

**POCATELLO DEVELOPMENT AUTHORITY**  
**Board of Commissioners Meeting**  
**June 17, 2020 – 11:00 a.m.**  
**Council Chambers – Pocatello City Hall**

**DUE to the COVID-19 pandemic guidelines,  
no on-site public access is permitted for this meeting.**

**The regular Pocatello Development Authority Meeting will be live-streamed at:  
<http://streaming.pocatello.us/> or on Sparklight Cable, channel 56**

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City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three days' advance notice by contacting Skyler Beebe at [sbeebe@pocatello.us](mailto:sbeebe@pocatello.us), 208.234.6248, or 5815 South 5<sup>th</sup> Avenue, Pocatello, Idaho.

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In the event this meeting is still in progress at 12:00 p.m., a ten-minute recess may be called.

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- 1. CALL TO ORDER, DISCLOSURE OF CONFLICT OF INTEREST, AND ACKNOWLEDGMENT OF GUESTS.**
- 2. ACTION ITEM – Minutes.** The Board may wish to waive the oral reading of the minutes and approve the minutes from the Board of Commissioners Regular Meeting held May 20, 2020, and the Special Meeting on June 2, 2020. *See attached document.*
- 3. ACTION ITEM – Financial Report.** A financial report for the PDA will be provided by PDA Treasurer. The Board may wish to approve the financial report. *To be supplemented.*
- 4. ACTION ITEM – Expense Payments & Reimbursements.** The Board may wish to approve the payment or reimbursement of the following PDA expenses:
  - a. \$8,116.50 from General Fund to Elam & Burke for legal fees for the month of May re: Special General Counsel
  - b. \$270.00 from North Portneuf fund to Stacey & Parks for legal services re: Client Communication.
- 5. ACTION ITEM – North Portneuf TIF District.** The Board may wish to define and approve the terms of and authorize the Chair's signature on an owner participation agreement with Portneuf Capital, LLC. *To be supplemented.*
- 6. ACTION ITEM – Airport TIF District.** The Board may wish to review and approve the following requested disbursements of funds under the previously approved reimbursement by the Board, and authorize the Chair's signature on the Confirmation of Agency Reimbursement. *See attached documents.*
  - a. Frigitek, LLC is requesting disbursement of \$68,182.50 under the owner participation agreement as approved by the Board on April 15, 2020 and authorized on September 18, 2019. The request is for civil engineering, geotechnical engineering and construction management services period of 03/26/20 – 4/25/20.
  - b. Frigitek, LLC is requesting disbursement of \$77,714.80 under the owner participation agreement as approved by the Board on April 15, 2020 and authorized on September 18, 2019 civil engineering, geotechnical engineering and construction management services 04/26/20 – 5/25/20.
  - c. Frigitek, LLC is requesting disbursement of \$35,000.00 under the owner participation agreement as approved by the Board on April 15, 2020 and authorized on September 18, 2019. The request is for professional services of infrastructure design and project management rendered between 08/7/2019-05/15/2020.
- 7. ACTION ITEM – Potential TIF District.** Tanner Hernandez will present a proposal for a potential urban renewal area/revenue allocation district in the South 5<sup>th</sup> area. *See attached documents.*
- 8. CALENDAR REVIEW –** The Board may wish to take this opportunity to inform other Board members of upcoming meetings and events that should be called to their attention.
- 9. ADJOURN.**

**AGENDA ITEM**

**NO. 2**

**POCATELLO DEVELOPMENT AUTHORITY**  
**MEETING MINUTES**  
**Held via GoToMeeting**  
**May 20, 2020**

**Members present:** Heidi Adamson, Mayor Brian Blad, Chad Carr, Rob Lion, Scott Smith, Scott Turner, Terrel Tovey , David Villareal

**Members absent/excused:** Thomas Ottaway,

**Others present:** Carl Anderson, Pocatello Senior Planner; Ashley Linton-Welsh, Treasurer (Conference Call); Jared Johnson, Pocatello City Attorney; Merril Quayle, Pocatello Public Works Development Engineer; Jeff Mansfield, Pocatello Public Works Director; John Regetz, Bannock Development Corporation; Sterling Davie, Off the Rails Brewery; Kenneth Brown, Lionchase North America; Elden Charles Frigitek Industrial Parks; L.D. Barthlome, Portneuf Capital; and other members of the public

**Agenda Item No. 1: Call to Order and Disclosure of Conflicts of Interest.** Chair Scott Smith called the meeting to order at approximately 11:02 a.m. No conflicts were disclosed at this time.

**Agenda Item No. 2: Approval of the Agenda.** Upon MSC (B. Blad, R. Lion) the agenda was approved.

**Agenda Item No. 3: Minutes.** The minutes from the Board of Commissioners Regular Meeting held April 15, 2020, were considered. It was then MSC (H. Adamson, S. Turner) to approve the minutes as presented.

**Agenda Item No. 4: Financial Report Linton-Welsh** presented the April financial report. At the end of the reporting period, the Authority had cash on hand of \$3,910,460.57, with checking account balance of \$4,910,435.57 and savings account was \$25.00. The Authority recognized financial activity as follows: net revenue totaled \$-228,954.76, of which \$875.90 was interest earnings on cash invested. Expenses totaled \$5,503.15 in administrative expenses and \$224,247.51 in debt services principal payoff. The Board discussed fund balance and it was then MSC (B. Blad, C. Carr) to approve the March financial report.

**Agenda Item No. 5: Fiscal Year 2019 Audit Report Linton-Welsh** presented the 2019 Fiscal Year Audit Report prepared by Deaton & Company. She reviewed the audit report and summarized the Board's activity for FY2019. It was a clean audit that included three items that the Board might consider. Questions were brought up regarding the economic development loans and grants. Concerns surrounding this practice is that the funds are not guaranteed back and recommended a fund fund for bad debt. She stated that there was a loan for \$50,000 and has not been able to locate this business to date, and recommends writing off the loan amount. It was also recommended that the Board not accept direct deposits. Following discussion it was then MSC (B. Blad, C. Carr) to accept the report.

**Agenda Item No. 6: Expense Payments & Reimbursements.** The following invoices were considered for payment:

- a. \$3,031.50 from General Fund to Elam & Burke for legal fees for the month of April re: Special General Counsel.
- b. \$75.00 from the General Fund to Alliance Title for the reconveyance fee regarding the sale of the property located at 200 S. Main St. to Station Square, LLC.

Anderson reviewed the payment requests, stating the invoices accurately reflect work performed for services provided, and are appropriate for payment. It was then MSC (C. Carr, R. Lion) to approve the payment requests.

**Agenda Item No. 7: PDA Staff support.** Anderson introduced the agenda item and provided a summary of the current organization of staff support to the Board. Staff present at the meeting provided a summary of the average time spent and discussed services provided.

The Board discussed the possibility of having staff support separate from City staff. It was stated that in the past the PDA was not reimbursing the City for staff time. It was discussed that the Board is well within budget and that the Board may

revisit the topic at the end of the year. The Board discussed maintaining the current staff support and will re-evaluate if it becomes an urgent issue, the Board will address at that time.

**Agenda Item No. 8: General Fund Loan – Off the Rails.** **Anderson** introduced the request from BGS Holdings, LLC, who is requesting an extension to the date of their first loan payment to the PDA. A staff summary of the project was provided. It was stated that the Board approved a grant in the amount of \$60,000.00 and a loan of \$200,000.00 at a fixed rate of prime plus 1% loan the fall of 2018. Per the associated promissory note, the first payment on the loan is due June 1, 2020, and payments are due every quarter until the balance is paid in full on March 1, 2024. The applicant had previously requested to subordinate the PDA's loan to the Bank of Idaho at the regular meeting held on July 24, 2019, which was approved following discussion. The applicant requested that the due date for the first payment be moved to January of 2021.

Following the staff summary, the Board discussed the request. **Adamson** expressed concern pertaining to the length of the extension being requested.

**Sterling Davie**, representing Off the Rails Brewery, stated that in six months they will have a plan and framework in place. He stated that there were delays to the original open date due to construction. It was stated that Off the Rails has a plan to bring employees back and it will take time.

**Tovey** left the meeting at 11:58 a.m.

**Villareal** stated that many businesses have been impacted and recommended the extension be granted for one quarter rather than 2, and that the extension be a one time extension. The Board discussed the request before them and the lack of any form of payment.

**Davie** clarified that Off the Rails is currently open, with the grand opening to be held on July 1, and they intend to hire back everyone that they can handle. **Davie** requested that a minimum of a three month extension be granted and stated that they do not want to open sooner as it would throw off their marketing campaign. **Davie** stated that they have received a three month holding period with Bank of Idaho and a small business loan to address employee salary.

Discussion ensued among Board members regarding the request, noting that the Board would like to see a 3 month extension with some payment up front. Following discussion the agenda item was then **MSC (D. Villareal, B. Blad)** that Off the Rails makes a payment of \$5,000.00 and the PDA adjust the quarterly payment amount and put that on the back of the note as an option, and that this is a one time option and no further action may be taken.

**Agenda Item No. 9: Airport TIF District.** **Anderson** introduced the request from Frigitek, LLC for reimbursement of work completed under the previously approved authorization from the Board at the September 18, 2019 meeting.

**Anderson** reviewed the payment requests, stating the invoices accurately reflect work performed or goods and services provided, and are appropriate for payment. Staff clarified that the lease agreement between the City of Pocatello and Frigitek Industrial Parks has been signed and returned to the City. It was then **MSC (H. Adamson, S. Turner)** to approve the reimbursement requests for items a. and b. as presented.

**Agenda Item No. 10: Executive Session:** This item was pulled from the agenda.

**Agenda Item No. 11: North Portneuf TIF District.** **Smith** introduced the report regarding the previously approved reimbursement request from Portneuf Capital, LLC for infrastructure improvements under the North Portneuf Urban Renewal Improvement Plan. Following the introduction, time was turned over to **Meghan Sullivan Conrad, Elam & Burke**, who reviewed the request from Portneuf capital. **Conrad's** summary indicated the plan was intended to facilitate the development of the site and that the improvements identified were specific to the site. She stated that the district was originally projected that the site would generate approximately \$62,000,000.00 over the life of the TIF. She indicated that

this property was originally owned by the City of Pocatello at the time these agreements were entered in to. Her summary included that when the property was purchased by Portneuf Capital, LLC, it was purchased on an as is basis. Following the summary **Conrad** found that the request is not compliant with the North Portneuf TIF plan.

**Conrad** then summarized options the Board may wish to consider moving forward. One option presented was an amendment to the North Portneuf TIF plan. It was indicated that TIF plans in the State of Idaho that were established pre 2016, may be amended without a base reset, however, this process would need an updated feasibility study. It was stated that the base was established in 2007 and is scheduled to terminate in 2031, and taxable values may not be able to pay in full. The process would not require the need to establish eligibility. She stated that a new plan would be made and taken before both the Planning & Zoning commission and City Council. She estimated that if moving expeditiously the amendment might be completed by the end of the calendar year. Another option presented was that the plan might be terminated and a new plan created. The process would be similar to the amendment to the plan amendment, however, eligibility would need to be established and the base reset.

**Smith** then clarified the request before the Board. **Conrad** summarized that the recommendation is to deny the funding request as proposed and take a hard look at both options moving forward.

**Blad** expressed concern with the recommendation and asked for additional clarification. **Conrad** stated that in reviewing the plan, the current request is for private development which is outside the scope of the existing plan.

Following the report, the Board ensued in discussion on the request. The Board discussed whether some of the request could be paid under the current plan. **L.D Barthlome, Portneuf Capital, LLC**, reviewed the scope of the project as presented. It was stated that he believes that there are items from the request that fall into the plan. Additionally, some of the items requested for reimbursement are items required by City Code. He then discussed the benefits the project will bring.

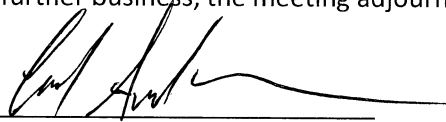
It was indicated that a meeting should be held between the applicant, staff, the Chair and legal counsel to further evaluate the proposal. Following discussion, a motion was made (**B. Blad, C. Carr**) to approve any of the expenditures that would fall into table 1 of the plan and that more information on the other items that have been asked for reimbursement with further discussion about a future amendment that may occur. Following the motion the Board ensued in discussion. Following discussion, and clarification of the plan amendment process, the motion was withdrawn.

**Lion** left the meeting at approximately 1:50 p.m.

With no further discussion the agenda item was then **MSC (C. Carr, B. Blad)** to postpone the agenda item to a special meeting the following week.

**Agenda Item No. 12: Calendar Review:** This item was pulled from the agenda.

**Agenda Item No. 13 Adjournment:** There being no further business, the meeting adjourned at approximately 1:57 p.m.

By:   
Carl Anderson  
Interim Executive Director

**POCATELLO DEVELOPMENT AUTHORITY**  
**SPECIAL MEETING MINUTES**  
**June 02, 2020**

**Members present:** Heidi Adamson, Mayor Brian Blad, Chad Carr, Scott Turner, David Villareal

**Members absent/excused:** Rob Lion, Thomas Ottaway Scott Smith, Terrel Tovey,

**Others present:** Carl Anderson, Pocatello Senior Planner; Merrill Quayle, Pocatello Public Works Development Engineer; Jeff Mansfield, Pocatello Public Works Director; L.D. Barthlome, Portneuf Capital; Chad Hansen, Portneuf Capital

**Agenda Item No. 1: Call to Order and Disclosure of Conflicts of Interest.** Vice Chair Chad Carr called the meeting to order at 11:13 a.m. No conflicts were disclosed at this time.

**Agenda Item No. 02: North Portneuf TIF District.** Anderson introduced the report regarding the previously approved reimbursement request from Portneuf Capital, LLC, for infrastructure improvements under the North Portneuf Urban Renewal Improvement Plan. The Board was informed that a summary was emailed to the board members at the start of the meeting as supplemental to the agenda packet, and that this summary is available upon request.

Following the introduction, time was turned over to **Meghan Sullivan Conrad, Elam & Burke**, who then provided a report on the request from Portneuf capital. She discussed the considerations of the analysis involved in the reimbursement request. The considerations are based on best practice and the shift in the scope of the plan. **Conrad** recommended a plan amendment and addressed the considerations involved in the plan amendment. She stated that there is an argument that there are some public improvements identified in the plan that have not yet been completed. She indicated that for utility work under consideration it was understood that the utility easements would be granted and the work contained within these easements, and that these utilities would also be available for future developments.

**Carr** clarified the distinction between the public utility and the cost associated. **Conrad** stated that there is an argument for power, natural gas and fiber utilities as these were projects existing under the current plan.

The Board discussed projects involved in the original plan and the process involved in dedicating the future road to the City. The Board discussed the request for paving concerning the parking areas and site access. **Quayle** discussed the original plan and clarified that a public road was originally considered. He then stated that the bridge on craft road is a county road. **Conrad** clarified that the roadway would need to be public roadway before being eligible for reimbursement. **Barthlome** then clarified that access across the Union Pacific tracks is not part of the request. He then reviewed the different paved areas that are part of the request.

Following discussion, a motion was made **MSC (B. Blad, S. Turner)** to reimburse after receipts are received for the requested power, fiber optic and natural gas extension.

Following the motion, the Board discussed the remaining items from the request and the process for dedicating the roadway.

**Agenda Item No. 3 Adjournment:** There being no further business, the meeting adjourned at approximately 12:14 p.m.

By:   
\_\_\_\_\_  
Carl Anderson  
Interim Executive Director

**AGENDA ITEM**

**NO. 7**

# Pocatello Development Authority

City of Pocatello  
911 North 7<sup>th</sup> Avenue  
Pocatello, Idaho 83201

*An urban renewal agency for the City of Pocatello, Idaho*

TO: Pocatello Development Authority, Board of Commissioners  
FROM: Carl Anderson, Interim Executive Director  
Merril Quayle, Public Works Development Engineer  
DATE: June 17, 2020  
SUBJECT: Frigitek, LLC – Issuance of Funds

**BACKGROUND:** As part of the Owner Participation Agreement with Frigitek LLC, the Board approved the TIF reimbursement request of \$4,578,117 which includes \$500,000 from existing district funds with the remainder as funds are available and sufficient increment is generated. Eligible costs include improvements outlined in the plan and approved OPA, associated with the development of the cold storage facility within the Airport TIF District.

To date, a total of \$114,900 has been approved by the Board for reimbursement on projects including site surveying and construction management services. June 17, 2020 reimbursement request include:

- 7a. KBCm Group - Pay application #3: \$68,182.50
- 7b. KBCm Group - Pay application #4: \$77,714.80
- 7c. Ryan Invoice No. 380568: \$35,000.00

June 17, 2020 request Total: \$180,897.30  
Total to Date: \$295,797.30

**SUMMARY:** No code-related permits or inspections were required as the work performed is primarily pre-construction. The work has been completed to the extent of the invoices included within attachment a and b. The work completed attachments a and b includes site civil engineering, geotechnical engineering and construction management services. It is staff's determination that the reimbursement request is appropriate for payment for items 7a and 7b.

In review of the work described on page 2 of the invoice, staff finds that the invoice located in attachment (c) is not eligible for reimbursement as it is not an eligible cost identified in either the Airport TIF plan or attachment 3 of the approved Owner Participation Agreement.

The applicable Agency Funded Public Improvements include the following:

Item	Estimated Cost
01-05500 – Civil Engineering	\$109,000
01-10160- Construction Manager	\$111,800
01-18000- Contingency	\$555,919

Upon approval, payment should be made to **Frigitek Industrial Parks**.



## Attachment 4

CONFIRMATION OF AGENCY REIMBURSEMENT NO. \_\_\_\_\_

This Confirmation of Agency Reimbursement (“Confirmation”) is entered into between the Pocatello Urban Renewal Agency, commonly known as the Pocatello Development Authority, an independent public body, corporate and politic (hereinafter “Agency”), organized pursuant to the Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the “Law”), and undertaking projects under the authority of the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (hereinafter the “Act”), and Frigitek Industrial Parks, Inc., a Texas corporation authorized to do business in the State of Idaho (hereinafter “Participant”). The Effective Date of this Confirmation is the date last signed by the parties.

### WITNESSETH:

1. **Agency Contribution**

Agency has, pursuant to the procedures set forth in the Owner Participation Agreement by and between the Agency and Participant with an effective date of \_\_\_\_\_ (the “OPA”), determined the Actual Eligible Costs for those certain Agency Funded Public Improvements as those terms are defined in the OPA and as specifically identified below, shall be \_\_\_\_\_ and \_\_\_/100 dollars (\$ \_\_\_\_\_) (the “Agency Reimbursement”) for the [identify Agency Funded Public Improvements subject to reimbursement in this Confirmation].

2. **Payment Terms.**

Agency agrees to reimburse Participant for the amount of the Agency Reimbursement, without interest from the Effective Date of this Confirmation pursuant to the Reimbursement Procedure set forth in the OPA.

**Participant acknowledges that the Agency Reimbursement may not be paid in full if the revenue allocation proceeds available for reimbursement under the Urban Renewal Plan and pursuant to the OPA, are less than the Agency Reimbursement.**

**If the Agency Reimbursement is not fully reimbursed by December 31, 2033, the Agency will not be obligated to make any additional payments.**

**To the extent there is more than one Confirmation of Agency Reimbursement between the parties and pursuant to the OPA, then payment will be applied to the Confirmation with the earliest Effective Date first, until paid in full, or until December 31, 2033, or upon termination of the Urban Renewal Plan, whichever occurs first.**

3. **Limitation on Making Payments**

It is the intention of the parties that Participant shall only be paid from the revenue allocation proceeds, if any, which are allocated to Agency as a direct result of the Private Development, as defined in the OPA, constructed by the Participant or others on or related to the Site. If, for any reason, the revenue allocation proceeds anticipated to be received by Agency as a direct result of the Private Development in the Project Area are reduced, curtailed or limited in any way by market conditions, actions by Participant, legislative enactments, initiative referendum, judicial decree, or other, the Agency shall have no obligation to pay the Agency Reimbursement to Participant as described in this Confirmation from other sources or monies which Agency has or might hereinafter received.

4. Except as expressly modified above, the terms and conditions of the OPA are still binding on Agency and Participant as set forth in such OPA.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

**AGENCY**  
**POCATELLO URBAN RENEWAL AGENCY, A/KA**  
**THE POCATELLO DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

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

ATTEST:

By: \_\_\_\_\_

\_\_\_\_\_,  
Secretary

**PARTICIPANT**  
**FRIGITEK INDUSTRIAL PARKS, INC.**

By: \_\_\_\_\_  
Gerald Dicker, President

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

# **Agency funded public improvements**

**Owner Participation Agreement - (attachment 3)**

### Attachment 3

#### Agency Funded Public Improvements

<b>Item</b>	<b>Estimated Cost</b>
01-05500 - Civil Engineering	\$109,000
01-10160 - Construction Manager	\$111,800
01-15526 - Traffic Control	\$12,000
01-17113 - Mobilization/Demobilization	\$204,269
01-18000 - Contingency	\$555,919
02-05400 - Aggregate Subbase	\$375,055
02-21419 - <b>Water</b> Main Piping	\$277,860
02-21420 - Water Main Valves	\$36,000
02-21421 - Hydrants	\$72,000
02-21422 - Sewer Piping	\$39,600
02-21423 - Sewer <b>Concrete</b> Manholes	\$25,000
02-21424 - Sanitary Sewer Lift Station	\$850,000
02-21425 - Sewer Cleanout	\$17,200
02-23150 - Engineered Fill	\$122,780
02-24500 - Railroad Construction	\$1,044,214
02-25150 - Asphalt Paving	\$363,625
02-29000 - Landscaping	\$75,150
02-31500 - Excavation	\$62,773
02-37000 - Erosion and Sedimentation Control	\$35,000
02-77000 - Curb and Gutters	\$71,550
01-10400 - Staging Area	\$2,000
02-20505 - Street Demolition	\$18,375
02-23100 - Clear and Grub	\$46,420
10-10460 - Traffic Signage	\$2,500
16-20050 - Street <b>Lighting</b>	\$66,000
<b>TOTAL</b>	<b>\$4,578,117</b>

**Pages 6-11 of the  
Airport TIF Plan**

## II. AIRPORT URBAN RENEWAL AREA DESCRIPTION

The Urban Renewal Area and Revenue Allocation District are identified with identical boundaries. The area is legally described in **Attachment 1**.

## III. PROJECT PLAN

A project list is outlined below. Elements of the list will be funded on a "pay-as-you go" or on a "reimbursement to developer" basis. This list is the immediate project list for the revenues available. If additional revenues become available, other site work may be pursued or the Development Authority may expedite payment of funds in anticipation of an early closing of the district. Table 1 lists the immediate project needs with estimated costs. This plan and the Revenue Allocation provision will terminate December 31, 2033.

**TABLE 1. Project Costs**

<b>GENERAL PROJECT LIST</b>	<b>COST</b>
Development Master Plan Creation	\$ 50,000
Surveying and Platting Work	\$ 30,000
Landscaping	\$ 0
Franchise Utility Upgrades (sites 'A' and 'B')	\$ 515,000
<b>General Project List Sub-Total</b>	<b>\$ 595,000</b>
<b>PROJECT LIST – Project Site 'A' (Fortress and Bell Streets)</b>	<b>COST</b>
Site Utilities: Water, Sewer, Storm Water Systems	\$ 256,700
Roadway Construction/Improvements – Turning Radii (gravel)	\$ 12,500
Rail Spur Rehabilitation/loading-unloading crane/hoist	\$ 0
Construction Engineering/Surveying/Management Services/Contingencies	\$ 110,000
Project Financing Charges	\$ 212,432
<b>Project List – Project Site 'A' Sub-Total</b>	<b>\$ 591,632</b>
<b>PROJECT LIST – Project Site 'B' (Boeing Street)</b>	<b>COST</b>
Site Utilities: Water, Sewer, and Storm Water Systems	\$ 720,400
Roadway Construction/Improvements	\$ 12,500
Rail Spur Rehabilitation/Extension	\$ 365,000
Construction Engineering/Surveying/Management Services/Contingencies	\$ 219,000
Project Financing Charges	\$ 737,743
<b>Project List – Project Site 'B' Sub-Total</b>	<b>\$2,054,643</b>
<b>PROJECT LIST – Project Site 'C' (Westside Industrial Park)</b>	<b>COST</b>
Site Utilities: Water, Sewer, and Storm Water Systems	\$ 0
Water Tank	\$1,500,000
Franchise Utility Upgrades	\$ 0

Construction Engineering/Surveying/Management Services/Contingencies	\$ 300,000
Project List – Project Site ‘C’ Sub-Total	\$1,800,000
<i>ALL TOTAL</i>	\$5,041,275
PDA Administrative Costs	\$ 0
<i>FINAL TOTAL</i>	\$5,041,275

**Project Descriptions:**

- **Master Planning:** This would include the hiring of professional planning and engineering services to plan the entire 589 acres so that utilities are provided adequately for full build-out, that areas for development are properly identified, and that proposed uses are compatible with one another.
- **Surveying and Platting:** Hiring an engineering firm to survey and plat an approximate 589 acre area of land in order to create parcels for marketing purposes.
- **Site Utilities: Water line and Water System Upgrades—**Install main water and sewer lines for fire and industrial water service. Install a 1,000,000 gallon storage tank and additional pump station(s) to accommodate fire water service requirements.
- **Site Utilities: Storm Water Upgrades –** Enhancements to storm water retention/detention capacity.
- **Landscaping—**Design and implement a landscaping plan for the area installing needed trees, grass and plants to beautify the area and to comply with City codes.
- **Roadway Improvements—**Widen roadways where needed and improve and/or expand roadway system and to accommodate future developments in the area. Reinforce roadway at rail spur intersections. Install curb and gutter and intersection radii and other necessary improvements to enhance access and transportation to the site.
- **Rail Spur Rehabilitation/Extension –** Upgrade rail spur system to accommodate industrial expansion in the area including the loading and off-loading of material.
- **Franchise Utility Upgrade--** Utility upgrades required to facilitate full development of sites within this area.
- **Contingency costs--**Additional cost were calculated for work related to increase in costs of the work and other administrative expenses associated with the project.
- **PDA Administrative Costs –** Eligible costs for reimbursement to the PDA for management, legal, financial and other oversight responsibilities of the district formed and projects undertaken.
- **Other--**Any costs or tasks related to, construction or reconstruction of roads, extensions of water, sewer, or storm water lines, street lighting, public landscaping, location of electrical transformers, construction of fire lanes or provision of fire flow, construction of wells, location of railroad spurs, switches, or signals within the project area, demolition or clean up of sub-standard buildings or other “horizontal” debris, management of property acquired by or in control of the agency, disposition of property for public or private uses in accordance with the Plan, including sale of property at fair value but below market value, assembly of adequate sites for development, any construction including foundations, platforms, and other structural forms, issuance of bonds, notes or other obligations to finance all or any part of the projects, and all other actions as necessary under State Law to accomplish this Plan, funded through Tax Increment Financing. Any additional costs related to any of the prioritized or alternative projects which the PDA and Council propose to be used to complete or enhance a project may also be used.

Table 2 outlines the total project costs and the projected revenue for the proposed revenue allocation district.

**TABLE 2. Project Costs and Revenues**

ITEM	AMOUNT	TOTAL
<b>COSTS</b>		
General Site Costs	\$ 595,000	
Site 'A' Costs	\$ 379,200	
Site 'B' Costs	\$1,316,900	
Site 'C' Costs	\$2,700,000	
PDA Administrative Costs	\$ 0	
<b>Total Costs</b>		<b>\$5,041,275</b>
<b>REVENUES</b>		
Revenue Allocation Proceeds	\$5,047,574	
Ending District Balance		\$ 6,299

**IV. ECONOMIC FEASIBILITY STUDY**

The following tables provide a breakdown of base-assessment valuations for the proposed revenue allocation district for the Pocatello Regional Airport Urban Renewal Area/Revenue Allocation District. These base valuation amounts were provided by the Power County Assessor's office. An analysis of the tax levy rates applied in calculating tax collection for the Pocatello Airport Revenue Allocation District is described below. The 2009 tax levies are used for each of the taxing jurisdictions as supplied by the Power County Assessor's office.

<u>Taxing Jurisdictions</u>	<u>Tax levy</u>
City of Pocatello	.009577781
Power County	.004321735
School District #381	.004300170
Power County Highway District	.002876996
A.F. Library	.000600302
County Hospital	.000951690
Ambulance	.000258694
East Po. Co. Fire	.000557434
Mosquito Abatement	.000368596
<b>Total</b>	<b>.019513228</b>

**TABLE 3.**

Taxing Entity	<sup>1</sup> Tax Levy	Valuation	Revenue
City of Pocatello	.0095777810	\$995,883	\$ 9,538
Power County	.0043217350	\$995,883	\$ 4,304
School District #381	.0043001700	\$995,883	\$ 4,282
County Highway District	.0028769960	\$995,883	\$ 2,865

<sup>1</sup> 2009 levy rate obtained from Power County



County Hospital	.000951690	\$995,883	\$ 948
Ambulance	.000258694	\$995,883	\$ 258
American Falls Library	.000600302	\$995,883	\$ 598
East Po. Co. Fire	.000557434	\$995,883	\$ 555
PO Mosquito Abate	.000368596	\$995,883	\$ 367
Total	.026537970	\$995,883	\$26,429

Table 3. shows the amount of revenue that the taxing jurisdictions will continue to be allocated based on the base year values. Numbers have been rounded to the nearest dollar which may account for discrepancies.

Table 4. provides an analysis of the total tax increment financing value within the Pocatello Regional Airport Revenue Allocation District. The base value is not added into these numbers. Therefore, the entire revenue stream shown here will be allocated to the Development Authority.

Year	Estimated TIF Tax Value	Tax Levy Rate	Tax Revenue to PDA	Cumulative Tax Revenue to PDA
2010	\$0	.019513228	\$0	\$0
2011	\$0	.019513228	\$0	\$0
2012	\$0	.019513228	\$0	\$0
2013	\$5,000,000	.019513228	\$97,566	\$97,566
2014	\$4,910,000	.019513228	\$95,810	\$193,376
2015	\$14,822,700	.019513228	\$289,239	\$482,615
2016	\$14,672,700	.019513228	\$286,312	\$768,927
2017	\$14,442,519	.019513228	\$281,820	\$1,050,747
2018	\$14,219,243	.019513228	\$277,463	\$1,328,210
2019	\$14,002,666	.019513228	\$273,237	\$1,601,447
2020	\$13,792,586	.019513228	\$269,138	\$1,870,585
2021	\$13,588,808	.019513228	\$265,162	\$2,135,746
2022	\$13,391,144	.019513228	\$261,305	\$2,397,051
2023	\$13,199,410	.019513228	\$257,563	\$2,654,614
2024	\$13,013,428	.019513228	\$253,934	\$2,908,548
2025	\$12,833,025	.019513228	\$250,414	\$3,158,962
2026	\$12,658,034	.019513228	\$246,999	\$3,405,961
2027	\$12,488,293	.019513228	\$243,687	\$3,649,648
2028	\$12,323,644	.019513228	\$240,474	\$3,890,122
2029	\$12,163,935	.019513228	\$237,358	\$4,127,480
2030	\$12,009,017	.019513228	\$234,335	\$4,361,815
2031	\$11,858,746	.019513228	\$231,402	\$4,593,217
2032	\$11,712,984	.019513228	\$228,558	\$4,821,775
2033	\$11,571,594	.019513228	\$225,799	\$5,047,574
Total				\$5,047,574

14/31

Estimated taxable values were provided by the Petersen Inc. (\$5,000,000) and Frazier (\$10,000,000); companies locating at the Airport. Petersen will occupy their building in early 2011. Frazier will occupy their building in 2013. Increment revenue was delayed one year in the schedule to reflect possible delays and when the value may actually be placed on the tax rolls of the county.

The estimated value of the building for Petersen is \$2,000,000. The estimated value of the building for Frazier is \$5,000,000. The combined \$7,000,000 building value is not depreciated for the life of the district. Equipment values are estimated at \$3,000,000 for Petersen Inc. and \$5,000,000 for Frazier. This combined total of \$8,000,000 is depreciated over the life of the district. The depreciated rate is an estimated 3% to mirror Hoku Scientific's depreciation schedule on equipment.

The total dollar amount that may be collected by the PDA over the 24-year life of the district is approximately \$5,047,574. This amount will be used to finance public improvement projects within the Pocatello Regional Airport Urban Renewal Area.

#### V. CONFORMANCE WITH STATE LAW

Redevelopment activities for the Pocatello Regional Airport Urban Renewal Area and Revenue Allocation District are governed by two applicable sections of Idaho Code: the Idaho Urban Renewal Law (Chapter 20, Title 50, Idaho Code) and the Idaho Local Economic Development Act (Chapter 29, Title 50, Idaho Code).

The Idaho Legislature passed the Urban Renewal Law in 1965. Under this law, a Mayor and Council can declare areas as deteriorating, and declare that the rehabilitation, conservation, and redevelopment of such areas is in the interest of the public's health, safety, morals or welfare (Idaho Code 50-2008). The Urban Renewal Law also states that an area of a city that "constitutes an economic and social liability imposing onerous municipal burdens which decrease the tax base and reduce tax revenues, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities..." may be designated an urban renewal area.

The Idaho Legislature passed the Local Economic Development Act in 1988. This act states: "An authorized municipality is hereby authorized and empowered to adopt, at any time, a revenue allocation financing provision, as described in this chapter, as part of an urban renewal plan...A revenue allocation financing provision may be adopted either at the time of the original adoption of an urban renewal plan or the creation by ordinance of a competitively disadvantaged border community area, or thereafter, as a modification of an urban renewal plan or the ordinance creating the competitively disadvantaged border community area." (Idaho Code 50-2904)

In addition to this, Idaho Code 50-2906 states: "The local governing body of an authorized municipality must enact an ordinance in accordance with Chapter 9, Title 50, Idaho Code, and Section 50-2008, Idaho Code. To modify an existing urban renewal plan, to add or change a revenue allocation, an authorized municipality must enact an ordinance...and conduct a public hearing." (Idaho Code 50-2906) This part of the Idaho Code specifically implies that a local municipality must enact an ordinance before redevelopment can take place.

The City of Pocatello's Pocatello Regional Airport Urban Renewal Area and Revenue Allocation District Plan proposed within this document follows the guidelines prescribed within Idaho Code for the development of Urban Renewal Areas and Revenue Allocation Districts.

#### **VI. PLAN DURATION**

The plan shall be in effect and enforceable for a period of time necessary to finance all designated improvements and all debt obligations which the PDA may incur in connection with such improvements, over a twenty (24) year time period (2010-2033).

#### **VII. AMENDMENT PROCEDURES**

The plan may be amended by the PDA after all notice and public hearing requirements as set forth in Idaho Code have been met, and upon formal approval by the Pocatello City Council.

#### **VIII. SEVERABILITY**

If any part of the plan is declared contrary to Idaho Code, and any provision or application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of any remaining provisions of the Plan.

#### **IX. CONCLUSION**

The Pocatello Regional Airport Urban Renewal Area and Revenue Allocation Districts Plan is designed to ameliorate deteriorating conditions which are causing economic under-development of the area and substantially impairing the sound growth of Pocatello.

Implementation of the plan will provide the infrastructure capacity necessary to foster sound growth of the airport and increase the tax base and tax revenues, encourage economic stability of the community, and improve the health, safety, and welfare of the community in this area.

The Pocatello Development Authority recommends that the City cooperate and assist in carrying out the purposes of this Plan. It is expected that the City of Pocatello will assist efforts to ensure that the projects as set forth and financed under this plan are accomplished.

**AGENDA ITEM**

**NO. 7a**



8901 Tehama Ridge Pkwy  
Suite 127140  
Ft. Worth, TX 76177

**Frigitek Industrial Parks**

# **2020-102 TIF Improvements**

# **Pay Application #3**

**(877) KBCM Group (office), (866) 275-1880 (fax), [www.kbcmgroup.com](http://www.kbcmgroup.com)**

# Pay Application Summary

1. **Report of Rejected Invoices:** Invoices rejected from contractor's billing
2. **Application for Payment:** Complete pay application in AIA form
3. **Subcontractor/Vendor Backup Invoices:** Each invoice is approved and stamped with the area and cost code
4. **Approved Change Orders:** Any approved change orders for the current pay period
5. **Commitment Report:** Report with committed cost to date
6. **Cost Report:** Snapshot of current job cost
7. **Cash Flow:** Estimate of cash flow projected month of month for the course of construction
8. **Lien Waiver Report:** Current lien waiver report and release from vendors for all payment against contracts with value of \$10,000 or more.

# Rejected Invoices

Invoice #	Total	Notes
NA		
Total	-	

**TO OWNER/CLIENT:**

City of Pocatello  
911 N 7th Avenue  
Pocatello, Idaho 83201

**PROJECT:**

TIF Improvements  
1950 Airport Way  
Pocatello, Idaho 83204

**APPLICATION NO: 3**

**INVOICE NO: 3**

**PERIOD: 03/26/20 - 04/25/20**

**PROJECT NO: 2020-102**

**CONTRACT DATE:**

**FROM CONTRACTOR:**

Frigitek Industrial Parks, Inc  
6565 N MacArthur Blvd, Suite 225  
Dallas, Texas 75039

**VIA ARCHITECT/ENGINEER:**

Jake Ferrell (ASM Engineering Consultants)  
202 E. Rhondda Ave.  
Andover, Kansas 67002

**CONTRACT FOR:** TIF Improvements Prime Contract

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum	\$4,578,117.00
2. Net change by change orders	\$0.00
3. Contract Sum to date (Line 1 ± 2)	\$4,578,117.00
4. Total completed and stored to date (Column G on detail sheet)	\$183,082.51
5. Retainage:	
a. 0.00% of completed work	\$0.00
b. 0.00% of stored material	\$0.00
Total retainage (Line 5a + 5b or total in column I of detail sheet)	\$0.00
6. Total earned less retainage (Line 4 less Line 5 Total)	\$183,082.51
7. Less previous certificates for payment (Line 6 from prior certificate)	\$114,900.01
8. <b>Current payment due:</b>	<b>\$68,182.50</b>
9. Balance to finish, including retainage (Line 3 less Line 6)	\$4,395,034.49

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner/Client:	\$0.00	\$0.00
Total approved this month:	\$0.00	\$0.00
Totals:	\$0.00	\$0.00
Net change by change orders:	\$0.00	

The undersigned certifies that to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work which previous Certificates for payment were issued and payments received from the Owner/Client, and that current payments shown herein is now due.

CONTRACTOR: Frigitek Industrial Parks, Inc

By: 

Date: 6/10/20

State of:

County of:

Subscribed and sworn to before  
me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public:

My commission expires:

**ARCHITECT'S/ENGINEER'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on the on-site observations and the data comprising this application, the Architect/Engineer certifies to the Owner/Client that to the best of the Architect's/Engineer's knowledge, information and belief that Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$68,182.50

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to confirm the amount certified.)

ARCHITECT/ENGINEER:

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

This certificate is not negotiable. The amount certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to the rights of the Owner/Client or Contractor under this Contract.



Document SUMMARY SHEET, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.  
Use Column I on Contracts where variable retainage for line items apply.

APPLICATION NUMBER: 3  
APPLICATION DATE: 4/25/2020  
PERIOD: 03/26/20 - 04/25/20

Contract Lines

A ITEM NO.	B COST CODE	C DESCRIPTION OF WORK	D SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	H % (G / C)	I BALANCE TO FINISH (C - G)	J RETAINAGE
				FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
1	01-01 30 11 - Civil Engineer	Civil Engineer	\$83,150.00	\$24,900.00	\$19,382.50	\$0.00	\$44,282.50	53.26%	\$38,867.50	\$0.00
2	01-01 30 15 - Geotechnical Engineering	Geotechnical Engineering	\$3,800.00	\$0.00	\$3,800.00	\$0.00	\$3,800.00	100.00%	\$0.00	\$0.00
3	01-01 31 05 - Construction Management Over Site Delivery	Construction Management Over Site Delivery	\$90,000.00	\$33,246.76	\$33,116.88	\$0.00	\$66,363.64	73.74%	\$23,636.36	\$0.00
4	01-01 31 06 - Project Management	Project Management	\$80,000.00	\$27,984.72	\$3,652.60	\$0.00	\$31,637.32	39.55%	\$48,362.68	\$0.00
5	01-01 31 08 - Project Controls	Project Controls	\$50,000.00	\$12,660.16	\$2,629.87	\$0.00	\$15,290.03	30.58%	\$34,709.97	\$0.00
6	01-01 31 11 - Project Modeling	Project Modeling	\$20,000.00	\$9,941.13	\$5,600.65	\$0.00	\$15,541.78	77.71%	\$4,458.22	\$0.00
7	01-01 31 12 - Master Execution Plan	Master Execution Plan	\$10,000.00	\$3,369.50	\$0.00	\$0.00	\$3,369.50	33.70%	\$6,630.50	\$0.00
8	01-01 31 13 - Project Coordination	Project Coordination	\$50,000.00	\$2,797.74	\$0.00	\$0.00	\$2,797.74	5.60%	\$47,202.26	\$0.00
9	01-01 55 26 - Traffic Control	Traffic Control	\$13,800.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$13,800.00	\$0.00
10	01-01 55 29 - Staging Areas	Staging Areas	\$2,300.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$2,300.00	\$0.00
11	01-01 57 13 - Temporary Erosion and Sediment Control	Temporary Erosion and Sediment Control	\$40,250.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$40,250.00	\$0.00
12	01-01 71 13 - Mobilization	Mobilization	\$10,062.94	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$10,062.94	\$0.00
13	10-10 14 53 - Traffic Signage	Traffic Signage	\$2,875.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$2,875.00	\$0.00
14	26-26 66 13 - Lighting Poles and Standards	Lighting Poles and Standards	\$75,900.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$75,900.00	\$0.00
15	32-32 92 19 - Seeding	Seeding	\$51,923.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$51,923.00	\$0.00
16	32-32 94 19 - Landscape Surfacing	Landscape Surfacing	\$34,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$34,500.00	\$0.00
17	01-01 41 23 - Fees	Fees	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$50,000.00	\$0.00
18	01-01 71 13 - Mobilization	Mobilization	\$58,827.04	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$58,827.04	\$0.00
19	33-33 05 61 - Concrete Manholes	Concrete Manholes	\$28,750.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$28,750.00	\$0.00
20	33-33 05 71 - Cleanouts	Cleanouts	\$19,780.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$19,780.00	\$0.00
21	33-33 14 16 - Site Water Utility Distribution Piping	Site Water Utility Distribution Piping	\$299,539.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$299,539.00	\$0.00
22	33-33 14 19 - Valves and Hydrants for Water Utility Service	Valves and Hydrants for Water Utility Service	\$104,200.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$104,200.00	\$0.00

A ITEM NO.	B COST CODE	C DESCRIPTION OF WORK	D SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE
				FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G / C)			
23	33-33 31 00 - Sanitary Sewerage Piping	Sanitary Sewerage Piping	\$45,540.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$45,540.00	\$0.00
24	33-33 32 13 - Packaged Wastewater Pumping Stations	Packaged Wastewater Pumping Stations	\$977,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$977,500.00	\$0.00
25	01-01 71 13 - Mobilization	Mobilization	\$44,153.65	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$44,153.65	\$0.00
26	02-02 41 00 - Demolition	Demolition	\$21,131.25	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$21,131.25	\$0.00
27	31-31 11 00 - Clearing and Grubbing	Clearing and Grubbing	\$8,050.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$8,050.00	\$0.00
28	31-31 24 13 - Roadway Embankments	Roadway Embankments	\$31,846.95	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$31,846.95	\$0.00
29	32-32 01 13 - Flexible Paving Surface Treatment	Flexible Paving Surface Treatment	\$305,571.75	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$305,571.75	\$0.00
30	32-32 11 16.16 - Aggregate Subbase Courses	Aggregate Subbase Courses	\$95,565.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$95,565.00	\$0.00
31	32-32 11 23 - Aggregate Base Courses	Aggregate Base Courses	\$305,048.25	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$305,048.25	\$0.00
32	32-32 12 16 - Asphalt Paving	Asphalt Paving	\$75,647.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$75,647.00	\$0.00
33	32-32 16 13 - Curbs and Gutters	Curbs and Gutters	\$82,282.50	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$82,282.50	\$0.00
34	01-01 71 13 - Mobilization	Mobilization	\$23,374.85	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$23,374.85	\$0.00
35	31-31 11 00 - Clearing and Grubbing	Clearing and Grubbing	\$35,333.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$35,333.00	\$0.00
36	31-31 23 16 - Excavation	Excavation	\$40,342.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$40,342.00	\$0.00
37	31-31 23 23 - Fill	Fill	\$141,197.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$141,197.00	\$0.00
38	34-34 11 26 - Ballasted Track Rail	Ballasted Track Rail	\$997,746.82	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$997,746.82	\$0.00
39	34-34 11 26.16 - Track Rail Subballast	Track Rail Subballast	\$168,130.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$168,130.00	\$0.00
<b>TOTALS:</b>			<b>\$4,578,117.00</b>	<b>\$114,900.01</b>	<b>\$68,182.50</b>	<b>\$0.00</b>	<b>\$183,082.51</b>	<b>4.00%</b>	<b>\$4,395,034.49</b>	<b>\$0.00</b>

Grand Totals

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE	
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G / C)				
<b>GRAND TOTALS:</b>			<b>\$4,578,117.00</b>	<b>\$114,900.01</b>	<b>\$68,182.50</b>	<b>\$0.00</b>	<b>\$183,082.51</b>	<b>4.00%</b>	<b>\$4,395,034.49</b>	<b>\$0.00</b>

**KBCm Group, LLC**  
 8901 Tehama Ridge Pkwy, Ste  
 127140  
 Ft Worth, TX 76177 US  
 sblankenfeld@kbcmgrou.com  
 www.kbcmgrou.com

## Invoice 20001-103



**BILL TO**

Elden Charles  
 Frigitek Industrial Parks, Inc  
 6565 N MacArthur Blvd Suite 225  
 Dallas, Texas 75039  
 United States

DATE  
03/01/2020

PLEASE PAY  
**\$45,000.00**

DUE DATE  
03/01/2020

**DESCRIPTION**

DESCRIPTION	QTY	RATE	AMOUNT
<b>CM:Construction Management Services</b>	1	45,000.00	45,000.00
Construction management services project delivery 3/1/2020 - 3/31/2020			

PO 2020-101-002 Construction management services

**TOTAL DUE \$45,000.00**

THANK YOU.

<b>ENTERED AS JOB COST</b>		
Date:	3/2/2020 12:21:29 PM	
By:	Skyler_KBCM	<input checked="" type="checkbox"/> <b>APPROVED</b>
PO/SC:	2020-101-002	<input type="checkbox"/> <b>REVISE</b>
Job:	Pocatello Cold Storage	<input type="checkbox"/> <b>REJECTED</b>

POCATELLO 2020-101		
Pay Application: 3		
SUB JOB	COST CODE	TOTAL
SITE	01 31 05	33,116.88
SITE	01 31 06	3,652.60
SITE	01 31 08	2,629.87
SITE	01 31 13	5,600.65
Skyler_KBCM 03/02/2020 12:21:14 PM		

## Time Sheet/Recap

Company: KBCm Group  
 Project: 2020 - 101 Pocastello Cold Storage  
 Period: 3/1/2020 - 3/30/2020

Printed May 20, 2020 at 7:49 AM

E#	Class	Name	Cost Code	Rate	Hrs	OT Rate	OT Hrs	Per Diem	Total	Discount Adjustment	Revised Total	Invoice
5042	Project Executive	1.1. Outline Owner's Expectations & Vision for the Project	01 31 05 - Construction Management Over Site Delivery	160	2				320	-	320	20001-103
		1.2. Map Elements of the Project (Site, Logistics, Process Etc.)										
5042	Project Executive	1.3. Map Resources, Constraints & Boundaries	01 31 05 - Construction Management Over Site Delivery	160	3				480	-	480	20001-103
		1.4. Map Time Constraints										
		1.5. Map Time Over Cost Graph										
		1.6. Identify Municipality Requirements										
		1.7. Identification of PFD & or P&ID Process										
		2.1. Map Land Closure, Owner Stewardship Requirements										
		2.2. Creation of Time Scaled Parameters										
		2.3. Creation of Resources & Budgetary Parameters										
		2.4. Creation of Design Parameters										
		2.5. Creation of Municipality Interface, Requirements & Milestones										
		2.6. Creation of Procurement Plan (Long Leads)										
		2.7. Identification of Site Logistical Plan										
		2.7.1. Delivery Sequence & Laydown Requirements Identified										
		2.7.2. Site Security Requirements Identified										
		2.7.3. OH Site & Traffic Control Responsibilities Identified										
		2.7.4. Rail Spur & Stack Up Requirements										
		2.9.1. Testing										
		2.9.2. Certification										
		2.9.3. QAQC Process										
		2.10. Safety Assessment, Observation & Reporting Plan										
		2.10.1. Safety Assessment, Agency Interaction Plan										
		3.1.1. Review & Refine Startup Check-list										
		3.1.2. Identify All Stake Holders & Team Members										
		3.1.2.1. Creation of Project Communication Plan										
		3.1.2.2. Mapping of Project Reporting Plan										
		3.1.3. Creation of Site Safety Plan										
		3.1.3.1. Aid Stations, Safety Protocols, & Emergency Action Plan										
		3.1.3.2. Site Evacuation & Marshaling Area Identified										
		3.1.3.3. Safe Area Emergency Master Plan										
5018	Project Coordinator	3.1.3.4. Vendor Safety Plan Management	01 31 13 - Project Coordination	110	7				770	-	770	20001-103
5081	Senior Project Manager	3.1.4. Construction Administration Plan	01 31 05 - Construction Management Over Site Delivery	150	10				1,500	-	1,500	20001-103
5037	Project Controller	3.1.4.1. Financial Management	01 31 08 - Project Controls	150	8				1,200	-	1,200	20001-103
		3.1.4.2. Project Payment Process										
		3.1.4.3. Change Management										
		3.1.4.4. Punch-list / Phased Turn Over Plan(s) if Applicable										
		3.2.1. Design Disciplines Outlined										
		3.2.1.1. PFD / P&IDs										
		3.2.1.2. 3D / BIM										
		3.2.1.3. Engineering										
		3.2.1.4. Utilities										
		3.2.1.5. Gas and Electrical Generation										
		3.2.1.6. Rail PFD / P&IDs Delivery Identified										
		3.2.1.8. Civil Earth and Roads										
		3.2.1.9. Structural										
		3.2.1.10. Architectural										
5042	Project Executive	3.2.2. Design Delivery Progress & Reporting	01 31 05 - Construction Management Over Site Delivery	160	25				4,000	-	4,000	20001-103

5081	Senior Project Manager	3.2.3. Integration of Design Delivery into Master Schedule	01 31 05 - Construction Management Over Site Delivery	150	20	3,000	-	3,000	20001-103
5081	Senior Project Manager	3.3.1. SOW & RFP Bid Packages	01 31 06 - Project Management	150	25	3,750	-	3,750	20001-103
5022	Procurement Manager	3.3.2. Procurement Schedule	01 31 05 - Construction Management Over Site Delivery	130	6	780	-	780	20001-103
5042	Project Executive	3.3.3. Contract Instruments	01 31 05 - Construction Management Over Site Delivery	160	4	640	-	640	20001-103
		3.3.4. Submittal Schedules							
		3.4. Construction Delivery							
5003	Project Administration	3.4.1. Project Administration	01 31 13 - Project Coordination	80	10	800	-	800	20001-103
5081	Senior Project Manager	3.4.1.1. Progress Meetings	01 31 05 - Construction Management Over Site Delivery	150	25	3,750	-	3,750	20001-103
5018	Project Coordinator	3.4.1.2. RFI & Issue Reporting Process	01 31 13 - Project Coordination	110	10	1,100	-	1,100	20001-103
5018	Project Coordinator	3.4.1.3. Progress Reporting Sequence & Format	01 31 13 - Project Coordination	110	5	550	-	550	20001-103
		3.4.1.5. Mapping, Photo & Drone Reporting							
5081	Senior Project Manager	3.4.2. Contract Administration	01 31 05 - Construction Management Over Site Delivery	150	6	900	-	900	20001-103
5081	Senior Project Manager	3.4.2.1. Creation of Specific SOW Packages	01 31 05 - Construction Management Over Site Delivery	150	25	3,750	-	3,750	20001-103
		3.4.2.2. Creation of Safety & Municipal Requirements Packages							
		3.4.2.3. Creation of Insurance Minimum Standards Packages							
5018	Project Coordinator	3.4.2.4. Communication Plan Requirements for each Trade/SOW	01 31 13 - Project Coordination	110	9	990	-	990	20001-103
5081	Senior Project Manager	3.4.3. Scheduling	01 31 05 - Construction Management Over Site Delivery	150	16	2,400	-	2,400	20001-103
		3.4.3.1. Creation of Driving Master Schedule							
		3.4.3.4. Creation of SIS / Reporting Sequence & Content							
5037	Project Controller	3.4.4. Financial Documentation	01 31 08 - Project Controls	150	4	600	-	600	20001-103
5037	Project Controller	3.4.4.1. Application for Payment Sequence, Format & Submission.	01 31 08 - Project Controls	150	6	900	-	900	20001-103
		3.4.4.2. Creation Payment Requirements & Sequence							
		3.4.4.3. Creation of Financial Reporting Sequence & Content							
		3.4.5. Site Management							
5042	Project Executive	3.4.5.1. Creation of QAQC Plan	01 31 05 - Construction Management Over Site Delivery	160	15	2,400	-	2,400	20001-103
5018	Project Coordinator	3.4.5.2. Creation of Housekeeping Plan	01 31 13 - Project Coordination	110	11	1,210	-	1,210	20001-103
		3.4.5.3. Temporary Utilities & Site Access Plan							
5018	Project Coordinator	3.4.5.4. Site Security Plan	01 31 13 - Project Coordination	110	3	330	-	330	20001-103
5042	Project Executive	3.4.5.5. Vendor Management	01 31 05 - Construction Management Over Site Delivery	160	63	10,080	-	10,080	20001-103
		3.4.5.7.1. SWPP							
		3.4.5.7.2. Permitting and Inspections							
		3.4.5.8.1. Equipment & Light Traffic Interface Protocol's							
		3.4.5.9. Cranes							
		3.4.5.9.1. Location & Lifting Plans							
		3.4.5.9.2. Laydown & Offload Plan							
		3.4.6. Off Site Management							
		3.4.6.2. Site Access Plan							
		3.4.6.3. Water & Utility Implementation Plan							
		4.1. Define Punch List Format							
		4.2. Create Operational Integration, Startup & Turnover Plan							
		4.2.1. Create Operations Training & Instructions Format & Criteria							
		4.2.2. Create Operations Turn-over Plan *(to Name Plate)							
		4.3. Create Demobilization Plan							
		4.3.1. Demobilization Schedule							
		4.3.2. Identify Material Overages & Surplus Dispersal Plan							
		4.4. Create Documents Close-out Management Plan							
		4.4.1. Outline Warranties, OEM Data Sheets & BOM Criteria							
		4.4.3. Create "As Built" Document(s) Criteria							
0001	Adjustment	Rate Adjustment for Billing Agreement \$45,000 per period							(1,200) 20001-103
Total				318	-	-	46,200	-	45,000



**ENTERED AS JOB COST** **KBCM Group**  
 Date: 5/13/2020 10:30:38 AM  
 By: Skyler\_KBCM  APPROVED  
 PO/SC: PO 2020-101-001  REVISE  
 Job: POCATELLO  REJECTED

POCATELLO 2020-102 <b>KBCM Group</b>		
Pay Application: 3		
SUB JOB	COST CODE	TOTAL
SITE	01 30 11	19,382.50
Skyler_KBCM 05/19/2020 4:12:49 PM		

Commitment Change Order 001

Frigitek Industria  
 6565 N MacArth  
 Suite 225  
 Dallas, TX 75033  
 Skyler Blankenfe

Invoice number 16-2640  
 Date 04/15/2020

Project **Pocatello Cold Storage Site Design  
 (2322 R-1)**

CCO #001 PO-2020-101

CCO #001 PO-2020-101-001

**INVOICE -Hourly Not To Exceed**

Description	Contract Amount	Prior Billed	Total Billed	Current Billed
SITE VISITS	2,650.00	0.00	0.00	0.00
LEASE BOUNDARY ESTABLISHMENT	2,700.00	0.00	456.00	456.00
FOOTPRINT SITE BOUNDARY DESIGN	18,200.00	680.00	17,458.50	16,778.50
CONSTRUCTION STORMWATER PERMIT	2,200.00	0.00	2,148.00	2,148.00
<b>Total</b>	<b>25,750.00</b>	<b>680.00</b>	<b>20,062.50</b>	<b>19,382.50</b>

**PROFESSIONAL FEES**

	Hours	Billed Amount
Principal Engineer	2.00	340.00
Project Engineer	79.50	12,084.00
Project Designer	38.00	5,016.00
Designer	18.50	1,942.50
<b>Professional Fees subtotal</b>	<b>138.00</b>	<b>19,382.50</b>
<b>Invoice total</b>		<b>19,382.50</b>

Thank you for your business

Xcell Engineering, LLC


260 Laurel Lane  
Chubbuck ID, 83202  
208-237-5900

# Invoice

<b>ENTERED AS JOB COST</b> 			
Date:	5/13/2020	10:25:07 AM	
By:	Skyler_KBCM	<input checked="" type="checkbox"/> APPROVED	
PO/SC:	PO 2020-101-003	<input type="checkbox"/> REVISE	
Job:	POCATELLO	<input type="checkbox"/> REJECTED	

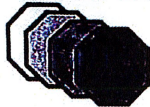
Date	Invoice #
3/20/2020	2126


<b>Bill To</b>
Frigitek Industrial Parks, Inc 6565 N MacArthur Blvd Suite 225 Dallas, TX 75039

<b>POCATELLO 2020-101</b> 		
Pay Application: NA		
SUB JOB	COST CODE	TOTAL
SITE	01 30 15	3,800.00
Skyler_KBCM 05/13/2020 10:23:02 AM		

P.O. No.	Terms	Project
P20416	Due on receipt	

Quantity	Description	Rate	Amount
1	Engineering/GE Evaluation FRIGITEK INDUSTRIAL PARK/Pocatello Airport	3,800.00	3,800.00
<b>Total</b>			<b>\$3,800.00</b>

**Xcell Engineering, LLC**  
  
260 Laurel Lane  
Chubbuck, ID 83202  
Phone (208) 237-5900  
Fax (208) 237-5925  
E-mail: [paul@xcelleng.com](mailto:paul@xcelleng.com)

**FAXED**  
MAR 15 2020  
BY: 

March 15, 2020  
P20416

Mr. Scott Thompson  
Frigitetek Industrial Parks, Inc.  
6565 N. MacArthur Blvd Suite 225  
Dallas, TX 75039

RE: **GEOTECHNICAL REPORT**  
Frigitetek Industrial Park  
Pocatello Airport  
Pocatello, ID

Scott:

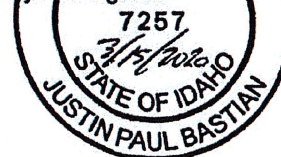
Xcell Engineering has performed the authorized geotechnical evaluation for the proposed industrial Park in Pocatello, Idaho. This evaluation was performed to assess the subsurface soil and groundwater conditions at the proposed site to depths of 12 feet or less. Geotechnical information in this report will be used to assist project planning, design and construction.

This report summarizes the results of our field evaluation, provides laboratory test results and presents our geotechnical findings and opinions. Specific geotechnical information is included in this report for soil and groundwater characteristics encountered during our field exploration. The report provides information based solely on our understanding of the project concept. If project plans are modified we recommend additional specific geotechnical evaluation be performed. Site dewatering during and post construction may be a significant component of design and construction for the project. Individual portions of this report cannot be relied upon without the supporting text throughout the report.

It has been our experience that maintaining geotechnical design continuity through all phases of the project reduces the potential for soil-engineering related errors during design and construction and contributes to overall project success and economy. We appreciate the opportunity to work with you on this project. Please contact our office if you have questions or comments.

Sincerely,  
Xcell Engineering, LLC

  
J. Paul Bastian, PE  
Project Engineer



*Building on Excellence*



# Committed Costs

Printed June 9, 2020 at 10:58 AM  
 Frigitek Industrial Parks  
 Pocatello, ID  
 United States

Export Date 6/9/2020

Project	Number	Title	Vendor	Status	Executed	Sum of Total With Approved Change Orders	Sum of Invoices	Sum of Pending Change Orders	Sum of Total Payments	Sum of Total Remaining
2020-102 TIF Improvements	PO-2020-102-001	Site Civil Engineering TIF	ASM Engineering Consultants	Approved	Yes	76,997.30	76,997.30	-	-	76,997.30
	PO-2020-102-002	Construction Management Delivery and Over Site	KBCm Group - Construction Management	Approved	Yes	180,000.00	180,000.00	-	-	180,000.00
	PO-2020-102-003	Geotechnical Engineering	Xcell Engineering	Approved	Yes	3,800.00	3,800.00	-	-	3,800.00

# Cost Report

2020-R02 TIF Improvements  
KBCm Group Cost Report

Printed June 9, 2020 at 10:59 AM  
Frigitlek Industrial Park  
Pocatello, ID  
United States

Export Date: 6/9/2020

Sub Job	Cost Code	Sum of Original Budget Amount	Sum of Approved COs	Sum of Revised Budget	Sum of Committed Costs	Sum of Direct Costs	Sum of Job to Date Costs	Sum of Forecast To Complete	Sum of Projected over Under
1	STREETS								
	01-01 71 13 - Mobilization	44,153.65	-	44,153.65	-	-	-	44,153.65	-
	02-02 41 00 - Demolition	21,131.25	-	21,131.25	-	-	-	21,131.25	-
	31-31 11 00 - Clearing and Grubbing	8,050.00	-	8,050.00	-	-	-	8,050.00	-
	31-31 24 13 - Roadway Embankments	31,846.95	-	31,846.95	-	-	-	31,846.95	-
	32-32 01 13 - Flexible Paving Surface Treatment	305,571.75	-	305,571.75	-	-	-	305,571.75	-
	32-32 11 16 16 - Aggregate Subbase Courses	95,565.00	-	95,565.00	-	-	-	95,565.00	-
	32-32 12 23 - Aggregate Base Courses	305,049.25	-	305,049.25	-	-	-	305,049.25	-
	32-32 12 16 - Asphalt Paving	75,647.00	-	75,647.00	-	-	-	75,647.00	-
	32-32 16 13 - Curbs and Gutters	82,282.50	-	82,282.50	-	-	-	82,282.50	-
1	STREETS Total	969,296.35	-	969,296.35	-	-	-	969,296.35	-
2	UTILITIES								
	01-01 41 23 - Fees	50,000.00	-	50,000.00	-	-	-	50,000.00	-
	01-01 71 13 - Mobilization	58,827.04	-	58,827.04	-	-	-	58,827.04	-
	33-33 05 61 - Concrete Manholes	28,750.00	-	28,750.00	-	-	-	28,750.00	-
	33-33 05 71 - Clearouts	19,780.00	-	19,780.00	-	-	-	19,780.00	-
	33-33 14 16 - Site Water Utility Distribution Piping	299,539.00	-	299,539.00	-	-	-	299,539.00	-
	33-33 14 16 - Valves and Hydrants for Water Utility Service	104,200.00	-	104,200.00	-	-	-	104,200.00	-
	33-33 31 00 - Sanitary Sewerage Piping	45,540.00	-	45,540.00	-	-	-	45,540.00	-
	33-33 32 13 - Packaged Wastewater Pumping Stations	977,500.00	-	977,500.00	-	-	-	977,500.00	-
2	UTILITIES Total	1,584,136.04	-	1,584,136.04	-	-	-	1,584,136.04	-
3	RAILROAD								
	01-01 71 13 - Mobilization	23,374.85	-	23,374.85	-	-	-	23,374.85	-
	31-31 11 00 - Clearing and Grubbing	35,333.00	-	35,333.00	-	-	-	35,333.00	-
	31-31 23 16 - Excavation	40,342.00	-	40,342.00	-	-	-	40,342.00	-
	31-31 23 23 - Fill	141,197.00	-	141,197.00	-	-	-	141,197.00	-
	34-34 11 26 - Ballasted Track Rail	997,746.82	-	997,746.82	-	-	-	997,746.82	-
	34-34 11 26 16 - Track Rail Subballast	168,130.00	-	168,130.00	-	-	-	168,130.00	-
3	RAILROAD Total	1,406,123.67	-	1,406,123.67	-	-	-	1,406,123.67	-
4	SITE GENERAL								
	01-01 30 11 - Civil Engineer	83,150.00	-	83,150.00	76,997.30	-	76,997.30	6,152.70	-
	01-01 30 15 - Geotechnical Engineering	3,800.00	-	3,800.00	3,800.00	-	3,800.00	-	-
	01-01 31 05 - Construction Management Over Site Delivery	90,000.00	-	90,000.00	89,523.98	-	89,523.98	476.02	-
	01-01 31 06 - Project Management	80,000.00	-	80,000.00	39,794.42	-	39,794.42	40,205.58	-
	01-01 31 08 - Project Controls	50,000.00	-	50,000.00	19,077.26	-	19,077.26	30,922.74	-
	01-01 31 11 - Project Modeling	20,000.00	-	20,000.00	19,836.46	-	19,836.46	163.54	-
	01-01 31 12 - Master Execution Plan	10,000.00	-	10,000.00	3,369.50	-	3,369.50	6,630.50	-
	01-01 31 13 - Project Coordination	50,000.00	-	50,000.00	8,898.38	-	8,898.38	41,101.62	-
	01-01 55 26 - Traffic Control	13,800.00	-	13,800.00	-	-	-	13,800.00	-
	01-01 55 29 - Staging Areas	2,300.00	-	2,300.00	-	-	-	2,300.00	-
	01-01 57 13 - Temporary Erosion and Sediment Control	40,250.00	-	40,250.00	-	-	-	40,250.00	-
	01-01 71 13 - Mobilization	10,062.94	-	10,062.94	-	-	-	10,062.94	-
	10-10 14 53 - Traffic Signage	2,875.00	-	2,875.00	-	-	-	2,875.00	-
	26-26 56 13 - Lighting Poles and Standards	75,900.00	-	75,900.00	-	-	-	75,900.00	-
	32-32 32 19 - Seeding	51,923.00	-	51,923.00	-	-	-	51,923.00	-
	32-32 34 19 - Landscape Surfacing	34,500.00	-	34,500.00	-	-	-	34,500.00	-
4	SITE GENERAL Total	618,560.94	-	618,560.94	260,797.30	-	260,797.30	357,763.64	-
	Grand Total	4,578,117.00	-	4,578,117.00	260,797.30	-	260,797.30	4,317,319.70	-

# Billing List



**Project: Cold Storage Facility**  
 Frigitek Industrial Parks  
 Pay Application # 3  
 Period: 12/26/2019 - 01/25/2020

## Invoices

Invoice #	Vendor	Scope Billed	Amount Billed	Amount Approved	Variance	Check #	Total	Remit Name	Address
ASM 16-2640	ASM Engineering	Civil Engineering	19,382.50	19,382.50	-		19,382.50	ASM Engineering Consultants	P.O. Box 452, Andover, KS 67002
KBCm_20001-	KBCm Group	Construction Management	45,000.00	45,000.00	-		45,000.00	KBCm Group, LLC	8901 Tehama Ridge Pkwy, Ft. Worth, TX 76177
Xcell_2126	Xcell Engineering	Geotechnical Report	3,800.00	3,800.00	-		3,800.00	Xcell Engineering, LLC	260 Laurel Lane Chubbuck, ID 83202
Total			68,182.50	68,182.50	-		68,182.50		



# Lien Waiver Report

Printed June 9, 2020 at 11:12 AM

Export Date 6/5/2020

Project	Vendor	Invoices to Date	Payments to Date	Amount Billed for Selected Period	Waivers Collected for Selected Period	Current Pay App Period
2020-102 TIF Improvements	Xcell Engineering	3,800.00	-	3,800.00	-	4
	ASM Engineering Consultants	44,282.50	-	19,382.50	-	4
	KBCm Group - Construction Management	135,000.00	-	45,000.00	-	4

Outstanding Waiver Amount

-

Risk Level

HIGH RISK

MODERATE RISK

LOW RISK

**AGENDA ITEM**

**NO. 7b**



8901 Tehama Ridge Pkwy  
Suite 127140  
Ft. Worth, TX 76177

**Frigitek Industrial Parks**

# 2020-102 TIF Improvements

# Pay Application #4

**(877) KBCM Group (office), (866) 275-1880 (fax), [www.kbcmgroup.com](http://www.kbcmgroup.com)**

# Pay Application Summary

1. **Report of Rejected Invoices:** Invoices rejected from contractor's billing
2. **Application for Payment:** Complete pay application in AIA form
3. **Subcontractor/Vendor Backup Invoices:** Each invoice is approved and stamped with the area and cost code
4. **Approved Change Orders:** Any approved change orders for the current pay period
5. **Commitment Report:** Report with committed cost to date
6. **Cost Report:** Snapshot of current job cost
7. **Cash Flow:** Estimate of cash flow projected month of month for the course of construction
8. **Lien Waiver Report:** Current lien waiver report and release from vendors for all payment against contracts with value of \$10,000 or more.



# Rejected Invoices

Invoice #	Total	Notes
NA		
Total	-	

**TO OWNER/CLIENT:**

City of Pocatello  
911 N 7th Avenue  
Pocatello, Idaho 83201

**PROJECT:**

TIF Improvements  
1950 Airport Way  
Pocatello, Idaho 83204

**APPLICATION NO: 4**

**INVOICE NO: 4**

**PERIOD: 04/26/20 - 05/25/20**

**PROJECT NO: 2020-102**

**CONTRACT DATE:**

**FROM CONTRACTOR:**

Frigitek Industrial Parks, Inc  
6565 N MacArthur Blvd, Suite 225  
Dallas, Texas 75039

**VIA ARCHITECT/ENGINEER:**

Jake Ferrell (ASM Engineering Consultants)  
202 E. Rhondda Ave.  
Andover, Kansas 67002

**CONTRACT FOR:** TIF Improvements Prime Contract

**CONTRACTOR'S APPLICATION FOR PAYMENT**


Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum	\$4,578,117.00
2. Net change by change orders	\$0.00
3. Contract Sum to date (Line 1 ± 2)	\$4,578,117.00
4. Total completed and stored to date (Column G on detail sheet)	\$260,797.31
5. Retainage:	
a. 0.00% of completed work	\$0.00
b. 0.00% of stored material	\$0.00
Total retainage (Line 5a + 5b or total in column I of detail sheet)	\$0.00
6. Total earned less retainage (Line 4 less Line 5 Total)	\$260,797.31
7. Less previous certificates for payment (Line 6 from prior certificate)	\$183,082.51
8. <b>Current payment due:</b>	<b>\$77,714.80</b>
9. Balance to finish, including retainage (Line 3 less Line 6)	\$4,317,319.69

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner/Client:	\$0.00	\$0.00
Total approved this month:	\$0.00	\$0.00
Totals:	\$0.00	\$0.00
Net change by change orders:	\$0.00	

The undersigned certifies that to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work which previous Certificates for payment were issued and payments received from the Owner/Client, and that current payments shown herein is now due.

CONTRACTOR: Frigitek Industrial Parks, Inc

By:  Date: 6/10/20

State of: \_\_\_\_\_  
County of: \_\_\_\_\_  
Subscribed and sworn to before  
me this \_\_\_\_\_ day of \_\_\_\_\_  
Notary Public:  
My commission expires: \_\_\_\_\_

**ARCHITECT'S/ENGINEER'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on the on-site observations and the data comprising this application, the Architect/Engineer certifies to the Owner/Client that to the best of the Architect's/Engineer's knowledge, information and belief that Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: **\$77,714.80**  
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to confirm the amount certified.)

ARCHITECT/ENGINEER:

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

This certificate is not negotiable. The amount certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to the rights of the Owner/Client or Contractor under this Contract.

Document SUMMARY SHEET, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.  
Use Column I on Contracts where variable retainage for line items apply.

APPLICATION NUMBER: 4  
APPLICATION DATE: 5/25/2020  
PERIOD: 04/26/20 - 05/25/20

Contract Lines

A ITEM NO.	B COST CODE	C DESCRIPTION OF WORK	D SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	H % (G / C)	I BALANCE TO FINISH (C - G)	J RETAINAGE
				D FROM PREVIOUS APPLICATION (D + E)	E THIS PERIOD					
1	01-01 30 11 - Civil Engineer	Civil Engineer	\$83,150.00	\$44,282.50	\$32,714.80	\$0.00	\$76,997.30	92.60%	\$6,152.70	\$0.00
2	01-01 30 15 - Geotechnical Engineering	Geotechnical Engineering	\$3,800.00	\$3,800.00	\$0.00	\$0.00	\$3,800.00	100.00%	\$0.00	\$0.00
3	01-01 31 05 - Construction Management Over Site Delivery	Construction Management Over Site Delivery	\$90,000.00	\$66,363.64	\$23,160.34	\$0.00	\$89,523.98	99.47%	\$476.02	\$0.00
4	01-01 31 06 - Project Management	Project Management	\$80,000.00	\$31,637.32	\$8,157.10	\$0.00	\$39,794.42	49.74%	\$40,205.58	\$0.00
5	01-01 31 08 - Project Controls	Project Controls	\$50,000.00	\$15,290.03	\$9,224.34	\$0.00	\$24,514.37	49.03%	\$25,485.63	\$0.00
6	01-01 31 11 - Project Modeling	Project Modeling	\$20,000.00	\$15,541.78	\$4,458.22	\$0.00	\$20,000.00	100.00%	\$0.00	\$0.00
7	01-01 31 12 - Master Execution Plan	Master Execution Plan	\$10,000.00	\$3,369.50	\$0.00	\$0.00	\$3,369.50	33.70%	\$6,630.50	\$0.00
8	01-01 31 13 - Project Coordination	Project Coordination	\$50,000.00	\$2,797.74	\$0.00	\$0.00	\$2,797.74	5.60%	\$47,202.26	\$0.00
9	01-01 55 26 - Traffic Control	Traffic Control	\$13,800.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$13,800.00	\$0.00
10	01-01 55 29 - Staging Areas	Staging Areas	\$2,300.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$2,300.00	\$0.00
11	01-01 57 13 - Temporary Erosion and Sediment Control	Temporary Erosion and Sediment Control	\$40,250.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$40,250.00	\$0.00
12	01-01 71 13 - Mobilization	Mobilization	\$10,062.94	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$10,062.94	\$0.00
13	10-10 14 53 - Traffic Signage	Traffic Signage	\$2,875.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$2,875.00	\$0.00
14	26-26 56 13 - Lighting Poles and Standards	Lighting Poles and Standards	\$75,900.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$75,900.00	\$0.00
15	32-32 92 19 - Seeding	Seeding	\$51,923.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$51,923.00	\$0.00
16	32-32 94 19 - Landscape Surfacing	Landscape Surfacing	\$34,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$34,500.00	\$0.00
17	01-01 41 23 - Fees	Fees	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$50,000.00	\$0.00
18	01-01 71 13 - Mobilization	Mobilization	\$58,827.04	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$58,827.04	\$0.00
19	33-33 05 61 - Concrete Manholes	Concrete Manholes	\$28,750.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$28,750.00	\$0.00
20	33-33 05 71 - Cleanouts	Cleanouts	\$19,780.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$19,780.00	\$0.00
21	33-33 14 16 - Site Water Utility Distribution Piping	Site Water Utility Distribution Piping	\$299,539.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$299,539.00	\$0.00
22	33-33 14 19 - Valves and Hydrants for Water Utility Service	Valves and Hydrants for Water Utility Service	\$104,200.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$104,200.00	\$0.00

A ITEM NO.	B COST CODE	C DESCRIPTION OF WORK	D SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H % (G / C)	I BALANCE TO FINISH (C - G)	J RETAINAGE
				FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)			
23	33-33 31 00 - Sanitary Sewerage Piping	Sanitary Sewerage Piping	\$45,540.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$45,540.00	\$0.00	
24	33-33 32 13 - Packaged Wastewater Pumping Stations	Packaged Wastewater Pumping Stations	\$977,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$977,500.00	\$0.00	
25	01-01 71 13 - Mobilization	Mobilization	\$44,153.65	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$44,153.65	\$0.00	
26	02-02 41 00 - Demolition	Demolition	\$21,131.25	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$21,131.25	\$0.00	
27	31-31 11 00 - Clearing and Grubbing	Clearing and Grubbing	\$8,050.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$8,050.00	\$0.00	
28	31-31 24 13 - Roadway Embankments	Roadway Embankments	\$31,846.95	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$31,846.95	\$0.00	
29	32-32 01 13 - Flexible Paving Surface Treatment	Flexible Paving Surface Treatment	\$305,571.75	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$305,571.75	\$0.00	
30	32-32 11 16.16 - Aggregate Subbase Courses	Aggregate Subbase Courses	\$95,565.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$95,565.00	\$0.00	
31	32-32 11 23 - Aggregate Base Courses	Aggregate Base Courses	\$305,048.25	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$305,048.25	\$0.00	
32	32-32 12 16 - Asphalt Paving	Asphalt Paving	\$75,647.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$75,647.00	\$0.00	
33	32-32 16 13 - Curbs and Gutters	Curbs and Gutters	\$82,282.50	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$82,282.50	\$0.00	
34	01-01 71 13 - Mobilization	Mobilization	\$23,374.85	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$23,374.85	\$0.00	
35	31-31 11 00 - Clearing and Grubbing	Clearing and Grubbing	\$35,333.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$35,333.00	\$0.00	
36	31-31 23 16 - Excavation	Excavation	\$40,342.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$40,342.00	\$0.00	
37	31-31 23 23 - Fill	Fill	\$141,197.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$141,197.00	\$0.00	
38	34-34 11 26 - Ballasted Track Rail	Ballasted Track Rail	\$997,746.82	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$997,746.82	\$0.00	
39	34-34 11 26.16 - Track Rail Subballast	Track Rail Subballast	\$168,130.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$168,130.00	\$0.00	
<b>TOTALS:</b>			<b>\$4,578,117.00</b>	<b>\$183,082.51</b>	<b>\$77,714.80</b>	<b>\$0.00</b>	<b>\$260,797.31</b>	<b>5.70%</b>	<b>\$4,317,319.69</b>	<b>\$0.00</b>	

Grand Totals

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	E WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H % (G / C)	I BALANCE TO FINISH (C - G)	J RETAINAGE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)			
<b>GRAND TOTALS:</b>			<b>\$4,578,117.00</b>	<b>\$183,082.51</b>	<b>\$77,714.80</b>	<b>\$0.00</b>	<b>\$260,797.31</b>	<b>5.70%</b>	<b>\$4,317,319.69</b>	<b>\$0.00</b>

**KBCm Group, LLC**  
 8901 Tehama Ridge Pkwy, Ste  
 127140  
 Ft Worth, TX 76177 US  
 sblankenfeld@kbcmgrou.com  
 www.kbcmgrou.com

# Invoice 20001-104



**BILL TO**

Elden Charles  
 Frigitek Industrial Parks, Inc  
 6565 N MacArthur Blvd Suite 225  
 Dallas, Texas 75039  
 United States

DATE 04/01/2020	PLEASE PAY <b>\$45,000.00</b>	DUE DATE 04/01/2020
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**DESCRIPTION**

**CM:Construction Management Services**  
 Construction management services monthly billing 4/1/2020 - 4/30/2020

QTY	RATE	AMOUNT
1	45,000.00	45,000.00

**TOTAL DUE \$45,000.00**

THANK YOU.

**POCATELLO 2020-102**

Pay Application: 3

SUB JOB	COST CODE	TOTAL
SITE	01 31 05	23,160.34
SITE	01 31 06	8,157.10
SITE	01 31 08	3,787.22
SITE	01 31 11	9,895.34

Skyler\_KBCM 05/20/2020 7:51:16 AM

**ENTERED AS JOB COST**

**Date:** 5/20/2020 7:54:07 AM  
**By:** Skyler\_KBCM  **APPROVED**  
**PO/SC:** PO 2020-102-002  **REVISE**  
**Job:** TIF Improvements  **REJECTED**

## Time Sheet/Recap

Company: KBCm Group  
 Project: 2020 - 101 Pocatello Cold Storage  
 Period: 4/1/2020 - 4/30/2020

Printed May 20, 2020 at 7:49 AM

E#	Class	Name	Cost Code	Rate	Hrs	OT Rate	OT Hrs	Per Diem	Total	Discount Adjustment	Revised Total	Invoice
5042	Project Executive	1.1. Outline Owner's Expectations & Vision for the Project	01 31 05 - Construction Management Over Site Delivery	160	1				160	-	160	20001-103
		1.2. Map Elements of the Project (Site, Logistics, Process Etc.)										
5042	Project Executive	1.3. Map Resources, Constraints & Boundaries	01 31 05 - Construction Management Over Site Delivery	160	1				160	-	160	20001-103
		1.4. Map Time Constraints										
		1.5. Map Time Over Cost Graph										
5042	Project Executive	1.6. Identify Municipality Requirements	01 31 11 - Project Modeling	160	3				480	-	480	20001-103
		1.7. Identification of PFD & or P&ID Process										
		2.1. Map Land Closure, Owner Stewardship Requirements										
		2.2. Creation of Time Scaled Parameters										
5037	Project Controller	2.3. Creation of Resources & Budgetary Parameters	01 31 11 - Project Modeling	150	27				4,050	-	4,050	20001-103
		2.4. Creation of Design Parameters										
5042	Project Executive	2.5. Municipality Interface, Requirements & Milestones	01 31 05 - Construction Management Over Site Delivery	160	2				320	-	320	20001-103
		2.6. Creation of Procurement Plan (Long Leads)										
5042	Project Executive	2.7. Identification of Site Logistical Plan	01 31 11 - Project Modeling	160	4				640	-	640	20001-103
5042	Project Executive	2.7.1. Delivery Sequence & Laydown Requirements Identified	01 31 11 - Project Modeling	160	4				640	-	640	20001-103
		2.7.2. Site Security Requirements Identified										
		2.7.3. Off Site & Traffic Control Responsibilities Identified										
		2.7.4. Rail Spur & Stack Up Requirements										
		2.9.1. Testing										
		2.9.2. Certification										
		2.9.3. QAQC Process										
5016	Project Coordinator	2.10. Safety Assessment, Observation & Reporting Plan	01 31 11 - Project Modeling	110	2				220	-	220	20001-103
		2.10.1. Safety Assessment, Agency Interaction Plan										
		3.1.1. Review & Refine Startup Check-list										
		3.1.2. Identify All Stake Holders & Team Members										
		3.1.2.1. Creation of Project Communication Plan										
5037	Project Controller	3.1.2.2. Mapping of Project Reporting Plan	01 31 11 - Project Modeling	150	16				2,400	-	2,400	20001-103
		3.1.3. Creation of Site Safety Plan										
		3.1.3.1. Aid Stations, Safety Protocols, & Emergency Action Plan										
		3.1.3.2. Site Evacuation & Marshaling Area Identified										
		3.1.3.3. Safe Area Emergency Master Plan										
5081	Senior Project Manager	3.1.3.4. Vendor Safety Plan Management	01 31 06 - Project Management	150	26				3,900	-	3,900	20001-103
5081	Senior Project Manager	3.1.4. Construction Administration	01 31 05 - Construction Management Over Site Delivery	150	18				2,700	-	2,700	20001-103
5037	Project Controller	3.1.4.1. Financial Management	01 31 08 - Project Controls	150	8				1,200	-	1,200	20001-103
		3.1.4.2. Project Payment Process										
		3.1.4.3. Change Management										
		3.1.4.4. Punch-list / Phased Turn Over Plan(s) if Applicable										
		3.2.1. Design Disciplines Outlined										
		3.2.1.1. PFD / P&IDs										
		3.2.1.2. 3D / BIM										
		3.2.1.3. Engineering										
		3.2.1.4. Utilities										
		3.2.1.5. Gas and Electrical Generation										
		3.2.1.6. Rail PFD / P&IDs Delivery Identified										
		3.2.1.8. Civil Earth and Roads										
		3.2.1.9. Structural										
		3.2.1.10 Architectural										
5042	Project Executive	3.2.2. Design Delivery Progress & Reporting	01 31 11 - Project Modeling	160	11				1,760	-	1,760	20001-103

5081	Senior Project Manager	3.2.3. Integration of Design Delivery into Master Schedule	01 31 06 - Project Management	150	4	600	-	600	20001-103
5081	Senior Project Manager	3.3.1. SOW & RFP Bid Packages	01 31 06 - Project Management	150	8	1,200	-	1,200	20001-103
5022	Procurement Manager	3.3.2. Procurement Schedule	01 31 05 - Construction Management Over Site Delivery	130	6	780	-	780	20001-103
5042	Project Executive	3.3.3. Contract Instruments	01 31 05 - Construction Management Over Site Delivery	160	2	320	-	320	20001-103
		3.3.4. Submittal Schedules							
		3.4. Construction Delivery							
5037	Project Controller	3.4.1. Project Administration	01 31 06 - Project Management	150	18	2,700	-	2,700	20001-103
5081	Senior Project Manager	3.4.1.1. Progress Meetings	01 31 05 - Construction Management Over Site Delivery	150	15	2,250	-	2,250	20001-103
5018	Project Coordinator	3.4.1.2. RFI & Issue Reporting Process	01 31 05 - Construction Management Over Site Delivery	110	31	3,410	-	3,410	20001-103
5018	Project Coordinator	3.4.1.3. Progress Reporting Sequence & Format	01 31 05 - Construction Management Over Site Delivery	110	12	1,320	-	1,320	20001-103
		3.4.1.5. Mapping, Photo & Drone Reporting							
5081	Senior Project Manager	3.4.2. Contract Administration	01 31 08 - Project Controls	150	1	150	-	150	20001-103
5081	Senior Project Manager	3.4.2.1. Developing Specific SOW Packages	01 31 05 - Construction Management Over Site Delivery	150	37	5,550	-	5,550	20001-103
		3.4.2.2. Creation of Safety & Municipal Requirements Packages							
		3.4.2.3. Creation of Insurance Minimum Standards Packages							
5018	Project Coordinator	3.4.2.4. Communication Plan Requirements for each Trade/SOW	01 31 13 - Project Coordination	110		-	-	-	20001-103
5081	Senior Project Manager	3.4.3. Scheduling	01 31 08 - Project Controls	150	6	900	-	900	20001-103
		3.4.3.1. Creation of Driving Master Schedule							
		3.4.3.4. Creation of SIS / Reporting Sequence & Content							
5037	Project Controller	3.4.4. Financial Documentation	01 31 08 - Project Controls	150	5	750	-	750	20001-103
5037	Project Controller	3.4.4.1. Application for Payment Sequence, Format & Submission.	01 31 08 - Project Controls	150	6	900	-	900	20001-103
		3.4.4.2. Creation Payment Requirements & Sequence							
		3.4.4.3. Creation of Financial Reporting Sequence & Content							
		3.4.5. Site Management							
5042	Project Executive	3.4.5.1. Creation of QAQC Plan	01 31 05 - Construction Management Over Site Delivery	160		-	-	-	20001-103
5018	Project Coordinator	3.4.5.2. Creation of Housekeeping Plan	01 31 13 - Project Coordination	110		-	-	-	20001-103
		3.4.5.3. Temporary Utilities & Site Access Plan							
5018	Project Coordinator	3.4.5.4. Site Security Plan	01 31 13 - Project Coordination	110		-	-	-	20001-103
5042	Project Executive	3.4.5.5. Vendor Management	01 31 05 - Construction Management Over Site Delivery	160	43	6,880	-	6,880	20001-103
		3.4.5.7.1. SWPP							
		3.4.5.7.2. Permitting and Inspections							
		3.4.5.8.1. Equipment & Light Traffic Interface Protocol's							
		3.4.5.9. Cranes							
		3.4.5.9.1. Location & Lifting Plans							
		3.4.5.9.2. Laydown & Offload Plan							
		3.4.6. Off Site Management							
		3.4.6.2. Site Access Plan							
		3.4.6.3. Water & Utility Implementation Plan							
		4.1. Define Punch List Format							
		4.2. Create Operational Integration, Startup & Turnover Plan							
		4.2.1. Create Operations Training & Instructions Format & Criteria							
		4.2.2. Create Operations Turn-over Plan *(to Name Plate)							
		4.3. Create Demobilization Plan							
		4.3.1. Demobilization Schedule							
		4.3.2. Identify Material Overages & Surplus Dispersal Plan							
		4.4. Create Documents Close-out Management Plan							
		4.4.1. Outline Warranties, OEM Data Sheets & BOM Criteria							
		4.4.3. Create "As Built" Document(s) Criteria							
0001	Adjustment	Rate Adjustment for billing Agreement \$45,000 per period						(1,340)	(1,340) 20001-104
<b>Total</b>				<b>317</b>		<b>-</b>	<b>-</b>	<b>46,340</b>	<b>(1,340)</b> <b>45,000</b>



**ENTERED AS JOB COST** **POCATELLO 2020-102**  
 Date: 5/13/2020 10:30:38 AM  
 By: Skyler\_KBCM  APPROVED  
 PO/SC: PO 2020-101-001  REVISE  
 Job: POCATELLO  REJECTED

Commitment Change Order 002

POCATELLO 2020-102		
Pay Application: 4		
SUB JOB	COST CODE	TOTAL
SITE	01 30 11	32,714.80
Skyler_KBCM 05/19/2020 4:13:49 PM		

Date 04/15/2020

Project **Pocatello Cold Storage Streets & Utilities (2322 R-2)**

Frigitek Industrial Parks  
6565 N MacArthur Blvd.  
Suite 225  
Dallas, TX 75039  
Skyler Blankenfeld

CCO #002 PO 2020-101-001

CCO #002 PO 2020-101-001

**INVOICE -Hourly Not To Exceed**

Description	Contract Amount	Prior Billed	Total Billed	Current Billed
SITE VISITS	2,650.00	0.00	0.00	0.00
STREET DESIGN SURVEY	8,000.00	0.00	8,236.80	8,236.80
INDUSTRIAL PARK TRUCK ROUTE STREET DESIGN	18,200.00	0.00	8,025.00	8,025.00
RAILROAD CONSTRUCTION DESIGN	13,200.00	0.00	4,539.00	4,539.00
FIRE & DOMESTIC WATER SERVICE DESIGN	9,100.00	0.00	7,768.00	7,768.00
SEWER LINE DESIGN	4,900.00	0.00	2,298.00	2,298.00
STORMWATER PERMITTING	2,200.00	0.00	1,848.00	1,848.00
<b>Total</b>	<b>58,250.00</b>	<b>0.00</b>	<b>32,714.80</b>	<b>32,714.80</b>

**PROFESSIONAL FEES**

	Hours	Billed Amount
<b>Principal Engineer</b>	2.00	340.00
<b>Project Engineer</b>	109.50	16,644.00
<b>Project Designer</b>	17.00	2,244.00
<b>Designer</b>	50.00	5,250.00
<b>Professional Fees subtotal</b>	<b>178.50</b>	<b>24,478.00</b>

**CONSULTANT**

	Billed Amount
Survey Consultant	8,236.80
<b>Consultant subtotal</b>	<b>8,236.80</b>

Invoice total **32,714.80**

Thank you for your business



# Committed Costs

Printed June 9, 2020 at 11:12 AM  
 Frigitek Industrial Parks  
 Pocatello, ID  
 United States

Export Date 6/9/2020

Project	Number	Title	Vendor	Status	Executed	Sum of Total With Approved Change Orders	Sum of Invoices	Sum of Pending Change Orders	Sum of Total Payments	Sum of Total Remaining
2020-102 TIF Improvements	PO-2020-102-001	Site Civil Engineering TIF	ASM Engineering Consultants	Approved	Yes	76,997.30	76,997.30	-	-	76,997.30
	PO-2020-102-002	Construction Management Delivery and Over Site	KBCm Group - Construction Management	Approved	Yes	180,000.00	180,000.00	-	-	180,000.00
	PO-2020-102-003	Geotechnical Engineering	Xcell Engineering	Approved	Yes	3,800.00	3,800.00	-	-	3,800.00

# Cost Report

2020-102 TIF Improvements  
K8Cm Group Cost Report

Printed June 9, 2020 at 11:12 AM  
Frigitek Industrial Parks  
Pocatello, ID  
United States

Export Date: 6/9/2020

Sub Job	Cost Code	Sum of Original Budget Amount	Sum of Approved COs	Sum of Revised Budget	Sum of Committed Costs	Sum of Direct Costs	Sum of Job to Date Costs	Sum of Forecast To Complete	Sum of Projected over Under
<b>1. STREETS</b>									
	01-01 71 13 - Mobilization	44,153.65	-	44,153.65	-	-	-	44,153.65	-
	02-02 41 00 - Demolition	21,131.25	-	21,131.25	-	-	-	21,131.25	-
	31-31 11 00 - Clearing and Grubbing	8,050.00	-	8,050.00	-	-	-	8,050.00	-
	31-31 24 13 - Roadway Embankments	31,846.95	-	31,846.95	-	-	-	31,846.95	-
	32-32 01 13 - Flexible Paving Surface Treatment	305,571.75	-	305,571.75	-	-	-	305,571.75	-
	32-32 11 16 16 - Aggregate Subbase Courses	95,565.00	-	95,565.00	-	-	-	95,565.00	-
	32-32 11 23 - Aggregate Base Courses	305,048.25	-	305,048.25	-	-	-	305,048.25	-
	32-32 12 16 - Asphalt Paving	75,647.00	-	75,647.00	-	-	-	75,647.00	-
	32-32 16 13 - Curbs and Gutters	82,282.50	-	82,282.50	-	-	-	82,282.50	-
<b>1. STREETS Total</b>		<b>969,296.35</b>		<b>969,296.35</b>				<b>969,296.35</b>	
<b>2. UTILITIES</b>									
	01-01 41 23 - Fees	50,000.00	-	50,000.00	-	-	-	50,000.00	-
	01-01 71 13 - Mobilization	58,827.04	-	58,827.04	-	-	-	58,827.04	-
	33-33 05 61 - Concrete Manholes	28,750.00	-	28,750.00	-	-	-	28,750.00	-
	33-33 05 71 - Cleanouts	19,780.00	-	19,780.00	-	-	-	19,780.00	-
	33-33 14 16 - Site Water Utility Distribution Piping	299,539.00	-	299,539.00	-	-	-	299,539.00	-
	33-33 14 19 - Valves and Hydrants for Water Utility Service	104,200.00	-	104,200.00	-	-	-	104,200.00	-
	33-33 31 00 - Sanitary Sewerage Piping	45,540.00	-	45,540.00	-	-	-	45,540.00	-
	33-33 32 13 - Packaged Wastewater Pumping Stations	977,500.00	-	977,500.00	-	-	-	977,500.00	-
<b>2. UTILITIES Total</b>		<b>1,584,136.04</b>		<b>1,584,136.04</b>				<b>1,584,136.04</b>	
<b>3. RAILROAD</b>									
	01-01 71 13 - Mobilization	23,374.85	-	23,374.85	-	-	-	23,374.85	-
	31-31 11 00 - Clearing and Grubbing	35,333.00	-	35,333.00	-	-	-	35,333.00	-
	31-31 23 16 - Excavation	40,342.00	-	40,342.00	-	-	-	40,342.00	-
	31-31 23 23 - Fill	141,997.00	-	141,997.00	-	-	-	141,997.00	-
	34-34 11 26 - Ballasted Track Rail	997,746.82	-	997,746.82	-	-	-	997,746.82	-
	34-34 11 26 16 - Track Rail Subballast	168,130.00	-	168,130.00	-	-	-	168,130.00	-
<b>3. RAILROAD Total</b>		<b>1,406,123.67</b>		<b>1,406,123.67</b>				<b>1,406,123.67</b>	
<b>4. SITE GENERAL</b>									
	01-01 30 11 - Civil Engineer	83,150.00	-	83,150.00	76,997.30	-	76,997.30	6,152.70	-
	01-01 30 15 - Geotechnical Engineering	3,800.00	-	3,800.00	3,800.00	-	3,800.00	-	-
	01-01 31 05 - Construction Management Over Site Delivery	90,000.00	-	90,000.00	89,523.98	-	89,523.98	476.02	-
	01-01 31 06 - Project Management	80,000.00	-	80,000.00	39,794.42	-	39,794.42	40,205.58	-
	01-01 31 08 - Project Controls	50,000.00	-	50,000.00	19,077.26	-	19,077.26	30,922.74	-
	01-01 31 11 - Project Modeling	20,000.00	-	20,000.00	19,836.46	-	19,836.46	163.54	-
	01-01 31 12 - Master Execution Plan	10,000.00	-	10,000.00	3,369.50	-	3,369.50	6,630.50	-
	01-01 31 13 - Project Coordination	50,000.00	-	50,000.00	8,398.38	-	8,398.38	41,601.62	-
	01-01 55 26 - Traffic Control	13,800.00	-	13,800.00	-	-	-	13,800.00	-
	01-01 55 29 - Staging Areas	2,300.00	-	2,300.00	-	-	-	2,300.00	-
	01-01 57 13 - Temporary Erosion and Sediment Control	40,250.00	-	40,250.00	-	-	-	40,250.00	-
	01-01 71 13 - Mobilization	10,062.94	-	10,062.94	-	-	-	10,062.94	-
	10-10 14 53 - Traffic Signage	2,875.00	-	2,875.00	-	-	-	2,875.00	-
	26-26 56 13 - Lighting Poles and Standards	75,900.00	-	75,900.00	-	-	-	75,900.00	-
	32-32 92 19 - Seeding	51,923.00	-	51,923.00	-	-	-	51,923.00	-
	32-32 94 19 - Landscape Surfacing	34,500.00	-	34,500.00	-	-	-	34,500.00	-
<b>4. SITE GENERAL Total</b>		<b>618,560.94</b>		<b>618,560.94</b>	<b>260,797.30</b>		<b>260,797.30</b>	<b>357,763.64</b>	
<b>Grand Total</b>		<b>4,578,117.00</b>		<b>4,578,117.00</b>	<b>260,797.30</b>		<b>260,797.30</b>	<b>4,317,319.70</b>	



# Billing List



**Project: Cold Storage Facility**  
 Frigitek Industrial Parks  
 Pay Application # 3  
 Period: 12/26/2019 - 01/25/2020

## Invoices

Invoice #	Vendor	Scope Billed	Amount Billed	Amount Approved	Variance	Check #	Total	Remit Name	Address
ASM 16-2641	ASM Engineers	Civil Engineering	32,714.80	32,714.80	-		32,714.80	ASM Engineering Consultants	PO Box 452, Andover, KS 67002
KBCm 20001-104	KBCm Group	Construction Management	45,000.00	45,000.00	-		45,000.00	KBCm Group, LLC	8901 Tehama Ridge Pkwy, Ft. Worth, TX 76177
					-				
<b>Total</b>			<b>77,714.80</b>	<b>77,714.80</b>			<b>77,714.80</b>		

**AGENDA ITEM**

**NO. 7c**



May 19, 2020

Three Galleria Tower  
13155 Noel Road, Suite 100  
Dallas, TX 75240

Main 972.934.0022  
Fax 972.960.0613

[www.ryan.com](http://www.ryan.com)

Elden Charles  
Executive Vice President  
Frigitek Industrial Parks, Inc.  
6565 N. MacArthur Boulevard  
Suite 225  
Irving, TX 75035

Invoice No. 380568

Payment Terms: Net 30

Engagement No. 462475200.001

Federal ID No. 75-2411641

For Services Rendered:

Progress billing for professional services of infrastructure design and project management rendered between August 7, 2019 and May 15, 2020, in connection with the Pocatello, Idaho Tax Increment Financing Business Incentives Consulting of Frigitek Industrial Parks, Inc. as per letter agreement dated June 12, 2019.

Fixed Fee:	\$	35,000.00
Total Invoice Due (see attached):	\$	<u>35,000.00</u>

Ryan's preferred method of payment is EFT.  
Please remit payment to: Bank of America  
Account: 488038499373 ACH Routing:  
111000025  
Wire Routing: 0260-0959-3 SWIFT:  
BOFAUS3N Remittance Advices:  
remit@ryan.com  
If paying by check, please remit to:  
Ryan, LLC, P.O. Box 848351, Dallas, TX 75284-8351

Late fees applied on past due balances

Share your experience with us at  
<http://ryanlistens.com/>

**Frigitek Industrial Parks, Inc.**  
**Pocatello, Idaho**  
**Project Management**  
**Tax Increment Financing Agreement**

Work performed for Pocatello, Idaho Tax Increment Financing Project for Project Management included:

- Preparation of application documentation;
- Calls with Pocatello Development Agency to discuss/review application;
- Travel to and participation in meeting with Pocatello Development Agency;
- Review and comment of Pocatello Development Agency agreement;
- Discussions/introductions with private placement financiers;
- Participation in virtual Pocatello Development Agency meeting to amend agreement

Josh Jenks, Consultant: Hours: 20.00

Matt Lowell, Director: Hours: 66.50

Allea Newbold, Principal: Hours: 44.00

Conner Ruyak, Senior Associate Consultant: Hours: 20.50

---

Total Fixed Fee Invoice: \$75,000.00

Current Progress Invoice: (\$35,000.00)

Total Remaining to be Invoiced: \$40,000.00

---

**Total Current Amount Due: \$35,000.00**

**AGENDA ITEM**

**NO. 8**



## Anderson, Carl

---

**From:** Tanner Hernandez <sold@primetimeauctions.com>  
**Sent:** Monday, June 8, 2020 8:02 AM  
**To:** Anderson, Carl  
**Subject:** June PDA Meeting Agenda - S 5th S Pocatello  
**Attachments:** 05-20-84 Maverik 5th Ave Letter.pdf; KMST LLC v County of Ada.pdf; Lochsa Falls LLC v State.pdf; Maverik Site-0199\_Various Turning Movement Exhibits\_050720(1).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

PDA / Carl Anderson please add this to the upcoming PDA Meeting.

Maverik and Prime Time Auctions are requesting the following:

For the PDA to fund as much as it can of the Stop Light at Exit 67 as it can from funds it currently has for community improvement.

Prime Time / Mavrik will get a loan to fund much of the other improvements down S 5th up to \$200,000, then being reimbursed by the new tif district.

See attached supporting documents:

### TIF proposal infrastructure improvements:

- 1 Telephone Poles Removed along S 5th underground 4 in front of 3380 - 3200 S 5th  
Centurylink: \$24,287. Sparklight / Cableone: \$2,153.
- 2 Sidewalk from 3400 - 3200 S 5th - 750 ft \$6,000
- 3 Sidewalk around Velton Culdesac - 300 ft \$2,500
- 4 Telephone Poles Removed go Underground  
3150 - 3020 S 5th 820 ft \$40,000 - \$100,000 waiting on details from centurylink
- 5 Sidewalk 3150 - 3020 S 5th 820 ft \$6,600
- 6 Other potential Sidewalks on Swisher St, Utility Improvements \$10,000  
Subtotal - \$91,545 - \$151,545

By estimates provided by City Staff - additional TIF funds could generate anywhere from \$293,000 - \$570,520 over a 20 year term or \$14,662 - \$28,526 per year. This situation fits the criteria for the TIF and is sure to be successful in rejuvenating the area.

----- Forwarded message -----

**From:** Corey Krantz <Corey.Krantz@itd.idaho.gov>  
**Date:** Tue, May 19, 2020 at 2:53 PM  
**Subject:** RE: [EXTERNAL] Update and Timing S 5th Pocatello  
**To:** Doug Meldrum <Doug.Meldrum@maverik.com>, Todd Hubbard <Todd.Hubbard@itd.idaho.gov>  
**Cc:** Tanner Hernandez <sold@primetimeauctions.com>, Joe Tonumaipea <Joe.Tonumaipea@maverik.com>

Mr. Meldrum,

Here is the ITD reply for your permit.

Corey A. Krantz, P.E.

Idaho Transportation Department

District 5 Traffic & Materials Engineering Mgr

208-239-3372 (office) 208-201-3372 (Cell)

----- Forwarded message -----

From: **TJ Budge** <tj@racineolson.com>

Date: Wed, Feb 26, 2020 at 10:11 AM

Subject: RE: Pocatello Maverik TIS Update

To: Tanner Hernandez <sold@primetimeauctions.com>

(Hi Tanner – As we discussed by phone today, ITD does have authority under Idaho law to require Maverik to make improvements, including the installation of traffic signals, as a condition of developing the property.)

IDAPA 39.03.42.700.03. However, the Idaho Supreme Court has ruled that demands by ITD “must meet a test of reasonableness and be rationally related to the cost of enforcing the regulations at hand.” *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 241 (2009). In other words, “there must be a rough proportionality between the condition imposed and the projected impact of the proposed development.” *KMST, LLC v. County of Ada*, 138 Idaho 577, 581 (2003) (citing *Dolan v. City of Tigard*, 513 U.S. 374 (1994)).

The traffic study states that a signal is warranted at the intersection of the southbound I-15 ramp and South 5<sup>th</sup> Avenue based on current peak hour traffic volumes, irrespective of whether Maverik constructs a gas station. As such, in my opinion it is not reasonable for ITD to require Maverik to pay the full cost of installing a traffic signal. It would be bad policy indeed to encourage government entities responsible for traffic safety to delay needed traffic controls out of hope that the cost may be passed off to some future developer. Because a traffic signal is currently warranted, ITD should be responsible to pay all or at least a significant portion of the cost. If Maverik is to pay any part of the cost, I would argue that it should be no greater than the proportionate increase in traffic that will result from development of the gas station. For example, if the gas station will increase traffic by 10% then Maverik should bear no more than 10% of the cost of the traffic signal.

Let me know if you have any further questions.

Best,

**T.J. Budge**

RACINE OLSON

201 E. Center St. | P.O. Box 1391 | Pocatello, Idaho 83204

Office: (208) 232-6101 | Direct: (208) 478-3467 | Cell: (208) 705-0826 | [www.racineolson.com](http://www.racineolson.com)

The amount of taxable development proposed in the defined area;

\$4 to \$9 Million depending on area included and if infrastructure is provided for growth

The timing of the proposed taxable development;

2020 - 21

The kind of development

Infrastructure, Traffic, Pedestrian Improvements, Beautification

The estimated amount of tax revenue to be generated

\$300,000 - \$900,000 in 10 to 20 years, \$20,000 - \$35,000 per year.

The projects proposed, including location and estimated cost

Preliminary Maps and Estimates provided.

This area fits the requirements for this type of assistance.

Serves all the citizens of our community

Blighted area and in need of the improvements for Safety, Functionality and Beautification

Combination of Bonded, Unbonded and Grants.



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Your Economic Opportunity**

**IDAHO TRANSPORTATION DEPARTMENT**  
5151 South 5<sup>th</sup> Ave. • Pocatello, ID 83204-2202  
(208) 239-3300 • itd.idaho.gov

May 19, 2020

Doug Meldrum  
Maverik  
185 South State Street  
Salt Lake City, UT  
84111

Mr. Meldrum,

The Idaho Transportation Department (ITD) has reviewed the Access Encroachment Permit and the accompanying Traffic Impact Study (TIS) for the Maverik fuel station planned at South 5<sup>th</sup> Avenue, Pocatello, Idaho near the Interstate 15 (I-15), Interchange 67 southbound (SB) off ramp. The development is planned to have a gas station with a convenience store, 27 fueling stations, of which, 7 are high speed commercial truck fueling stations, and a commercial vehicle scale.

The TIS recommended 2 mitigation items: A traffic signal and a right turn deceleration lane for Accesses 1 and 2. The TIS based all the traffic impacts upon the premise that a signal is installed at the South 5<sup>th</sup> Avenue/I-15 SB off ramp.

ITD is willing to permit the below noted accesses if Maverik installs all the items recommended in the Traffic Impact Study section titled SUMMARY OF KEY FINDINGS/RECOMMENDATIONS:

1. Access 1 is approximately 185 feet from the SB Off ramp. It is limited to Right-In, Right-Out due to ITD full access control along centerline of South 5th Avenue.
2. Access 2 is approximately 400 feet from the SB Off ramp. It is limited to Right-In, Right-Out, Left-In (¾ Approach) due to ITD full access control along centerline of South 5th Avenue.
3. Access 3 is approximately 900 feet from the SB Off ramp. It is a full-movement access. Accessed via an easement across other property.

The permit will require Maverik to install the below recommended items noted in the Traffic Impact Study, including but not limited to:

1. Install Signal.
    - a. Intersection is almost at Signal Warrant 2, Four-Hour Vehicular Volume. (Warrant 3, Peak Hour is wrong warrant to use.) These are warranted per the TIS for the new facility.
    - b. Design and Install Signal to ITD standards. TIS based Level of Service on Signal installation.
    - c. Signal Poles and signal head, foundations, conduits and wiring, signal cabinet with battery backup and controller, vehicle detection system, emergency pre-emption system, CCTV, junction boxes, signs, power service meter, etc.
-



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- d. Remove conflicting signage.
- e. Install all necessary pavement markings.
- f. Connect signal to ITD Fiber optic system, need 300 feet of conduit, 2000 feet of fiber, junction boxes, splice box, and splices. Utilize 1400 feet of existing fiber conduit.
- g. All installed Materials shall comply ITD construction standards.
- h. Produce an Interchange Modification Report for FHWA approval.
- i. Assess impacts of Access 3 to the Southbound On Ramp.

2. Acceleration/Deceleration Lane along 5<sup>th</sup> Avenue.

- a. These are warranted based on Right-Turn Lane Warrant in the ITD Traffic Manual as per the TIS.
  - b. Install right-turn deceleration lanes at Access 1 and Access 2 as a continuous auxiliary lane from the Southbound I-15 Off Ramp, with a radius that accommodates trucks maneuvering from the I-15 southbound off ramp into a newly built acceleration/deceleration lane without encroaching into any other lanes. The lane will extend past the Access 2 furthest west and have a tapered transition back to two lanes, or as approved by ITD.
  - c. ITD does not believe that adding on lane on 5<sup>th</sup> Avenue will require an Interchange Modification Report even as we are tying into the interchange ramp with the new radius and asphalt.
  - d. Perform an ITD Materials Phase III/V pavement investigation for the addition of the acceleration/deceleration lane.
  - e. Install new curb, gutter, sidewalk affiliated along the Maverik Property as will be required by the City of Pocatello to the ITD Standards.
  - f. Require an engineering study and review of the stop bar/crosswalk placement, which includes evaluation of a pedestrian refuge island between the right and through/left lanes of the I-15 southbound off ramp and pedestrian crossing warning system such as a remotely activated Rectangular Rapid Flashing Beacon.
  - g. Adjust the storm water pipes, inlets, drains that will be affected by any and all roadway modifications.
  - h. Relocate any and all roadway illumination affected by any and all roadway modifications. Install new conduits, wiring, foundations, and relocate existing luminaires to new foundations. Remove existing foundations.
  - i. Remove and relocate any conflicting signage to ITD current signing and sign installation standards. Reuse existing signs.
  - j. Install Right Turn Arrows and Right Lane Must Turn Right signs.
  - k. Long Line Pavement Markings could be done by ITD.
  - l. All installed Materials shall comply ITD construction standards.
  - m. Use the truck turning template radii that allow truck movements into Maverik approaches without encroaching into any other lane than the one they are in.
  - n. Dedicate the new acceleration/deceleration lane, curb, gutter, sidewalk as public right of way. This would then be maintained in accordance with the State/Local Agreement with City of Pocatello.
-



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**IDAHO TRANSPORTATION DEPARTMENT**  
5151 South 5<sup>th</sup> Ave. • Pocatello, ID 83204-2202  
(208) 239-3300 • [itd.idaho.gov](http://itd.idaho.gov)

ITD looks forward to continuing to work through this with you,

Sincerely,

**Corey A. Krantz** Digitally signed by Corey A. Krantz  
Date: 2020.05.19 14:49:08 -06'00'

Corey A. Krantz, P.E.  
District 5 Traffic & Materials Engineering Mgr

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KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. Winder v. Canyon Vista Family Ltd.  
Partnership, Idaho, March 17, 2010

138 Idaho 577  
Supreme Court of Idaho,  
Boise, February 2003 Term.

KMST, LLC., an Idaho limited liability  
company, Plaintiff–Appellant,  
v.  
COUNTY OF ADA, a political subdivision  
of the State of Idaho, Defendant,  
and  
Ada County Highway District, a  
body politic corporate of the State  
of Idaho, Defendant–Respondent.

No. 28055.  
|  
April 2, 2003.

#### Synopsis

Developer brought action against county and highway district to protest requirement that it construct a public street and pay impact fees, alleging that the requirement was an unconstitutional taking. The District Court, Fourth Judicial District, Ada County, Michael R. McLaughlin, J., granted county's motion for summary judgment and following trial entered judgment for district. Developer appealed judgment for district. The Supreme Court, Eismann, J., held that: (1) district did not have final authority to impose requirement that developer dedicate street, and thus requirement did not constitute taking by district; (2) developer voluntarily decided to dedicate road; and (3) developer waived issue of whether impact fee assessment was a taking by failing to exhaust administrative remedies.

Affirmed.

**Procedural Posture(s):** On Appeal; Motion for Summary Judgment.

West Headnotes (12)

[1] **Eminent Domain**  
⇒ Nature and grounds in general

A property owner who believes that his or her property, or some interest therein, has been invaded or appropriated to the extent of a taking, but without due process of law and the payment of just compensation, may bring an action for inverse condemnation. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14.

2 Cases that cite this headnote

[2] **Eminent Domain**  
⇒ Nature and grounds in general

A property owner cannot maintain an inverse condemnation action unless there has actually been a taking of his or her property. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14.

1 Cases that cite this headnote

[3] **Eminent Domain**  
⇒ Questions for jury

The determination of whether or not there has been a taking is a matter of law to be resolved by the trial court. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14.

[4] **Eminent Domain**  
⇒ Appeal and error

Because the determination of whether or not there has been a taking is a question of law, the Supreme Court exercises free review over the trial court's decision on that issue. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14.

[5] **Eminent Domain**  
⇒ Appeal and error

Although the Supreme Court is free to draw its own conclusions from the facts when reviewing an inverse condemnation decision, it will not disturb the trial court's findings of fact that are supported by substantial and competent evidence. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14.

3 Cases that cite this headnote

[6] **Appeal and Error**

⊖ Credibility and Number of Witnesses

**Appeal and Error**

⊖ Inferences and Conclusions Drawn from Evidence

**Appeal and Error**

⊖ Manifest weight; manifestly contrary

It is the province of the trial court to determine the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence.

12 Cases that cite this headnote

[7] **Eminent Domain**

⊖ Exactions and conditions

Highway district did not have final authority to impose requirement that developer construct and dedicate street and thus requirement did not constitute a taking of developer's property; county commissioners had final authority to approve or reject proposed development, and district did not obtain jurisdiction over street until developer deeded street to district. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14; I.C. §§ 40-1310, 40-1406, 67-6501 et seq.

3 Cases that cite this headnote

[8] **Eminent Domain**

⊖ Exactions and conditions

Requirement that developer construct and dedicate street did not constitute a taking of developer's property, as developer voluntarily decided to dedicate road in order to speed approval of development; developer stated in application that it would build public road and stated that new road would provide for better traffic circulation. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14.

5 Cases that cite this headnote

[9] **Eminent Domain**

⊖ Conditions precedent to action; ripeness

Developer failed to exhaust administrative remedies and therefore waived issue of whether

highway district's impact fee assessment of \$99,127, which was calculated based on fee schedules in ordinance, was a taking of developer's property; developer did not request an individual assessment of the amount of its impact fees, did not appeal the calculation of the fees, and it did not pay the fees assessed under protest, but rather simply paid the impact fees in the amount initially calculated. U.S.C.A. Const.Amends. 5, 14; Const. Art. 1, § 14; I.C. § 67-8212(1).

4 Cases that cite this headnote

[10] **Administrative Law and Procedure**

⊖ Exhaustion of Administrative Remedies

As a general rule, a party must exhaust administrative remedies before resorting to the courts to challenge the validity of administrative acts.

4 Cases that cite this headnote

[11] **Eminent Domain**

⊖ Appeal and error

Developer failed to specify in opening brief as to how highway district failed to comply with rule for awarding costs and thus waived issue on appeal. Rules Civ.Proc., Rule 54(d)(5).

[12] **Costs**

⊖ Nature and form of judgment, action, or proceedings for review

Developer's appeal in inverse condemnation action against highway district involved legal issues which were matters of first impression in state and thus appeal was not brought or pursued frivolously, unreasonably, or without foundation so as to entitle highway district to award of attorney fees. I.C. § 12-121.

2 Cases that cite this headnote



### Attorneys and Law Firms

**\*\*57 \*578** Davison, Copple, Copple & Copple, Boise, for appellant. Heather A. Cunningham argued.

Holland & Hart, Boise, for respondent. Steven C. Bowman argued.

### Opinion

EISMANN, Justice.

This is an appeal alleging that the requirements that a developer construct a public street and pay impact fees constituted an unconstitutional taking of the developer's property. The district court entered judgment for the respondent, holding that the requirement to construct a street was not an unconstitutional taking and that the impact fees were properly calculated. We affirm the judgment of the district court on different grounds, holding that there was no taking with regard to the dedication of the street and that the appellant failed to exhaust administrative remedies with respect to its challenge to the amount of the impact fees.

## I. FACTS AND PROCEDURAL HISTORY

The plaintiff-appellant KMST, LLC, is a partnership comprised of Doug Kowallis, John Mackey, Scott Stewart, and Tom Trent. In December 1996, KMST became interested in purchasing a five-acre parcel of real property located on the north side of Overland Road approximately one-fourth mile east of Maple Grove Road. KMST desired to develop the property into a commercial retail center, which would require a zoning change from rural transitional to high-density commercial. In January 1997, KMST met with Ada County officials to discuss its desire to rezone the property and to inquire into the requirements of the county comprehensive plan. On January 30, 1997, KMST entered into an option to purchase the property.

KMST desired to construct a 45,180-square-foot retail shopping center on the property. On May 19, 1997, KMST commenced the process to have the property rezoned and its proposed development approved. It submitted an application to the Ada County Planning and Zoning Commission to begin the process for obtaining a zoning change and county approval of the proposed development. It also submitted a land use application to the Ada County Highway District (ACHD). The ACHD is responsible for all streets and

roadways within the county highway system, which includes city **\*\*58 \*579** streets within the county. IDAHO CODE § 40-1406 (2002).

Before submitting its land use application to the ACHD, some of the KMST partners met twice with Larry Sale, the supervisor of the ACHD's Development Services Division, in order to determine what would be the ACHD staff recommendations regarding the proposed development. The Development Services Division functions similarly to a city planning and zoning department. It reviews applications for land development that are submitted to it by one of the six cities within Ada County and makes recommendations regarding those applications to the Ada County Board of Commissioners or the ACHD Board of Commissioners. The staff of the Development Services Division is also available to meet with developers before they submit their applications in order to answer questions and inform them of what the staff recommendations will likely be regarding the various aspects of the proposed developments. If a developer disagrees with a staff recommendation, the developer can appeal that recommendation to the ACHD Commissioners.

When the KMST partners met with Mr. Sale, he informed them that he would recommend that KMST be required to construct a street along the east side of its property and dedicate that street to the public. In its application submitted to the ACHD on May 19, 1997, KMST stated that it would construct a public street along the east side of the property and that such street would be the primary access to the property.

On June 18, 1997, the ACHD Commissioners met to consider the KMST application. Prior to that meeting, the ACHD staff had submitted written recommendations that included site-specific requirements regarding the proposed new street and adjoining sidewalk. Chris Korte, who had significant experience in processing development applications and obtaining approvals from government agencies, represented KMST at the hearing. Mr. Korte requested two amendments to the staff recommendations: one to the width of the street KMST would construct and one to the location of the sidewalk to be constructed along that street. The ACHD Commissioners approved KMST's application with both of those requested amendments. During his presentation, Mr. Korte also stated that KMST could develop the project without building the street, but he did not request that the site-specific requirement regarding the street be deleted.

After public hearings before the Ada County Planning and Zoning Commission and the Ada County Board of Commissioners, the County Commissioners approved KMST's proposed development and requested zoning change on August 13, 1997. The minutes of the public hearing before the County Commissioners reflect that Mr. Korte asked that KMST not be required to construct the street. The minutes state:

C. Korte further stated the Ada County Highway District had decided to extend a street to Overland Road that is not needed for this development. Until the conditions of approval are established, the applicant must receive approval from the Ada County Highway District as a condition of filing the final development plan and obtaining the rezone. The Highway District established as a condition, that the applicant pay to put that road through. C. Korte requested the Board make a condition of approval that the applicant not be required to extend the road, as it is not needed for their development.

The record does not reflect that the County Commissioners responded to that request, but they approved the proposed development without deleting the requirement that KMST construct the public street. The county's approval included, as standard conditions, that prior to the approval of the final development plan, KMST must submit written approval from various agencies including the ACHD.

On August 29, 1997, KMST purchased the real property. Almost one year later on August 28, 1998, the County Commissioners approved the final development plan. On September 29, 1998, KMST conveyed the street to ACHD by warranty deed. It also paid impact fees to ACHD in the sum of \$99,127.

**\*\*59 \*580** On August 12, 1999, after it had completed construction of its shopping center and the public street, KMST filed this action against Ada County and the ACHD alleging five causes of action: (1) a claim under 42 U.S.C.

§ 1983 for depriving KMST of property and property rights without just compensation while acting under color of state law; (2) a claim that the conditions and exactions imposed by Ada County and the ACHD were arbitrary, capricious and unreasonable and an abuse of governmental power; (3) a claim that Ada County and the ACHD violated KMST's right to procedural due process; (4) a claim that Ada County and the ACHD denied KMST the equal protection of the law; and (5) a claim for inverse condemnation alleging that by requiring construction of the public street and imposing excessive impact fees Ada County and the ACHD took KMST's property without due process of law in violation of the federal and state constitutions. Both defendants filed answers denying the material allegations in the complaint.

On August 11, 2000, KMST moved for partial summary judgment seeking a ruling that pursuant to Idaho Code § 67-6521(2)(b) it was not required to exhaust its administrative remedies before bringing this action. On August 28, 2000, Ada County and the ACHD filed motions for partial summary judgment seeking the dismissal of all of KMST's claims, except the inverse condemnation claim, on the grounds that KMST had failed to exhaust its administrative remedies and that the federal claims were not ripe for review. The motions were argued to the district court, and on October 24, 2000, it issued a memorandum decision and order dismissing all of KMST's claims except its claim for inverse condemnation.

On August 31, 2000, KMST again moved for partial summary judgment seeking a ruling that Ada County and the ACHD had taken its property by requiring that it construct the public street and by requiring it to pay unreasonable and excessive impact fees. Ada County and the ACHD both moved for summary judgment seeking a dismissal of KMST's remaining claim. The motions were argued to the district court, and on December 1, 2000, it issued its memorandum decision and order. It dismissed the claim against Ada County regarding the construction of the public street on the ground that the ACHD had complete jurisdiction over the public streets and public rights-of-way throughout Ada County and therefore the Ada County Commissioners lacked the authority to alter or amend conditions placed upon developers by the ACHD. The court reasoned that the County Commissioners did nothing more than require that KMST obtain the approval of the ACHD. The district court dismissed the claim against Ada County regarding the impact fees on the ground that Ada County had no role in calculating the fees or in requiring that they be paid.

With respect to the claim against the ACHD that the construction and dedication of the street and the impact fees constituted a taking of property without just compensation, the district court held that there were factual issues that must be resolved at trial. That claim was later tried to the district court. On November 2001, the district court issued its findings of fact, conclusions of law, and judgment in favor of the ACHD. KMST then filed this appeal.

## II. ISSUES ON APPEAL

- A. Did the district court err in finding that there had been no unconstitutional taking of KMST's property by the ACHD?
- B. Did the district court err in awarding costs to the ACHD?
- C. Is either party entitled to an award of attorney fees on appeal?

## III. ANALYSIS

### A. Did the District Court Err in Finding that There Had Been No Unconstitutional Taking of KMST's Property by the ACHD?

The Takings Clause of the Fifth Amendment of the Constitution of the United States, made applicable to the states through the Fourteenth Amendment, *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), provides: "[N]or shall private property be taken for public use, without just compensation." \*\*60 \*581 Article 1, § 14, of the Constitution of the State of Idaho provides: "Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor."

[1] [2] [3] [4] [5] [6] A property owner who believes that his or her property, or some interest therein, has been invaded or appropriated to the extent of a taking, but without due process of law and the payment of just compensation, may bring an action for inverse condemnation. *McQuillen v. City of Ammon*, 113 Idaho 719, 747 P.2d 741 (1987). The property owner cannot maintain an inverse condemnation action unless there has actually been a taking of his or her property. *Covington v. Jefferson County*, 137 Idaho 777, 53 P.3d 828 (2002). The determination of whether or not there has been a taking is a matter of law to be resolved by the

trial court. *Id.* Because that determination is a question of law, this Court exercises free review over the trial court's decision on that issue. *Id.* Although we are free to draw our own conclusions from the facts, we will not disturb the trial court's findings of fact that are supported by substantial and competent evidence. *International Ass'n of Firefighters, Local No. 672 v. City of Boise City*, 136 Idaho 162, 30 P.3d 940 (2001). It is the province of the trial court to determine the credibility of witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence. *Id.*

**1. Did the ACHD requirement that KMST construct and dedicate the street constitute a taking?** KMST alleges that the requirement imposed by the ACHD that it construct and dedicate the street constituted a taking of its property without just compensation. The district court analyzed that issue under *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), and *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987). In *Nollan*, the Supreme Court held that there must be a nexus between a legitimate state interest and the condition imposed by the governmental entity when approving the development. That condition must serve the same governmental purpose as the restriction or limitation on development. In *Dolan*, the Supreme Court held that there must be a rough proportionality between the condition imposed and the projected impact of the proposed development. The governmental agency must make an individualized determination that the required dedication of property to public use is related both in nature and extent to the impact of the proposed development. The court concluded that the ACHD had shown there was an essential nexus between its legitimate interests and the construction and dedication of the street; that the ACHD made an individualized determination, prior to the imposition of the condition, that the impacts caused by the KMST development could not be mitigated through impact fees alone; and that the requirement that KMST construct the public street was roughly proportional to the impact of KMST's proposed development. KMST challenges all of those conclusions on appeal. We affirm the judgment dismissing KMST's claim against the ACHD, but for reasons different than those of the district court.

[7] The requirement that KMST construct and dedicate the street, stated by the ACHD as a condition of its approval of the development, did not constitute a taking of KMST's

property. The ACHD did not have final authority to impose that condition. In *Williamson Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985), the United States Supreme Court held that a developer had no claim that a planning commission's application of the zoning laws and regulations to the developer's property amounted to a taking because the developer had not yet obtained a final decision on that issue from the governmental entity charged with implementing those laws and regulations. In that case, the planning commission had held that the proposed development did not comply with the zoning ordinance and subdivision regulations. Another governmental board had the power to grant variances from the zoning ordinance, and the commission had the power to grant variances from the regulations. Because the developer had not sought variances from either body, the Supreme Court held that **\*\*61 \*582** there was no final decision upon which a taking claim could be based.

The ACHD had exclusive general supervision and jurisdiction over all highways and public rights-of-way within its highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways within its highway system. IDAHO CODE §§ 40-1406 & 40-1310 (2002). The ACHD did not obtain jurisdiction over the street constructed by KMST until September 29, 1998, when KMST deeded it to the ACHD. The ACHD had no final authority to approve or reject KMST's proposed development. That authority was vested in the Ada County Commissioners under the Local Land Use Planning Act, IDAHO CODE §§ 67-6501 *et seq.* (2001). Although the Ada County Commissioners could certainly require approval of other governmental entities regarding the proposed development, including the ACHD, the Commissioners had the final authority to approve or reject KMST's proposed development and to decide what conditions, if any, to impose when granting approval. In fact, KMST's representative Mr. Korte asked the County Commissioners to delete the condition that it construct the public road, and the Commissioners declined to do so. Because the condition imposed by the ACHD was not a final decision of the governmental entity that had authority to approve the development, it did not constitute a taking of KMST's property. KMST has not appealed the judgment dismissing its claim against Ada County, and therefore we do not address the issue of whether the conduct of the Ada County Commissioners constituted a taking.

**[8]** Even assuming that the ACHD had final authority to approve some aspect of KMST's proposed development, there

was no taking under the facts of this case. In the initial land use application that it submitted to the ACHD, KMST stated that it would build the public road. It stated in its application as follows:

The property fronts on Overland Road which is a fully improved 5 lane arterial street. The development of the site will also start the construction of a road from Overland to Hackamore Drive to the north. This will connect the subject site with the Century Landmark Center to the north. Thus, the property will be on the corner of two public roads. (See MAP 2) The primary access to the property will be from the new side street. Only one access point is proposed on Overland Road. (See MAP 3)

In its application, KMST also stated that the new street "will limit curb cuts on Overland Road and provide for a better circulation pattern within and adjacent to the project."

Although Mr. Sale had informed KMST that he would recommend that requirement as a condition of approval, he did not have the authority to impose that condition. He could only recommend it, and staff recommendations could be appealed to the ACHD Commission. The district court found "that as a general matter developers do not include conditions in development applications if they disagree with the conditions." The district court also found, "KMST representatives included the construction and dedication of Bird Street in the application because they were concerned that failing to do so would delay closing on the property and development of the property." KMST's property was not taken. It voluntarily decided to dedicate the road to the public in order to speed the approval of its development. Having done so, it cannot now claim that its property was "taken."<sup>1</sup>

**[9]** **2. Did the imposition of the impact fees constitute a taking?** Pursuant to the Idaho Development Impact Fee Act, IDAHO CODE §§ 67-8201 *et seq.* (2001), the ACHD imposed an impact fee upon KMST totaling \$99,127. KMST argues that the fee constituted an unconstitutional monetary taking because it was excessive in amount. It contends that when calculating the amount of **\*\*62 \*583** the fee,

the ACHD used outdated fee tables, failed to give KMST any credit for the \$99,530 it incurred in designing and constructing the public street, and failed to consider the extent to which the street benefited the ACHD's highway system. According to KMST, the impact fees would total \$40,701 if they were calculated using the most recent fee tables from the Institute of Transportation Engineers Trip Generation Manual. KMST argues that the district court erred in failing to apply the standards announced by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), and *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), when determining the constitutionality of the amount of the impact fees.

The Idaho Development Impact Fee Act provides: "A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payer from any discretionary action or inaction by or on behalf of the governmental entity." IDAHO CODE § 67-8212(1) (2001). Pursuant to the authority granted by the Impact Fee Act, the ACHD adopted the "Ada County Highway District Road Impact Fee Ordinance." The Ordinance includes a fee schedule for calculating the amount of the impact fees, and it provides for offsets to those fees for the present value of any construction of, or dedication of land for, a system improvement. A system improvement would include the construction of a new street, along with the associated curbs, gutters, sidewalks, and traffic signals, but would not include the construction of a street or a right-of-way dedication for direct access to and/or within the proposed project or development. If a developer believes that his or her proposed development is unique in its traffic impacts and that these impacts are substantially less than would be indicated by using the fee schedule, the developer may request an individual assessment of the impact fees by a professional approved by the ACHD. If the developer does not accept the findings of the individual assessment, the ACHD Commission resolves the issue. The Ordinance contains procedures for an administrative appeal to the ACHD Commission of any discretionary action or inaction by the ACHD staff charged with administering the Ordinance. It also provides that the developer can pay the impact fees under protest without being estopped from exercising the right of appeal or from receiving a refund of any amount deemed to have been illegally collected.

In this case, the ACHD staff calculated the impact fees for KMST's development based upon the fee schedules in the Ordinance. KMST did not request an individual assessment of the amount of its impact fees; it did not appeal the calculation of the fees; and it did not pay the fees assessed under protest. It simply paid the impact fees in the amount initially calculated. Having done so, it cannot now claim that the amount of the impact fees constituted an unconstitutional taking of its property.

[10] As a general rule, a party must exhaust administrative remedies before resorting to the courts to challenge the validity of administrative acts. *Arnzen v. State*, 123 Idaho 899, 854 P.2d 242 (1993). We have recognized exceptions to that rule in two instances: (a) when the interests of justice so require, and (b) when the agency acted outside its authority. *Id.* Neither of those exceptions applies in this case. KMST had the opportunity to challenge the calculation of the impact fees administratively, and it chose not to do so. The Ordinance provided administrative procedures for addressing all three of the claimed errors in calculating the impact fees. In fact, KMST argues in its opening brief, "It is undisputed that had they [KMST] asked for one [an individual assessment], they would have gotten an impact fee reduction."

The district court addressed KMST's claim that the impact fees were incorrectly calculated because it accepted KMST's argument that Idaho Code § 67-6521(b)<sup>2</sup> exempted it from being required to exhaust its administrative \*\*63 \*584 remedies before challenging the calculation in court. By its terms, that statute has no application to the impact fees imposed in this case. It only applies if the basis of the inverse condemnation claim is "that a specific zoning action or permitting action restricting private property development is actually a regulatory action by local government deemed 'necessary to complete the development of the material resources of the state,' or necessary for other public uses."

#### **B. Did the District Court Err in Awarding Costs to the ACHD?**

[11] KMST argues the district court erred in awarding costs to the ACHD because it failed to comply with Rule 54(d)(5) of the Idaho Rules of Civil Procedure.<sup>3</sup> In its opening brief, KMST did not specify in what manner the ACHD failed to comply with the rule, however. It merely stated:

ACHD failed to comply with this rule when seeking post-trial costs. The trial court determined that ACHD had substantially complied with the requirements of I.R.C.P. 54(d)(5). The issue for the appellate court is therefore whether strict compliance or substantial compliance with the rule is required in order to recover costs, and whether ACHD met the requirements.

Because KMST did not support this assignment of error with argument specifying in what manner the ACHD allegedly failed to comply with Rule 54(d)(5), we will not consider this assignment of error. *State v. Zichko*, 129 Idaho 259, 923 P.2d 966 (1996).

**C. Is Either Party Entitled to an Award of Attorney Fees on Appeal?**

[12] Both parties seek an award of attorney fees on appeal. Because KMST was not the prevailing party on appeal, it is not entitled to an award of attorney fees.

The ACHD seeks an award of attorney fees under Idaho Code § 12–121. Under that statute, attorney fees will be awarded to the prevailing party on appeal when this Court

is left with the abiding belief that the appeal was brought or pursued frivolously, **\*\*64 \*585** unreasonably or without foundation. *King v. King*, 137 Idaho 438, 50 P.3d 453 (2002). Because there were legal issues involved in the appeal that were matters of first impression in Idaho, we do not find that the appeal was brought or pursued frivolously, unreasonably or without foundation.

**IV. CONCLUSION**

We uphold the judgment of the district court dismissing KMST's claim for inverse condemnation. We award costs, but not attorney fees, on appeal to the ACHD.

Justices SCHROEDER, WALTERS, KIDWELL and Justice Pro Tem MELANSON concur.

**All Citations**

138 Idaho 577, 67 P.3d 56

**Footnotes**

1 We are not holding that there was no taking simply because KMST built the public street before challenging that requirement in court. We are holding that there was no taking because KMST itself proposed that it would construct and dedicate the street as part of its development. We express no opinion as to whether a developer who contends that a condition of approval amounts to an unconstitutional taking of property must litigate that issue before proceeding with the development.

2 The statute provides as follows:

**67–6521. Actions by affected persons.**—(1)(a) As used herein, an affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development.

(b) Any affected person may at any time prior to final action on a permit required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to section 67–6512, Idaho Code; provided, however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

(i) Grant or deny a permit; or

(ii) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by rule and regulation a time period within which a recommendation or decision must be made.

(d) An affected person aggrieved by a decision may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title 67, Idaho Code.

(2) (a) Authority to exercise the regulatory power of zoning in land use planning shall not simultaneously displace coexisting eminent domain authority granted under section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

(b) An affected person claiming "just compensation" for a perceived "taking," the basis of the claim being that a specific zoning action or permitting action restricting private property development is actually a regulatory action by local government deemed "necessary to complete the development of the material resources of the state," or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of section 14, article I, of the constitution of the state of Idaho relating to eminent domain. Under these circumstances, the affected person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect by local government to provide "just compensation" under the provisions of section 14, article I, of the constitution of the state of Idaho and chapter 7, title 7, Idaho Code.

3 That rule provides as follows:

At any time after the verdict of a jury or a decision of the court, any party who claims costs may file and serve on adverse parties a memorandum of costs, itemizing each claimed expense, but such memorandum of costs may not be filed later than fourteen (14) days after entry of judgment. Such memorandum must state that to the best of the party's knowledge and belief the items are correct and that the costs claimed are in compliance with this rule. Failure to file such memorandum of costs within the period prescribed by this rule shall be a waiver of the right of costs. A memorandum of costs prematurely filed shall be considered as timely.

KeyCite Yellow Flag - Negative Treatment  
Distinguished by State ex rel. Winder v. Canyon Vista Family Ltd.  
Partnership, Idaho, March 17, 2010

147 Idaho 232  
Supreme Court of Idaho.  
Boise, May 2008 Term.

LOCHSA FALLS, L.L.C., an Idaho limited  
liability company, Plaintiff–Appellant,

v.

STATE of Idaho, Idaho Transportation  
Board, Defendant–Respondent.

No. 34039.

|  
April 7, 2009.

|  
Rehearing Denied May 21, 2009.

#### Synopsis

**Background:** Subdivision developer filed suit against Idaho Transportation Department (ITD) seeking reimbursement of costs it incurred in constructing traffic signal, as required by temporary encroachment permit ITD had issued to it. ITD filed motion for summary judgment. The District Court, Ada County, [2007 WL 5273975](#), Michael R. McLaughlin, J., granted motion and dismissed complaint due to developer's failure to exhaust administrative remedies. Developer appealed.

**Holdings:** The Supreme Court, Horton, J., held that:

[1] judicial review of ITD's action on encroachment permit granted to developer was governed by Administrative Procedure Act (APA);

[2] developer was not required to exhaust administrative remedies before filing suit against ITD;

[3] costs incurred by developer to construct traffic signal did not constitute an impermissible tax;

[4] ITD was not entitled to appellate attorney fees and costs; and

[5] developer was not entitled to appellate attorney fees and costs.

Vacated and remanded.

J. Jones, J., concurred in part and dissented in part, with opinion.

**Procedural Posture(s):** On Appeal; Motion for Summary Judgment.

West Headnotes (29)

#### [1] Appeal and Error

⊖ Review using standard applied below

In an appeal from an order granting summary judgment, the standard of review is the same as the standard used by the district court in ruling on a motion for summary judgment.

#### [2] Appeal and Error

⊖ Summary Judgment

Upon review of a grant of summary judgment, the Supreme Court must liberally construe facts in the existing record in favor of the nonmoving party, and draw all reasonable inferences from the record in favor of the nonmoving party.

#### [3] Judgment

⊖ Existence or non-existence of fact issue

Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

#### [4] Judgment

⊖ Existence or non-existence of fact issue

If there are conflicting inferences contained in the record or reasonable minds might reach different conclusions, summary judgment must be denied.



[5] **Appeal and Error**

⊖ Statutory or legislative law

**Appeal and Error**

⊖ Administrative law; regulations

The constitutionality of a statute or administrative regulation is a question of law over which Supreme Court exercises free review.

2 Cases that cite this headnote

[6] **Administrative Law and Procedure**

⊖ Presumptions and burden of proof

**Constitutional Law**

⊖ Presumptions and Construction as to Constitutionality

**Constitutional Law**

⊖ Burden of Proof

There is a presumption in favor of the constitutionality of a challenged statute or regulation, and the burden of establishing that the statute or regulation is unconstitutional rests upon the challengers.

[7] **Constitutional Law**

⊖ Presumptions and Construction as to Constitutionality

An appellate court is obligated to seek an interpretation of a statute that upholds its constitutionality.

1 Cases that cite this headnote

[8] **Constitutional Law**

⊖ Clearly, positively, or unmistakably unconstitutional

The judicial power to declare legislative action unconstitutional should be exercised only in clear cases.

[9] **Administrative Law and Procedure**

⊖ Exhaustion of Administrative Remedies

Where an administrative remedy is provided by statute, relief must be sought from the

administrative body and this remedy exhausted before the courts will act.

[10] **Administrative Law and Procedure**

⊖ Exhaustion of Administrative Remedies

As a general rule, a party must exhaust administrative remedies before resorting to the courts to challenge the validity of administrative acts.

3 Cases that cite this headnote

[11] **Administrative Law and Procedure**

⊖ Exceptions

Two exceptions to general rule requiring exhausting of administrative remedies are when the interests of justice so require, and when the administrative agency acted outside its authority.

4 Cases that cite this headnote

[12] **Administrative Law and Procedure**

⊖ Exhaustion of Administrative Remedies

Administrative Procedure Act (APA) requires an exhaustion of the full gamut of administrative remedies before judicial review may be sought. West's I.C.A. § 67-5271.

1 Cases that cite this headnote

[13] **States**

⊖ Executive departments, boards, or other bodies

Idaho Transportation Department (ITD) is an agency, for purposes of the Administrative Procedure Act (APA). West's I.C.A. §§ 40-501, 67-5201(2).

1 Cases that cite this headnote

[14] **Administrative Law and Procedure**

⊖ Contested or noncontested case

Whether or not an administrative agency decision determines legal rights, duties, privileges, immunities or other legal interests such that it is a contested case under the

Administrative Procedure Act (APA) requires a two-step analysis as to whether (1) the legislature granted the agency the authority to determine the particular issue, and (2) the agency decision on the issue determines the legal rights, duties, privileges, immunities, or other legal interests of one or more persons. West's I.C.A. §§ 67-5201(12), 67-5240.

**[15] Highways**

⊖ Right of access

Judicial review of Idaho Transportation Department (ITD) action on encroachment permit granted to subdivision developer was governed by Administrative Procedure Act (APA), for purposes of determining whether developer was required to exhaust its administrative remedies in connection with its dispute with ITD over payment for construction of traffic signal required by encroachment permit; power to impose certain conditions upon encroachment permit application, including construction of traffic signals, was within scope of legislature's grant of authority to ITD to regulate safe use of and access to controlled access highways, and ITD's approval or denial of such application determined legal rights and interests of property owner in accessing their property from state highway. West's I.C.A. §§ 67-5201(12), 67-5240.

3 Cases that cite this headnote

**[16] Administrative Law and Procedure**

⊖ Nature and purpose

Doctrine of exhaustion of administrative remedies serves important policy considerations, including providing the opportunity for mitigating or curing errors without judicial intervention, deferring to the administrative process established by the legislature and the administrative body, and the sense of comity for the quasi-judicial functions of the administrative body; consistent with these principles, courts infer that statutory administrative remedies

implemented by the legislature are intended to be exclusive.

**[17] Highways**

⊖ Right of access

Subdivision developer was not required to exhaust administrative remedies before filing suit against Idaho Transportation Department (ITD) and its board seeking reimbursement for expenses its incurred in constructing traffic signal as required by temporary encroachment permit granted to developer, absent availability of such remedies; developer installed traffic signal as required by permit, but ITD never conducted final inspection and approved construction, nor did ITD formally deny permit or disapprove of construction, and, while administrative rules provided internal mechanism for appeal from denial of encroachment permit, rules provided no mechanism whereby applicant, whose permit application had been approved subject to imposition of additional requirements, could challenge those conditions. West's I.C.A. § 67-5271; IDAPA 39.03.42.003.

3 Cases that cite this headnote

**[18] Administrative Law and Procedure**

⊖ Opportunity for adequate relief

While pursuit of statutory administrative remedies is a condition precedent to judicial review under the Administrative Procedure Act (APA), failure to exhaust administrative remedies is not a bar to litigation when there are no remedies to exhaust. West's I.C.A. § 67-5271.

5 Cases that cite this headnote

**[19] Constitutional Law**

⊖ Facial invalidity

**Constitutional Law**

⊖ Invalidity as applied

A party may challenge a statute as unconstitutional "on its face" or "as applied" to the party's conduct.

1 Cases that cite this headnote

[20] **Constitutional Law**

⊖ Questions of law or fact

A facial constitutional challenge to a statute or rule is purely a question of law.

1 Cases that cite this headnote

[21] **Administrative Law and Procedure**

⊖ Facial invalidity

**Administrative Law and Procedure**

⊖ Invalidity as applied

**Constitutional Law**

⊖ Facial invalidity

Generally, a facial constitutional challenge to a statute or rule is mutually exclusive from an as applied challenge.

1 Cases that cite this headnote

[22] **Constitutional Law**

⊖ Facial invalidity

For a facial constitutional challenge to a statute to succeed, the party must demonstrate that the law is unconstitutional in all of its applications; in other words, the challenger must establish that no set of circumstances exists under which the law would be valid.

2 Cases that cite this headnote

[23] **Constitutional Law**

⊖ Invalidity as applied

To prove a statute is unconstitutional "as applied," the party must only show that, as applied to defendant's conduct, the statute is unconstitutional.

1 Cases that cite this headnote

[24] **Highways**

⊖ Right of access

Costs incurred by subdivision developer to construct traffic signal, as required by temporary encroachment permit that had been granted to

developer by Idaho Transportation Department (ITD), did not constitute an impermissible tax, but were permissible fees imposed for purpose of regulating safe use of and access to state highways at the development; costs that developer incurred were only those costs that developer itself proposed were necessary to safely connect its development to highway, and which were outlined in transportation impact study (TIS) that developer prepared and submitted to ITD, and ITD received only the \$100 application fee developer was required to pay. IDAPA 39.03.42.700.03.e.

3 Cases that cite this headnote

[25] **Highways**

⊖ Authority and Powers

**Municipal Corporations**

⊖ Power and Duty to Tax in General

State agencies and municipalities that are statutorily empowered to carry out police powers, such as Idaho Transportation Department (ITD), have the discretion to impose regulatory fees in accomplishing their directives; however, this authority does not impart the ability to tax.

[26] **Appeal and Error**

⊖ Issues not addressed below in general

Remand was required in subdivision developer's appeal of dismissal of its suit against Idaho Transportation Department (ITD) seeking reimbursement of costs it incurred in constructing traffic signal as required by temporary encroachment permit that ITD had granted to it, for trial court to determine whether imposition of condition that developer construct signal in order to be granted permit was reasonable, as trial court had not considered entirety of developer's complaints and factual allegations when it dismissed complaint solely for developer's failure to exhaust administrative remedies.

2 Cases that cite this headnote

[27] Licenses

Reasonableness of fees

Fees imposed by administrative agencies and municipalities as regulations under police powers must meet a test of reasonableness and be rationally related to the cost of enforcing the regulations at hand.

[28] States

Costs

Idaho Transportation Department (ITD) was not entitled to appellate attorney fees and costs in connection with subdivision developer's appeal of dismissal of its suit against ITD seeking reimbursement of costs it incurred in constructing traffic signal, as ITD was not prevailing party, given Supreme Court's decision vacating trial court's order granting ITD summary judgment and dismissing subdivision's complaint. West's I.C.A. § 12-117.

[29] States

Costs

Subdivision developer was not entitled to appellate attorney fees and costs in connection with its appeal of dismissal of its suit against Idaho Transportation Department (ITD) for failure to exhaust administrative remedies, though developer was prevailing party on appeal, as ITD did not act without a reasonable basis in fact or law, in that parties were typically required to exhaust administrative remedies before pursuing judicial review in actions under the Administrative Procedure Act (APA), as would have been case for developer, except for procedural void in administrative rules pertaining to conditions imposed in connection with encroachment permit applications. West's I.C.A. § 12-117.

2 Cases that cite this headnote

Attorneys and Law Firms

**\*\*966** Wilson & McColl, Boise, for appellant. Lisa Rasmussen argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent. Steven Parry argued.

Opinion

HORTON, Justice.

**\*235** This is an appeal by Lochsa Falls, L.L.C. (Lochsa Falls), a developer, from an order of the district court dismissing its complaint against the Idaho Transportation Department (ITD) and the Board of ITD for failure to exhaust administrative remedies. Because we find that no administrative remedies were available in the instant case, we vacate the judgment dismissing Lochsa Falls' complaint and remand for further proceedings consistent with this opinion. We decline to award attorney fees on appeal.

I. FACTUAL AND PROCEDURAL BACKGROUND

Lochsa Falls is the developer of a 254 acre subdivision located along U.S. Highway 20/26 (Chinden Boulevard) between Linder and Ten Mile roads, in Meridian, Idaho. The development includes approximately 740 residential lots. The development, according to Lochsa Falls' traffic consultant, Washington Infrastructure Services, is estimated to generate 12,480 vehicle trips per day, with 1,396 trips during the peak hour.

In January of 2003, Lochsa Falls presented a preliminary plat of the entire subdivision to the City of Meridian (the City) for approval. The City approved the preliminary plat. In order to accommodate the significant increase in traffic at the time of build out, the plat called for an internal collector street to intersect with Chinden Boulevard.<sup>1</sup>

Because Chinden Boulevard is designated as a controlled-access highway, ITD required that Lochsa Falls obtain an encroachment permit. As part of the application process, Lochsa Falls was required to submit a Transportation Impact Study (TIS). Lochsa Falls' traffic consultant recommended that a traffic signal be installed at one of the two approaches to Chinden Boulevard. During the encroachment permit application process, the location of the recommended traffic

signal was modified by ITD's Chief Engineer. With the exception of the change in the location of the traffic signal, Lochsa Falls' application was approved as submitted and ITD's Chief Engineer issued a temporary encroachment permit on November 19, 2006. That permit states: "This permit **SHALL BE VOID** if all work is not completed and the Department has not made final inspection and approval within one year of the issuance date," and "Permit will be considered *Temporary* until final inspection and approval by a Department Representative." (emphasis in original).

Lochsa Falls' TIS estimated construction costs for the signal and approach at approximately \$180,000. Accordingly, the encroachment permit included *inter alia* the conditions that "Developer shall design and construct a signal prior" and that "[a] Performance Bond or a Certificate of Deposit in the amount of \$180,000.000, shall be provided by the developer for the signal, prior to \*236 \*\*967 any work being done on the highway right of way."<sup>2</sup>

After a subdivision receives preliminary plat approval from the City, the developer has the option of constructing the subdivision in phases. Lochsa Falls elected to construct the subdivision in twelve phases. Lochsa Falls obtained construction plan approval and final plat approval for all twelve phases from the City. After all phases of the subdivision were under construction or complete, including completion of all roadways, and all lots in the subdivision had been sold except for the 116 lots contained in Phase 12, the City informed Lochsa Falls that building permits would not be issued until Lochsa Falls complied with ITD's requirement that the signal be paid for by Lochsa Falls.

Under these circumstances, Lochsa Falls believed that it had no option but to agree to pay the cost of the installation of the signal. Thus, in March 2005, Lochsa Falls submitted to ITD's District Office a letter of credit to cover construction costs. The letter of credit was accompanied by a cover letter from Brian F. McColl, Lochsa Falls' attorney, which stated, in part, that filing the "letter of credit does not constitute a waiver of ... Lochsa's rights to question the District's authority to require Lochsa Falls to pay for the traffic signal in question."<sup>3</sup> This was the first indication from Lochsa Falls to ITD that it objected to paying for the cost of the construction of the signal.

After the new road intersecting Chinden Boulevard was built and the traffic signal was installed but not operational, Lochsa Falls initiated this litigation on August 30, 2006, seeking to

have ITD reimburse it for expenses it incurred in constructing the traffic signal. ITD has never accepted nor approved of any portion of the permitted work, including the traffic signal. On the other hand, ITD never formally denied the permit nor disapproved of the construction.

Lochsa Falls presented three causes of action before the district court arguing that the requirement it construct the traffic signal was: (1) a disguised and unconstitutional tax, (2) a taking without just compensation, and (3) a violation of substantive due process and equal protection of the law. In response, ITD filed a motion for summary judgment requesting that the district court dismiss Lochsa Falls' complaint without prejudice for, *inter alia*, failure to exhaust administrative remedies.

The district court dismissed Lochsa Falls' complaint without prejudice for failure to exhaust administrative remedies. The district court further found that the fee was reasonably imposed pursuant to valid police power, was rationally related to public safety, and was not an unconstitutional tax. The district court did not address Lochsa Falls' second and third causes of action in its decision. Lochsa Falls appeals from the district court's dismissal of its complaint.

## II. STANDARD OF REVIEW

[1] [2] [3] [4] [5] [6] [7] [8] [9] This appeal is from: (1) an order of summary judgment, (2) arising under the Idaho Administrative Procedures Act (APA), (3) which raises constitutional questions. This Court was recently faced with a similar situation in *American Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Resources*, 143 Idaho 862, 154 P.3d 433 (2007) wherein we explained the appropriate standard of review:

In an appeal from an order granting summary judgment, the standard of review is the same as the standard used by the district court in ruling on a motion for summary judgment. Upon review, the Court must liberally construe facts in the existing record in favor of the nonmoving party, and draw all reasonable inferences from the record in favor of the nonmoving party. Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if \*237 \*\*968 any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. If there are conflicting inferences contained

in the record or reasonable minds might reach different conclusions, summary judgment must be denied.

The constitutionality of a statute or administrative regulation is a question of law over which this Court exercises free review. There is a presumption in favor of the constitutionality of the challenged statute or regulation, and the burden of establishing that the statute or regulation is unconstitutional rests upon the challengers. An appellate court is obligated to seek an interpretation of a statute that upholds its constitutionality. The judicial power to declare legislative action unconstitutional should be exercised only in clear cases.

Where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act.

*Id.* at 869, 154 P.3d at 440 (internal citations and quotation marks omitted).

### III. ANALYSIS

On appeal we are asked to consider: (1) whether the district court correctly dismissed Lochsa Falls' complaint finding that it was required to exhaust its administrative remedies prior to filing suit; (2) whether the district court correctly found that ITD and its Board had authority to require Lochsa Falls to construct the traffic signal at its own cost, and; (3) whether either party is entitled to attorney fees on appeal.

#### A. Failure to exhaust administrative remedies

[10] [11] The primary issue in this case is whether Lochsa Falls' complaint was properly dismissed for failure to exhaust administrative remedies. "As a general rule, a party must exhaust administrative remedies before resorting to the courts to challenge the validity of administrative acts." *KMST, LLC v. County of Ada*, 138 Idaho 577, 583, 67 P.3d 56, 62 (2003) (citing *Arnzen v. State*, 123 Idaho 899, 906, 854 P.2d 242, 249 (1993)). This Court has recognized two exceptions to this rule: (a) when the interests of justice so require, and (b) when the agency acted outside its authority. *Regan v. Kootenai County*, 140 Idaho 721, 725, 100 P.3d 615, 619 (2004).

[12] The APA requires an exhaustion of the "full gamut" of administrative remedies before judicial review may be

sought. I.C. § 67-5271; *Petersen v. Franklin County*, 130 Idaho 176, 185, 938 P.2d 1214, 1223 (1997) (quoting *Grever v. Idaho Tel. Co.*, 94 Idaho 900, 903, 499 P.2d 1256, 1259 (1972)); see also *Regan*, 140 Idaho at 724, 100 P.3d at 618; *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 111, 73 P.3d 721, 725 (2003). Therefore, we first consider whether the APA governs the issuance of an encroachment permit by the ITD.

#### 1. The APA governs the issuance of an encroachment permit.

[13] The APA governs if the issue at hand arose from a "contested case," which the APA defines as "[a] proceeding by an *agency* ... that may result in the issuance of an *order*."

I.C. § 67-5240 (emphasis added); *Westway*, 139 Idaho at 111, 73 P.3d at 725. Since it is an executive department of the state government, the ITD is clearly an "agency" within the definition of the APA. I.C. §§ 40-501 & 67-5201(2); *Westway*, 139 Idaho at 111, 73 P.3d at 725. The APA defines an order as "an agency action of particular applicability that determines legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons." I.C. § 67-5201(12); *Id.* at 111, 73 P.3d at 725.

[14] This inquiry requires a two-step analysis: (1) Has the legislature granted the agency the authority to determine the particular issue? and (2) Does the agency decision on the issue determine "the legal rights, duties, privileges, immunities, or other legal interests" of one or more persons? *Westway*, 139 Idaho at 112, 73 P.3d at 726.

[15] This Court must first determine whether the legislature granted ITD the authority \*238 \*\*969 to issue encroachment permits and specify the conditions for the granting of such permits. *Id.* This necessarily begins with a consideration of the relevant statutes.

ITD and its Board are granted the following applicable duties and powers by statute:

To "[e]stablish standards for the location, design construction, reconstruction, alteration, extension, repair and maintenance of state highways..." I.C. § 40-310(5).

To “[d]esignate state highways, or parts of them, as controlled-access facilities and regulate, restrict or prohibit access to those highways to serve the traffic for which the facility is intended.” I.C. § 40–310(9).

To “[p]roscribe rules and regulations affecting state highways ... and enforce compliance with those rules and regulations.” I.C. § 40–312(1).

To “regulate or prohibit the use of any controlled-access highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.” I.C. § 49–202(23).

Clearly, the legislature has empowered ITD and its Board to make rules and regulations controlling rights of access to and the safe use of state highways. Furthermore, as to traffic signals in particular, the legislature has specifically empowered ITD and its Board to:

[E]rect and maintain traffic-control devices on controlled-access highways on which any prohibitions are applicable.

I.C. § 49–202(24).

Furnish, erect and maintain, whenever necessary for public safety and convenience, suitable signs, markers, signals and other devices to control, guide and warn pedestrians and vehicular traffic entering or traveling upon the state highway system. I.C. § 40–313(1).

Pursuant to its grant of authority under I.C. §§ 40–310(9), 40–311(1), 40–312(3), 40–313(2), and 49–202(19), (23) and (28), 49–221, and 67–5203, the Board of ITD promulgated the “Rules Governing Highway Right-of-Way Encroachments on State Rights-of-Way.” IDAPA 39.03.42 *et seq.* These administrative rules provide that, in order “[t]o help preserve the highways as constructed and provide responsible growth where allowed, any individual, business, or other entity planning to add, modify, relocate, maintain, or remove an encroachment on the State highway ... shall obtain a permit ...” IDAPA 39.03.42.200.01. These rules require that any new encroachment to a controlled state highway must comply with the safety specification and standards specified by ITD and that an application may be denied if it does not. IDAPA 39.03.42.300.06; 39.03.42.300.09.

The rules lay out the costs an applicant can expect to bear. Under the rules, a permit application fee is required “based

on [ITD's] cost to produce the permit and administer the program.” IDAPA 39.03.42.700.01. The application fee for a major development the size and type of Lochsa Falls is \$100.<sup>4</sup> IDAPA 39.03.42.700.02. An application for a major development like Lochsa Falls must also be accompanied by a full TIS provided and paid for by the developer. IDAPA 39.03.42.301.01.a. The rules provide that:

A TIS shall document the extent of the impact of the proposed development on the State Highway System, including additional trips, resulting level of service during AM and PM peaks, and the need for auxiliary lanes or other special capacity or safety features. Any required changes in traffic control, land use, access, pedestrian, or bicycle usage shall also be addressed.

IDAPA 39.03.42.301.01.c. ITD reviews the TIS and makes the final decision regarding any requirements. IDAPA 39.03.42.301.02.

Additionally, the rules provide that an applicant “shall pay for any changes or adjustments of highway features or fixtures brought about by actions, operations or requirements caused by the applicant” and that “[ITD] may require payment of costs associated with ... [c]onstruction of highway modifications or improvements, including but not limited to signals....” IDAPA 39.03.42.200.06; 39.03.42.700.03.e. The rules also provide that, at the discretion of ITD, **\*239 \*\*970** the applicant may be required to secure a performance bond to guarantee completion of the work in accordance with requirements of the permit. IDAPA 39.03.42.700.03.d.

In appreciation of the specific IDAPA rules and provisions of the Idaho Code as set forth above, we conclude that the power to impose certain specific conditions upon an application for an encroachment permit, including, but not limited to, provision of bonds and construction of traffic signals, is within the scope of the legislature's grant of authority to ITD to regulate the safe use of and access to controlled access highways.

Having so concluded, we must next consider the second part of the test, that is, whether the agency decision on the issue determines “the legal rights, duties, privileges, immunities, or other legal interests” of the party. *Westway*, 139 Idaho at 112, 73 P.3d at 726. Because the ITD's denial or approval of an encroachment permit application determines the legal rights and interests of a property owner in accessing their property from a state highway, it falls within the definition of an order.

Thus, judicial review of ITD's action on an encroachment permit application is governed by the APA.

**2. The applicable rules do not provide for an appeal of conditions imposed in connection with an encroachment permit.**

[16] Typically, exhaustion of administrative remedies is a prerequisite to seeking judicial review under the APA:

The doctrine of exhaustion serves important policy considerations, including “providing the opportunity for mitigating or curing errors without judicial intervention, deferring to the administrative process established by the Legislature and the administrative body, and the sense of comity for the quasi-judicial functions of the administrative body.” Consistent with these principles, courts infer that statutory administrative remedies implemented by the Legislature are intended to be exclusive.

*Park v. Banbury*, 143 Idaho 576, 579, 149 P.3d 851, 853–854 (2006) (quoting *Regan*, 140 Idaho at 724, 100 P.3d at 618, internal citations omitted).

[17] The IDAPA rules provide an internal mechanism for an appeal from the denial of an encroachment permit. This internal appeals process is outlined in IDAPA 39.03.42.003. This process commences when the applicant notifies the local ITD District Traffic office of the appeal in written form within thirty days after receipt of notification of the denial. IDAPA 39.03.42.003.01. In the initial appeal process, the District office has 14 working days to review the appeal. IDAPA 39.03.42.003.03. If the District office does not overturn the initial denial, the appeal is then forwarded to the State Traffic Engineer who also has 14 working days to review the appeal. *Id.* The State Traffic Engineer is required to prepare the appeal for review by the ITD's Chief Engineer. The Chief Engineer is also granted 14 working days to review the appeal. *Id.* The appellant must then be notified within seven working days of the Chief Engineer's decision on the matter. *Id.* If the Chief Engineer affirms the denial of the application, a secondary appeals process begins. If within thirty days, the appellant then notifies ITD's legal section, the legal section will then initiate an appeal in accordance with the APA and IDAPA 04.11.01. IDAPA 39.03.42.003.04.

The Right-Of-Way Encroachment Application and Permit issued to Lochsa Falls stated that the “[p]ermit will be

considered *Temporary* until final inspection and approval by a Department Representative.” (emphasis in original). Although Lochsa Falls installed the traffic light, ITD never conducted a final inspection and approved the construction. Nonetheless, the application was never formally denied nor formally approved. For that reason, Lochsa Falls argues that it was not required to follow the multi-tiered internal administrative appeals process set forth in the IDAPA rules before seeking judicial review. We agree.

[18] While “[p]ursuit of statutory administrative remedies is a condition precedent to judicial review” under the APA,

*Park*, 143 Idaho at 578, 149 P.3d at 853, failure to exhaust administrative remedies is not a bar to litigation when there are no remedies to \*240 \*\*971 exhaust. In *James v. Dep't of Transp.*, 125 Idaho 892, 876 P.2d 590 (1994), this Court held that a terminated employee was not required to exhaust administrative remedies when a statute and the department's grievance procedures did not entitle him to grieve his termination. 125 Idaho at 895, 876 P.2d at 593. This Court did apply the rule requiring exhaustion of administrative remedies as to the one component of James's claim for breach of contract for which there was an administrative remedy. *Id.* The clear holding in *James* is that this Court will not bar litigation for failure to exhaust administrative remedies when no remedy is available.

Turning to the present action, the administrative rules provide a process whereby a denial of a permit application can be appealed internally within ITD. However, those rules provide no mechanism whereby an applicant, whose permit application has been *approved* subject to the imposition of additional requirements, can challenge those conditions. In the absence of an administrative remedy, we conclude that the district court erred in dismissing Lochsa Falls' complaint for failure to exhaust administrative remedies. Thus, we vacate the district court's order dismissing Lochsa Falls' complaint without prejudice for failure to exhaust administrative remedies and remand for proceedings consistent with this opinion.<sup>5</sup>

**B. Lochsa Falls' Constitutional Claims**

Lochsa Falls presented three causes of action before the district court. The complaint stated that the requirement that Lochsa Falls construct a traffic signal was: (1) a disguised and unconstitutional tax, (2) a taking without just compensation, and (3) a violation of substantive due process and equal protection of the law. Lochsa Falls contends that the rules



allowing ITD to impose conditions upon a permit application are unconstitutional on their face since ITD was palpably without jurisdiction to impose taxes or impact fees. Despite having determined that Lochsa Falls' complaint should be dismissed for failure to exhaust administrative remedies, the district court addressed Lochsa Falls' first constitutional challenge and held that the fee was reasonably imposed pursuant to valid police power, was rationally related to public safety, and was not an unconstitutional tax. The district court did not consider Lochsa Falls' second and third causes of action in its decision. Accordingly, we will address the sole constitutional question addressed by the district court, that is, whether the requirement that Lochsa Falls construct the traffic signal was a disguised tax.

This court has held that administrative remedies must generally be exhausted before a district court has jurisdiction to decide constitutional issues. *American Falls*, 143 Idaho at 871, 154 P.3d at 442. However, because we conclude that the IDAPA rules do not provide any mechanism whereby Lochsa Falls could have internally challenged the conditions placed upon the issuance of its temporary encroachment permit, the exhaustion doctrine does not bar consideration of Lochsa Falls' constitutional challenge.

[19] [20] [21] [22] [23] Constitutional challenges come in two forms “facial” and “as applied”:

A party may challenge a statute as unconstitutional “on its face” or “as applied” to the party's conduct. ■ *State v. Korsen*, 138 Idaho 706, 712, 69 P.3d 126, 132 (2003). A facial challenge to a statute or rule is “purely a question of law.” *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998). Generally, a facial challenge is mutually exclusive from an as applied challenge. ■ *Korsen*, 138 Idaho at 712, 69 P.3d at 132. For a facial constitutional challenge to succeed, the party must demonstrate that the law is unconstitutional in all of its applications. *Id.* In other words, “the challenger must establish that no set of circumstances exists under which the \*241 \*\*972 [law] would be valid.” *Id.* In contrast, to prove a statute is unconstitutional “as applied”, the party must only show that, as applied to the defendant's conduct, the statute is unconstitutional.

■ *Korsen*, 138 Idaho at 712, 69 P.3d at 132.

*American Falls*, 143 Idaho at 870–71, 154 P.3d at 441–442.

[24] On appeal, Lochsa Falls asks this Court to consider whether the district court correctly found that ITD and its Board had authority to require Lochsa Falls to construct the traffic signal at its own cost. Lochsa Falls terms its constitutional challenge as “facial.” Despite its attempt to style its appeal as such, the reality is that Lochsa Falls' challenge is “as applied.” Lochsa Falls has not demonstrated that, under no set of circumstances, the encroachment permit application rules and process could be constitutionally valid. Rather, Lochsa Falls is specifically challenging that the rules are unconstitutional *as applied to it*. The IDAPA rules provide that the Department *may* require payment of the costs associated with “[c]onstruction of highway modifications or improvements, including but not limited to signals....” IDAPA 39.03.42.700.03.e (emphasis added).

[25] As was discussed above, ITD is statutorily imbued with the police power to regulate the safe use of and access to state highways. Certainly, Lochsa Falls had no right of access to Chinden Boulevard; rather, any access is in the nature of a privilege extended by ITD. Entities such as state agencies and municipalities that are statutorily empowered to carry out police powers, such as ITD, have the discretion to impose regulatory fees in accomplishing their directives. *Brewster v. City of Pocatello*, 115 Idaho 502, 504–05, 768 P.2d 765, 767–68 (1988). However, this authority does not impart the ability to tax. *Id.* We have previously distinguished between taxes and fees by noting that fees are for the purpose of regulation whereas taxes are solely for purposes of raising revenue. *Id.*

The costs that Lochsa Falls incurred in the instant case were only those costs that Lochsa Falls itself proposed were necessary to safely connect its development to Chinden Boulevard, and which were outlined in the TIS that Lochsa Falls prepared and submitted to ITD. Moreover, ITD received only the \$100 application fee Lochsa Falls was required to pay. Therefore, we conclude the fees that Lochsa Falls complains of were for the purpose of regulating the safe use of and access to state highways at its development and were not a tax solely for the purpose of raising revenue.

[26] [27] However, even fees imposed as regulations under police powers must meet a test of reasonableness and be rationally related to the cost of enforcing the regulations at hand. *BHA Investments, Inc. v. State*, 138 Idaho 348, 353, 63 P.3d 474, 479 (2003). Whether such a requirement is reasonable or rationally related to the impact of a particular development on the safety of the travelling public requires

a case-by-case analysis. As the district court stated in its memorandum decision, it did not consider the entirety of Lochsa Falls' complaints and factual allegations when it dismissed the complaint solely on procedural grounds:

Although Plaintiff raises constitutional challenges before this Court, Plaintiff also acknowledged at oral argument that Plaintiff has other complaints regarding the permit fee imposed by the ITD. Among those being that Lochsa Falls should not be required to bear the cost for a traffic signal that is benefiting other developers in the immediate area. This argument, along with Plaintiff's other complaints should be channeled through the administrative appeals process prior to seeking any form of relief in this Court.

Although we conclude that, generally speaking, it is not an impermissible tax for the ITD to impose the condition of erecting a traffic signal as a requirement for a developer seeking to be granted an encroachment permit to a controlled access highway, we express no opinion as to whether the imposition of the condition was reasonable in light of Lochsa Falls' individual application. The determination of reasonableness must be made by the district court on remand.

Because the district court did not consider Lochsa Falls' second and third causes of actions on takings and due process/equal \*242 \*\*973 protection, respectively, we do not address those issues for the first time on appeal and reserve them for the district court's consideration on remand with the benefit of the parties' opportunity to further present their arguments and develop the factual record.

### C. Attorney Fees and Costs on Appeal

[28] [29] Both parties request attorney fees and costs on appeal pursuant to I.C. § 12-117. That statute provides in part:

Unless otherwise provided by statute, in any administrative ... proceeding involving as adverse parties a state agency ... and a person, the court

shall award the prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.

We decline to award fees to either party. Because we vacate the district court's order granting ITD summary judgment and dismissing Lochsa Falls' complaint it cannot be said that ITD is the prevailing party. Thus, ITD is not entitled to fees of costs. Although Lochsa Falls is the prevailing party on appeal, we cannot find that ITD acted without a reasonable basis in fact or law. Parties are typically required to exhaust administrative remedies before pursuing judicial review in actions under the APA, as would be the case here if it were not for a procedural void in the IDAPA rules pertaining to conditions imposed in connection with encroachment permit applications.

### IV. CONCLUSION

We vacate the district court's judgment dismissing Lochsa Falls' complaint without prejudice for failure to exhaust administrative remedies. We remand this matter to the district court for proceedings consistent with this opinion. Costs to appellant.

Chief Justice EISMANN, Justice BURDICK and Justice Pro Tem TROUT **CONCUR.**

J. JONES, J., concurring in part and dissenting in part.

I concur in the Court's opinion, except that I would award attorney fees to ITD. In my estimation, Lochsa Falls' claims contain little substance. While the Court was technically correct in remanding the constitutional claims (only because the district court did not consider them), they appear to have less merit than the issues that were decided by this Court. Lochsa Falls did brief and argue its takings claim but failed to put forth a convincing argument that a compensable taking had occurred. This Justice was left with the abiding feeling that Lochsa Falls benefitted much more than the State from the transaction at issue.

While Lochsa Falls portrays itself as having been put upon by being required to signalize an intersection for the benefit of the State and the motoring public, the reality is otherwise. The salient facts are that Lochsa Falls wished to develop a parcel of property located along a limited access highway, its traffic consultant recommended and it requested a signalized intersection to provide subdivision access to and from the highway, it was advised it could have the signalized intersection if it would pay for the same, it raised no protest to this routine requirement, and having gotten the benefit it sought Lochsa Falls now wishes to have ITD foot the bill.

This case could appropriately be analyzed in a contractual context. Lochsa Falls requests that ITD grant it the right to have a signalized intersection to benefit its subdivision. ITD agrees, provided that Lochsa Falls pays for signalizing the intersection. Lochsa Falls accepts the proposal without protest and proceeds to perform the signalizing work. Upon completion of the work, Lochsa Falls unilaterally changes its mind and decides it needs to be paid for the signalizing, but expresses no intention of giving up the valuable benefit it has derived from the deal. Lochsa Falls got what it bargained for but does not wish to honor its undertaking to bear the cost of such benefit. Had Lochsa Falls objected to the requirement that it pay for signalizing the intersection, it could simply have said “thanks, but no thanks” and done without a signal. One suspects there is \*243 \*\*974 not the slightest chance it would have done so, as the increase in the value of its lots would substantially outweigh the cost of the traffic signal.

Lochsa Falls portrays the signalized intersection as an improvement to the highway, benefitting the traveling public. In its brief, Lochsa Falls asserts “had [the Legislature] wanted developers to pay for the costs to improve highways,” it could have granted ITD the power to assess impact fees. Lochsa Falls continues, stating that ITD “has decided that developers should pay for the privilege of having a state highway with a traffic signal abut their property, while the other traveling public who pass through and benefit from the signal and state

highway do not have to pay for the traffic signal.” From ITD's standpoint, adding additional traffic signals to a well-used limited access highway does not necessarily improve the highway system but, rather, may slow the passage of traffic along that highway system. As ITD notes in its brief, “[n]either ITD nor the state highway system receive any benefit from the new intersection. The capacity of the U.S. highway did not increase, nor are there any improvements to the state highway.” Neither is the traveling public benefitted by an additional stoplight, as the traveling public would likely prefer not to have to stop for the signal or to deal with the additional traffic coming onto the highway.

Lochsa Falls did correctly state that it is a “privilege” for a developer to have its property abutted by a state highway with a traffic signal. The fact is that a signalized intersection is a great benefit to the abutting property, substantially increasing its value. More signalized intersections are requested than are granted. Lochsa Falls should be pleased that it was able to obtain one for the benefit of its property and its prospective lot buyers. It essentially obtained a franchise to stop the flow of traffic to allow its lot buyers to have access to and from the highway. Rather than being heavily burdened, it has been highly benefitted. And, the benefit becomes a vested property interest. As ITD points out in its brief, “[w]hen a permittee completes the requirements for an encroachment permit, then under the ITD rule, it receives a deeded right of access.” See, IDAPA 39.03.42.300.04. In other words, when the traffic signal and new intersection are accepted by ITD and the permitting process has been completed, Lochsa Falls will get a deeded property right to the access.

Because Lochsa Falls has brought and appealed claims without a reasonable basis in fact or law, I would award ITD attorney fees under Idaho Code § 12-117.

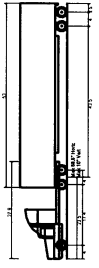
#### All Citations

147 Idaho 232, 207 P.3d 963

#### Footnotes

- 1 Lochsa Falls also has access to Ada County Highway District streets, which are not at issue in this appeal.
- 2 In light of this condition contained in the November 19, 2004 encroachment permit, Lochsa Falls' assertion that Lochsa Falls “was not notified that it would be required to install and pay for a traffic signal until February 24, 2005” is somewhat puzzling. Nevertheless, the discrepant dates are not material to our analysis.

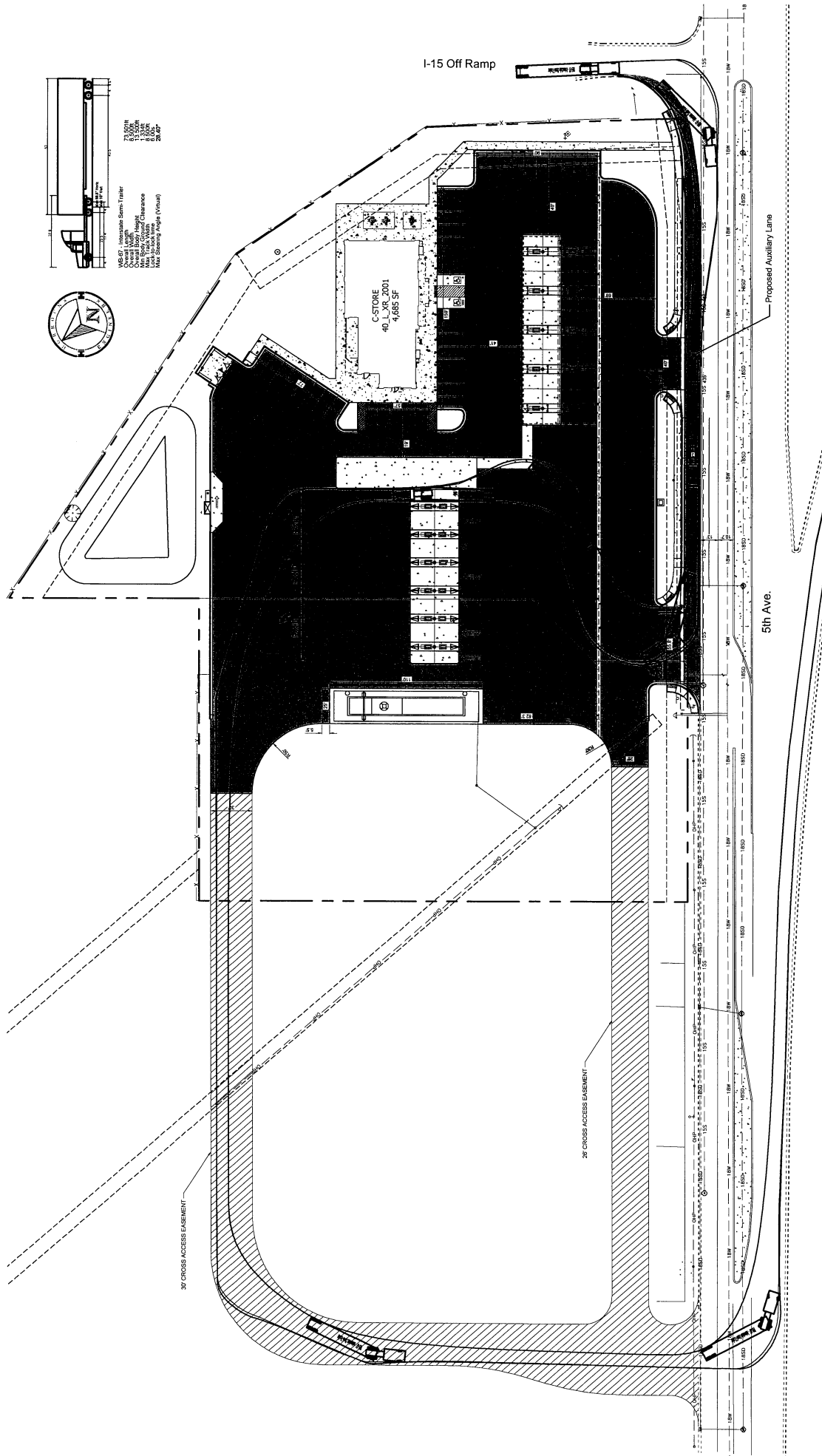
- 3 Because Lochsa Falls's complaint was dismissed on procedural grounds, the issue of waiver was not addressed below. This issue may be considered on remand.
- 4 Lochsa Falls does not challenge ITD's authority to require the \$100 application fee.
- 5 The fact that the permit was never formally approved or denied does, however, raise questions beyond a consideration of whether Lochsa Falls failed to exhaust administrative remedies. The temporary encroachment permit issued to Lochsa Falls stated: "This permit **SHALL BE VOID** if all work is not completed and ITD has not made final inspection and approval within one year of the issuance date." (emphasis in original). We note that by operation of IDAPA 39.03.42.200 and 39.03.42.201 and the passage of time, the encroachment permit in question is void, triggering a requirement for a new permit application. IDAPA 39.03.42.201.03.



40' x 8' Intermediate Semi Trailer  
 Overall Length 73'-0" (N)  
 Overall Width 11'-0" (N)  
 Overall Height 11'-0" (N)  
 Max. Trailering Clearance 8'-0" (N)  
 Max. Trailering Clearance 8'-0" (N)  
 Max. Trailering Clearance 8'-0" (N)  
 Max. Trailering Clearance 8'-0" (N)  
 Max. Trailering Clearance 8'-0" (N)



I-15 Off Ramp



30' CROSS ACCESS EASEMENT

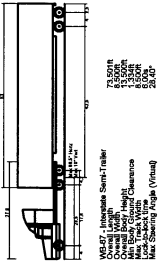
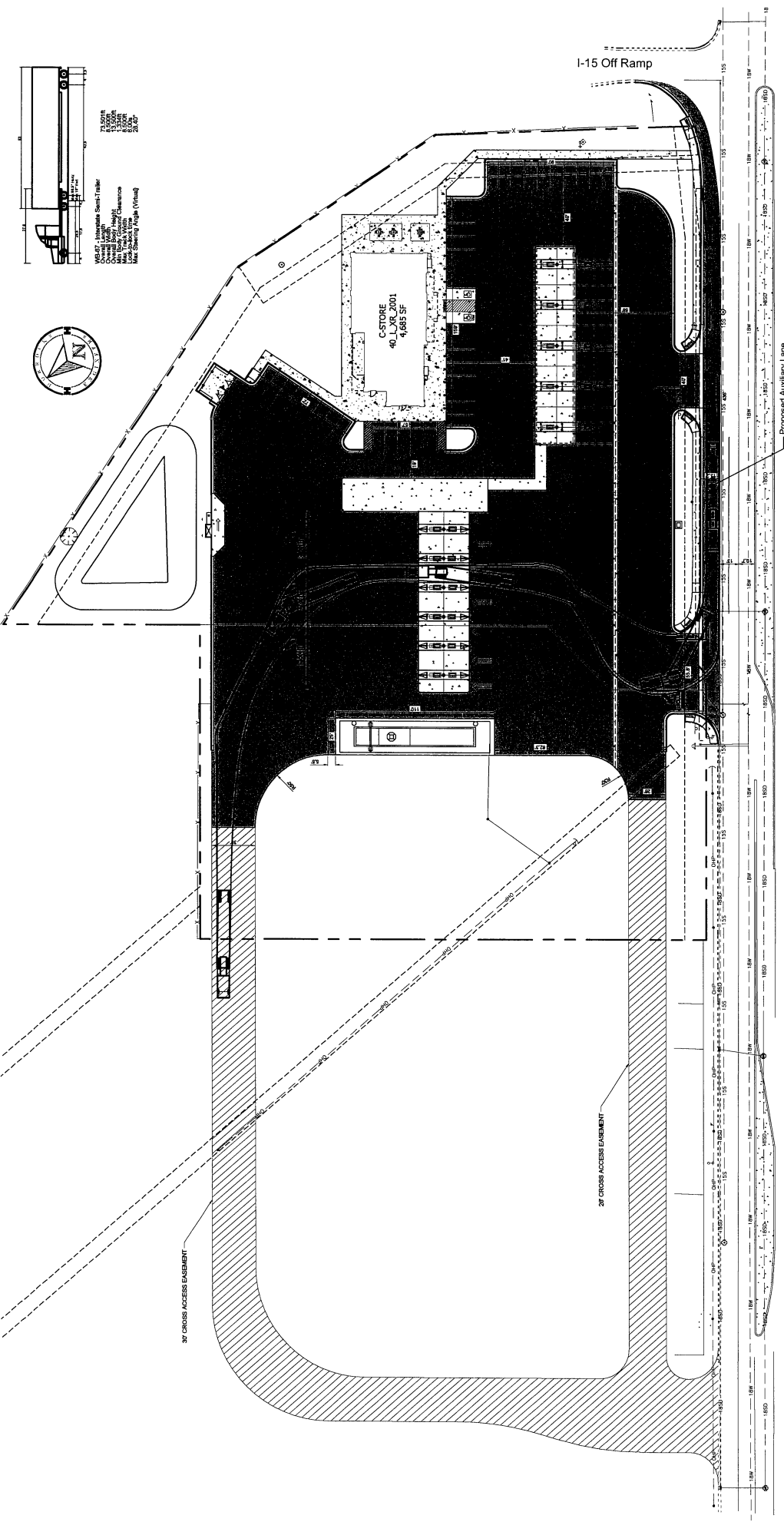
26' CROSS ACCESS EASEMENT

5th Ave.

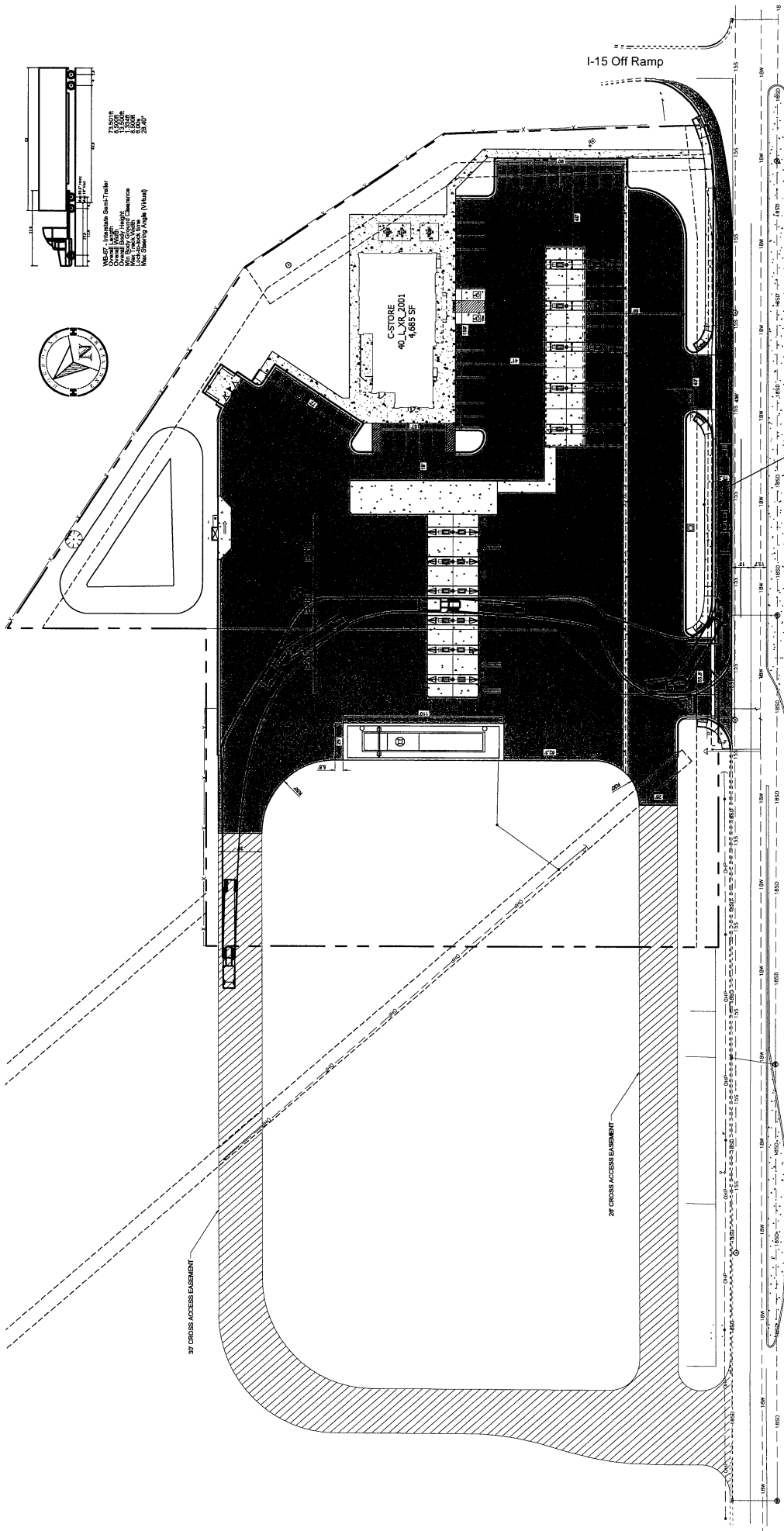
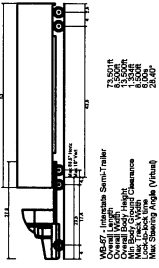
Proposed Auxiliary Lane

Maverik Site-0199  
 Pocatello, ID  
 WB-67 Trailer Exhibit  
 5/06/2020



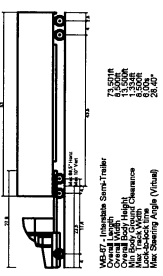
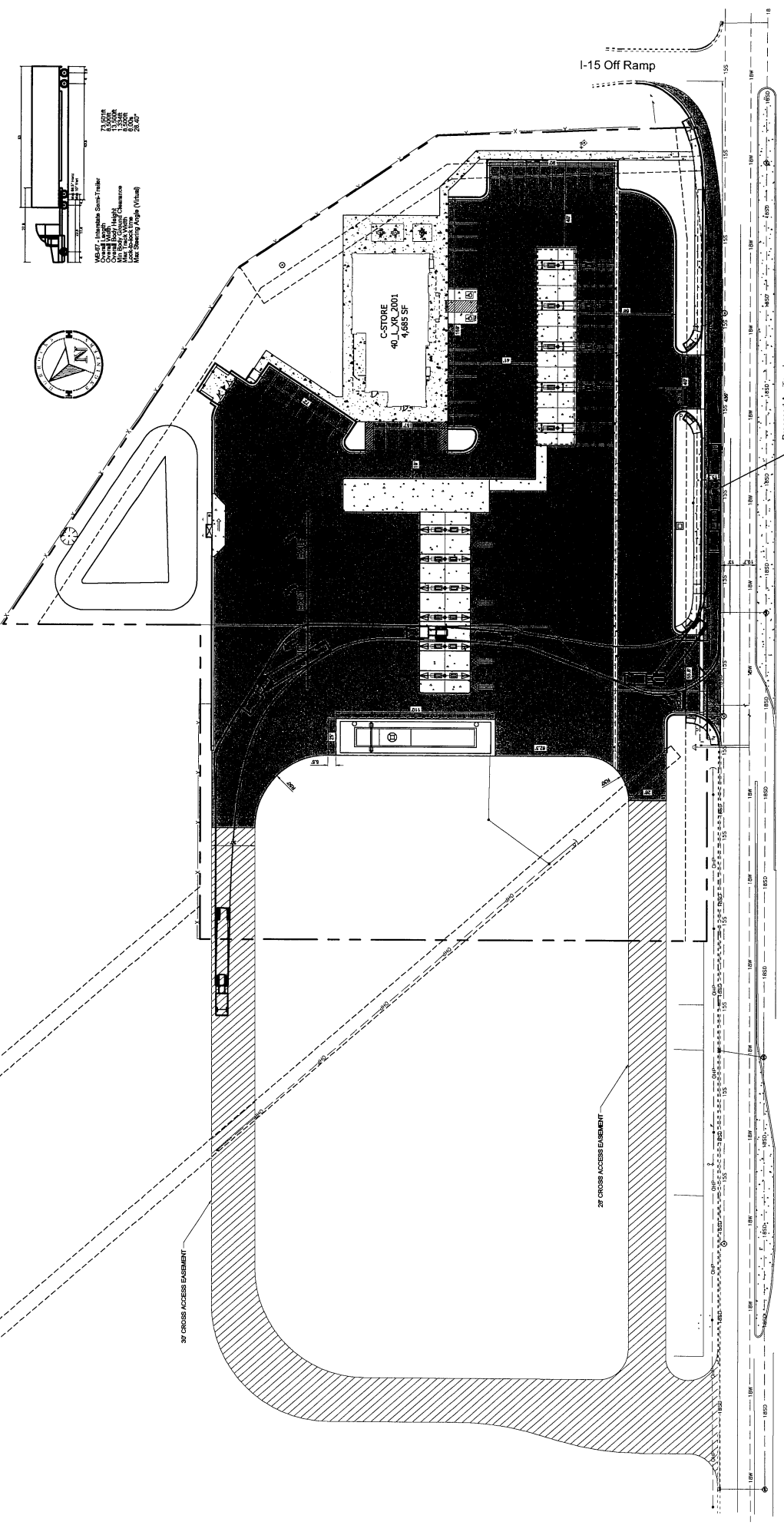


Maverik Site-0199  
 Pocatello, ID  
 WB-67 Trailer Exhibit  
 5/07/2020

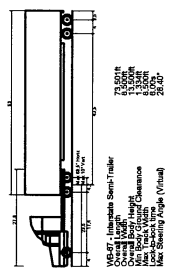
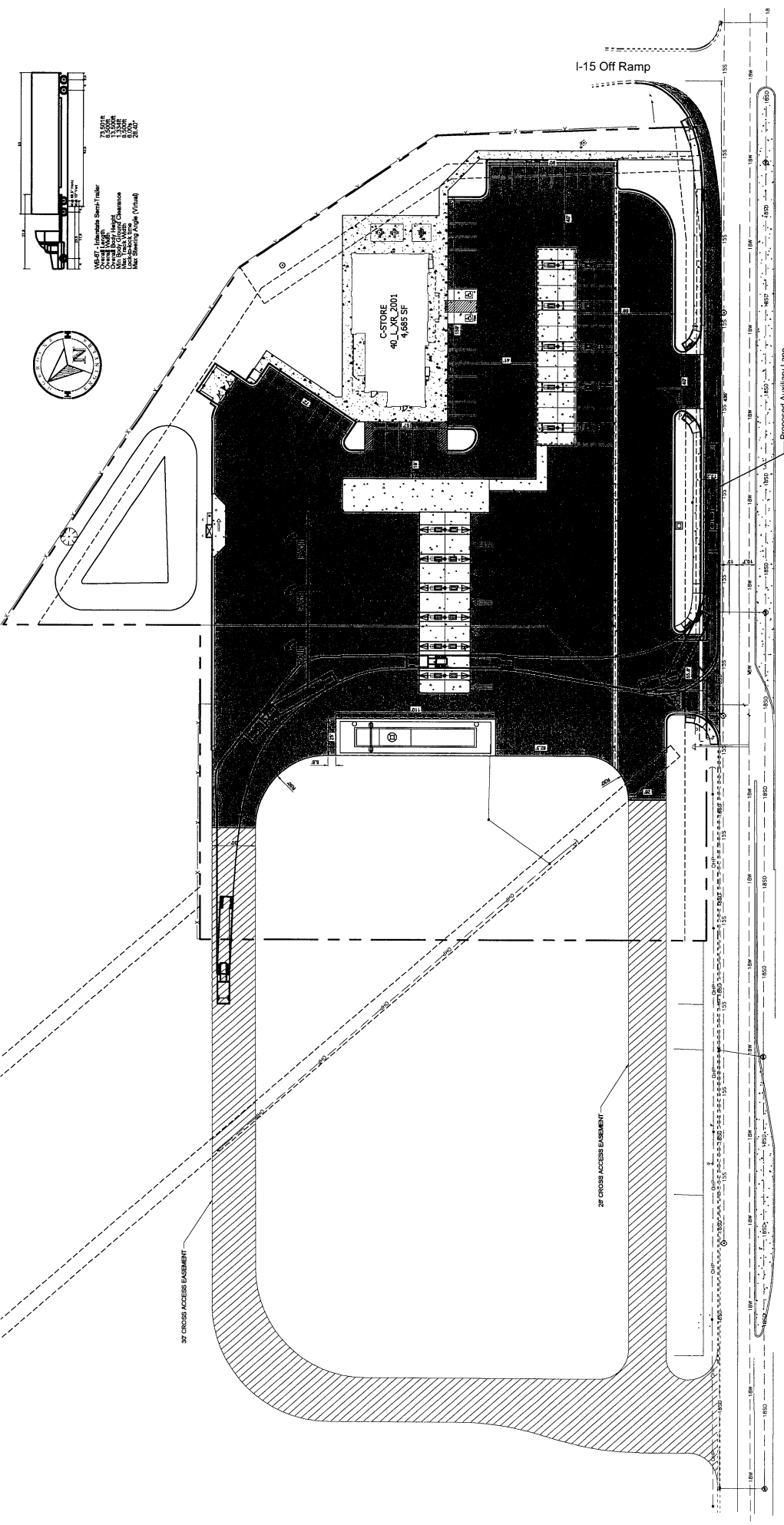


Maverik Site-0199  
Pocatello, ID  
WB-67 Trailer Exhibit  
5/07/2020

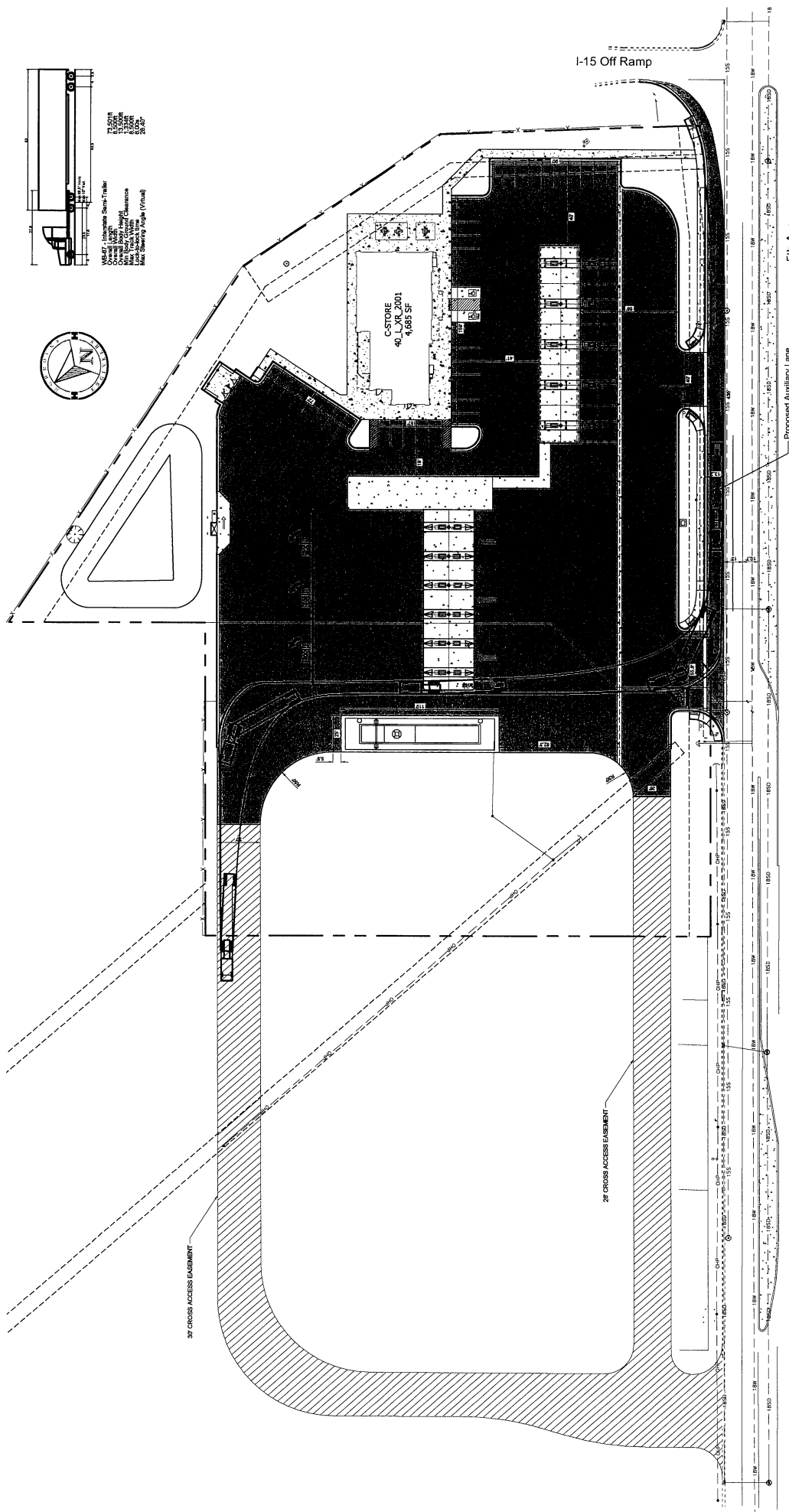




Maverik Site-0199  
 Pocatello, ID  
 WB-67 Trailer Exhibit  
 5/07/2020



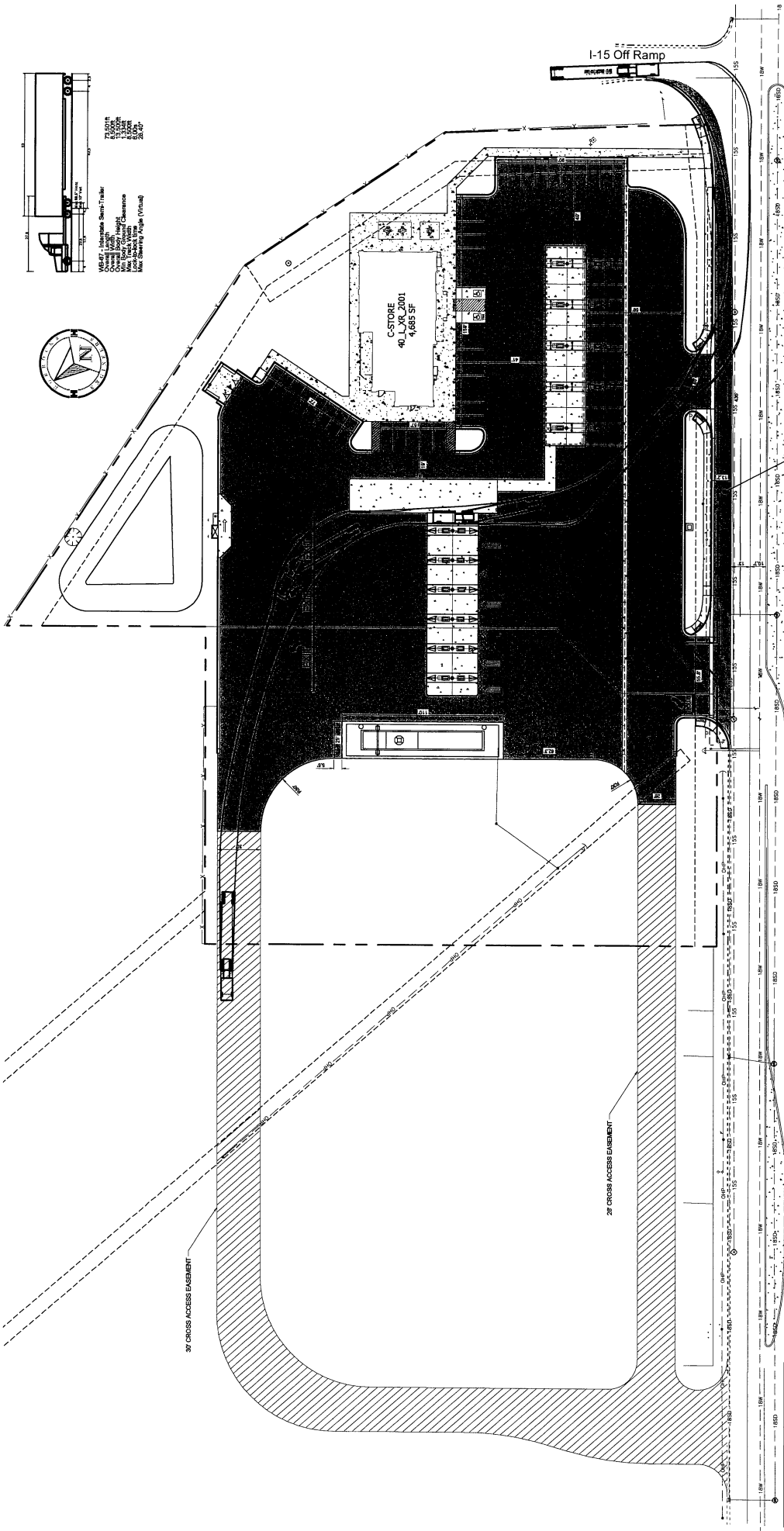
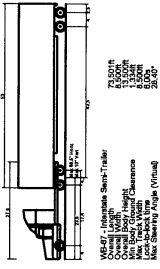
Maverik Site-0199  
 Pocatello, ID  
 WB-67 Trailer Exhibit  
 5/07/2020



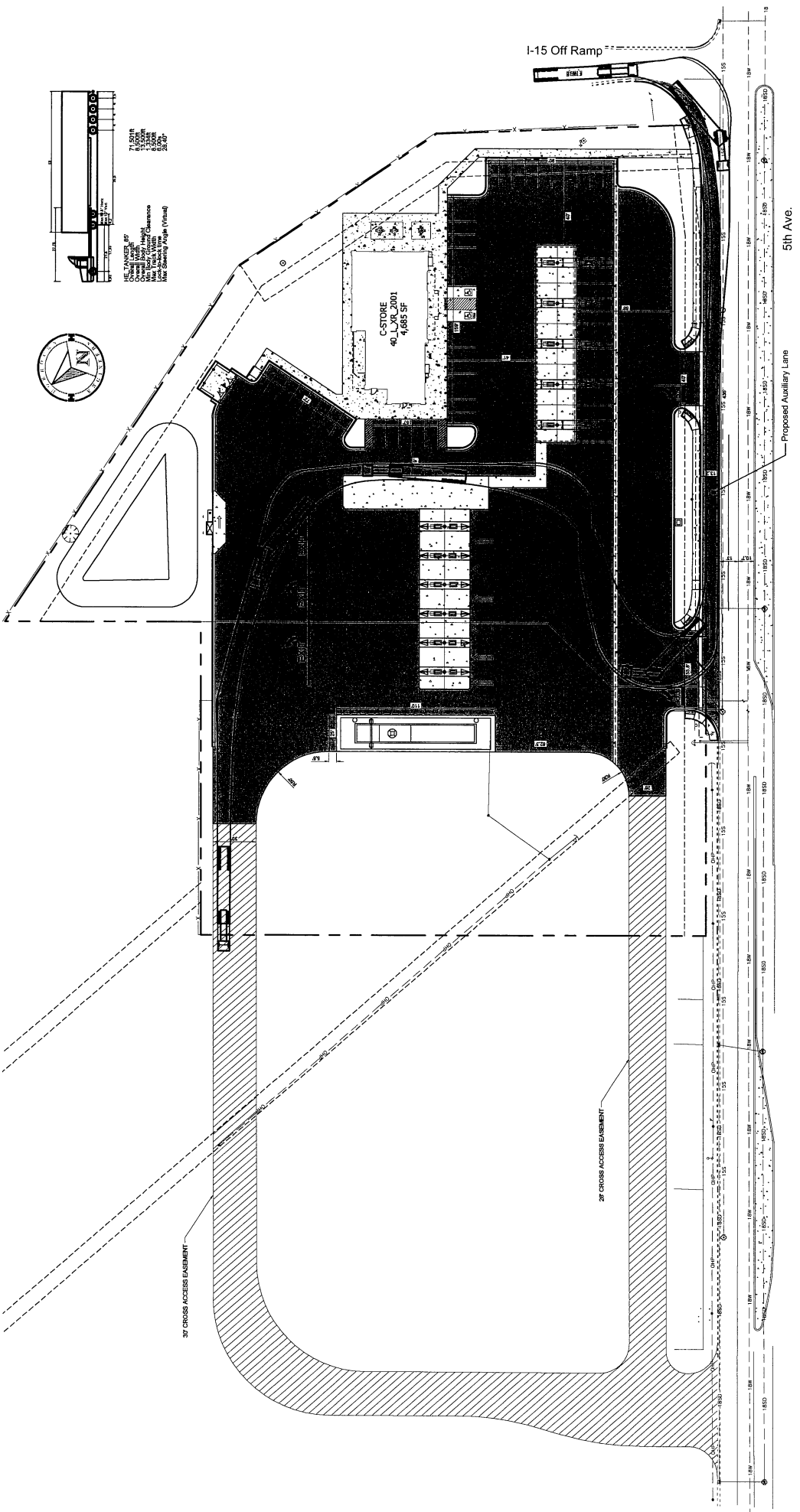
WB-67 - Integrated Scan-T-Table  
Plot Size: 36" x 48"  
Scale: 1/8" = 1'-0"  
Date: 5/07/2020  
User: [Name]  
Project: [Name]

Maverik Site-0199  
Pocatello, ID  
WB-67 Trailer Exhibit  
5/07/2020



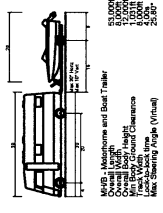
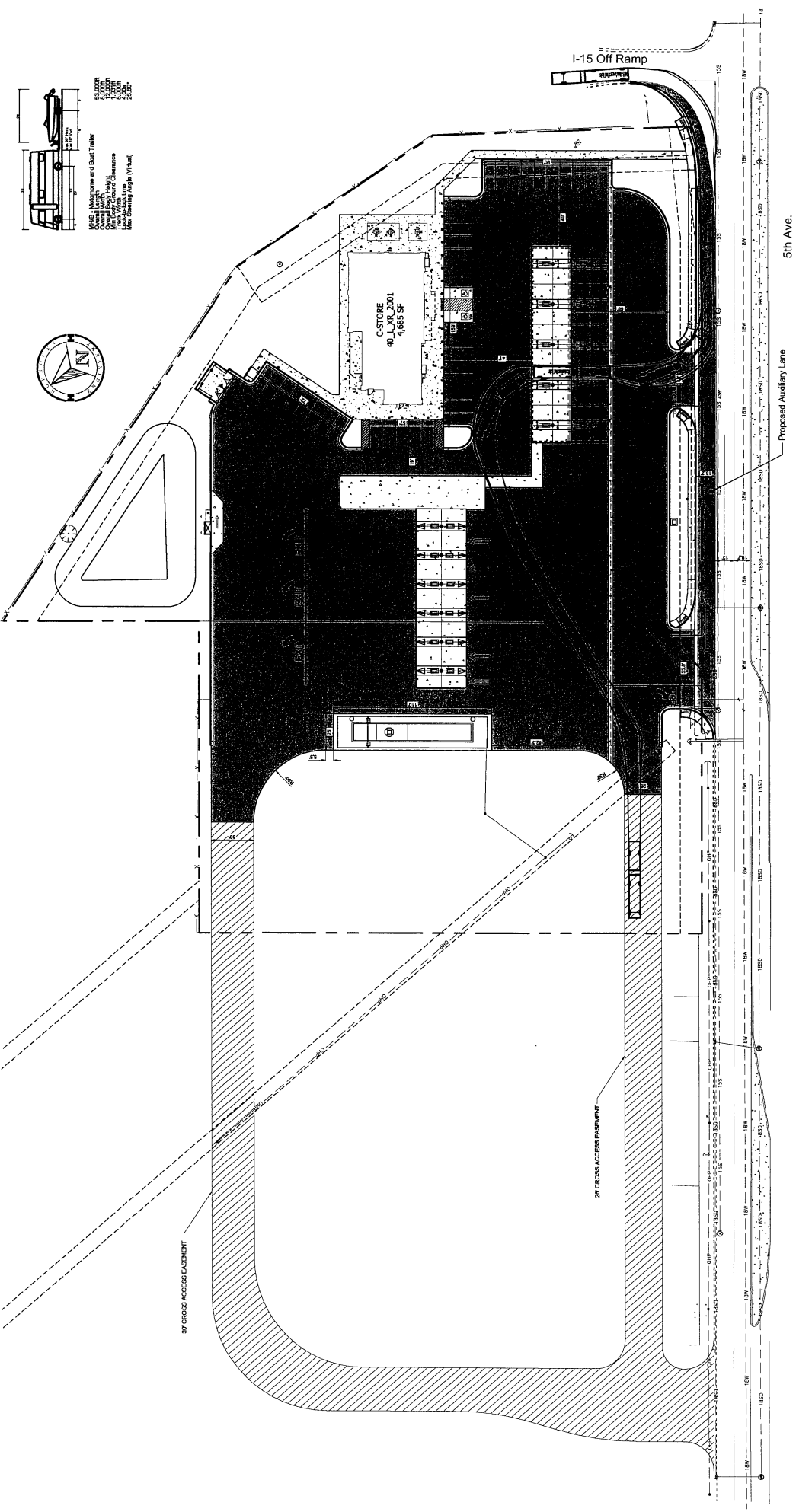


Mavertk Site-0199  
 Pocatello, ID  
 WB-67 Trailer Exhibit  
 5/07/2020



Maverik Site-0199  
 Pocatello, ID  
 85' Tanker Exhibit  
 5/07/2020





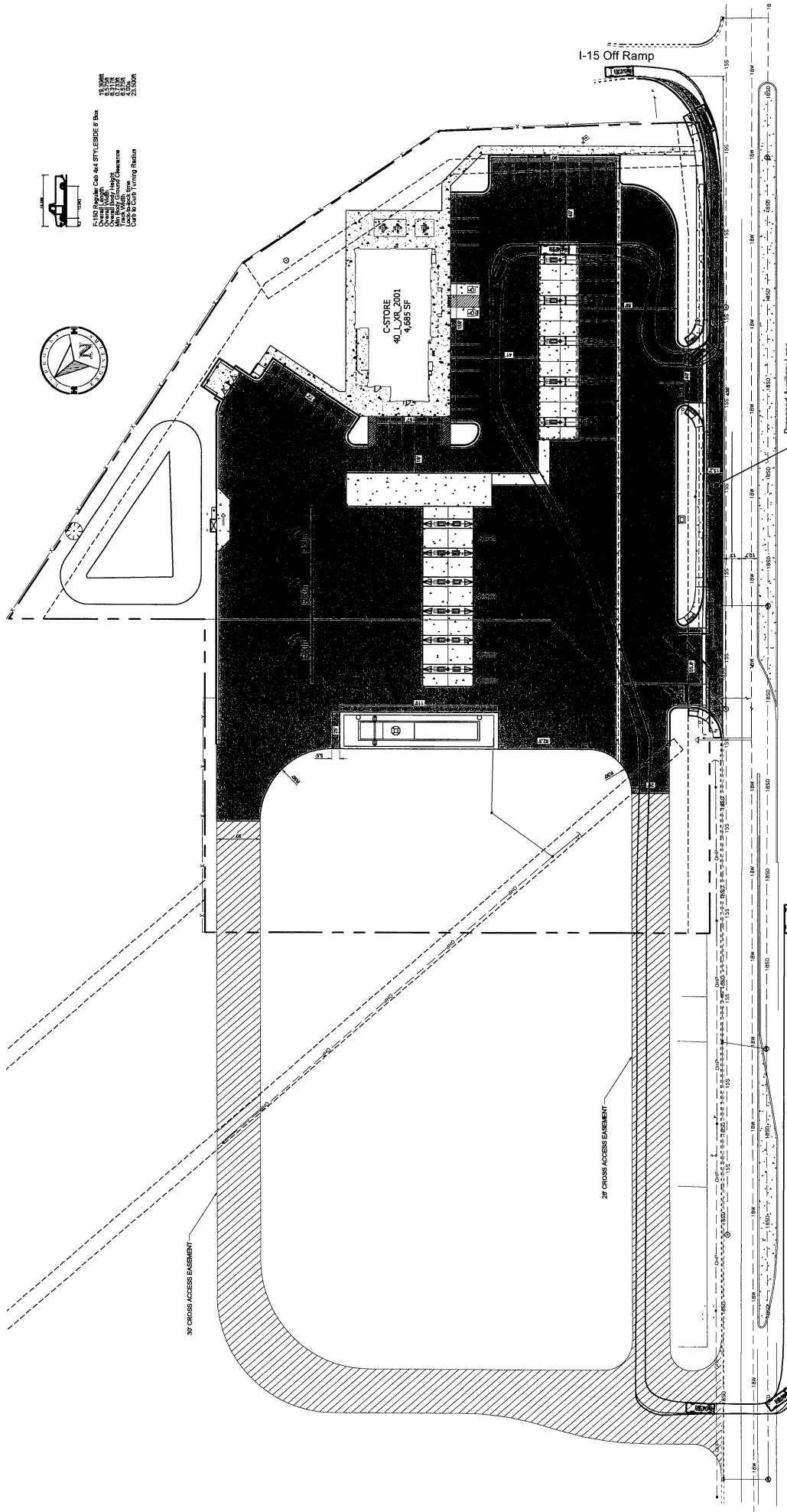
3D MODEL  
 Motorhome and Boat Trailer  
 Overall Length: 28'-0"  
 Overall Width: 8'-6"  
 Motorhome Height: 11'-0"  
 Trailer Height: 6'-0"  
 Trailer Width: 6'-0"  
 Trailer Length: 20'-0"  
 Trailer Axle Spacing: 10'-0"  
 Trailer Axle Offset: 2'-0"  
 Max Steering Angle: 25.0°

Maventik Site-0199  
 Pocatello, ID  
 Motorhome with Trailer Exhibit  
 5/07/2020





15000 GVW  
 50' Length  
 130' Turning Radius  
 Overall Height  
 Overall Width  
 Overall Length  
 Overall Depth  
 Overall Weight  
 Overall Volume  
 Overall Area  
 Overall Perimeter  
 Overall Circumference  
 Overall Surface Area  
 Overall Volume  
 Overall Weight  
 Overall Volume  
 Overall Weight



I-15 Off Ramp

5th Ave.

Proposed Auxiliary Lane

Maverik Site-0199  
 Pocatello, ID  
 Pick-up Truck Exhibit  
 5/07/2020