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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STAKER & PARSONS COMPANIES, a Utah
corporation, doing business as IDAHO
MATERIALS & CONSTRUCTION,

Plaintiff,

vs.

CITY OF POCATELLO, a municipal
corporation, and POCATELLO
DEVELOPMENT AUTHORITY, an
independent public body corporate and politic,

Defendants.

Case No. CV03-22-02569

COMPLAINT

COMES NOW, Plaintiff, STAKER & PARSONS COMPANIES, a Utah corporation, doing business as IDAHO MATERIALS & CONSTRUCTION, as and for a claim for relief against Defendants, pleads and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Staker & Parson Companies, doing business as Idaho Materials & Construction, (hereinafter "IMC") is a Utah corporation duly authorized to do business in the State of Idaho, and is a licensed contractor in the State of Idaho.

2. Defendant, City of Pocatello (hereinafter "City"), is a municipal corporation located in Bannock County, State of Idaho.

3. Defendant, Pocatello Development Authority (hereinafter "PDA"), is an independent public body corporate and politic pursuant to I.C. § 50-2006 located in Bannock County, State of Idaho.

4. Jurisdiction and venue are proper in this Court pursuant to I.C. § 54-1926 – 1929, among others, because the project which is the subject of this litigation is located in Bannock County, State of Idaho, and the amount in dispute is within the required limits for this Court.

GENERAL ALLEGATIONS

5. Frigitek Industrial Parks, Inc. (hereinafter “Frigitek”) is an Idaho corporation in good standing with its principal place of business in Ada County, State of Idaho.

6. The basis for this action is unpaid claims by IMC against Frigitek and Defendants for certain construction work and materials provided by IMC at the request of and pursuant to a contract with Frigitek.

7. The work and materials provided by IMC to Frigitek at issue in this case were provided to a project located in Bannock County, State of Idaho, known as the Pocatello TIF Work, TIF Improvements to Sewer, Water and Streets Project (“the Project”).

8. Said construction work and materials were used to improve real property belonging to the City and extending the City’s roads and utilities.

9. These improvements were made with the knowledge and cooperation of the City and PDA.

10. The boundaries of Project (outlined in yellow) are illustrated immediately below:

(SEE NEXT PAGE)

FRIGITEK/CITY OF POCATELLO - COLD STORAGE FACILITY

SITE WORK AND INFRASTRUCTURE IMPROVEMENTS FOR FRIGITEK WITH LEASE AGREEMENT OBLIGATED TO CITY OF POCATELLO.



11. The Project is located on real property owned by the City which was in turn leased to Frigitek.

12. On or about June 4, 2020, IMC executed a Contract (“Contract”) with Frigitek which required IMC to provide certain work and materials on the Project.

13. A true and correct copy of this Contract is attached hereto as **Exhibit “A”** and is incorporated herein by this reference.

14. Frigitek was listed in the Contract as the owner but also acted as its own general contractor, hiring its own project manager and agent on the Project, KBCm Group LLC (“KBCm”).

15. Pursuant to the Contract, at all times relevant herein, IMC provided work and materials for the completion of the Contract on the Project from on or about June 2020 through November 2020.

16. As work and materials were provided, IMC would submit to Frigitek’s project manager, KBCm, pay applications for the work and materials provided.

17. Pursuant to the Contract, Frigitek was obligated to pay the amount approved by KBCm in each pay application by the 30th day of the month following approval of the pay application by KBCm.

18. Frigitek then presented these invoices to the City and PDA for reimbursement.

19. Upon completion of all the work required by the Contract, IMC submitted to KBCm Pay Application #3 for the Project.

20. KBCm approved IMC's Pay Application # 3 on February 16, 2021 for payment of \$560,172.00.

21. Per the Contract, Frigitek was obligated to pay IMC for Pay Application #3 in the amount of \$560,172.00 on March 30, 2021.

22. To date, Frigitek has failed and refused to pay IMC in full for all of the work and materials provided and described in Pay Application #3, and payment is substantially past due.

23. In addition to the work required by the Contract, IMC also provided additional requested and approved in change orders by Frigitek's project manager and agent on the Project, KBCm.

24. On or about September 24, 2020, Frigitek reviewed and approved Subcontract Change Order #005 ("CCO #5") requiring IMC to perform additional work on the Project for which Frigitek would be pay IMC \$14,195.00 for such extra work. A copy of CCO #5 is attached hereto as **Exhibit "B"** and is incorporated herein by this reference.

25. On or about September 24, 2020, Frigitek reviewed and approved Subcontract Change Order #006 ("CCO #6") requiring IMC to perform additional work on the Project for which Frigitek would be pay IMC \$25,631.00 for such extra work. A copy of CCO #6 is attached hereto as **Exhibit "C"** and is incorporated herein by this reference.

26. On or about November 2, 2020, Frigitek reviewed and approved Subcontract Change Order #007 ("CCO #7") requiring IMC to perform additional work on the Project for which Frigitek would be pay IMC \$22,950.00 for such extra work. A copy of CCO #7 is attached hereto as **Exhibit "D"** and is incorporated herein by this reference.

27. Pursuant to the Contract and CCO #5, CCO #6 and CCO #7, IMC provided the work and materials required by the three change orders referenced herein from on or about September 2020 through November 2020.

28. Pursuant to the Contract, IMC, upon completion of all the work required by the CCO #5, CCO #6 and CCO #7, submitted an invoice to Frigitek dated June 17, 2021 for the payment of CCO #5, CCO #6 and CCO #7.

29. To date, Frigitek has not paid IMC for all of the work and materials required by CCO #5, CCO #6 and CCO #7.

30. IMC's work and materials contributed to the construction of the public roadway, sewer lines, and water lines illustrated below:

ROADWAY (Purple)

FRIGITEK/CITY OF POCATELLO - COLD STORAGE FACILITY

SITE WORK AND INFRASTRUCTURE IMPROVEMENTS FOR FRIGITEK WITH LEASE AGREEMENT OBLIGATED TO CITY OF POCATELLO.



SEWER LINES (Green)

FRIGITEK/CITY OF POCATELLO - COLD STORAGE FACILITY

SITE WORK AND INFRASTRUCTURE IMPROVEMENTS FOR FRIGITEK WITH LEASE AGREEMENT OBLIGATED TO CITY OF POCATELLO.



WATER LINES (Blue)

FRIGITEK/CITY OF POCATELLO - COLD STORAGE FACILITY

SITE WORK AND INFRASTRUCTURE IMPROVEMENTS FOR FRIGITEK WITH LEASE AGREEMENT OBLIGATED TO CITY OF POCATELLO.



31. The City and PDA were aware of these improvements.
32. The City approved these improvements prior to their construction.
33. PDA approved these improvements prior to their construction.
34. PDA budgeted for reimbursement to Frigitek for development of the roadway, sewer lines, and waterlines.
35. The City and PDA received invoices from Frigitek for the work performed with Frigitek's request for reimbursement.
36. PDA contributed toward payment of these improvements through Frigitek by way of reimbursement for a time.
37. The work and materials provided by IMC on the Project for which IMC has not been paid total the principal amount of \$560,172.00 for original Contract work and further \$62,776.00 for the total change order work, for a total outstanding principal balance of \$622,948.00.
38. In spite of numerous demands for payment from Frigitek, IMC has not been paid in full for the materials provided in accordance with the Contract.

39. On March 4, 2021, counsel for IMC made demand for payment notifying PDA and the City of the potential claims against PDA and the City for unjust enrichment. A true and correct copy of this demand is attached hereto as **Exhibit “E”**.

40. On March 29, 2021, counsel for IMC made demand for payment notifying PDA and the City of the potential claims against PDA and the City for unjust enrichment. A true and correct copy of this demand is attached hereto as **Exhibit “F”**.

41. On April 12, 2021, counsel for IMC made demand for payment notifying PDA and the City of the potential claims against PDA and the City for unjust enrichment. A true and correct copy of this demand is attached hereto as **Exhibit “G”**.

42. On June 29, 2021, IMC filed a complaint against Frigitek for Breach of Contract assigned as Bannock County Case No. CV03-21-02126.

43. Default Judgments were entered therein against Frigitek on November 23, 2021 for \$678,177.01 (Default Judgment) which was inclusive of prejudgment interest and attorneys fees and \$15,204.73 (Second Judgment) for attorneys fees

44. The combined judgment amount against Frigitek was therefore entered in the amount \$693,381.74.

45. A partial satisfaction was subsequently filed on December 12, 2021 to correct a duplicative recovery of attorneys fees in the amount of \$15,144.23.

46. Accordingly, as of November 23, 2021, judgment balances therefore existed against Frigitek in the total amount of \$676,969.80.

47. Interest continues to accrue on these judgments at the annual legal rate of \$5.250% (presently equivalent to \$97.37 per day or \$35,540.05 annually).

48. To date, despite several attempts to collect by Plaintiff, Frigitek has paid no portion of these judgments.

49. As a result of Frigitek’s continued failure to pay this obligation, this action has been filed to recover IMC’s damages against the City and PDA who have been unjustly enriched by those improvements identified above that have not been paid.

COUNT I
UNJUST ENRICHMENT & DETRIMENTAL RELIANCE

50. IMC incorporates by reference the allegations contained in ¶¶ 1 - 47 as though set forth verbatim herein.

51. IMC incorporated work and materials provided, as described in the Contract and CCO #5, CCO #6 and CCO #7 referenced above into the Project located on the real property owned by the City.

52. The work and materials were used for the purpose of constructing public roads and public infrastructure (sewer and water transmission lines), thereby extending public roadways and utilities on real property owned by the City.

53. The City is therefore in possession of the resulting road and infrastructure of the Project performed by IMC.

54. The City has not paid any portion of the aforementioned outstanding balance for the Project.

55. Based on information and belief, the City and the PDA approved the Project as a qualified urban renewal project in order for PDA to allocate funds thereto.

56. Further, Frigitek and PDA entered an Owner Participation Agreement addressing PDA's agreement to reimburse Frigitek for public improvements among other improvements related to the Project.

57. Based on information and belief, PDA arranged for and obtained funding (wholly or partially) for the furnishing of public works including, street, sewer, and other public works pertaining to the Project.

58. Based on information and belief, PDA has received and continues to receive an allocation of tax revenues for the benefit of infrastructure related to the Project.

59. Based on information and belief, PDA has collected allocated revenues for the Project that have not been distributed to IMC for the work and materials IMC has provided.

60. Defendants knowingly received the benefit of IMC's work and materials described above all of which are located on land owned by the City.

61. Defendants have failed to pay for IMC's work and materials as set forth above.

62. Defendant, City, is unjustly enriched by obtaining the work and materials from IMC on the Project without paying for them while retaining the real property now and in the future.

63. Defendant, PDA, is unjustly enriched by obtaining and retaining funding for the Project now and in the future, which it has failed to apply to the Project.

64. Therefore, Defendants have been unjustly enriched at IMC's expense and IMC is entitled to a judgment against Defendants in the principal amount of the value of work and materials received on the Project that have not yet been paid for, which principal amount is not more than \$662,948.00 and together with IMC's cost of collection, including attorney fees and court costs, pursuant to I.C. §§ 12-117, 120(3), 12-121, and I.R.C.P. 54.

65. Any judgment obtained herein shall be offset by those future amounts that may be paid by Frigitek in Bannock County Case No. CV03-21-02126 and vice versa.

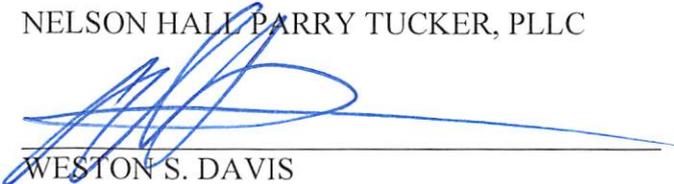
PRAYER

WHEREFORE, IMC prays the above-entitled Court for judgment as follows:

- A. That a money judgment be entered in favor of Plaintiff, Staker & Parson Companies, d/b/a Idaho Materials & Construction, and against Defendants, the City and PDA, for the amount of the judgment entered against Frigitek plus the applicable amount of judgment interest, or in the alternative, \$662,948.00 plus interest at 12% from the date the underlying obligations fell past due as well as attorney fees and court costs, pursuant to the Contract and further pursuant to I.C. §§ 12-117, 12-120(3), 12-121, 54-1929, and I.R.C.P. 54;
- B. Any judgment obtained herein shall be offset by those future amounts that may be paid by Frigitek in Bannock County Case No. CV03-21-02126 and vice versa;
AND
- C. For such other and further relief as the Court deems just and equitable in the premises.

DATED this 22nd day of July, 2022.

NELSON HALL PARRY TUCKER, PLLC



WESTON S. DAVIS

*Attorneys for Staker & Parson Companies, d/b/a
Idaho Materials & Construction*

EXHIBIT “A”

EXHIBIT “A”



AIA® Document A132™ – 2019

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the 4th day of June in the year Two Thousand Twenty
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

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

and the Contractor:
(Name, legal status, address, and other information)

Idaho Materials & Construction- Pocatello A CRH Company
10200 Batiste Rd
Pocatello, ID 83204

for the following Project:
(Name, location, and detailed description)

Pocatello TIF Work
1950 Airport Rd. Pocatello, ID
TIF improvements to sewer water and streets.
The Construction Manager:
(Name, legal status, address, and other information)

KBCm Group LLC
8901 Tehama Ridge PKWY, Suite 127140
Fort Worth, Texas 76177

The Engineer:
(Name, legal status, address, and other information)

ASM Engineering Consultants
202 East Rhonnda Ave
Andover, Kansas 67002

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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EXHIBIT A INSURANCE AND BONDS

EXHIBIT B DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- [X] The date of this Agreement.
- [] A date set forth in a notice to proceed issued by the Owner.
- [] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion of the Project or Portions Thereof

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:

(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

Init.

September 15th, 2020

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of all of the Contractors for the Project are to be completed prior to Substantial Completion of the entire Work of all of the Contractors for the Project, the Contractors shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
| NA | NA |

§ 3.4 When the Work of this Contract, or any Portion Thereof, is Substantially Complete

§ 3.4.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall substantially complete the entire Work of this Contract:

(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date: September 15th, 2020

§ 3.4.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work of this Contract are to be substantially complete prior to when the entire Work of this Contract shall be substantially complete, the Contractor shall substantially complete such portions by the following dates:

| Portion of Work | Date to be substantially complete |
|-----------------|-----------------------------------|
| NA | NA |

§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

(Paragraph deleted)

(Table deleted)

(Paragraphs deleted)

§ 4.4 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.

§ 4.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)

Included in the guaranteed Maximum Price (Section 4.4.7.1)

Init.

§ 4.4.3 The method of adjustment of the Contractor's Fee for changes in the Work:

8% (Eight percent)

§ 4.4.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

OH&P shall not exceed 8% of the actual scope of work calculated above the line

§ 4.4.5 Rental rates for Contractor-owned equipment shall not exceed Five percent (5 %) of the standard rental rate paid at the place of the Project.

§ 4.4.6 Unit Prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|--|-----------------------|-------------------------|
| . | NA | NA |
| Item | Units and Limitations | Price per Unit (\$0.00) |
| Mobilization | LS | \$45,515.00 |
| Construction Staking | LS | \$6,315.00 |
| Ex. Pavement Removal (6" Depth Assumed) | SY | \$4.50 |
| Ex. Curb & Gutter Removal | LF | \$3.10 |
| Ex. Tree Removal | LS | \$1,625.00 |
| 2" Topsoil Stripping (Wasted On Site) | CY | \$4.00 |
| Excavation | CY | \$3.15 |
| Embankment | CY | \$3.00 |
| 2" Mill and Overlay (Class III, 1/2" Aggregate) | SY | \$13.25 |
| 2" Asphalt Surface Course (Class III, 1/2" Aggregate) | SY | \$9.50 |
| 4" Asphalt Base Course (Class III, 3/4" Aggregate) | SY | \$1.00 |
| Concrete Valley Gutter | LF | \$50.00 |
| Standard 6 Inch Vertical Curb & Gutter | LF | \$21.00 |
| 4" Crushed Agg Base (3/4 Inch Minus - Type 1) (C&G Base) | CY | \$95.00 |
| 3-foot Wide Gravel Shoulder (3/4 Inch Minus - Type 1) | CY | \$45.00 |
| 6" Crushed Aggregate Base (3/4 Inch Minus - Type 1) | CY | \$28.00 |
| 8" Crushed Aggregate Base (2 Inch Minus - Type 2) | CY | \$26.00 |
| 12" Crushed Aggregate Base (3/4 Inch Minus - Type 1) | CY | \$28.00 |
| 8 oz. Non-Woven Geotextile Fabric | SY | \$3.50 |
| Pavement Striping - 4"-wide Double White Lines | LF | \$2.00 |
| Pavement Striping - 12"-wide Stop Bars | LF | \$54.00 |
| 30" Stop Sign | EA | \$550.00 |
| BMP - Silt Fence | LF | \$4.00 |
| BMP - Inlet Protection | EA | \$235.00 |
| BMP - Check Dams | EA | \$235.00 |
| Seeding | ACRE | \$2,700.00 |
| Mulching | ACRE | \$1,100.00 |
| Fertilizing | ACRE | \$815.00 |
| 8" C900 DR-18 PVC Pipe | LF | \$33.00 |
| 12" C900 DR-18 PVC Pipe | LF | \$42.00 |

Init.

| | | |
|---|----|------------|
| 20" Steel Casing Pipe (0.25" Wall)2 | LF | \$425.00 |
| 12" Gate Valve | EA | \$2,375.00 |
| 12"x8" Tee | EA | \$2,585.00 |
| 12"x6" Tee | EA | \$1,155.00 |
| 12" Tee | EA | \$3,165.00 |
| 12" Cap | EA | \$595.00 |
| 12" 45° Bend | EA | \$1,015.00 |
| 12" 22.5° Bend | EA | \$975.00 |
| 12" 11.25° Bend | EA | \$50.00 |
| 12"x12" Coupler | EA | \$665.00 |
| 12"x8" Coupler | EA | \$885.00 |
| 12"x6" Coupler | EA | \$875.00 |
| 8" Gate Valve | EA | \$1,535.00 |
| 8" Tee | EA | \$1,125.00 |
| 8" Cap | EA | \$515.00 |
| 8" 45° Bend | EA | \$665.00 |
| 8" 22.5° Bend | EA | \$650.00 |
| 8"x8" Coupler | EA | \$550.00 |
| 8"x6" Tee | EA | \$25.00 |
| 6" Gate Valve | EA | \$1,065.00 |
| 6"x6" Coupler | EA | \$735.00 |
| Fire Hydrant Assembly3 | EA | \$6,500.00 |
| Manhole Connection | LS | \$2,375.00 |
| 6" AWWA C900 PVC Pipe1,3 (Force Main) | LF | \$28.00 |
| GPS Force Main As-Built Survey (Locates @ 200' Space Max) | LS | \$2,750.00 |

§ 4.4.7 Guaranteed Maximum Price

§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed One million, two thousand nine hundred twenty five dollars and no cents (\$ 1,022,925.00), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 4.4.7.2 Alternates

§ 4.4.7.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

| Item | Price |
|------|-------|
| NA | NA |

§ 4.4.7.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------------------------------------|-------|--|
| Soil shrinkage savings possibility | TBD | Native silty soil normally experiences 25-30% shrinkage, this is included in the GMP. If this type of shrinkage is not encountered a credit will be given to the respective owner. |

§ 4.4.7.3 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Init.

| Item | Price |
|------|-------|
| NA | NA |

§ 4.4.7.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption.)

- Includes Pocatello Warehouse Roadway Drawings Date 4/21/2020
- Includes Pocatello Warehouse Sewer Drawings Dated 4/20/2020
- Includes Pocatello Warehouse Waterline Drawings Dated 4/20/2020
- Includes Geotechnical report dated 3/15/2020
- Includes all testing and inspections in accordance with City standard.
- Includes SWPPP installation and maintenance while on site.
- Includes location of existing utilities to ensure no disruption of existing utilities.
- Includes slope stability as required.
- Includes all excavation and embankment for rough grade on site plan. Including any import or export of soils required for suitable soils.
- Includes all aggregate base.
- Includes all clear and grub
- Protect control points / property irons during construction.
- Includes specified doweled expansion joints
- Includes multiple mobilizations as necessary for a complete and functional scope of work.
- Includes all trenching and backfill as specified for all site utilities.
- Includes all water line as specified for a complete and functional scope of work.
- 6" water line specified to be removed, can be abandoned in place.
- Includes all pressure sewer lines as specified for a complete and functional scope of work.
- Includes pipe casings where specified. Includes jack and boring under tracks at specified locations.
- Includes all manhole connections as specified
- Includes all connection fees required.
- Includes necessary traffic control/ barricades during scope of work.
- Includes tracer wire and tracer wire stations including specified labeling.
- Includes all thrust blocks
- Includes air testing and pipe flushing as specified
- Includes required protection of existing utilities when crossing.
- Includes water and sewer stub ups to building as shown.
- Includes all fire hydrants in compliance with City of Pocatello specification.
- Includes all valve boxes including installation and adjustments as necessary.
- Includes all saw cutting and removal of existing pavement at roadway tie ins.
- Include all demolition as specified on the drawings.
- Includes all asphalt milling and overlay
- Includes all new roadways and sub base as specified
- Includes all pavement striping
- Includes curb and gutter
- Includes traffic signage
- Includes all roadway tie ins
- Includes rough grade for rail.
- Includes hydroseeding , mulching and fertilizing in areas specified.

§ 4.4.8 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the

Init.

Contractor. The Contractor shall notify the Owner via the Construction Manager of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any, to be assessed in accordance with Section 3.4.)

Any and all actual damages incurred

§ 4.6 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

Cost savings to be split 50/50 with owner and contractor

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

application with all required back up by the 25th of the month projected through through the end of the month

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty five (35) days after the Construction Manager receives the complete, including all required back up, Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

(Paragraphs deleted)

§ 5.1.6 Progress Payments Where the Contract Sum is Based on the Cost of the Work with a Guaranteed Maximum Price

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 5.1.6.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.6.2.2 The allocation of the Guaranteed Maximum Price under this Section 5.1.6.2 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Construction Manager.

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§ 5.1.6.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.1.6.4 In accordance with AIA Document A232-2019, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.4.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Construction Manager determines, in the Construction Manager's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 at the rate stated in Section 4.4.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 5.1.6.4.1.1 and 5.1.6.4.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 5.1.6.4.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Construction Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Construction Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.6.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.6.5 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 5.1.6.7 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.6.8 If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

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§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to when the Work of this Contract is substantially complete, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

10%

(Paragraphs deleted)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, when the Work of this Contract is substantially complete, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted when the Work of this Contract is substantially complete shall not include retainage as follows:

(Insert any other conditions for release of retainage when the Work of this Contract is substantially complete, or upon Substantial Completion of the Work of all Contractors on the Project or portions thereof.)

Final payment shall include final billing and retainage as two separate applications. At the Construction Manager’s discretion for reasons pertaining to in complete work, punch list, final documentation, or any other in completed contract requirement, may withhold final payment or partial until all outstanding items are completed.

(Paragraphs deleted)

§ 5.2.2 Final Payment Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 5.2.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A232–2019, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, pursuant to Exhibit B, Determination of the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Construction Manager in accordance with Exhibit B, Determination of the Cost of the Work.

§ 5.2.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:

§ 5.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Paragraphs deleted)

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Construction Manager will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(Paragraphs deleted)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A232–2019.

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If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.1.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

§ 7.2 Where the Contract Sum is Based on the Cost of the Work with or without a Guaranteed Maximum Price

§ 7.2.1 Termination

§ 7.2.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.2.1.2 Termination by the Owner for Cause

§ 7.2.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232–2019, the Owner shall then only pay the Contractor an amount as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 4.3.2 or 4.4.2, as applicable, or, if the Contractor’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A232–2019.

§ 7.2.1.2.2 When the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, if the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A232-2019, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A232-2019 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed the amount calculated in Section 7.2.1.2.1.

§ 7.2.1.2.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 7.2.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 7, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Contractor will contain provisions allowing for assignment to the Owner as described above.

§ 7.2.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A232–2019, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

Progression of the work at the time of termination plus the fee as noted.

§ 7.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A232–2019, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 4.3.2 or 4.4.2, as applicable, of this Agreement.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Elden Charles
Executive Vice President
6565 N MacArthur Blvd
Suite 225
Dallas, TX 75039

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Nate Springer
Chief Estimator / Construction Manager
10200 N Batiste
Pocatello, ID 83205

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A232–2019, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Construction Manager and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate

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supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§ 8.8 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A132™-2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition
- .2 AIA Document A132™-2019, Exhibit A, Insurance and Bonds Exhibit
- .3 AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition
- .4

(Paragraphs deleted)

- .5 Drawings

| Number | Title | Date |
|--------|--|---------|
| Number | Title | Date |
| SS100 | Title Sheet | 4/20/20 |
| SS101 | Sewer Line Site Plan | 4/20/20 |
| SS200 | Sewer Line Details | 4/20/20 |
| SS201 | Sewer Line Details | 4/20/20 |
| SS300 | Forced Main Plan & Profile | 4/20/20 |
| SS301 | Force Main and Sewer Line Plan & Profile | 4/20/20 |
| WL100 | Title Sheet | 4/20/20 |
| WL101 | Water Line Site Plan | 4/20/20 |
| WL102 | Fire Protection Plan | 4/20/20 |
| WL200 | Water Line Details | 4/20/20 |
| WL201 | Water Line Details | 4/20/20 |
| WL202 | Water Line Details | 4/20/20 |
| WL203 | Fire Hydrant Details | 4/20/20 |
| WL204 | 1 Inch Water Line Service Line Details | 4/20/20 |
| WL205 | 12 Inch Water Line Service Line Details | 4/20/20 |
| WL300 | Water Line 1 Plan & Profile | 4/20/20 |
| WL301 | Water Line 1 Plan & Profile | 4/20/20 |
| WL302 | Water Line 2 Plan & Profile | 4/20/20 |
| WL303 | Water Line 2 Plan & Profile | 4/20/20 |
| WL304 | Water Line 2 Plan & Profile | 4/20/20 |
| WL305 | Water Line 2 Plan & Profile | 4/20/20 |
| WL306 | Water Line 2 Plan & Profile | 4/20/20 |
| WL307 | Water Line 3 Plan & | 4/20/20 |

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| | | |
|-------|-------------------------------------|---------|
| | Profile | |
| WL308 | Water Line 4 Plan & Profile | 4/20/20 |
| RD100 | Title Sheet | 4/21/20 |
| RD101 | Demolition Plan | 4/21/20 |
| RD102 | Roadway Improvements Site Plan | 4/21/20 |
| RD103 | Mill & Overlay Plan | 4/21/20 |
| RD200 | Grading & Paving Details | 4/21/20 |
| RD300 | Beechcraft Extension Plan & Profile | 4/21/20 |
| RD301 | Beechcraft Extension Plan & Profile | 4/21/20 |
| RD302 | Beechcraft Extension Plan & Profile | 4/21/20 |
| RD303 | Strret Connection Plan & Profile | 4/21/20 |
| RD400 | Intersection Plan | 4/21/20 |
| RD401 | Intersection Plan | 4/21/20 |
| RD402 | Warehouse Entrance Plan | 4/21/20 |
| RD403 | Cul-de-sac Plan | 4/21/20 |
| RD500 | Pavement Striping & Signage Plan | 4/21/20 |
| EC100 | Erosion Control Plan | 4/21/20 |
| EC101 | Erosion Control Plan | 4/21/20 |
| C100 | Title Sheet | 4/21/20 |
| C101 | Improvements Overview | 4/21/20 |
| C200 | Warehouse Site Plan | 4/21/20 |
| C201 | Grading & Paving Details | 4/21/20 |
| C202 | Grading & Paving Notes | 4/21/20 |
| C300 | Grading Plans | 4/21/20 |
| C301 | Grading Plans | 4/21/20 |
| C302 | Grading Plans | 4/21/20 |
| C303 | Grading Plans | 4/21/20 |
| C400 | Paving Plans | 4/21/20 |
| C401 | Paving Plans | 4/21/20 |
| C402 | Paving Plans | 4/21/20 |
| C450 | Concrete Jointing Plan | 4/21/20 |
| C500 | Pavement Striping Plan | 4/21/20 |
| EC100 | Erosion Control Plan | 4/21/20 |
| EC101 | Erosion Control Plan | 4/21/20 |
| D100 | Ex. Condition Drainage Plan | 4/21/20 |
| D101 | Prop. Condition Drainage Plan | 4/21/20 |
| D102 | Bowstring method Calcs | 4/21/20 |

.6 Specifications

| Section | Title | Date | Pages |
|---------|-------|------|-------|
| NA | | | |

.7 Addenda, if any:

| Number | Date | Pages |
|--------|------|-------|
| NA | | |

Init.

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

(Paragraphs deleted)

(Table deleted)

*(Paragraphs deleted).***9** Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232-2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

1. KBCm Group will provide access to a web based collaborative platform "ProCore" wherein all project transactions will reside and shall be considered part of the contract documents.
2. Addendum to AIA A232-2019 General Conditions

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

Elden Charles Executive Vice President
(Printed name and title)

Nathan Stinger

CONTRACTOR *(Signature)*

Nate Stinger Chief Estimator Construction Manager
(Printed name and title)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

(Paragraphs deleted)
(Table deleted)

(Paragraphs deleted).9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232-2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

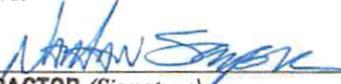
1. KBCm Group will provide access to a web based collaborative platform "ProCore" wherein all project transactions will reside and shall be considered part of the contract documents.
2. Addendum to AIA A232-2019 General Conditions

This Agreement is entered into as of the day and year first written above.



OWNER (Signature)

Elden Charles Executive Vice President
(Printed name and title)



CONTRACTOR (Signature)

Nate Stinger Chief Estimator Construction Manager
(Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document A132™ – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 18:49:30 ET on 08/22/2020.

PAGE 1

AGREEMENT made as of the 4th day of June in the year Two Thousand Twenty

...

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

...

Idaho Materials & Construction- Pocatello A CRH Company
10200 Batiste Rd
Pocatello, ID 83204

...

Pocatello TIF Work
1950 Airport Rd. Pocatello, ID
TIF improvements to sewer water and streets.

...

KBCm Group LLC
8901 Tehama Ridge PKWY, Suite 127140
Fort Worth, Texas 76177

...

The Architect: Engineer:

...

ASM Engineering Consultants
202 East Rhonnda Ave
Andover, Kansas 67002

PAGE 2

[] The date of this Agreement.

PAGE 3

September 15th, 2020

...

NA

NA

...

[X] By the following date: September 15th, 2020

...

NA

NA

...

[] ~~Stipulated Sum, in accordance with Section 4.2 below~~

[X] ~~Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below~~

[~~—~~] ~~Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below~~

~~(Based on the selection above, complete Section 4.2, 4.3 or 4.4 below.)~~

~~§ 4.2 Stipulated Sum~~

~~§ 4.2.1 The Contract Sum shall be (\$ —), subject to additions and deductions as provided in the Contract Documents.~~

~~§ 4.2.2 Alternates~~

~~§ 4.2.2.1 Alternates, if any, included in the Contract Sum:~~

| Item | Price |
|------|-------|
|------|-------|

~~§ 4.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)~~

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
|------|-------|---------------------------|

~~§ 4.2.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)~~

| Item | Price |
|------|-------|
|------|-------|

~~§ 4.2.4 Unit prices, if any:~~

~~(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)~~

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

~~§ 4.3 Cost of the Work Plus Contractor's Fee without a Guaranteed Maximum Price~~

~~§ 4.3.1 The Cost of the Work is as defined in Exhibit B, Determination of the Cost of the Work.~~

~~§ 4.3.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)~~

~~§ 4.3.3~~ The method of adjustment of the Contractor's Fee for changes in the Work:

~~§ 4.3.4~~ Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

~~§ 4.3.5~~ Rental rates for Contractor-owned equipment shall not exceed _____ percent (____%) of the standard rental rate paid at the place of the Project.

~~§ 4.3.6~~ Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

| <u>Item</u> | <u>Units and Limitations</u> | <u>Price per Unit (\$0.00)</u> |
|-------------|------------------------------|--------------------------------|
|-------------|------------------------------|--------------------------------|

~~§ 4.3.7~~ The Contractor shall prepare and submit to the Construction Manager, within 14 days of executing this Agreement, a written Control Estimate for the Owner's review and approval. The Control Estimate shall include the items in Section B.1 of Exhibit B, Determination of the Cost of the Work.

...

Included in the guaranteed Maximum Price (Section 4.4.7.1)

PAGE 4

8% (Eight percent)

...

OH&P shall not exceed 8% of the actual scope of work calculated above the line

~~§ 4.4.5~~ Rental rates for Contractor-owned equipment shall not exceed Five percent (5%) of the standard rental rate paid at the place of the Project.

...

| <u>Item</u> | <u>Units and Limitations</u> | <u>Price per Unit (\$0.00)</u> |
|-------------|------------------------------|--------------------------------|
|-------------|------------------------------|--------------------------------|

...

| | | |
|---|-----------|--------------------|
| <u>Mobilization</u> | <u>LS</u> | <u>\$45,515.00</u> |
| <u>Construction Staking</u> | <u>LS</u> | <u>\$6,315.00</u> |
| <u>Ex. Pavement Removal (6" Depth Assumed)</u> | <u>SY</u> | <u>\$4.50</u> |
| <u>Ex. Curb & Gutter Removal</u> | <u>LF</u> | <u>\$3.10</u> |
| <u>Ex. Tree Removal</u> | <u>LS</u> | <u>\$1,625.00</u> |
| <u>2" Topsoil Stripping (Wasted On Site)</u> | <u>CY</u> | <u>\$4.00</u> |
| <u>Excavation</u> | <u>CY</u> | <u>\$3.15</u> |
| <u>Embankment</u> | <u>CY</u> | <u>\$3.00</u> |
| <u>2" Mill and Overlay (Class III, 1/2"</u> | <u>SY</u> | <u>\$13.25</u> |
| <u>Aggregate)</u> | | |
| <u>2" Asphalt Surface Course (Class III, 1/2"</u> | <u>SY</u> | <u>\$9.50</u> |
| <u>Aggregate)</u> | | |
| <u>4" Asphalt Base Course (Class III, 3/4"</u> | <u>SY</u> | <u>\$1.00</u> |

| | | |
|---|------|------------|
| Aggregate) | | |
| Concrete Valley Gutter | LF | \$50.00 |
| Standard 6 Inch Vertical Curb & Gutter | LF | \$21.00 |
| 4" Crushed Agg Base (3/4 Inch Minus - Type 1) (C&G Base) | CY | \$95.00 |
| 3-foot Wide Gravel Shoulder (3/4 Inch Minus - Type 1) | CY | \$45.00 |
| 6" Crushed Aggregate Base (3/4 Inch Minus - Type 1) | CY | \$28.00 |
| 8" Crushed Aggregate Base (2 Inch Minus - Type 2) | CY | \$26.00 |
| 12" Crushed Aggregate Base (3/4 Inch Minus - Type 1) | CY | \$28.00 |
| 8 oz. Non-Woven Geotextile Fabric | SY | \$3.50 |
| Pavement Striping - 4"-wide Double White Lines | LF | \$2.00 |
| Pavement Striping - 12"-wide Stop Bars | LF | \$54.00 |
| 30" Stop Sign | EA | \$550.00 |
| BMP - Silt Fence | LF | \$4.00 |
| BMP - Inlet Protection | EA | \$235.00 |
| BMP - Check Dams | EA | \$235.00 |
| Seeding | ACRE | \$2,700.00 |
| Mulching | ACRE | \$1,100.00 |
| Fertilizing | ACRE | \$815.00 |
| 8" C900 DR-18 PVC Pipe1 | LF | \$33.00 |
| 12" C900 DR-18 PVC Pipe1 | LF | \$42.00 |
| 20" Steel Casing Pipe (0.25" Wall)2 | LF | \$425.00 |
| 12" Gate Valve | EA | \$2,375.00 |
| 12"x8" Tee | EA | \$2,585.00 |
| 12"x6" Tee | EA | \$1,155.00 |
| 12" Tee | EA | \$3,165.00 |
| 12" Cap | EA | \$595.00 |
| 12" 45° Bend | EA | \$1,015.00 |
| 12" 22.5° Bend | EA | \$975.00 |
| 12" 11.25° Bend | EA | \$50.00 |
| 12"x12" Coupler | EA | \$665.00 |
| 12"x8" Coupler | EA | \$885.00 |
| 12"x6" Coupler | EA | \$875.00 |
| 8" Gate Valve | EA | \$1,535.00 |
| 8" Tee | EA | \$1,125.00 |
| 8" Cap | EA | \$515.00 |
| 8" 45° Bend | EA | \$665.00 |
| 8" 22.5° Bend | EA | \$650.00 |
| 8"x8" Coupler | EA | \$550.00 |
| 8"x6" Tee | EA | \$25.00 |
| 6" Gate Valve | EA | \$1,065.00 |
| 6"x6" Coupler | EA | \$735.00 |
| Fire Hydrant Assembly3 | EA | \$6,500.00 |
| Manhole Connection | LS | \$2,375.00 |
| 6" AWWA C900 PVC Pipe1,3 (Force Main) | LF | \$28.00 |
| GPS Force Main As-Built Survey (Locates @ 200' Space Max) | LS | \$2,750.00 |

PAGE 5

§ 4.4.7.1 The Contract Sum is guaranteed by the Contractor not to exceed One million, two thousand nine hundred twenty five dollars and no cents (\$ 1,022,925.00), subject to additions and deductions by Change Order as provided

in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

...

NA

NA

...

Soil shrinkage savings possibility

TBD

Native silty soil normally experiences 25-30% shrinkage, this is included in the GMP. If this type of shrinkage is not encountered a credit will be given to the respective owner.

PAGE 6

NA

NA

...

Includes Pocatello Warehouse Roadway Drawings Date 4/21/2020
Includes Pocatello Warehouse Sewer Drawings Dated 4/20/2020
Includes Pocatello Warehouse Waterline Drawings Dated 4/20/2020
Includes Geotechnical report dated 3/15/2020
Includes all testing and inspections in accordance with City standard.
Includes SWPPP installation and maintenance while on site.
Includes location of existing utilities to ensure no disruption of existing utilities.
Includes slope stability as required.
Includes all excavation and embankment for rough grade on site plan. Including any import or export of soils required for suitable soils.
Includes all aggregate base.
Includes all clear and grub
Protect control points / property irons during construction.
Includes specified doveled expansion joints
Includes multiple mobilizations as necessary for a complete and functional scope of work.
Includes all trenching and backfill as specified for all site utilities.
Includes all water line as specified for a complete and functional scope of work.
6" water line specified to be removed, can be abandoned in place.
Includes all pressure sewer lines as specified for a complete and functional scope of work.
Includes pipe casings where specified. Includes jack and boring under tracks at specified locations.
Includes all manhole connections as specified
Includes all connection fees required.
Includes necessary traffic control/ barricades during scope of work.
Includes tracer wire and tracer wire stations including specified labeling.
Includes all thrust blocks
Includes air testing and pipe flushing as specified
Includes required protection of existing utilities when crossing.
Includes water and sewer stub ups to building as shown.
Includes all fire hydrants in compliance with City of Pocatello specification.
Includes all valve boxes including installation and adjustments as necessary.
Includes all saw cutting and removal of existing pavement at roadway tie ins.
Include all demolition as specified on the drawings.
Includes all asphalt milling and overlay

Includes all new roadways and sub base as specified
Includes all pavement striping
Includes curb and gutter
Includes traffic signage
Includes all roadway tie ins
Includes rough grade for rail.
Includes hydroseeding , mulching and fertilizing in areas specified.

...

§ 4.4.9 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 4.4.7.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner ~~and Architect~~ via the Construction Manager of any inconsistencies between the agreed-upon assumptions contained in Section 4.4.7.4 and the revised Contract Documents.

PAGE 7

Any and all actual damages incurred

...

Cost savings to be split 50/50 with owner and contractor

...

§ 5.1.1 Based upon Applications for Payment submitted to the Construction Manager by the Contractor, and Certificates for Payment issued by the Construction Manager ~~and Architect, Manager,~~ the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents.

...

application with all required back up by the 25th of the month projected through through the end of the month

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty five (35) days after the Construction Manager receives the Application complete, including all required back up, Application for Payment.

...

~~§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum~~

~~§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

~~§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.~~

~~§ 5.1.4.3 In accordance with AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.4.3.1 The amount of each progress payment shall first include:~~

- ~~.1— That portion of the Contract Sum properly allocable to completed Work;~~
- ~~.2— That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and~~
- ~~.3— That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.~~

~~§ 5.1.4.3.2 The amount of each progress payment shall then be reduced by:~~

- ~~.1— The aggregate of any amounts previously paid by the Owner;~~
- ~~.2— The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~.3— Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4— For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019; and~~
- ~~.5— Retainage withheld pursuant to Section 5.1.7.~~

~~§ 5.1.5 Progress Payments Where the Contract Sum is Based on the Cost of the Work without a Guaranteed Maximum Price~~

~~§ 5.1.5.1 With each Application for Payment, the Contractor shall submit the cost control information required in Exhibit B, Determination of the Cost of the Work, along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor, plus payrolls for the period covered by the present Application for Payment, less that portion of the payments attributable to the Contractor's Fee.~~

~~§ 5.1.5.2 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.~~

~~§ 5.1.5.3 In accordance with AIA Document A232–2019 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:~~

~~§ 5.1.5.3.1 The amount of each progress payment shall first include:~~

- ~~.1— The Cost of the Work as described in Exhibit B, Determination of the Cost of the Work;~~
- ~~.2— That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and~~
- ~~.3— The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 5.1.5.3.1.1 at the rate stated in Section 4.3.2; or if the Contractor's Fee is stated as a fixed sum in Section 4.3.2 an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work included in Section 5.1.5.3.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.~~

~~§ 5.1.5.3.2 The amount of each progress payment shall then be reduced by:~~

- ~~.1— The aggregate of any amounts previously paid by the Owner;~~
- ~~.2— The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232–2019;~~
- ~~.3— Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;~~
- ~~.4— For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232–2019;~~
- ~~.5— The shortfall, if any, indicated by the Contractor in the documentation required by Section 5.1.5.1 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6— Retainage withheld pursuant to Section 5.1.7.~~

~~§ 5.1.5.4~~ The Owner, Construction Manager and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

~~§ 5.1.5.5~~ In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Construction Manager and Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Article 5 or other supporting data; (2) that the Construction Manager and Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager and Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

~~§ 5.1.5.6~~ Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

~~§ 5.1.5.7~~ If final completion of the Work is materially delayed through no fault of the Contractor, then the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A232-2019.

§ 5.1.6.1 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Construction Manager or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

...

§ 5.1.6.2.1 The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

§ 5.1.6.2.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect and Construction Manager.

PAGE 8

.3 That portion of Construction Change Directives that the Architect-Construction Manager determines, in the Architect's-Construction Manager's professional judgment, to be reasonably justified; and

...

.2 The amount, if any, for Work that remains uncorrected and for which the Architect-Construction Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A232-2019;

...

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect-Construction Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A232-2019;

...

§ 5.1.6.6 In taking action on the Contractor's Applications for Payment, the Construction Manager and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and such action shall not be deemed to be a representation that (1) the Construction Manager or Architect have made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Section 5.1.6.1 or other supporting data; (2) that the Construction Manager or Architect have made exhaustive or continuous on-site inspections; or (3) that the Construction Manager or Architect have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

PAGE 9

10%

~~§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)~~

~~§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to when the entire Work of this Contract is substantially complete, including modifications for completion of portions of the Work as provided in Section 3.4.2, insert provisions for such modifications.)~~

...

Final payment shall include final billing and retainage as two separate applications. At the Construction Manager's discretion for reasons pertaining to in complete work, punch list, final documentation, or any other in completed contract requirement, may withhold final payment or partial until all outstanding items are completed.

~~§ 5.2 Final Payment~~

~~§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum~~

~~§ 5.2.1.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when~~

- ~~.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment; and~~
- ~~.2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect.~~

~~§ 5.2.1.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:~~

...

- ~~.3 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect~~
Construction Manager in accordance with Exhibit B, Determination of the Cost of the Work.

...

(Insert rate of interest agreed upon, if any.)

—%

...

The ~~Architect~~ Construction Manager will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

...

Arbitration pursuant to Article 15 of AIA Document A232–2019.

Litigation in a court of competent jurisdiction.

Other: *(Specify)*

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Progression of the work at the time of termination plus the fee as noted.

...

Elden Charles
Executive Vice President
6565 N MacArthur Blvd
Suite 225
Dallas, TX 75039

...

Nate Springer
Chief Estimator / Construction Manager
10200 N Batiste
Pocatello, ID 83205

...

Where the Contract is based on the Cost of the Work plus the Contractor’s Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the ~~Architect~~ Construction Manager and exercise the Contractor’s skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner’s interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

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- 4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

...

| <u>Number</u> | <u>Title</u> | <u>Date</u> |
|---------------|---|----------------|
| <u>SS100</u> | <u>Title Sheet</u> | <u>4/20/20</u> |
| <u>SS101</u> | <u>Sewer Line Site Plan</u> | <u>4/20/20</u> |
| <u>SS200</u> | <u>Sewer Line Details</u> | <u>4/20/20</u> |
| <u>SS201</u> | <u>Sewer Line Details</u> | <u>4/20/20</u> |
| <u>SS300</u> | <u>Forced Main Plan & Profile</u> | <u>4/20/20</u> |
| <u>SS301</u> | <u>Force Main and Sewer Line Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL100</u> | <u>Title Sheet</u> | <u>4/20/20</u> |
| <u>WL101</u> | <u>Water Line Site Plan</u> | <u>4/20/20</u> |
| <u>WL102</u> | <u>Fire Protection Plan</u> | <u>4/20/20</u> |
| <u>WL200</u> | <u>Water Line Details</u> | <u>4/20/20</u> |
| <u>WL201</u> | <u>Water Line Details</u> | <u>4/20/20</u> |
| <u>WL202</u> | <u>Water Line Details</u> | <u>4/20/20</u> |
| <u>WL203</u> | <u>Fire Hydrant Details</u> | <u>4/20/20</u> |
| <u>WL204</u> | <u>1 Inch Water Line Service Line Details</u> | <u>4/20/20</u> |
| <u>WL205</u> | <u>12 Inch Water Line Service Line Details</u> | <u>4/20/20</u> |
| <u>WL300</u> | <u>Water Line 1 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL301</u> | <u>Water Line 1 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL302</u> | <u>Water Line 2 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL303</u> | <u>Water Line 2 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL304</u> | <u>Water Line 2 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL305</u> | <u>Water Line 2 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL306</u> | <u>Water Line 2 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL307</u> | <u>Water Line 3 Plan & Profile</u> | <u>4/20/20</u> |
| <u>WL308</u> | <u>Water Line 4 Plan & Profile</u> | <u>4/20/20</u> |
| <u>RD100</u> | <u>Title Sheet</u> | <u>4/21/20</u> |
| <u>RD101</u> | <u>Demolition Plan</u> | <u>4/21/20</u> |
| <u>RD102</u> | <u>Roadway Improvements Site Plan</u> | <u>4/21/20</u> |
| <u>RD103</u> | <u>Mill & Overlay Plan</u> | <u>4/21/20</u> |
| <u>RD200</u> | <u>Grading & Paving Details</u> | <u>4/21/20</u> |
| <u>RD300</u> | <u>Beechcraft Extension Plan & Profile</u> | <u>4/21/20</u> |
| <u>RD301</u> | <u>Beechcraft Extension Plan & Profile</u> | <u>4/21/20</u> |
| <u>RD302</u> | <u>Beechcraft Extension</u> | <u>4/21/20</u> |

| | | |
|--------------|---|----------------|
| | <u>Plan & Profile</u> | |
| <u>RD303</u> | <u>Strret Connection Plan & Profile</u> | <u>4/21/20</u> |
| <u>RD400</u> | <u>Intersection Plan</u> | <u>4/21/20</u> |
| <u>RD401</u> | <u>Intersection Plan</u> | <u>4/21/20</u> |
| <u>RD402</u> | <u>Warehouse Entrance Plan</u> | <u>4/21/20</u> |
| <u>RD403</u> | <u>Cul-de-sac Plan</u> | <u>4/21/20</u> |
| <u>RD500</u> | <u>Pavement Striping & Signage Plan</u> | <u>4/21/20</u> |
| <u>EC100</u> | <u>Erosion Control Plan</u> | <u>4/21/20</u> |
| <u>EC101</u> | <u>Erosion Control Plan</u> | <u>4/21/20</u> |
| <u>C100</u> | <u>Title Sheet</u> | <u>4/21/20</u> |
| <u>C101</u> | <u>Improvements Overview</u> | <u>4/21/20</u> |
| <u>C200</u> | <u>Warehouse Site Plan</u> | <u>4/21/20</u> |
| <u>C201</u> | <u>Grading & Paving Details</u> | <u>4/21/20</u> |
| <u>C202</u> | <u>Grading & Paving Notes</u> | <u>4/21/20</u> |
| <u>C300</u> | <u>Grading Plans</u> | <u>4/21/20</u> |
| <u>C301</u> | <u>Grading Plans</u> | <u>4/21/20</u> |
| <u>C302</u> | <u>Grading Plans</u> | <u>4/21/20</u> |
| <u>C303</u> | <u>Grading Plans</u> | <u>4/21/20</u> |
| <u>C400</u> | <u>Paving Plans</u> | <u>4/21/20</u> |
| <u>C401</u> | <u>Paving Plans</u> | <u>4/21/20</u> |
| <u>C402</u> | <u>Paving Plans</u> | <u>4/21/20</u> |
| <u>C450</u> | <u>Concrete Jointing Plan</u> | <u>4/21/20</u> |
| <u>C500</u> | <u>Pavement Striping Plan</u> | <u>4/21/20</u> |
| <u>EC100</u> | <u>Erosion Control Plan</u> | <u>4/21/20</u> |
| <u>EC101</u> | <u>Erosion Control Plan</u> | <u>4/21/20</u> |
| <u>D100</u> | <u>Ex. Condition Drainage Plan</u> | <u>4/21/20</u> |
| <u>D101</u> | <u>Prop. Condition Drainage Plan</u> | <u>4/21/20</u> |
| <u>D102</u> | <u>Bowstring method Calcs</u> | <u>4/21/20</u> |

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NA

...

NA

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[] — AIA Document A132™ 2019, Exhibit B, Determination of the Cost of the Work

[] — AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

[] — The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

[] — Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

.9 Other documents, if any, listed below:

...

1. KBCm Group will provide access to a web based collaborative platform "ProCore" wherein all project transactions will reside and shall be considered part iof the contract documents.
2. Addendum to AIA A232-2019 General Conditions

...

Elden Charles Executive Vice President

Nate Stinger Chief Estimator Construction Manager

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Vista Sand, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 18:49:30 ET on 08/22/2020 under Order No. 6676769418 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

**ADDENDUM TO AIA A232-2019 GENERAL CONDITIONS & A132-2019 STANDARD FORM OF AGREEMENT BETWEEN
FRIGITEK INDUSTRIAL PARKS, INC. ("Owner")
AND
KBCM GROUP, LLC ("Construction Manager")
AND
STAKER & PARSON CO., d/b/a IDAHO MATERIALS & CONSTRUCTION, a CRH Owner ("Contractor")
DATED _____, 2020 (collectively, the "Contract")**

In consideration of the following mutual covenants, and notwithstanding any term or condition of the Agreement to the contrary, Owner, Construction Manager, and Contractor hereby agree to modify and amend the above-referenced Contract as follows:

1. Contractor does not agree to assume any obligation that does not arise from the Contractor's work on the Project, unless the Contractor agrees to assume a specific obligation, in writing.
2. Contractor shall have no obligation to perform in increments quantities or portions of the work that Contractor plans to perform in a single operation or a single mobilization; nor shall Contractor have any obligation to perform work in a different sequence than planned by Contractor.
3. Contractor shall release, indemnify, defend, and save Owner, Construction Manager, and any other required parties, harmless for claims, demands, suits, judgments, penalties, fines, damages, interest, litigation, liabilities, losses, costs, attorney's fees, and expenses that result from, arise out of, or are caused by, and only to the extent of, Contractor's wrongful or negligent acts or omissions on the Project. For the purpose of clarity, Contractor's defense and indemnity obligations apply only to the extent of Contractor's negligent acts or omissions and do not include the indemnified parties' proportional negligence, wrongful conduct, or liability.
4. Insurance procured by Contractor shall name Owner and the other persons or entities required by the Agreement as additional insureds using ISO Endorsements CG 20 10 04 13 and CG 20 37 04 13, but defend and indemnify the same only to the extent that claims and liabilities covered by such insurance arise from Contractor's negligent or wrongful acts or omissions.
5. Contractor shall have no responsibility for or duty in connection with any subsurface or other site condition not ascertainable through visual inspection, nor shall Contractor be responsible for any work performed by others.
6. Contractor waives no legal rights, including, without limitation, lien rights, rights to any bond(s), or rights to claim interest or other earnings, among other rights to payments or earnings, but shall solely provide lien waivers to the extent Contractor receives payment from Owner. Final payment to Contractor only serves as Contractor waiver of payment related claims.
7. Contractor shall be liable for only those liquidated or delay damages directly caused by Contractor's wrongful or negligent acts or omissions. Contractor's liability for liquidated damages shall be proportional to its acts or omissions.
8. Owner shall have forty-eight (48) hours in which to inspect the Materials (the "Inspection"). Thereafter, Owner shall be deemed to have accepted the materials/goods provided by Contractor ("Materials"), unless Contractor receives written notification from Owner within seventy-two (72) hours of Owner's rejection of some or all of the Materials. Contractor agrees to provide Owner with conforming Materials to replace any Materials rejected by Owner.
9. Contractor shall provide goods or materials which comply with the Project plans and specifications and makes no warranty whether the same are fit for any particular purpose.
10. In the event of (a) any breach or default by Contractor, (b) any claim against Contractor, or (c) any defects covered by warranty, Contractor will be given reasonable notice and reasonable time to remedy, resolve, or cure any and all such breaches, defaults, claims, or defects.
11. Contractor shall not release possession of its equipment or materials, unless same has already been paid for by Owner.
12. Contractor's quote, dated _____, 2020, is incorporated herein.

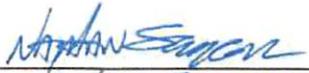
This Addendum is incorporated into the Agreement and controls over any inconsistent provisions in the same.

AGREED this 23rd day of September 2020.

FRIGITEK INDUSTRIAL PARKS, INC.

By: 
Name: Elden Charles
Title: Executive Vice President

**STAKER & PARSON CO., d/b/a IDAHO
MATERIALS & CONSTRUCTION, a CRH
Owner**

By: 
Name: NATHAN STUMBER
Title: CONSTRUCTION MANAGER

KBCM GROUP, LLC

By: _____
Name: _____
Title: _____

EXHIBIT “B”

EXHIBIT “B”



CCO #005

Frigitek Industrial Parks
 6565 N Macarthur Blvd, Suite 225
 Dallas, TX 75039
 Phone: (469) 325-1616

Project: 2020-102 - TIF Improvements
 1950 Airport Way
 Pocatello, Idaho 83204

Subcontract Change Order #005: Tensar Geogrid for Beechcraft Avenue Extension

| | | | |
|-------------------------------|---|-------------------------|---|
| CONTRACT COMPANY: | Idaho Materials & Construction 10200 N Balliste Road Pocatello, Idaho 83205 | CONTRACT FOR: | SC-2020-102-002:Earthwork, Utilities, and Road Improvements |
| DATE CREATED: | 9/24/2020 | CREATED BY: | Skyler Blankenfeld (KBCm Group, LLC) |
| CONTRACT STATUS: | Approved | REVISION: | 0 |
| REQUEST RECEIVED FROM: | Nate Stinger | LOCATION | |
| DESIGNATED REVIEWER: | Ken Blankenfeld (KBCm Group, LLC) | REVIEWED BY: | |
| DUE DATE: | 09/24/2020 | REVIEW DATE: | 09/24/2020 |
| INVOICED DATE: | | PAID DATE: | |
| REFERENCE: | | CHANGE REASON: | Existing Conditions |
| PAID IN FULL: | No | EXECUTED: | No |
| ACCOUNTING METHOD: | Amount Based | SCHEDULE IMPACT: | 0 days |
| FIELD CHANGE: | No | TOTAL AMOUNT: | \$ 14,195.00 |

DESCRIPTION:
 In response to concern over native soil subbase at the Beechcraft Avenue extension, this change includes subgrade fabric and Tensar geogrid to stabilize the soil as outlined and agreed to in RFI 10 (attached). Cost is not to exceed 14,195.

ATTACHMENTS:
[2020-102-TIF Improvements-RFI10-Subbase at Beechcraft Avenue Exten.pdf](#)

**CHANGE ORDER LINE ITEMS:
 CCO #005**

| # | SubJob | Cost Code | Description | Type | Amount |
|---|------------|--|------------------------------------|---------------------|--------------------|
| 1 | 1. STREETS | 32-32 11 16.16 - Aggregate Subbase Courses | Subgrade fabric and Tensar geogrid | TIF Fund | \$ 14,195.00 |
| | | | | Subtotal: | \$14,195.00 |
| | | | | Grand Total: | \$14,195.00 |

The original (Contract Sum) \$ 1,022,925.00
 Net change by previously authorized Change Orders \$ 95,122.00
 The contract sum prior to this Change Order was \$ 1,118,047.00
 The contract sum will be increased by this Change Order in the amount of \$ 14,195.00
 The new contract sum including this Change Order will be \$ 1,132,242.00
 The contract time will not be changed by this Change Order by 0 days.

Frigitek Industrial Parks
 6565 N Macarthur Blvd, Suite 225
 Dallas, TX 75039

Idaho Materials & Construction
 10200 N Balliste Road
 Pocatello, Idaho 83205



 SIGNATURE DATE

 SIGNATURE DATE

EXHIBIT “C”

EXHIBIT “C”



CCO #006

Frigitek Industrial Parks
 6565 N Macarthur Blvd, Suite 225
 Dallas, TX 75039
 Phone: (469) 325-1616

Project: 2020-102 - TIF Improvements
 1950 Airport Way
 Pocatello, Idaho 83204

Subcontract Change Order #006: Fortress Street Asphaltic Layer and Radius Add

| | | | |
|-------------------------------|--|-------------------------|---|
| CONTRACT COMPANY: | Idaho Materials & Construction 10200 N Batisle Road Pocatello, Idaho 83205 | CONTRACT FOR: | SC-2020-102-002:Earthwork, Utilities, and Road Improvements |
| DATE CREATED: | 9/24/2020 | CREATED BY: | Skyler Blankenfeld (KBCm Group, LLC) |
| CONTRACT STATUS: | Approved | REVISION: | 0 |
| REQUEST RECEIVED FROM: | Nate Stinger | LOCATION: | |
| DESIGNATED REVIEWER: | Ken Blankenfeld (KBCm Group, LLC) | REVIEWED BY: | |
| DUE DATE: | 09/24/2020 | REVIEW DATE: | 09/24/2020 |
| INVOICED DATE: | | PAID DATE: | |
| REFERENCE: | | CHANGE REASON: | Added Scope |
| PAID IN FULL: | No | EXECUTED: | No |
| ACCOUNTING METHOD: | Amount Based | SCHEDULE IMPACT: | 0 days |
| FIELD CHANGE: | No | TOTAL AMOUNT: | \$ 25,631.00 |

DESCRIPTION:

In response to concern over base layer exposed after asphalt milling, this change will include a 1" asphaltic overlay in addition to an added radius at the corner of Beechcraft and Fortress. Radius change will include excavation, subbase, and asphalt placement as noted and agreed to in RF11 (attached).

ATTACHMENTS:

[2020-102-TIF_Improvements-RF11-Beechcraft_p.pdf](#) [NS_RF11_Quote.pdf](#)

CHANGE ORDER LINE ITEMS:

CCO #006

| # | SubJob | Cost Code | Description | Type | Amount |
|---------------------|------------|--------------------------------------|------------------------------|----------|--------------------|
| 1 | 1. STREETS | 31-31 23 16 - Excavation | Radius excavation | TIF Fund | \$ 1,050.26 |
| 2 | 1. STREETS | 32-32 11 26 - Asphaltic Base Courses | Radius subbase and road base | TIF Fund | \$ 3,670.00 |
| 3 | 1. STREETS | 32-32 12 16 - Asphalt Paving | Radius asphaltic pavement | TIF Fund | \$ 1,836.75 |
| 4 | 1. STREETS | 32-32 12 16 - Asphalt Paving | Asphalt paving | TIF Fund | \$ 18,875.00 |
| Subtotal: | | | | | \$25,631.00 |
| Grand Total: | | | | | \$25,631.00 |

| | |
|--|-----------------|
| The original (Contract Sum) | \$ 1,022,925.00 |
| Net change by previously authorized Change Orders | \$ 109,317.00 |
| The contract sum prior to this Change Order was | \$ 1,132,242.00 |
| The contract sum will be increased by this Change Order in the amount of | \$ 25,631.00 |
| The new contract sum including this Change Order will be | \$ 1,157,873.00 |
| The contract time will not be changed by this Change Order by 0 days. | |

Frigitek Industrial Parks
6565 N Macarthur Blvd, Suite 225
Dallas, TX 75039



SIGNATURE

DATE

Idaho Materials & Construction
10200 N Batiste Road
Pocatello, Idaho 83205

SIGNATURE

DATE

EXHIBIT “D”

EXHIBIT “D”



CCO #007

Frigitek Industrial Parks
 8585 N MacArthur Blvd, Suite 225
 Dallas, TX 75039
 Phone: (469) 326-1618

Project: 2020-102 - TIF Improvements
 1950 Airport Way
 Pocatello, Idaho 83204

Subcontract Change Order #007: Truck Route Signage and Concrete Barrier

| | | | |
|-------------------------------|---|-------------------------|---|
| CONTRACT COMPANY: | Idaho Materials & Construction 10200 N Battiste Road Pocatello, Idaho 83205 | CONTRACT FOR: | SC-2020-102-002:Earthwork, Utilities, and Road Improvements |
| DATE CREATED: | 10/30/2020 | CREATED BY: | Skyler Blankenfeld (KBCm Group, LLC) |
| CONTRACT STATUS: | Approved | REVISION: | 0 |
| REQUEST RECEIVED FROM: | Nate Slinger | LOCATION | |
| DESIGNATED REVIEWER: | Ken Blankenfeld (KBCm Group, LLC) | REVIEWED BY: | |
| DUE DATE: | | REVIEW DATE: | 11/02/2020 |
| INVOICED DATE: | | PAID DATE: | |
| REFERENCE: | | CHANGE REASON: | |
| PAID IN FULL: | No | EXECUTED: | No |
| ACCOUNTING METHOD: | Amount Based | SCHEDULE IMPACT: | 0 days |
| FIELD CHANGE: | No | TOTAL AMOUNT: | \$ 22,950.00 |

DESCRIPTION:

Change includes truck route signage and concrete barriers provided by Idaho Materials:

- truck route signage as specified in RFI #14, and to be provided and installed along designated route.
- concrete barriers provided and placed as specified in RFI #14.

ATTACHMENTS:

[IMCFrigitek SignageStripe Estimate.pdf](#), [2020-102-TIF Improvements-14-Truck Route-2020-10-30.pdf](#), [TIF RFI #14 .pdf](#)

CHANGE ORDER LINE ITEMS:

CCO #007

| # | SubJob | Cost Code | Description | Type | Amount |
|---------------------|------------|-------------------------------|------------------------------|----------|--------------------|
| 1 | 1. STREETS | 10-10 14 63 - Traffic Signage | Signage | TIF Fund | \$ 12,569.00 |
| 2 | 1. STREETS | 10-10 14 63 - Traffic Signage | Concrete barrier and Install | TIF Fund | \$ 10,381.00 |
| Subtotal: | | | | | \$22,950.00 |
| Grand Total: | | | | | \$22,950.00 |

| | |
|--|-----------------|
| The original (Contract Sum) | \$ 1,022,925.00 |
| Net change by previously authorized Change Orders | \$ 134,948.00 |
| The contract sum prior to this Change Order was | \$ 1,157,873.00 |
| The contract sum will be increased by this Change Order in the amount of | \$ 22,950.00 |
| The new contract sum including this Change Order will be | \$ 1,180,823.00 |
| The contract time will not be changed by this Change Order by 0 days. | |



CCO #007

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

A handwritten signature in black ink, appearing to be "F. B. S.", written over a horizontal line.

SIGNATURE

DATE

Idaho Materials & Construction
10200 N Battiste Road
Pocatello, Idaho 83205

SIGNATURE

DATE



RFI Attached for Reference

RFI #14

Frigitek Industrial Parks
 6565 N MacArthur Blvd, Suite 225
 Dallas, TX 75039
 Phone: (469) 325-1616

Project: 2020-102 - TIF Improvements
 1950 Airport Way
 Pocatello, Idaho 83204

Truck Route

| | |
|---|---|
| TO: Skyler Blankenfeld (KBCm Group, LLC) Megan McFarland (KBCm Group, LLC) Ken Blankenfeld (KBCm Group, LLC) | FROM: Megan McFarland (KBCm Group, LLC) Dallas- Fort Worth, |
| DATE INITIATED: 09/30/2020 | STATUS: Open |
| LOCATION: | DUE DATE: 10/07/2020 |
| PROJECT STAGE: Course of Construction | COST CODE: |
| SUB JOB: | SCHEDULE IMPACT: TBD |
| COST IMPACT: TBD | SPEC SECTION: |
| DRAWING NUMBER: | REFERENCE: |
| LINKED DRAWINGS: | |
| RECEIVED FROM: | |
| COPIES TO: Ken Blankenfeld (KBCm Group, LLC), Alan Evans (Pocatello Regional Airport), Jake Ferrell (ASM Engineering Consultants), Merrill Quayle (City of Pocatello), Nate Slinger (Idaho Materials & Construction), Scott Thomson (KBCm Group, LLC), Ben Wood (Idaho Materials & Construction) | |

Question from Megan McFarland (KBCm Group, LLC) at 09:37 AM on 09/30/2020

An official truck route may be needed to limit future truck traffic from entering the terminal. This could be established with signage and possibly some additional curb.

Official Response: Ken Blankenfeld (KBCm Group, LLC) responded on Friday, October 30th, 2020 at 1:31PM CDT
 KBCm will process the COR for Idaho Materials

Attachments:

Official Response: Merrill Quayle (City of Pocatello) responded on Friday, October 30th, 2020 at 1:17PM CDT
 The information dealing with the signs look correct. The over all cost of \$22,950 for the materials and placement of signs and concrete blocks also look acceptable for the change order. Correction for the concrete barriers and installation of signs is \$10,381.00 witch is Included in the total. The price is acceptable to the City upon my review.

Attachments:

Official Response: Megan McFarland (KBCm Group, LLC) responded on Monday, October 26th, 2020 at 12:28PM CDT
 Pricing from Idaho Materials for Signage and Concrete Barriers (See attachements)

Concrete Barriers and Installation of signage \$10,3381.00
 Signage \$12,569.00

Total: \$\$22,950.00

Merril to Approve for KBCm Group to open a Change order and get signage ordered.

Attachments:

[IMCFrigitek SignageStripe Estimate.pdf](#), [TIF RFI #14 .pdf](#)

Official Response: Merrill Quayle (City of Pocatello) responded on Thursday, October 8th, 2020 at 9:21AM CDT
 Per our discussion there will be 8-speed limit signs at 20MPH using the R2-1 (24x30-Inch).

Attachments:

Official Response: Merrill Quayle (City of Pocatello) responded on Friday, October 2nd, 2020 at 4:41PM CDT
 As further discussed in the 9.30.2020 meeting the signs will be on diamond grade 3M sheeling with vandal coating. There will be 6-stop signs 7 if Frigitek would like one exiting their entrance. Stop signs will be 30-inch in size (R1-1). There will be placed the concrete blocks (2x2x3-feet) at 25-foot increments along both sides of the Fortress and Beachcraft (truck route). There may need to be tighter increments in designated areas if there becomes an issue with trucks exiting the roadway onto private property. 8-no parking (symbol) R8-3 24x24-Inch. 2 white and blue wayfinding business indicator signs, possible 3 is Frigitekj wants on at their entrance stating Frigitek with a direction arrow. 1-Truck Route use Fortress Street R14-1



(18x14) green and white. 1 Truck Route I-86 with arrow (24x18) green and white. 2-truck route R14-1 (24x18) black and White with arrow. 2 No Trucks R5-2 (24x24). 1 Airport Terminal with arrow 24x24 green and white. I am still working on the speed limit to be 20 or 25 MPH.

Attachments:

Official Response: Megan McFarland (KBCm Group, LLC) responded on Wednesday, September 30th, 2020 at 9:38AM CDT

Discussions in TIF Weekly meeting 9/23/2020 resulted in the desire to keep the trucks from entering the terminal as well as parking or entering unauthorized areas. Merrill, Allen and Ken will drive the area and discuss truck route options and present them at the next meeting.

Attachments:

All Replies:

Response from Ken Blankenfeld (KBCm Group, LLC) at 01:31 PM on 10/30/2020

KBCm will process the COR for Idaho Materials

Attachments:

Response from Merrill Quayle (City of Pocatello) at 01:17 PM on 10/30/2020

The information dealing with the signs look correct. The over all cost of \$22, 950 for the materials and placement of signs and concrete blocks also look acceptable for the change order. Correction for the concrete barriers and installation of signs is \$10,381.00 witch is Included in the total. The price is acceptable to the City upon my review.

Attachments:

Response from Megan McFarland (KBCm Group, LLC) at 12:28 PM on 10/26/2020

Pricing from Idaho Materials for Signage and Concrete Barriers (See attachements)

Concrete Barriers and Installation of signage \$10,3381.00
Signage \$12,569.00

Total: \$\$22,950.00

Merril to Approve for KBCm Group to open a Change order and get signage ordered.

Attachments:

IMCFrigitek SignageStripe Estimate.pdf TIF RFI #14 .pdf

Response from Merrill Quayle (City of Pocatello) at 09:21 AM on 10/08/2020

Per our discussion there will be 8-speed limit signs at 20MPH using the R2-1 (24x30-inch).

Attachments:

Response from Merrill Quayle (City of Pocatello) at 04:41 PM on 10/02/2020

As further discussed in the 9.30.2020 meeting the signs will be on diamond grade 3M sheeting with vandal coating. There will be 6-stop signs 7 if Frigitek would like one exiting their entrance. Stop signs will be 30-inch in size (R1-1). There will be placed the concrete blocks (2x2x3-feet) at 25-foot increments along both sides of the Fortress and Beachcraft (truck route). There may need to be tighter increments in designated areas if there becomes an issue with trucks exiting the roadway onto private property. 8-no parking (symbol) R8-3 24x24-inch. 2 white and blue wayfinding business indicator signs, possible 3 is Frigitekj wants on at their entrance stating Frigitek with a direction arrow. 1-Truck Route use Fortress Street R14-1 (18x14) green and white. 1 Truck Route I-86 with arrow (24x18) green and white. 2-truck route R14-1 (24x18) black and White with arrow. 2 No Trucks R5-2 (24x24). 1 Airport Terminal with arrow 24x24 green and white. I am still working on the speed limit to be 20 or 25 MPH.

Attachments:

Response from Megan McFarland (KBCm Group, LLC) at 09:38 AM on 09/30/2020

Discussions in TIF Weekly meeting 9/23/2020 resulted in the desire to keep the trucks from entering the terminal as well as parking or entering unauthorized areas. Merrill, Allen and Ken will drive the area and discuss truck route options and present them at the next meeting.

Attachments:

BY _____

DATE _____

COPIES TO _____

EXHIBIT “E”

EXHIBIT “E”

KESLER | RUST

Douglas E. Griffith
Attorney at Law
dgriffith@keslerrust.com

L A W O F F I C E S · E S T . 1 9 8 0

March 4, 2021

VIA U.S. MAIL & EMAIL:

FRIGITEK INDUSTRIAL PARKS, INC.
6565 N. MacArthur Blvd., Suite 225
Dallas, TX 75039

Attn: KEN BROWN

Re: *Unpaid Balance Due Idaho Materials & Construction -- Pocatello;
Pocatello TIF Work Project;
TIF Improvements to Sewer, Water and Streets;*

Dear Mr. Brown:

This office represents Staker Parson Materials & Construction, doing business as Idaho Materials & Construction -- Pocatello ("IMC"). On or about June 4, 2020, IMC, as the general contractor, entered into a contract with Frigitek Industrial Parks, Inc. ("Frigitek"), as the owner, for a project known as Pocatello TIF Work, TIF Improvements to Sewer, Water and Streets ("the Project").

Pursuant to the contract, the Project was managed by KBCm Group, LLC, ("KBCm"), the construction manager who represented and acted on behalf of Frigitek on the Project. According to the contract, KBCm would review and approve all pay applications submitted by IMC for payment. In the Article 5 Payments section, the contract states that Frigitek is obligated to pay Staker Parson progress payments for each approved pay application by the 30th day of the month following the approval of the pay application by KBCm.

IMC has now completed all of its contracted work on the Project and such work has been approved and accepted by Pocatello City, whose road, water, and sewer systems received the benefit of IMC's work on the Project. In addition to completing all of the work required by the contract, IMC also completed work required by six change orders. Four of the change orders have been approved by KBCm and signed by Frigitek. Two of the change orders were approved by KBCm, the work completed by IMC, the costs for such change orders fully accounted and accepted by KBCm. However, these change orders, Change Order No. 5 and Change Order No. 6 are still pending signatures from Frigitek.

To date, IMC has submitted four pay applications for payment. Pay Application No. 1 for \$225,813.00 was approved by KBCm on September 2, 2020. Pay Application No. 2 for \$292,256.00 was approved by KBCm on January 5, 2021. Pay Application No. 3 for \$560,172.00 was approved by KBCm on February 16, 2021.

MCINTYRE BUILDING · 68 SOUTH MAIN STREET, STE 200 · SALT LAKE CITY, UTAH 84101
TELEPHONE: 801 .532 .8000 · TELEFAX: 801 .531 .7965

www.keslerrust.com

FRIGITEK INDUSTRIAL PARKS, INC.

March 4, 2021

Page 2

From those submitted pay applications, Frigitek has only paid to date \$64,200.00 of Pay Application No. 1. Currently, Frigitek is in default of the contract with IMC in the principal amount of \$453,860.00. As a result of Frigitek's default, IMC is also entitled to statutory interest on the past due balances at the rate of 12% per annum, under Idaho law, and IMC attorney fees incurred in collecting the past due balance, pursuant to the contract. To date, accrued interest totals \$8,733.86 and incurred attorney fees total \$1,500.00. Consequently, the total past due default balance due and owing IMC is \$464,101.86. In addition, Frigitek will owe IMC the balance of Pay Application No. 3, which is \$560,172.00, on March 30, 2021.

IMC has been extremely cooperative in working with Frigitek and KBCm on this matter. However, IMC is no longer willing to carry the delinquent balance on this contract. Therefore, you are hereby required to contact the undersigned within seven (7) days of the date of this letter to make arrangements to pay off the past due balance of \$464,101.86 in full. In addition, IMC expects that Pay Application No. 3 for \$560,172.00 to be paid in full on or before March 30, 2021.

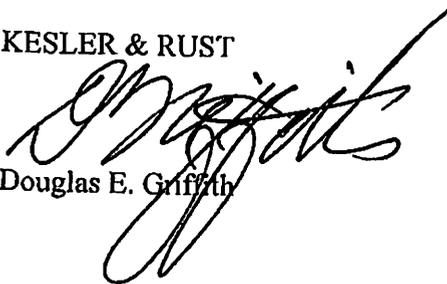
It should be clearly understood that this letter constitutes a demand for payment. If you fail to contact the undersigned and pay the above-referenced past due balance as demanded, IMC has instructed this office to institute litigation against Frigitek, based on the executed contract. Such litigation may also include an action against Pocatello City and/or Portneuf Development Authority, which parties received the benefit of IMC's work on the Airport Road.

If IMC is required to institute litigation in order to collect on this contract, it will also pursue its claims against Frigitek for its accrued interest at the statutory rate of 12% per annum, court costs and attorney fees, in accordance with the terms and conditions of the contract Frigitek signed. These costs, fees, and interest charges may be substantial.

Clearly, it is in your best interest to resolve this account as quickly as possible and avoid the additional expense of litigation. Please govern yourself accordingly.

Sincerely,

KESLER & RUST


Douglas E. Griffith

cc: Pocatello City
Portneuf Development Authority
Idaho Materials & Construction -- Pocatello

EXHIBIT “F”

EXHIBIT “F”

KESLER | RUST

Douglas E. Griffith
Attorney at Law
dgriffith@keslerrust.com

L A W O F F I C E S • E S T . 1 9 8 0

March 29, 2021

VIA U.S. MAIL & EMAIL: Ken Brown <kb@lionchase.com>

FRIGITEK INDUSTRIAL PARKS, INC.
6565 N. MacArthur Blvd., Suite 225
Dallas, TX 75039

Attn: KEN BROWN

KBCM GROUP, LLC
c/o kblankenfeld@kbcmgroup.com

Attn: KEN BLANKENFELD

Re: *Unpaid Balance Due Idaho Materials & Construction -- Pocatello;
Pocatello TIF Work Project;
TIF Improvements to Sewer, Water and Streets;*

Dear Mr. Brown and Mr. Blankenfeld:

This office represents Staker Parson Materials & Construction, doing business as Idaho Materials & Construction -- Pocatello ("IMC"). On March 4, 2021, I sent to Mr. Brown, as the representative of Frigitek Industrial Parks, Inc. ("Frigitek"), a demand letter. In said letter, I identified the actions of Frigitek which amounted to Frigitek's default of its contract with Staker Parson on the project known as Pocatello TIF Work, TIF Improvements to Sewer, Water and Streets ("the Project").

In response to said demand letter, Frigitek, through its agent and manager on the Project, KBCm Group, LLC, ("KBCm"), notified IMC that IMC would immediately receive the balance of the payment due and owing for Pay Application No. 1. At the same time, KBCm also stated and represented to IMC that IMC would receive the past due payment for Pay Application No. 2 immediately following IMC signing and sending in the Unconditional Lien Waiver for the receipt of the \$161,613.00 payment.

IMC received the payment of \$161,613.00 on 3/17/21. Upon such receipt, IMC signed and returned to KBCm the Unconditional Lien Waiver on 3/19/21. A copy of said Waiver and the email sending it to KBCm are enclosed herewith. In spite of the representation that payment of Pay Application No. 2 would be immediately sent following receipt of the Waiver, IMC has not received said payment as of the date of this letter. Pay Application No. 2 for \$292,256.00 was approved by KBCm on January 5, 2021 and payment by Frigitek to IMC was due and owing on February 5, 2021, as per the subcontract between the parties.

MCINTYRE BUILDING • 68 SOUTH MAIN STREET, STE 200 • SALT LAKE CITY, UTAH 84101
TELEPHONE: 801 .532 .8000 • TELEFAX: 801 .531 .7965

www.keslerrust.com

FRIGITEK INDUSTRIAL PARKS, INC.
KBCM GROUP, LLC
March 29, 2021
Page 2

The frustration IMC is having, in connection with Frigitek's failure to pay IMC for its Pay Application No. 2, is that Frigitek in fact received payment from the Pocatello Development Authority ("PDA") for IMC's Pay Application No. 2 with a check dated March 2, 2021. Evidence indicates that Frigitek deposited this check into its account at JP Morgan Chase Bank on March 4, 2021. A copy of the front and back of the check from PDA is enclosed herewith.

It is also our understanding that Frigitek's contract with PDA only allows Frigitek to receive a reimbursement from PDA for monies Frigitek has paid for the construction work and materials required on the Project. Consequently, for Frigitek to receive monies from PDA for IMC's Pay Application No. 2, Frigitek would first have to represent to PDA that Frigitek had already paid IMC for Pay Application No. 2 and thus was seeking to be reimbursed for such monies paid out by Frigitek. IMC knows without question that Frigitek has never paid IMC the \$292,256.00 due and owing IMC for Pay Application No. 2. If Frigitek represented otherwise to PDA, Frigitek is committing fraud.

Frigitek's current refusal and failure to timely pay IMC Pay Application No. 2 as promised, even though it has received a reimbursement payment from PDA for IMC's Pay Application No. 2, constitutes not only a breach of contract, but also constitutes bad faith and fraud against IMC. If Frigitek does not pay IMC the \$292,256.00 for Pay Application No. 2 within five (5) days of the date of this letter, IMC has instructed this office to institute litigation to collect the past due, outstanding balance. Such litigation will include claims against Frigitek and KBCM for breach of contract, breach of good faith and fair dealing, bad faith and fraud. In addition to the direct damages it has suffered, IMC will seek punitive damages based on Frigitek's breach of good faith and fair dealing, bad faith and fraud.

The litigation will also include an action against Pocatello City and/or the Pocatello Development Authority, which parties received the benefit of IMC's work on the Airport Road.

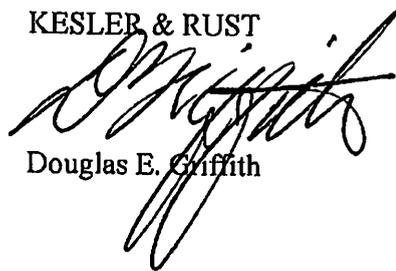
If IMC is required to institute litigation in order to collect on this contract, it will also pursue its claims against Frigitek for its accrued interest at the statutory rate of 12% per annum, court costs and attorney fees, in accordance with the terms and conditions of the contract Frigitek signed, as well as the punitive damages described above. These damages, costs, fees, and interest charges may be substantial.

FRIGITEK INDUSTRIAL PARKS, INC.
KBCM GROUP, LLC
March 29, 2021
Page 3

Clearly, it is in your best interest to resolve this account as quickly as possible and avoid the additional expense of litigation. Please govern yourselves accordingly.

Sincerely,

KESLER & RUST

A handwritten signature in black ink, appearing to read "Douglas E. Griffith", is written over the printed name below.

Douglas E. Griffith

Enclosure

cc: Pocatello City
Pocatello Development Authority
Idaho Materials & Construction -- Pocatello

| CBR | DBR | Run | Batch | Src Batch | Sequence | App | C/D | Serial | EPC | Transit | Account | Trancode |
|------------|-----|-----|------------|-----------|----------|-----|-----|--------|-----|-----------|-----------|----------|
| 0 | 0 | 11 | 15 | 0 | 28920 | 11 | D | 001381 | | 324173626 | 717758615 | 0 |
| Amount | | Pkt | Date | | | | | | | | | |
| 570,442.68 | | 11 | 03/10/2021 | | | | | | | | | |

03/04/2021

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

570092632001
[074909962] 03/04/2021

| | | | |
|---|--|---|------------------|
| POCATELLO DEVELOPMENT AUTHORITY PO BOX 4169 POCATELLO, ID 83206-4169 208-234-6218 | | IDAHO CENTRAL CREDIT UNION 52-3820011 | 1381 3/2/2021 |
| PAY TO THE ORDER OF <u>Frigitek Industrial Parks, Inc.</u> | | \$ **570,442.68 | |
| Five Hundred Seventy Thousand Four Hundred Forty-Two and 68/100 ***** DOLLARS | | | |
| Frigitek Industrial Parks | |  AUTHORIZED SIGNATURE | |
| MEMO | | | |

JPMorganChaseBank 030901 349249 963820023703

* 000000
 CREDITED TO ACCOUNT OF
 MIDDIN NAMED BAYEE
 FOR DEPOSIT ONLY
 JPMorgan Chase Bank, N.A.

03/04/2021

Do not endorse or write below this line. ↓

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thanks,
Doug



Douglas E. Griffith
68 S. Main St., Ste. 200
Salt Lake City, Utah 84101
Tel: (801) 532-8000
Fax: (801) 531-7965
Email: dgriffith@keslerrust.com
www.keslerrust.com

From: Douglas E. Griffith <dgriffith@keslerrust.com>
Sent: Monday, March 29, 2021 10:40 AM
To: 'Ken Brown' <kb@lionchase.com>; 'Ken Blankenfeld' <kblankenfeld@kbcmgroupp.com>; 'Brian Blad' <mayor@pocatello.us>; 'Brent McLane' <bmlane@pocatello.us>; 'Merril Quayle' <mquayle@pocatello.us>
Cc: 'Wilkes, John (Idaho Materials)' <john.wilkes@idahomaterials.com>; 'Stinger, Nate (Idaho Materials)' <nate.stinger@idahomaterials.com>
Subject: RE: Balance Due Idaho Materials & Construction; Pocatello TIF Work Project;

Please review the attached letter.



Douglas E. Griffith
68 S. Main St., Ste. 200
Salt Lake City, Utah 84101
Tel: (801) 532-8000

Fax: (801) 531-7965

EXHIBIT “G”

EXHIBIT “G”

KESLER | RUST

Douglas E. Griffith
Attorney at Law
dgriffith@keslerrust.com

L A W O F F I C E S • E S T . 1 9 8 0

April 12, 2021

VIA U.S. MAIL & EMAIL: Ken Brown <kb@lionchase.com>

FRIGITEK INDUSTRIAL PARKS, INC.
6565 N. MacArthur Blvd., Suite 225
Dallas, TX 75039

Attn: KEN BROWN

KBCM GROUP, LLC
c/o kblankenfeld@kbcmgroup.com

Attn: KEN BLANKENFELD

Re: *Unpaid Balance Due on Pay Request #3;
Idaho Materials & Construction -- Pocatello;
Pocatello TIF Work Project;
TIF Improvements to Sewer, Water and Streets;*

Dear Mr. Brown and Mr. Blankenfeld:

As you know, this office represents Staker Parson Materials & Construction, doing business as Idaho Materials & Construction -- Pocatello ("IMC"). IMC, as the general contractor, has completed all of its contracted work for Frigitek Industrial Parks, Inc. ("Frigitek") on the project known as Pocatello TIF Work, TIF Improvements to Sewer, Water and Streets ("the Project").

In response to demand letters from this office, Frigitek recently paid IMC Pay Application No. 2 in full. Upon such receipt, IMC signed and returned to KBCm the Unconditional Lien Waiver for Pay Application No. 2 on April 8, 2021. A copy of said Waiver and the email sending it to KBCm are enclosed herewith.

As I have stated in prior letters to you, the contract between IMC and Frigitek states that the Project is managed by KBCm Group, LLC, ("KBCm"), the construction manager who represented and acted on behalf of Frigitek on the Project. According to contract, KBCm will review and approves all pay applications submitted by IMC for payment. Article 5 Payments section of the contract then states that Frigitek is obligated and required to pay Staker Parson progress payments for each approved pay application by not later than the 30th day of the month following the approval of each pay application by KBCm.

MCINTYRE BUILDING • 68 SOUTH MAIN STREET, STE 200 • SALT LAKE CITY, UTAH 84101
TELEPHONE: 801 .532 .8000 • TELEFAX: 801 .531 .7965

www.keslerrust.com

FRIGITEK INDUSTRIAL PARKS, INC.
KBCM GROUP, LLC
April 12, 2021
Page 2

Pay Application No. 3 for \$560,172.00 was approved by KBCM for payment on February 16, 2021. Consequently, on March 30, 2021, Frigitek owed IMC the amount of Pay Application No. 3, which is \$560,172.00. As of the date of this letter, IMC had not received the payment of Pay Application No. 3. Therefore, Frigitek is currently in default of the contract with IMC for the payment of Pay Application No. 3 in the principal amount of \$560,172.00. Under Idaho law, statutory interest of this past due balance accrues at 12% per annum, as well as incurred attorney fees in accordance with the contract.

IMC has been extremely patient and cooperative in working with you and KBCM on this matter. However, IMC is no longer willing to carry the delinquent balance on this contract. Therefore, you are hereby required to contact the undersigned within seven (7) days of the date of this letter to make arrangements to pay off the past due principal balance of \$560,172.00 in full.

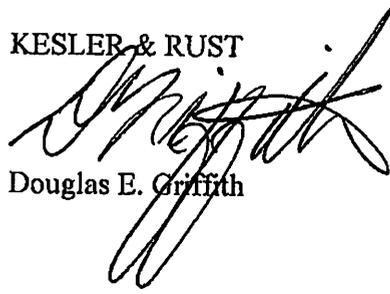
It should be clearly understood that this letter constitutes a demand for payment. If you fail to contact the undersigned and pay the above-referenced balance as demanded, IMC has instructed this office to institute litigation against Frigitek, based on the executed contract. The litigation will also include an action against Pocatello City and/or the Pocatello Development Authority, which parties received the benefit of IMC's work on the Airport Road.

If IMC is required to institute litigation in order to collect on this contract, it will also pursue its claims against Frigitek for its accrued interest at the statutory rate of 12% pr annum, court costs and attorney fees, in accordance with the terms and conditions of the contract Frigitek signed. These costs, fees and interest charges may be substantial.

Clearly, it is in your best interest to resolve this account as quickly as possible and avoid the additional expense of litigation. Please govern yourself accordingly.

Sincerely,

KESLER & RUST


Douglas E. Griffith

Enclosure

cc: Pocatello City
Pocatello Development Authority
Idaho Materials & Construction -- Pocatello

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: IDAHO MATERIALS AND CONSTRUCTION

Name of Customer: FRIGITEK INDUSTRIAL PARKS

Job Location: 1950 AIRPORT WAY, POCATELLO, ID 83204

Owner: FRIGITEK INDUSTRIAL PARKS

Through Date: 10/31/2020

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ 292,255.39

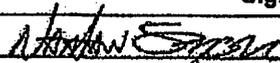
Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature:



Claimant's Title: IMC PROJECT MANAGER

Date of Signature: 04/08/2021

[REDACTED]



KESLER | RUST

LAW OFFICES • EST. 1988

Douglas E. Griffith

68 S. Main St., Ste. 200
Salt Lake City, Utah 84101
Tel: (801) 532-8000
Fax: (801) 531-7965
Email: dgriffith@keslerrust.com
www.keslerrust.com

From: Douglas E. Griffith <dgriffith@keslerrust.com>

Sent: Monday, April 12, 2021 11:55 AM

To: 'Ken Brown' <kb@lionchase.com>; 'Ken Blankenfeld' <kblankenfeld@kbcgroup.com>; 'Brian Blad' <mayor@pocatello.us>; 'Brent McLane' <bmclane@pocatello.us>; 'Merril Quayle' <mquayle@pocatello.us>

Cc: 'Wilkes, John (Idaho Materials)' <john.wilkes@idahomaterials.com>; 'Stinger, Nate (Idaho Materials)' <nate.stinger@idahomaterials.com>

Subject: RE: Firigitek's Unpaid Balance Due Idaho Materials & Construction; Pocatello TIF Work Project;

Please review the attached letter.

KESLER | RUST

LAW OFFICES • EST. 1988

Douglas E. Griffith

68 S. Main St., Ste. 200
Salt Lake City, Utah 84101
Tel: (801) 532-8000
Fax: (801) 531-7965