



City of Ketchum

### CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:	July 25, 2024	Staff Member/Dept:	Abby Rivin, Senior Planner Planning and Building Department
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Agenda Item:	Recommendation to Approve Right-of-Way Encroachment Agreement 24920 for the placement of driveway pavers with snowmelt in the public right-of-way at 401 Sage Road B.
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**Recommended Motion:**

I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 24920 with property owner Craig E Samitt.
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**Reasons for Recommendation:**

- |   |
|---|
| <ul style="list-style-type: none"> <li>ROW Encroachment Agreement 24920 is for the placement of driveway pavers with snowmelt in the public right-of-way at 401 Sage Road B. The owner of the subject property has proposed widening and improving the existing driveway with heated pavers to prevent the accumulation of ice. The existing driveway is unheated and slopes down 7.5% from Sage Road. The ice buildup along the driveway is exaggerated by stormwater drainage along Sage Road.</li> </ul>   |
| <ul style="list-style-type: none"> <li>During their meeting on April 3, 2023, the City Council provided policy direction that snowmelt systems for private driveway are prohibited from encroaching within residential public rights-of-way unless required by the Fire Department, Streets Department, or City Engineer. The Streets Department and City Engineer recommend widening and heating the proposed driveway with a snowmelt system to the edge of asphalt to enhance drainage and safety by preventing ice accumulation along the edge of Sage Road and down the driveway.</li> </ul> |
| <ul style="list-style-type: none"> <li>The proposed driveway improvements will not impact drainage, snow removal, or city operations along Sage Road and comply with the standards for permanent right-of-way encroachments specified in Ketchum Municipal Code §12.12.060.</li> </ul>  |

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

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**Sustainability Impact:**

None OR state impact here: The residential snowmelt system complies with the city’s energy efficiency requirements.
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**Financial Impact:**

None OR Adequate funds exist in account:	None
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**Attachments:**

1. Right-of-Way Encroachment Agreement 24920
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**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 24920**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of July, 2024, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation ("Ketchum"), whose address is Post Office Box 2315, Ketchum, Idaho 83340 and CRAIG E SAMITT ("Owner"), whose address is 401 Sage Road B.

*RECITALS*

WHEREAS, the Owner owns the real property described as Bernath Townhomes Sublot 1 located at 401 Sage Road B ("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 Sage Road. 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 Sage Road, 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.

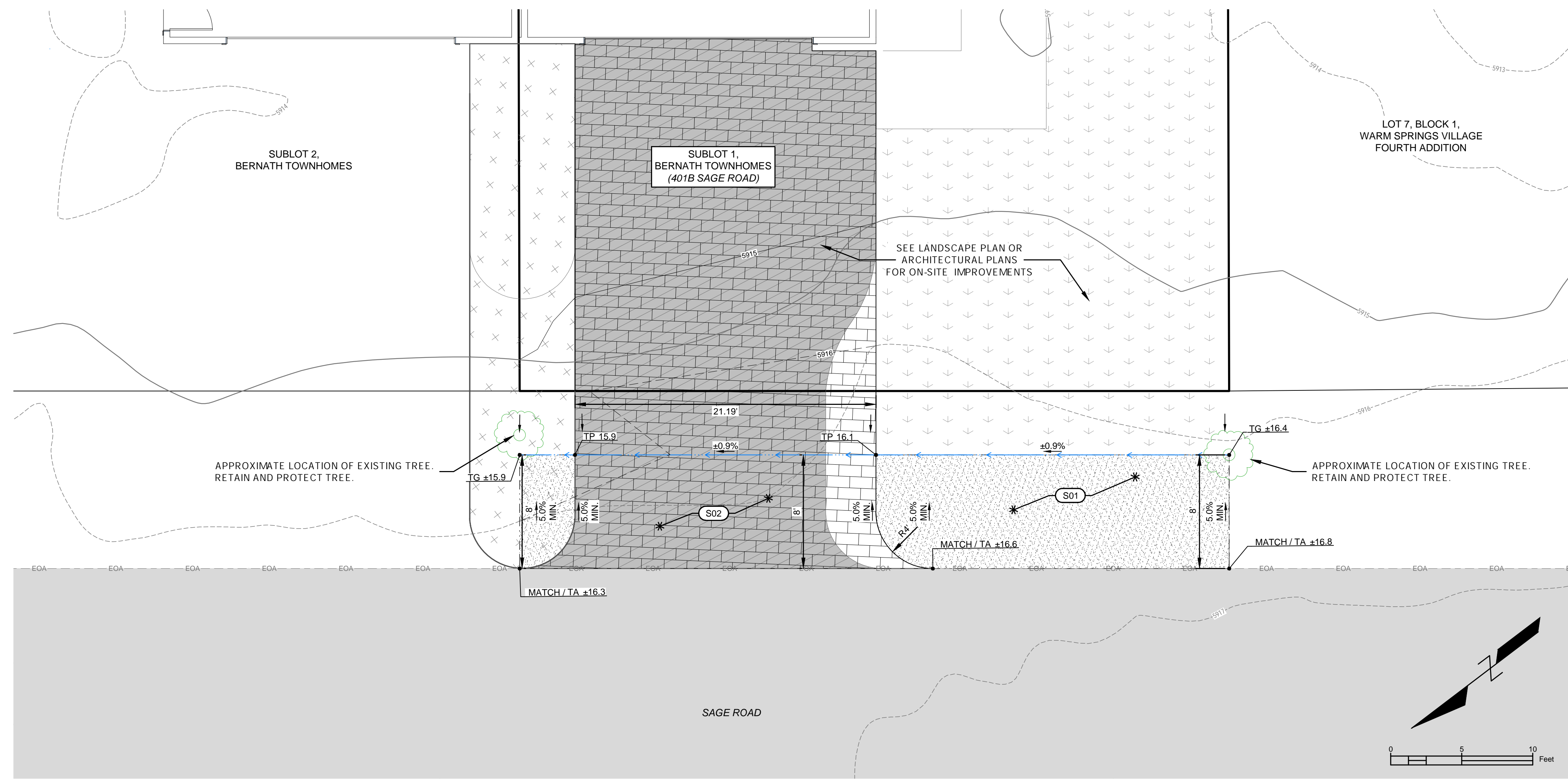
12. This Agreement shall be recorded with the Blaine County Recorder by Ketchum.

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



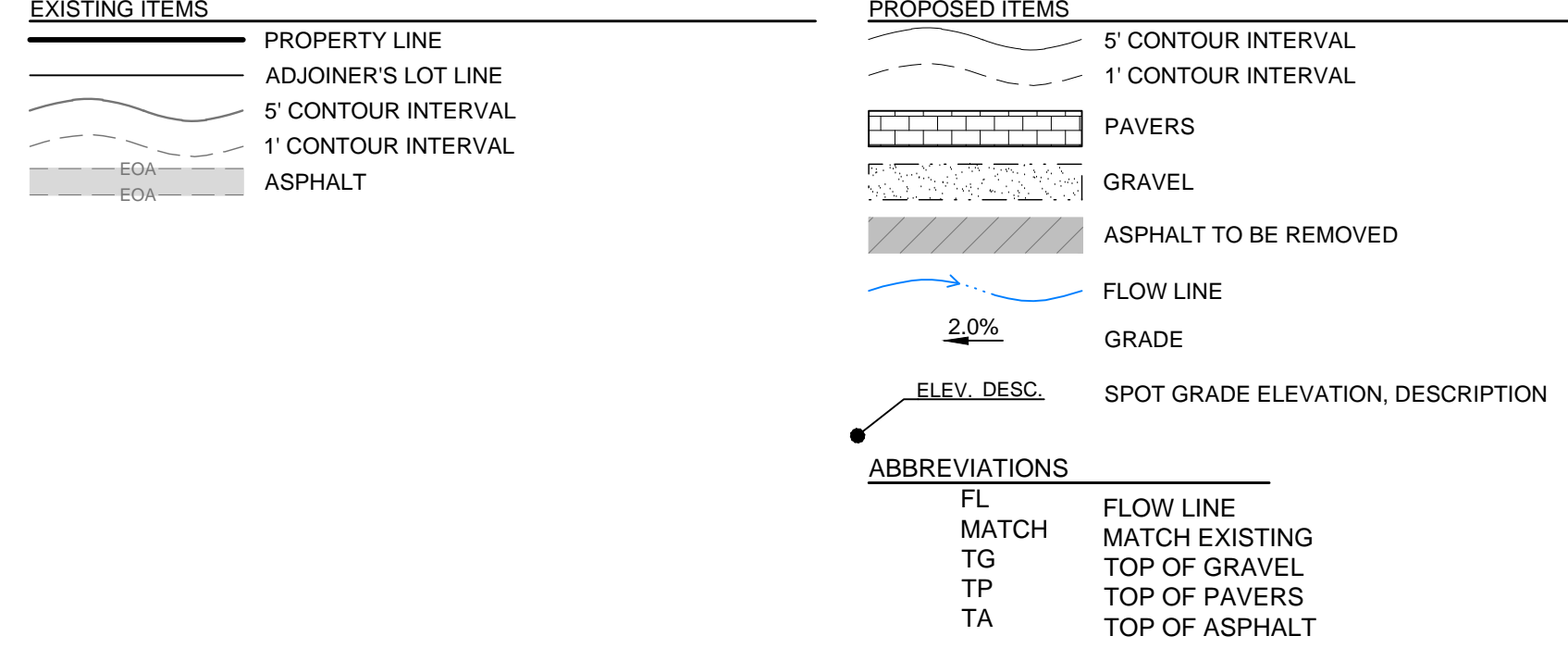


VICINITY MAP  
N.T.S.

**CONSTRUCTION NOTES:**

- ALL CONSTRUCTION SHALL BE IN CONFORMANCE WITH THE MOST CURRENT EDITION OF THE 'IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION' (ISPMC) AND CITY OF KETCHUM STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING AND KEEPING A COPY OF THE ISPMC AND CITY OF KETCHUM STANDARDS ON SITE DURING CONSTRUCTION.
- THE LOCATION OF EXISTING UNDERGROUND UTILITIES, IF SHOWN, 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.
- 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, INCLUDING BUT NOT LIMITED TO, EPA'S NPDES CONSTRUCTION GENERAL PERMIT.
- 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 (GGP) PERMIT COVERAGE), INCLUDING THE CITY OF KETCHUM'S STREET AND ALLEY DIGGING, EXCAVATION, AND TRENCH PERMIT.
- ALL CLEARING & GRUBBING SHALL CONFORM TO ISPMC SECTION 201.
- ALL EXCAVATION & EMBANKMENT SHALL CONFORM TO ISPMC SECTION 202. EXCAVATED SUBGRADE SHALL BE COMPACTED AND ALL UNSUITABLE SECTIONS REMOVED AND REPLACED WITH STRUCTURAL FILL AS DETERMINED BY THE ENGINEER. MINIMUM COMPACTION OF PLACED MATERIAL SHALL BE 95% OF MAXIMUM LABORATORY DENSITY AS DETERMINED BY AASHTO T-99 OR ITD T-91.
- ALL 2" MINUS GRAVEL SHALL CONFORM TO ISPMC 802, TYPE II (ITD STANDARD 703.04, 2"), SHALL BE PLACED IN CONFORMANCE WITH ISPMC SECTION 801 AND COMPACTED PER ISPMC 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 ISPMC 802, TYPE I (ITD STANDARD 703.04, 3/4" B), SHALL BE PLACED IN CONFORMANCE WITH ISPMC SECTION 802 AND COMPACTED PER ISPMC 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 ASPHALTIC CONCRETE PAVEMENT WORK SHALL CONFORM TO ISPMC SECTION(S) 805, 810, AND 811 FOR CLASS II PAVEMENT. ASPHALT AGGREGATE SHALL BE 1/2" (13MM) NOMINAL SIZE CONFORMING TO TABLE 803B IN ISPMC SECTION 803. ASPHALT BINDER SHALL BE PG 58-28 CONFORMING TO TABLE A-1 IN ISPMC 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 CONCRETE WORK SHALL CONFORM TO ISPMC SECTIONS 701, 703, AND 705. ALL CONCRETE SHALL BE 3,000 PSI MINIMUM, 28 DAY, AS DEFINED IN ISPMC SECTION 703, TABLE 1. IMMEDIATELY AFTER PLACEMENT PROTECT CONCRETE BY APPLYING MEMBRANE-FORMING CURING COMPOUND, TYPE 2, CLASS A PER ASTM C 309-94. APPLY CURING COMPOUND PER MANUFACTURER'S INSTRUCTIONS AND SPECIFICATIONS. CONCRETE REPLACEMENT SHALL CONFORM TO CITY OF KETCHUM STANDARD DRAWING NO. 7.
- ALL TRENCHING SHALL CONFORM TO ISPMC STANDARD DRAWING SD-301 AND CITY OF KETCHUM STANDARD DRAWING 12. 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.
- ALL REPAIRS MUST MATCH EXISTING LINES, GRADES, AND DRAINAGE PATTERNS. REPAIR AND REPLACE IN KIND ALL EXISTING FEATURES OR IMPROVEMENTS DAMAGED DURING CONSTRUCTION, INCLUDING LANDSCAPE AND IRRIGATION. ALL REPAIRS SHALL RESULT IN EQUAL OR BETTER QUALITY THAN EXISTING CONDITIONS.
- 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). TRAFFIC CONTROL PLANS ARE REQUIRED AS PART OF THE CITY OF KETCHUM'S STREET AND ALLEY DIGGING, EXCAVATION, AND TRENCH PERMIT.
- CONTRACTOR SHALL COMPLETE A CONSTRUCTION MANAGEMENT PLAN CONSISTENT WITH CITY OF KETCHUM STANDARDS.
- EXISTING CONDITIONS SHOW HEREON ARE APPROXIMATE BASED UPON A DRAWING BY TND ARCHITECTS RECEIVED MAY 05, 2024 AND FIELD MEASUREMENTS. BOUNDARIES SHOW HEREON ARE APPROXIMATE PER THE BLAINE COUNTY GIS. EXISTING CONDITIONS SHALL BE FIELD VERIFIED BY CONTRACTOR. A SURVEYOR SHALL BE HIRED IF CONTRACTOR IS UNABLE TO LOCATE CORNER MONUMENTS TO VERIFY PROPERTY BOUNDARY LOCATION.

**LEGEND**

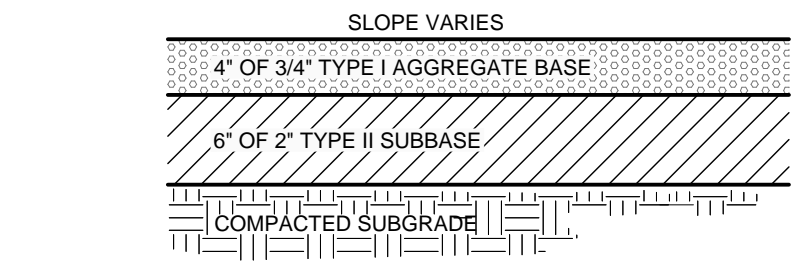


**SITE IMPROVEMENT KEY NOTES**

- S01** REMOVE EXISTING LANDSCAPE AND IRRIGATION IMPROVEMENTS AND INSTALL GRAVEL PER DETAIL 1, SHEET C0.1.
- S02** REMOVE EXISTING DRIVEWAY AND CONSTRUCT HEATED PAVER DRIVEWAY PER DETAIL 2, SHEET C0.1.

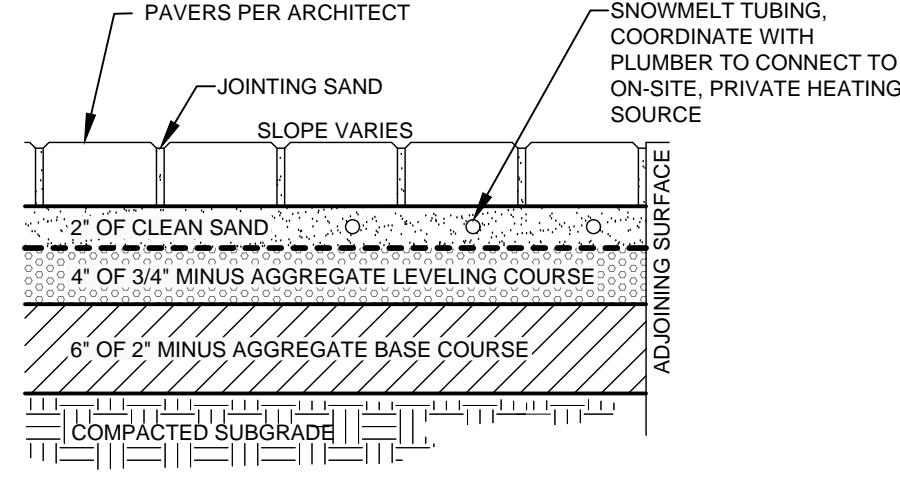
**CITY OF KETCHUM- STREET DEPARTMENT NOTES**

- MAY 1ST STARTING DATE IS WEATHER DEPENDENT.
- DIG PERMIT IS REQUIRED WHICH WILL REQUIRE DETAILED TRAFFIC CONTROL PLAN.
- SIZE OF PROJECT REQUIRES INCREASED BOND AMOUNT (TO BE DETERMINED), PLEASE PROVIDE A COST ESTIMATE OF STREET REPAIRS REQUIRED FOR PROJECT.
- PUBLIC NOTICE ANNOUNCEMENT IN MOUNTAIN EXPRESS AS WELL AS DOOR KNOCKERS TO THOSE IMPACTED ARE REQUIRED AT LEAST THREE DAYS IN ADVANCE.
- CONTRACTOR NEEDS TO BE ON JOB DAILY UNTIL COMPLETE (WEEKENDS AND HOLIDAYS EXCLUDED).
- FLAGGERS WILL BE REQUIRED AT RESIDENTIAL AND BUSINESS ENTRANCES AS NEEDED. THIS WILL NEED TO BE ADDRESSED ON DETAILED TRAFFIC CONTROL PLAN.
- KEEP ONE LANE OPEN ALWAYS UNLESS FULL CLOSURE IS NECESSARY (ACCESS FOR RESIDENTIAL AND BUSINESSES MUST BE MAINTAINED).
- KEEP TRENCHING CUTS STRAIGHT AND NEAT.
- ALL ASPHALT CUTS TO BE SAWCUT AND TWO FEET BACK FROM THE DEEPEST UNDERMINE.
- CONTRACTOR WILL NOT TRENCH MORE THAN CAN BE SLURRIED AND BACKFILLED PER DAY.
- NO HOLES OPEN OVERNIGHT MORE THAN ONE FOOT DEEP (UNLESS PLATED OR BARRICADED PER THE MUTCD).
- CONTRACTOR IS REQUIRED TO KEEP STREETS CLEAN FROM ROCKS, DIRT, MUD, ETC. DAILY (SWEEP).
- STREET DEPARTMENT MUST BE CALLED FOR INSPECTION BEFORE BACK FILL, SLURRY, AND ASPHALT.
- KEEP ASPHALT CUT JOINTS OUT OF WHEEL LANES IF POSSIBLE.
- CONSTRUCTION HOURS ARE BETWEEN 7:30 AM TO 7:00 PM ON WEEKDAYS AND SATURDAYS, NO CONSTRUCTION IS PERMITTED ON SUNDAYS OR MAJOR HOLIDAYS.

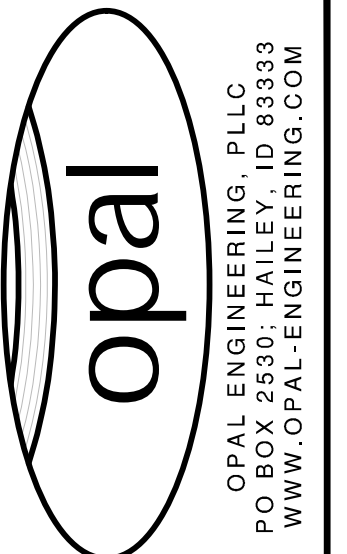


- NOTES:**
- SUBBASE CAN BE 2" TYPE II OR 3/4" TYPE I CRUSHED AGGREGATE BASE COURSE.
  - MATERIALS SHALL CONFORM WITH CURRENT ISPMC STANDARDS, DIVISION 800 AGGREGATES AND ASPHALT.
  - PAVEMENT SECTION MAY BE MODIFIED IF A PROJECT SPECIFIC GEOTECHNICAL REPORT, STAMPED BY A LICENSED ENGINEER, IS PROVIDED.

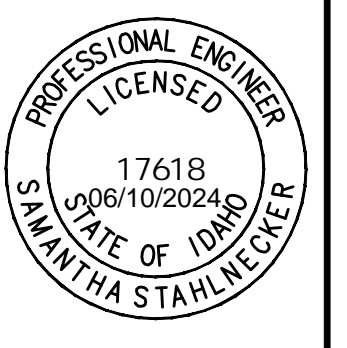
**1**  
C1.0 TYPICAL GRAVEL SECTION  
N.T.S.



**2**  
C1.0 PAVER DETAIL  
N.T.S.



PURPOSE: ISSUE FOR ROW PERMIT SUBMITTAL (6/10/2024)
REVISION NO. DATE DESCRIPTION



**RIGHT-OF-WAY IMPROVEMENTS PLAN**  
HART/SAMITT RESIDENCE - 401B SAGE ROAD  
PREPARED FOR CRAIG E. SAMITT

24024  
PROJECT NUMBER  
**C1.0**

**Exhibit B**





City of Ketchum  
Planning & Building

EXHIBIT "B"  
RESIDENTIAL SNOWMELT INSTALLATION CERTIFICATE

PROPERTY OWNER'S NAME: Craig Samitt

PROPERTY ADDRESS: 401 B Sage Road, Ketchum, ID 83340

LEGAL DESCRIPTION: BERNATH TOWNHOMES SUBLOT 1

PARCEL NUMBER: RPK02830000010

INSTALLATION CONTRACTOR INFORMATION

COMPANY NAME: Elias Construction

CONTRACTOR ADDRESS: 131 4th St #211, Ketchum, ID 83340

CONTRACTOR PHONE: 208-725-5400

CONTRACTOR EMAIL: Pszczotka@eliasconstruction.com

Pursuant to the requirements of Right-of-Way Encroachment Agreement # 24920, the installation contractor certifies the following:

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

Yes I certify that the boiler/heatpump/other (circle one) operates at a 96 percent efficiency.

Boiler/Heatpump Model Number: WHB285N

Other: \_\_\_\_\_

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

Yes 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.

Yes 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: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

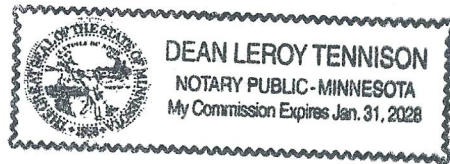
By, Owner:  
Print Name: CRAIG SAMITT  
Signature: [Signature]  
Date: 7/11/2024

STATE OF MINN )  
 ) ss.  
County of Hennepin )

On this 11 day of July, 2024, before me, the undersigned Notary Public in and for said State, personally appeared Craig Samitt (owner) (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 MINN  
Residing at 8014 Hwy 55  
Commission expires 01/31/2028



By, Installation Contractor:

Print Name: Patrick Szczotka

Signature: *Patrick Szczotka*

Date: 7.9.24

By, Owner:

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF ID )

) ss.

County of Blaine )

On this 9 day of July, <sup>2024</sup>2022, before me, the undersigned Notary Public in and for said State, personally appeared Patrick Szczotka (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.



Barbara Kehrer

Notary Public for \_\_\_\_\_

Residing at Blaine Co, Idaho

Commission expires 2/18/26