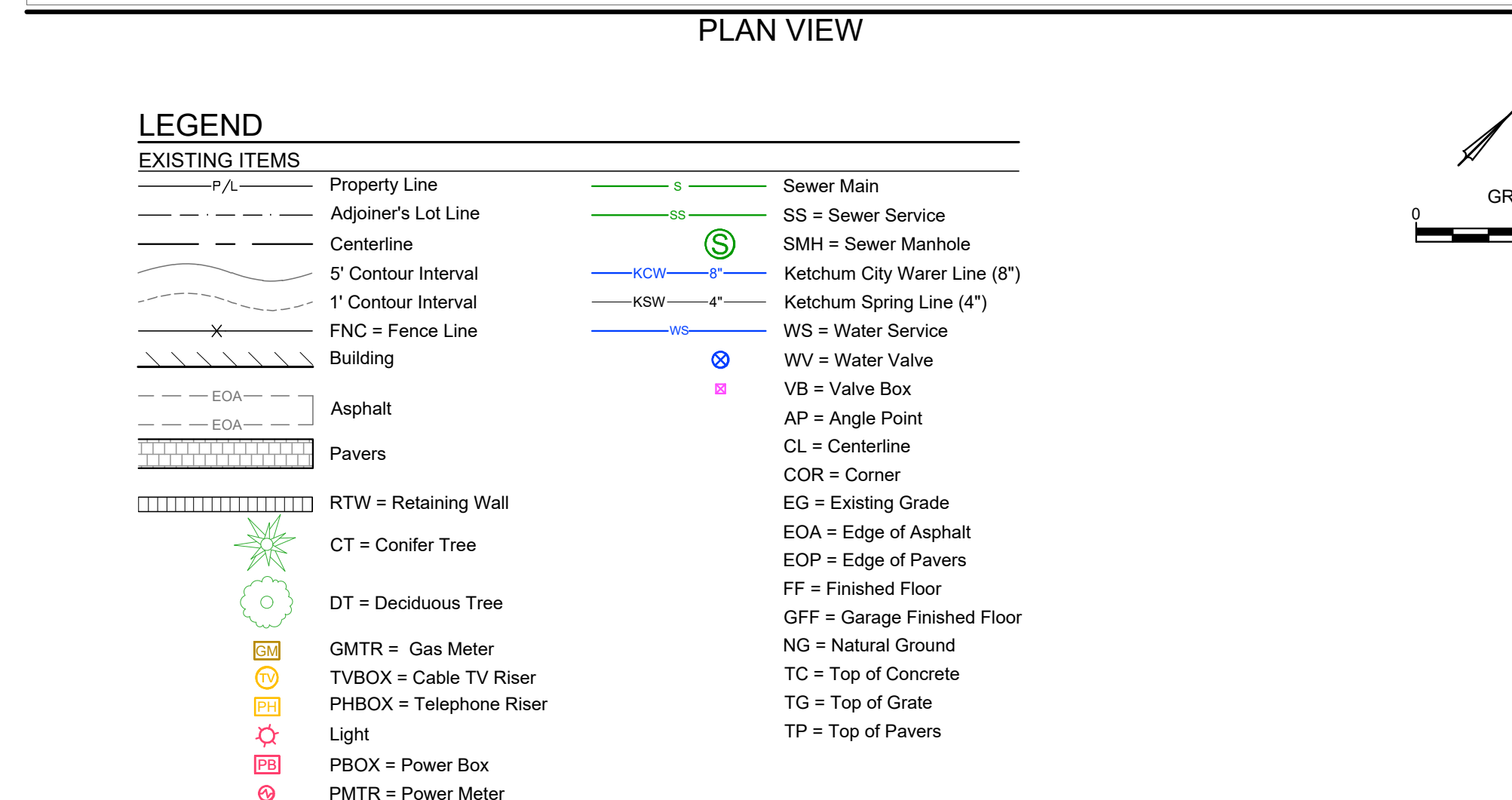
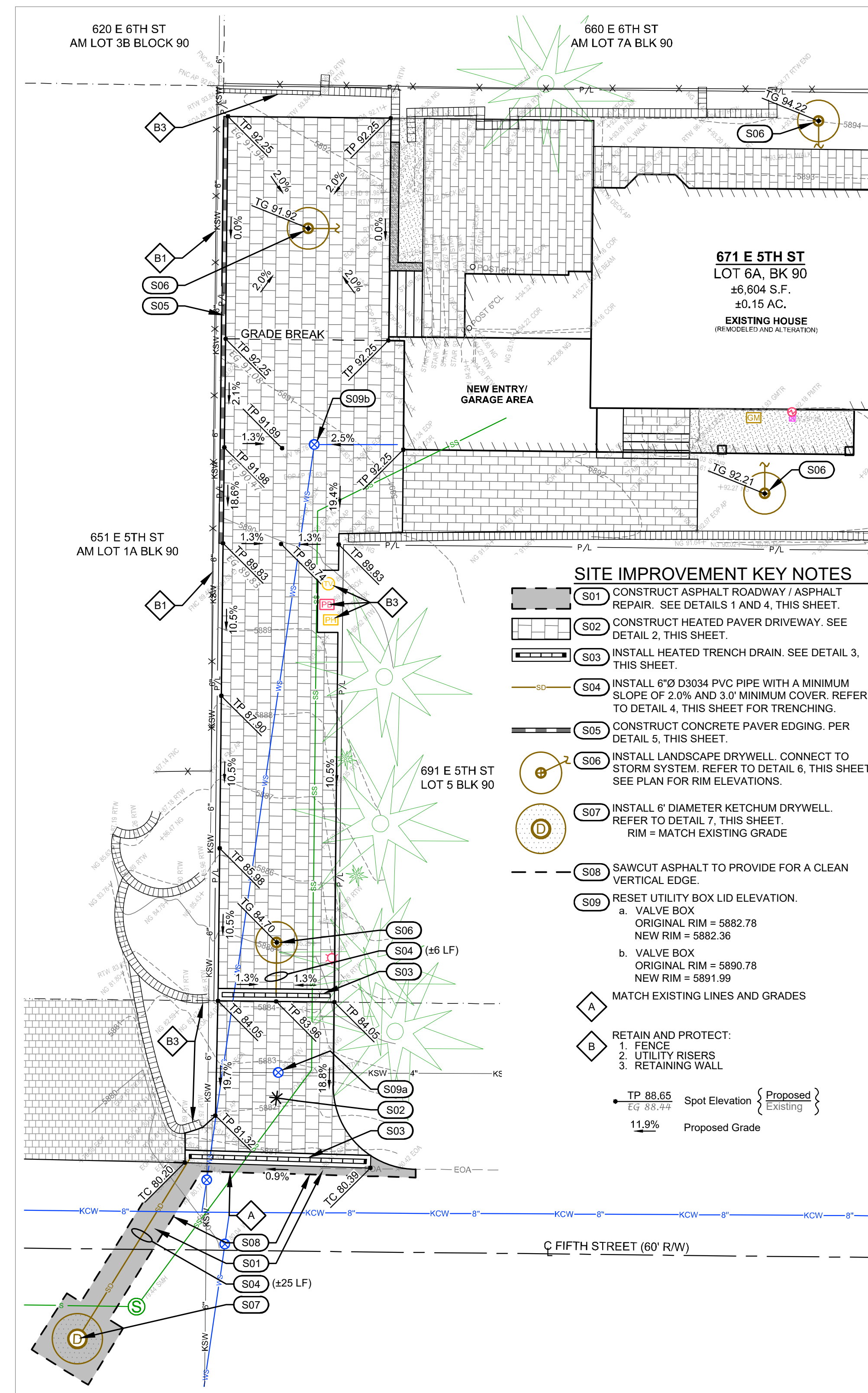
12. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

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.

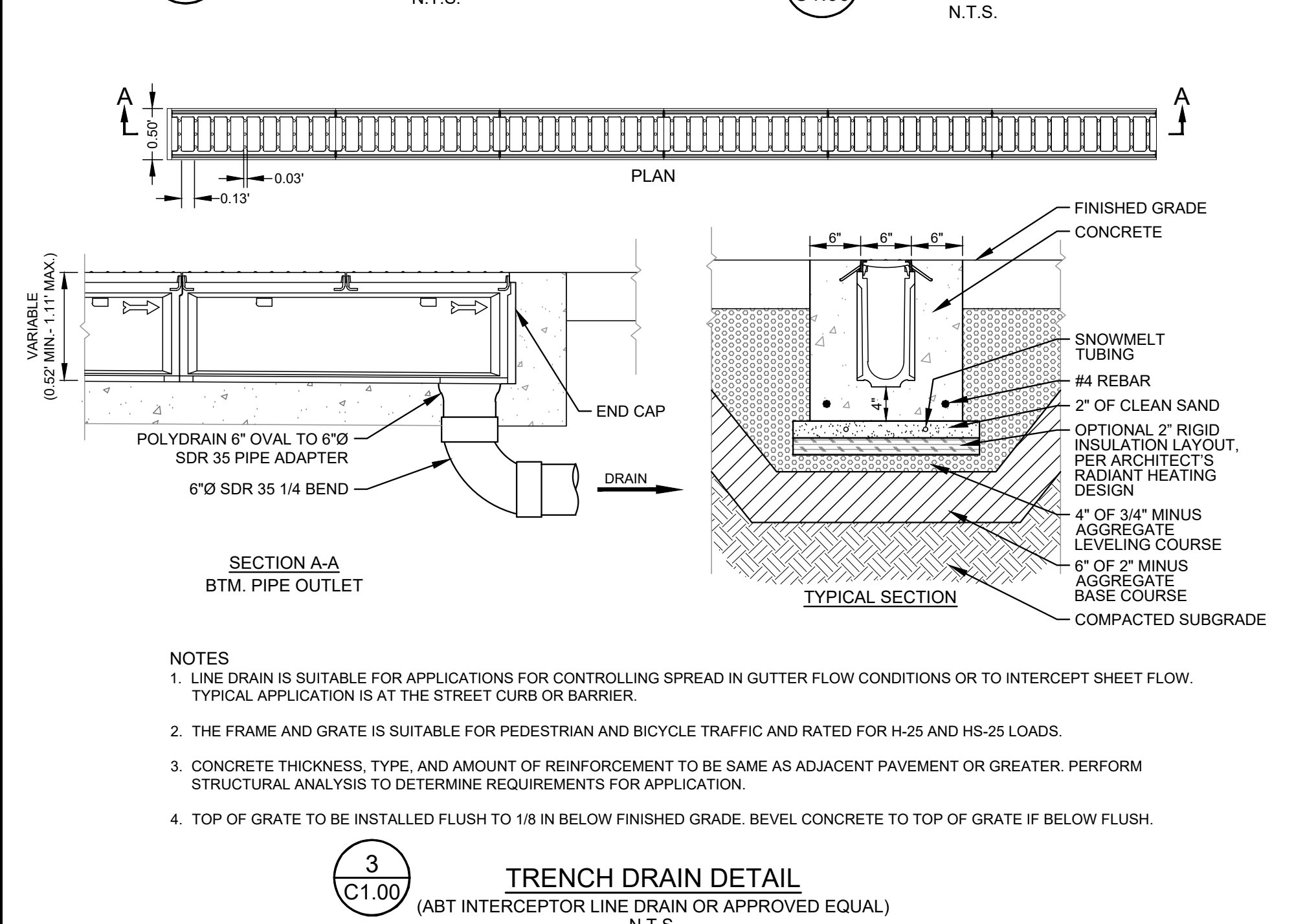
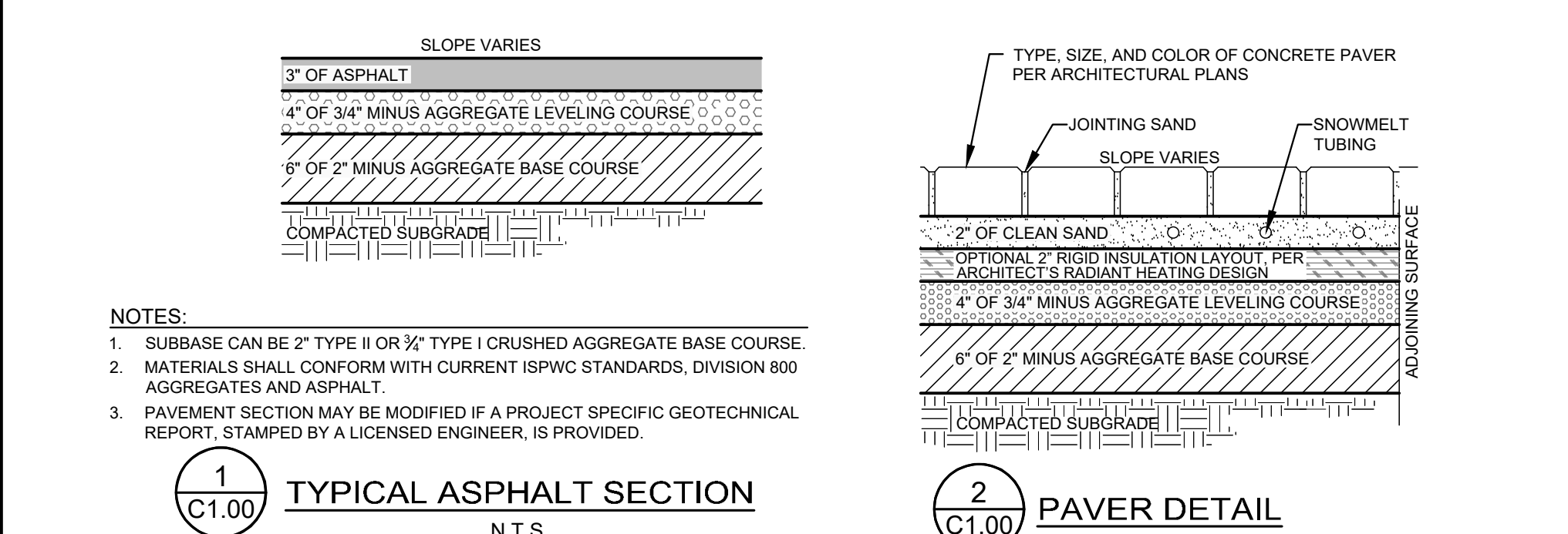
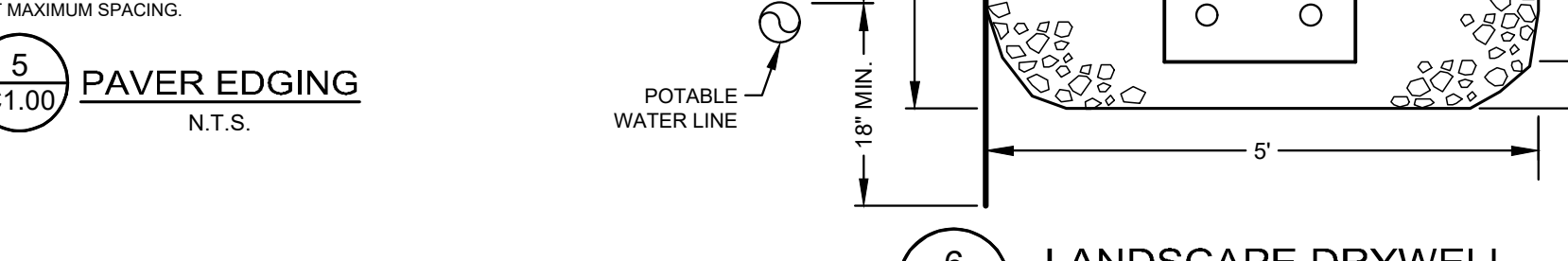
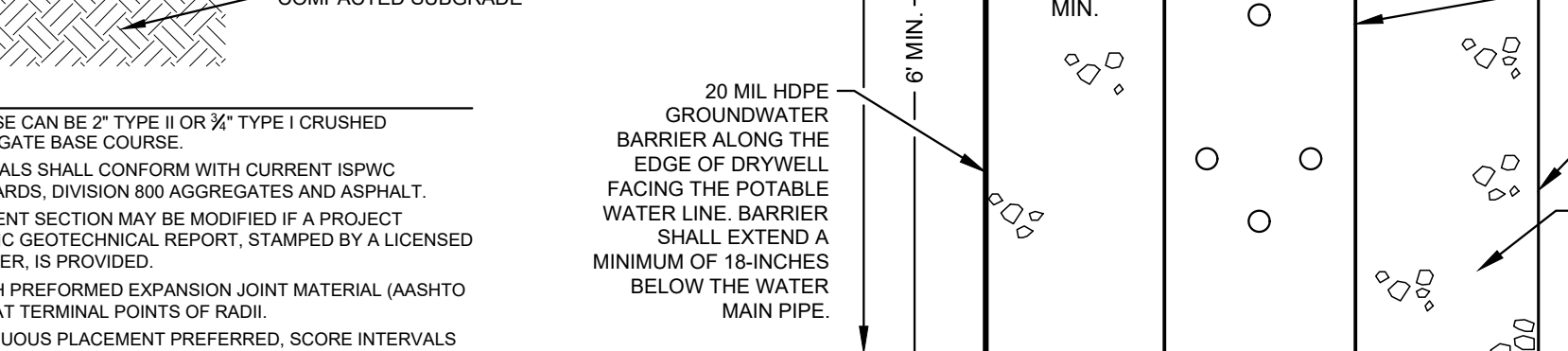
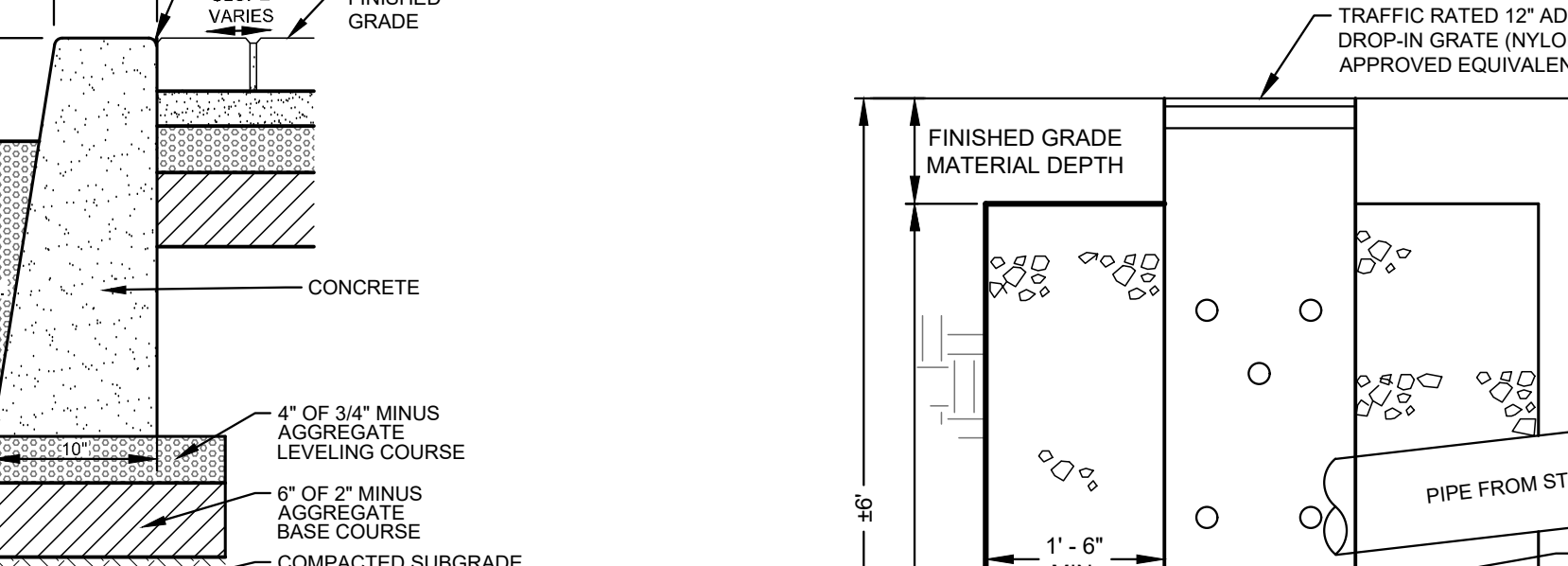
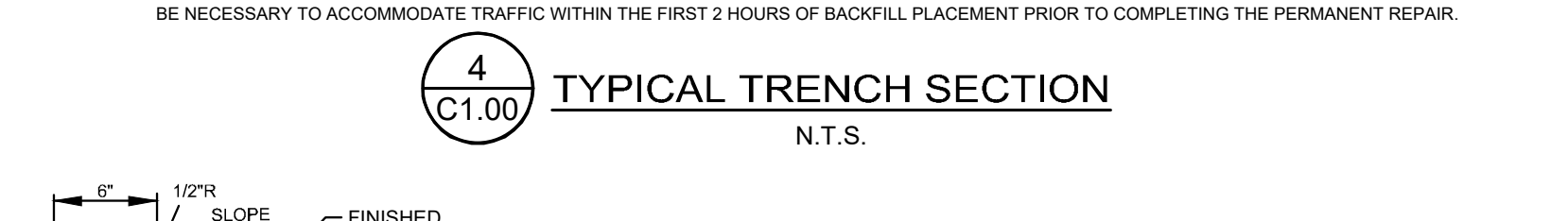
EXHIBIT A

CONSTRUCTION NOTES

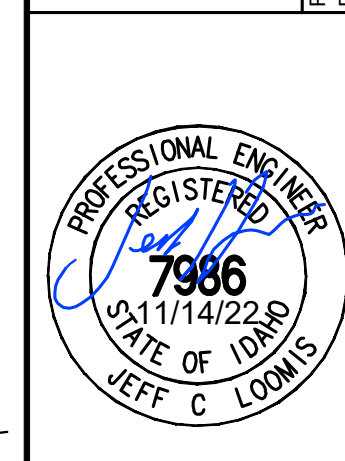
- ALL CONSTRUCTION SHALL BE IN CONFORMANCE WITH THE MOST CURRENT EDITION OF THE "IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION" (ISPC) AND CITY OF KETCHUM STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND KEEPING A COPY OF THE ISPC AND CITY OF KETCHUM STANDARDS ON SITE DURING CONSTRUCTION.
- 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.
- CONTRACTOR SHALL COORDINATE RELOCATIONS OF DRY UTILITY FACILITIES (POWER, CABLE, PHONE, TV) WITH THE APPROPRIATE UTILITY FRANCHISE.
- 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 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 ISPC SECTION 201.
- ALL EXCAVATION & EMBANKMENT SHALL CONFORM TO ISPC 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.
- ALL 2" MINUS GRAVEL SHALL CONFORM TO ISPC 802, TYPE II (ITD STANDARD 703.04, 2"). SHALL BE PLACED IN CONFORMANCE WITH ISPC 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.
- ALL 3/4" MINUS CRUSHED GRAVEL SHALL CONFORM TO ISPC 802, TYPE I (ITD STANDARD 703.04, 3/4"). SHALL BE PLACED IN CONFORMANCE WITH ISPC 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.
- ALL ASPHALT CONCRETE PAVEMENT WORK SHALL CONFORM TO ISPC SECTION(S) 805, 810, AND 811 FOR CLASS II PAVEMENT. ASPHALT AGGREGATE SHALL BE 1/2" (13MM) NOMINAL SIZE CONFORMING TO TABLE 803B IN ISPC SECTION 803. ASPHALT BINDER SHALL BE PG 58-28 CONFORMING TO TABLE A-1 IN ISPC SECTION 805.
- 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.
- 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).
- ALL TRENCHING SHALL CONFORM TO ISPC STANDARD DRAWING SD-301. TRENCHES SHALL BE BACKFILLED AND COMPACTED TO A MINIMUM OF 95% OF MAXIMUM DENSITY AS DETERMINED BY AASHTO T-99.
- 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.
- BOUNDARY AND TOPOGRAPHIC INFORMATION IS PER A SURVEY BY GALENA ENGINEERING DATED 05/26/2021.



KETCHUM PUBLIC CONSTRUCTION SLURRY REQUIREMENT
 IN AREAS WHERE IT IS NECESSARY TO CUT THE ASPHALT PAVEMENT AND DIG A TRENCH FOR BURIAL OF CONDUIT CABLE OR OTHER CITY UTILITY, THE TRENCH SHALL BE BACKFILLED WITH A LEAN CONCRETE MIX TO THE BOTTOM OF FINISH SURFACE MATERIAL WITH THE FOLLOWING PROPORTIONS OF MATERIALS:
 COARSE AGGREGATE (3/4" MINUS) : 2,600 LBS
 SAND : 800 LBS
 PORTLAND CEMENT : 94 LBS
 WATER : 11 GAL (MAX.)
 WATER CONTENT IS MAXIMUM AND MAY BE REDUCING DOWNWARD. CARES SHALL BE TAKEN TO ASSURE THAT EXCESS WATER IS NOT PRESENT IN THE MIXING DRUM PRIOR TO CHARGING THE MIXER WITH MATERIALS. THOROUGH MIXING WILL BE REQUIRED PRIOR TO DISCHARGE.
 NO COMPACTION, VIBRATION OR FINISHING IS REQUIRED. THE LEAN CONCRETE MIX SHALL BE STRUCK OFF AT OR BELOW THE ELEVATION OF THE PLANT MIX SURFACING WITH A SQUARE-NOSE SHOVEL OR SIMILAR HAND TOOL. THE BACKFILL MIX SHALL BE ALLOWED TO SET FOR A MINIMUM OF 2 HOURS BEFORE THE PERMANENT PLANT MIX SURFACING IS PLACED TO COMPLETE THE TRENCH REPAIR. TEMPORARY PLACEMENT OF ASPHALT COLD MIX SURFACING MAY BE NECESSARY TO ACCOMMODATE TRAFFIC WITHIN THE FIRST 2 HOURS OF BACKFILL PLACEMENT PRIOR TO COMPLETING THE PERMANENT REPAIR.



A GRADING AND DRAINAGE PLAN SHOWING
671 E 5TH ST: LOT 6A, BLK 90, KETCHUM TOWNSITE
 LOCATED WITHIN SECTION 18, T.4 N., R.18 E., B.M., CITY OF KETCHUM, BLAINE COUNTY, IDAHO
 PREPARED FOR JOLYON SAWREY



DESIGNED BY: CT
 DRAWN BY: JCL
 CHECKED BY: JCL

GALENA ENGINEERING, INC.
 Civil Engineers & Land Surveyors
 317 N. River Street
 Halley, Idaho 83333
 (208) 768-1705
 email: galena@galena-engineering.com

REUSE OF DRAWINGS: These drawings, or any portion thereof, shall not be used on any project or extension of this project except by agreement in writing with Galena Engineering, Inc.

PROJECT INFORMATION
 File: 671E5thStGrading.dwg
 Date: 10/20/22 12:21:28 PM

PURPOSE: ISSUE FOR PERMIT
 NO. DATE BY REVISIONS
 C1.00

EXHIBIT B



EXHIBIT "B"
RESIDENTIAL SNOWMELT INSTALLATION CERTIFICATE

PROPERTY OWNER'S NAME: 671 E. 5th Street Management, LLC
PROPERTY ADDRESS: 671 E. 5th St. Ketchum, ID, 83340
LEGAL DESCRIPTION: LOT #6A BLOCK #90
PARCEL NUMBER: APK 0000090006A

INSTALLATION CONTRACTOR INFORMATION

COMPANY NAME: THORNTON HEATING
CONTRACTOR ADDRESS: 121 Hospital Dr Ketchum, ID 83340
CONTRACTOR PHONE: (208) 726-5520
CONTRACTOR EMAIL: THORNTONHEATING@HOTMAIL.COM

Pursuant to the requirements of Right-of-Way Encroachment Agreement # _____, the installation contractor certifies the following:

I certify that the system proposed meets all requirements of the International Energy Conservation Code (2018 IECC, 403.12.2).

I certify that insulation will be installed below and along the perimeter of the system and that the insulation is rated R-10.

I certify that the boiler/heatpump/other (circle one) operates at a 95 percent efficiency.

Boiler/Heatpump Model Number: Lochner FTX100

Other: _____

I certify that geofabric will be installed under the pavers to ensure positive drainage off the driveway or sidewalk.

I certify that the system will be operated by an electronic main control board that optimizes the way the system functions and minimizes inefficiencies to the greatest degree possible.

I certify that the system will be installed with 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.

By, Installation Contractor:

Print Name: Matt Thornton

Signature: [Signature]

Date: 10-27-22

By, Owner:

Print Name: ANNA GIESI

Signature: [Signature]

Date: 10-27-22

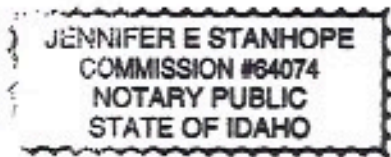
STATE OF Idaho)

) ss.

County of Blaine)

On this 27th day of October, 2022, before me, the undersigned Notary Public in and for said State, personally appeared Matt Thornton (Installation Contractor), 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.



[Signature]
Notary Public for Idaho
Residing at Blaine County
Commission expires 8-11-26

STATE OF IDAHO)

) ss.

County of BLAINE)

On this 27 day of October, 2022, before me, the undersigned Notary Public in and for said State, personally appeared ANNA GEIST (Owner), 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.



[Signature]
Notary Public for IDAHO
Residing at HAILEY
Commission expires 8.11.22