

City of Ketchum

October 17, 2022

Mayor Bradshaw and City Councilors City of Ketchum Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Right-of-Way Encroachment Agreement 22788 for the placement of sidewalk pavers with snowmelt in the public right-of-way adjacent to 131 N Washington Ave.

Recommendation and Summary

Staff recommends the Ketchum City Council approve the attached Right-of-Way Encroachment Agreement 22788 and adopt the following motion:

"I move to authorize the Mayor to sign Right-of-Way Encroachment Agreement 22788 between the City and Bohica Idaho, LLC."

The reasons for the recommendation are as follows:

- The proposed mixed-use project is within the Ketchum Community Core, where snowmelt sidewalks assist in public safety and snow management operations in the winter.
- The improvements will not impact the use or operation of N Washington Ave.
- The improvements will not impact drainage or snow removal within the public right-of-way.
- The project complies with all standards for Right-of-Way Encroachment Permit issuance specified in Ketchum Municipal Code §12.12.060.
- The project meets all requirements for energy code and installation as outlined in the agreement and shown in the exhibits.

Introduction and History

The City of Ketchum receive a building permit application on May 18, 2022, for the remodel and expansion of an existing building commonly referenced as the Boho Lounge at 131 N Washington Ave. The proposed project received Design Review approval by the Planning and Zoning Commission on April 26, 2022. The sidewalk along the subject property is currently a paver sidewalk 5-6 feet wide constructed in 2008 when the original building was constructed. The proposed project includes a paver sidewalk 8 feet wide with snowmelt that connects to the new sidewalk constructed for the Mountain Land Design project under construction at the corner of 1st Street and N Washington Ave.

A public right-of-way is defined as improved or unimproved public property dedicated or deeded to the City for the purpose of providing vehicular, pedestrian, and public use. In Ketchum, the public rights-of-way consist of roadways, curbs, gutters, sidewalks, signage, and drainage facilities. The public rights-of-way are also used for public parking, wintertime snow storage, and conveyance of utilities, such as water, sewer, electricity, telephone, and cable.

<u>Analysis</u>

Pursuant to Ketchum Municipal Code §12.12.040.C, a Right-of-Way Encroachment Permit is required for any permanent encroachment of the public right-of-way where a permanent fixture to the ground or a building will occur. The associated Right-of-Way Encroachment Agreement is 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. The standards for issuance of a Right-of-Way Encroachment Permit are specified in Ketchum Municipal Code §12.12.060. The encroachments proposed for the 131 N Washington Ave mixed-use project complies with all standards.

<u>Sustainability</u>

The City Council is conducting ongoing discussions as to the application of snowmelt systems and the goals and policies of the Sustainability Action Plan related to snowmelt in driveways in residential neighborhoods. To date, the City Council has been supportive of snowmelt systems in sidewalks within the Community Core due to the increased benefit to public safety and snow management operations in the winter. The proposed project complies with all insulation, boiler efficiency, and installation requirements as outlined in the agreement.

Financial Impact

There is no financial requirement from the city for this action.

<u>Attachments</u>

ROW Encroachment Agreement 22788 and Exhibits

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 22788

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 Bohica Idaho, LLC ("Owner"), whose mailing PO Box 1129, Ketchum ID 83340 and who owns real property located at 131 N Washington Ave, Ketchum, ID 83340 ("subject property").

RECITALS

WHEREAS, Encroachment Permit Application 08-005 was approved by Ketchum on September 2, 2008, Resolution Number 08-097, for the installation of an entry awning constructed over the sidewalk adjacent to the subject property; and

WHEREAS, Ketchum approved a Design Review application (File No. P22-001) on April 26, 2022 for the remodel and expansion of the building on the subject property which shows the removal of the entry awning previously constructed; and,

WHEREAS, Ketchum received a building permit application (File No. B22-041) to construct the project approved under the Design Review approval, showing the removal of the entry awning and the construction of various new improvements within the right-of-way; and

WHEREAS, Owner wishes to permit placement of sidewalk pavers with associated snowmelt system totalling 810 square feet. 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 a paver sidewalk and associated snowmelt system identified in Exhibit "A" within the public right-of-way on N Washington Ave adjacent to the subject property, 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.

- 3. Snowmelt systems installed in the public right-of-way shall be installed and operate at all times during the winter according to the following and as shown in Exhibit "B":
 - 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 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 vault, to the satisfaction of the Director of Streets and Facilities.

In consideration of Ketchum allowing Owner to maintain the Improvements in the 5. 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. Upon recording of this Agreement, Encroachment Permit 08-005, Resolution Number 08-097, shall become null and void.

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.

OWNER:

CITY OF KETCHUM:

Ву:_____

By: <u>Neil Bradshaw</u> Its: Mayor

STATE OF _____,) County of _____.)

On this _____ day of _____, 2022, 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 expir	es

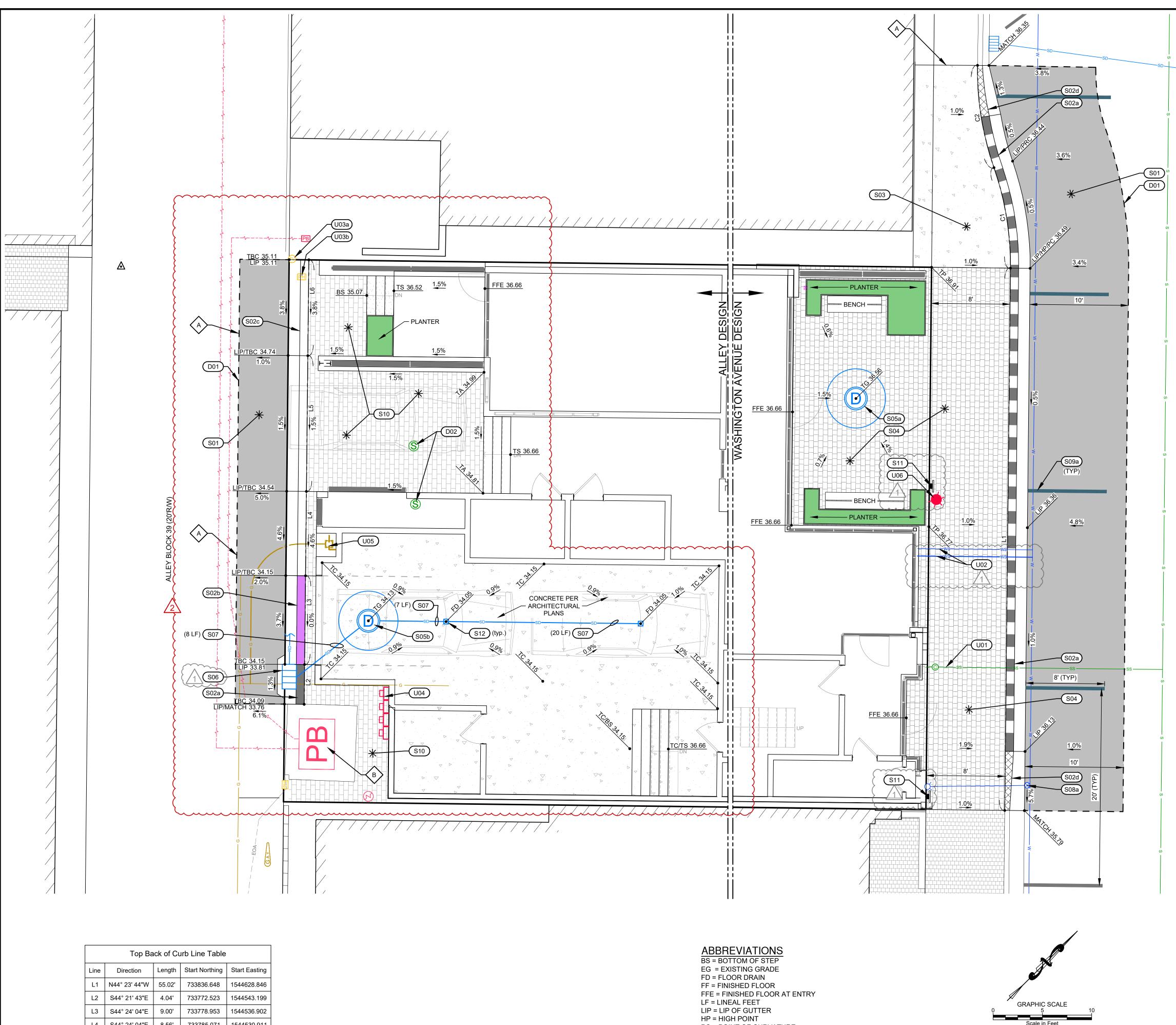
STATE OF IDAHO)) ss. County of Blaine)

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"



	Top Back of Curb Line Table				
Line	Direction	Length	Start Northing	Start Easting	
L1	N44° 23' 44"W	55.02'	733836.648	1544628.846	
L2	S44° 21' 43"E	4.04'	733772.523	1544543.199	
L3	S44° 24' 04"E	9.00'	733778.953	1544536.902	
L4	S44° 24' 04"E	8.56'	733785.071	1544530.911	
L5	S44° 24' 04"E	13.77'	733794.910	1544521.276	
L6	S44° 24' 04"E	9.72'	733801.855	1544514.475	

Top Back of Curb Curve Table							
Curve	Radius	Length	Delta	Chord Direction	Chord Length	Start Northing	Start Easting
C1	30.00'	10.38'	19° 49' 43"	N54° 18' 36"W	10.33'	733875.965	1544590.350
C2	30.00'	10.56'	20° 10' 39"	N54° 08' 08"W	10.51'	733881.992	1544581.960

- PC = POINT OF CURVATURE
- PRC = POINT OF REVERSE CURVE PT = POINT OF TANGENCY
- TBC = TOP BACK OF CURB
- TC = TOP OF CONCRETE
- TG = TOP OF GRATE
- TP = TOP OF PAVERS TS = TOP OF STEP

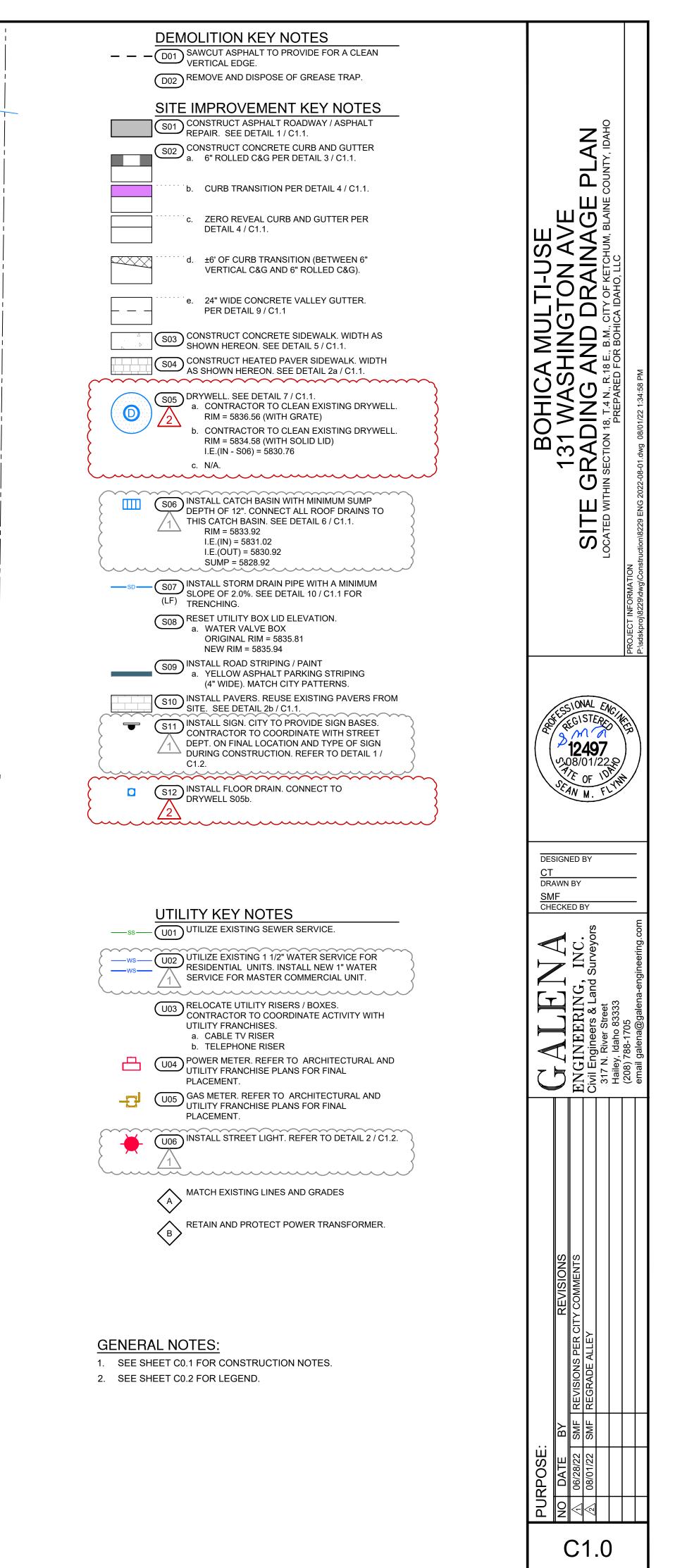


EXHIBIT "B"

Snow Melt System:

Sidewalkwill have snow melt per cities requirements.

A snow melt controller is installed along with outside air temperature sensors and snow/ice sensors. • The system meets the requirements of the International Energy Conservation Code (2018 IECC, 403.12.2)

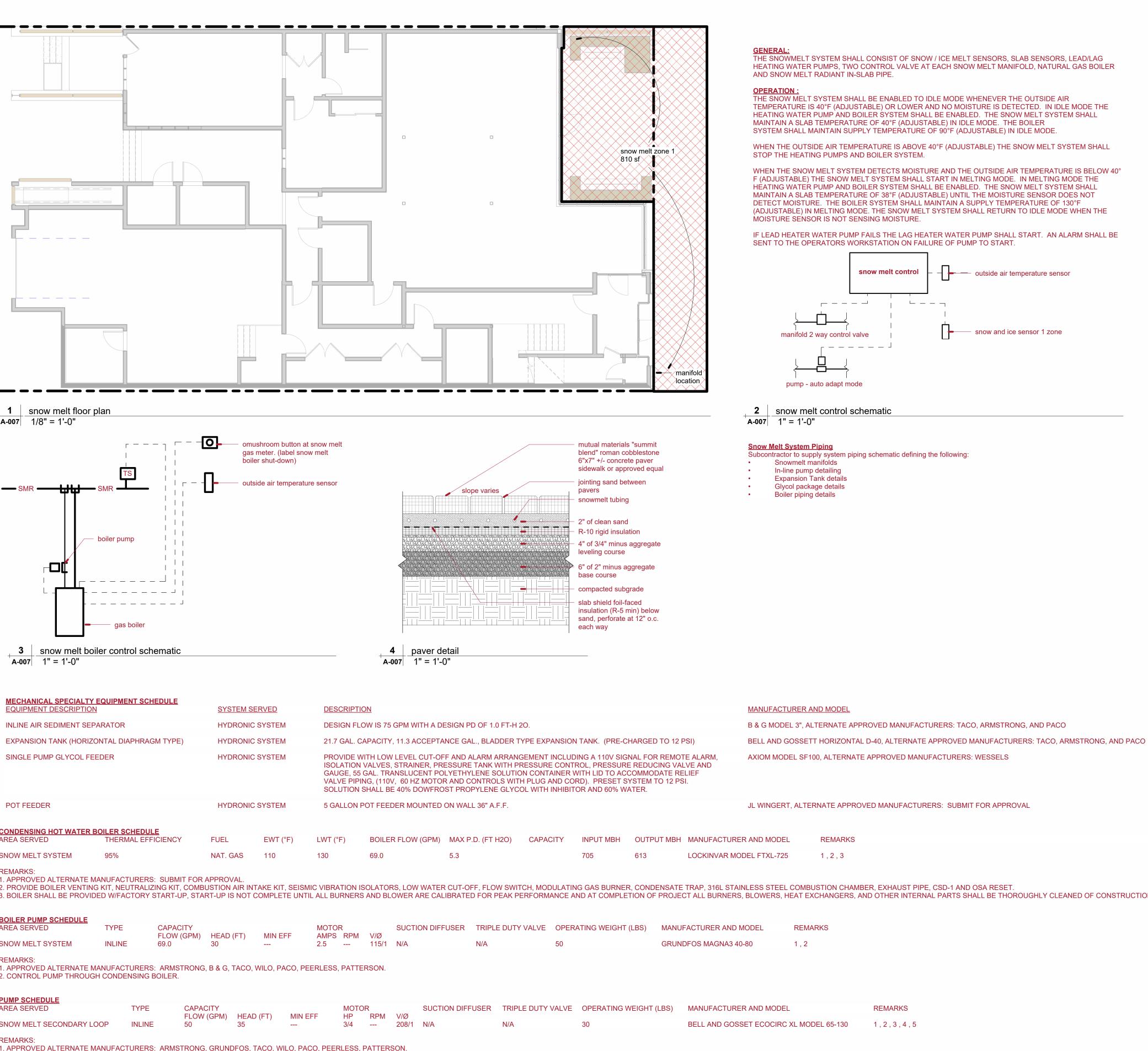
See Sequence of Operation below:

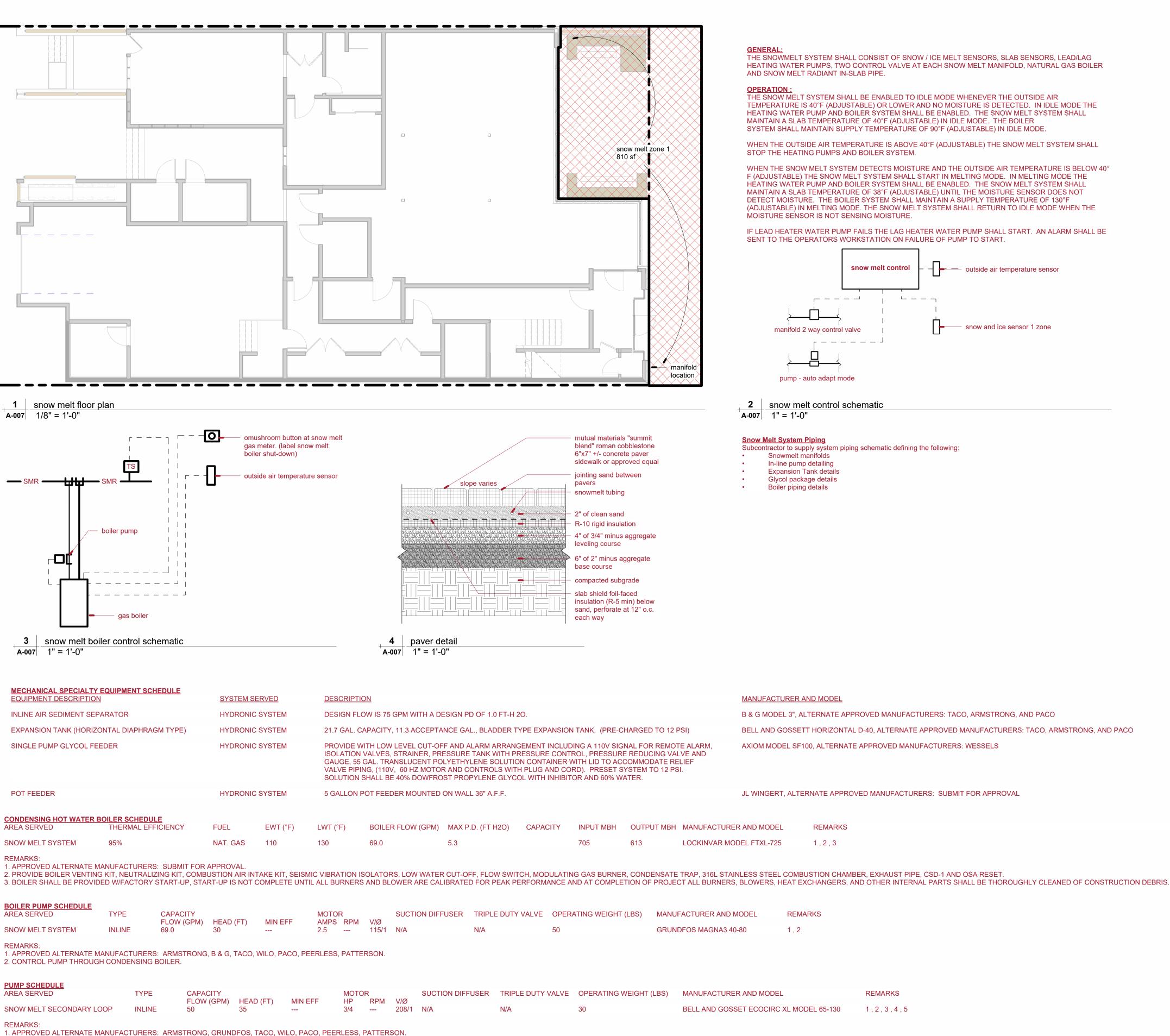
The Snowmelt System shall consist of snow / ice melt sensors, slab sensors, lead/lag heating water pumps, two control valve at each snow melt manifold, natural gas boiler and snow melt radiant in-slab pipe.

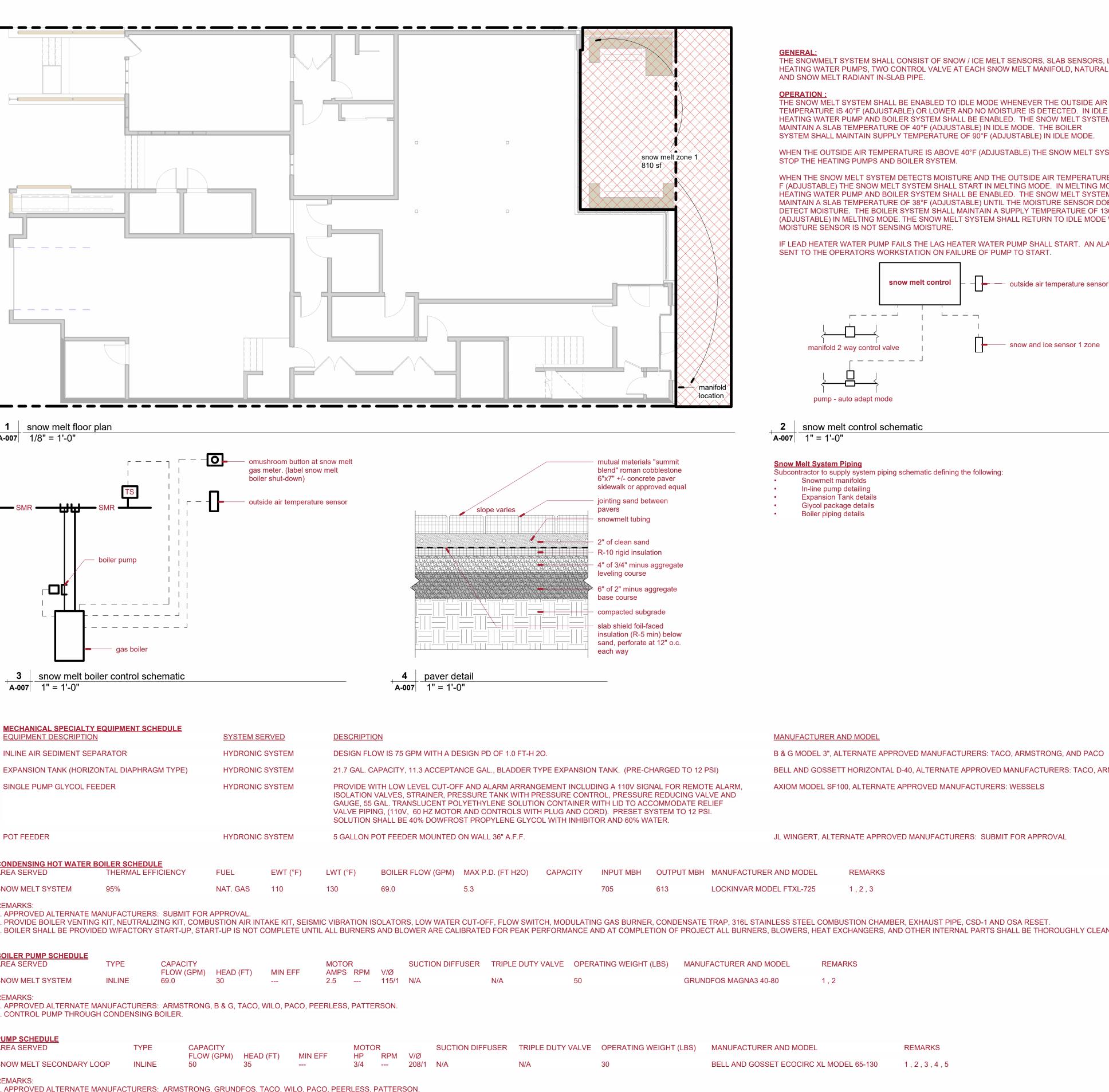
OPERATION:

GENERAL:

- The Snowmelt System shall be enabled to idle mode whenever the outside air temperature is 40°f (adjustable) or lower and no moisture is detected. In idle mode, the heating water pump and boiler system shall be enabled. The Snowmelt System shall maintain a slab temperature of 40°f (adjustable) in idle mode. The boiler system shall maintain supply temperature of 90°f (adjustable) in idle mode.
- When the outside air temperature is above 40°f (adjustable) the Snowmelt System shall stop the heating pumps and boiler system.
- When the Snowmelt System detects moisture, and the outside air temperature is below 40°f (adjustable) the Snowmelt System shall start in melting mode. In melting mode, the heating water pump and boiler system shall be enabled. The Snowmelt System shall maintain a slab temperature of 38°f (adjustable) until the moisture sensor does not detect moisture. The boiler system shall maintain a supply temperature of 130°f (adjustable) in melting mode. The Snowmelt System shall return to idle mode when the moisture sensor is not sensing moisture.
- If lead heater water pump fails, the lag heater water pump shall start. An alarm shall be sent to the operator's workstation on failure of pump to start.
- A snow melt controller is installed along with outside air temperature sensors and snow/ice sensors for each zone. 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.
- A snow melt controller is installed along with outside air temperature sensors and snow/ice sensors for each zone. •







CONDENSING HOT WAT	ER BOILER
AREA SERVED	THE

SNOW MELT SYSTEM	95%

3. PUMP SEALS SHALL BE COMPATIBLE WITH PROPYLENE GLYCOL.

5. SUPPORT PUMP FROM STRUCTURE.

SNOW MELT MANIFOLD SCHEDULE ZONE # AREA (ft2)

SNOWMELT ZONE 1 810

REMARKS:

AND PERFORMANCE.. 2. PANEL TUBING TO BE WITHIN 4" OF PERIMETER. 3. PROVIDE A 35% PROPYLENE GLYCOL 65% WATER SOLUTION. 4. TUBING TO BE RATED FOR 180°F AT 100 PSI SERVICE.

2. PROVIDE UNIT WITH PREMIUM EFFICIENCY MOTOR WITH INTEGRAL VFD.

4. NOTE CONTROL BASED PRESSURE. DIFFERENTIAL (VARIABLE FLOW). PUMPS TO OPERATE IN PARALLEL. BOTH PUMPS SHALL START ON CALL FOR HEATING.

INSULATION Rv (°F x ft2 x hr/Btu) HEAT LOAD (Btu/hr/ft2) # OF LOOPS TUBE TYPE & SIZE TUBE SPACING (in) SUPPLY WATER (°F) DESIGN TEMP. DROP (°F) SURFACE TEMP. (°F) FLOW RATE (GPM) HEAD LOSS (PSI) REMARKS 10.0 130 9" O.C. 12.1 1,2,3,4,5 hePEX 3/4" 130 25 35 4.1

1. SNOW MELT CIRCUITS TO BE EQUAL LENGTHS OFF EACH MANIFOLD WITH A 300 FT MAXIMUM TUBE LENGTH. PROVIDE A BALL VALVE FOR EACH OF THE LOOPS. RADIANT FLOOR MANIFOLD DESIGN BASED ON UPONOR STAINLESS STEEL MANIFOLD WITH ISOLATION VALVES AND VISUAL FLOW GAUGES. ALTERNATES SHALL BE EQUAL IN QUALITY

5. TUBING FOR SNOW MELT SYSTEM MUST BE LAID OUT IN A COUNTER FLOW PATTERN.

THE SNOWMELT SYSTEM SHALL CONSIST OF SNOW / ICE MELT SENSORS, SLAB SENSORS, LEAD/LAG HEATING WATER PUMPS, TWO CONTROL VALVE AT EACH SNOW MELT MANIFOLD, NATURAL GAS BOILER

TEMPERATURE IS 40°F (ADJUSTABLE) OR LOWER AND NO MOISTURE IS DETECTED. IN IDLE MODE THE

WHEN THE OUTSIDE AIR TEMPERATURE IS ABOVE 40°F (ADJUSTABLE) THE SNOW MELT SYSTEM SHALL

(ADJUSTABLE) IN MELTING MODE. THE SNOW MELT SYSTEM SHALL RETURN TO IDLE MODE WHEN THE

IF LEAD HEATER WATER PUMP FAILS THE LAG HEATER WATER PUMP SHALL START. AN ALARM SHALL BE

PROIFCT:

Bohica Building

131 N Washington Ave Ketchum, ID 83340

DATE: 09/24/22 PROJECT NO REVISION DATE

NOTES:

SCALE: As indicated

Michael F Brunelle

AR-984536

snow melt



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190 Cranbrook R PO BOX 3204 Hailey Idaho 83333-3204 p 208.589.0771

DRAWN BY: Author