

Patrick J. Davis, Esq. (ISB No. 9270)
BEARD ST. CLAIR GAFFNEY PA
1832 Wayfarer Street
Suite A
Pocatello, Idaho 83202
Telephone: (208) 356-5493
Facsimile: (208) 232-5962
Email: pdavis@beardstclair.com

DISTRICT COURT SIXTH JUDICIAL DISCTRICT
BANNOCK COUNTY, IDAHO

HAROLD L. RUPP SR. TRUST, an Idaho
trust ; and VEDA J. RUPP REVOCABLE
LIVING TRUST; an Idaho trust

Plaintiffs,

vs.

CITY OF POCA TELLO, an Idaho
municipality; MILLENNIAL
DEVELOPMENT PARTNERS, LLC, a
Utah limited liability company;
PORTNEUF DEVELOPMENT, LLC, an
Idaho limited liability company; BRIAN
BLAD in both his official and individual
capacities; KEN PAPE, individually;
ARVIL B. SWANEY, individually; and
JOHN OR JANE DOES 1-10,

Defendants.

Case No.: CV03-22-00398

**DECLARATION OF ARVIL “BUCK”
SWANEY**

-
1. I certify under penalty of perjury pursuant to the law of the State of Idaho that the following is true and correct.
 2. I am over 18 years of age and competent to testify to all matters stated in this declaration, and if called up on to testify would do so truthfully.

3. I am not under any testimonial disability.

4. I am the managing member of Millennial Development Partners, LLC (“MDP”) and have always been the primary point of contact on behalf of MDP regarding its interests and endeavors in Bannock County, Idaho.

5. I have been in the business of development of real property into commercial and residential developments for approximately 26 years.

6. Attached hereto as Exhibits A, B, C, D, and E are true and accurate copies of correspondence between my counsel, Lavelle Rupp, and Lavelle Rupp’s former counsel that I personally reviewed and approved at the time, in the case of my counsel, and reviewed and analyzed at the time of receipt, in the case of Mr. Rupp and his former counsel.

7. At no point after reaching agreement with Plaintiffs did I ever commit on MDP’s behalf to construct or have responsibility for the construction of such intersection(s), and there is no provision with similar responsibilities toward MDP therefor in the Right of Way Agreement wherein MDP purchased real property from Plaintiffs that eventually became Northgate Parkway, east of Interstate 15.

8. Plaintiffs set forth three maps at the end of Exhibit A to the October 10, 2025 Declaration of Harold Lavelle Rupp Jr. (“Rupp Decl.”) Both are also labeled as “Exhibit A.” The second map labeled “Exhibit A” to the is not part of the ROWA.

9. Rather, that second map labeled “Exhibit A” was part of earlier drafts and iterations of the ROWA that were created pursuant to the negotiation process that occurred between MDP and Plaintiffs, thus Paragraph 4 of the “Statement of Facts” contained in the memorandum of points and authorities in support of Plaintiffs’ Cross Motion for Partial Summary Judgment (the “Motion”) is a misrepresentation and untrue.

10. The addendum referenced in Paragraph 6 of the Motion was eventually created and provided to Plaintiffs for signature, but they never signed and returned it, and it lapsed by its own

terms on March 17, 2018. A true and correct copy of that addendum is attached hereto as “Exhibit D”.

11. The conversation referenced by Don Zebe in his deposition that is quoted by Plaintiffs in paragraph 19 of the Statement of Facts of the Motion is false. This conversation never occurred.

12. Section 15(a) of the ROWA contemplates installation of stubs at and east of the intersection of Northgate Parkway and Olympus Drive. There is no infrastructure east of that intersection as of yet. Once the infrastructure is constructed MDP will comply with its obligations to install sewer and water stubs as agreed in the ROWA.

13. The purpose of the parcels of real property ten feet in width on either side of the Northgate Parkway that Plaintiffs continuously refer to as “control strips” is to facilitate the convenient expansion of Northgate Parkway at a future date should the need for an additional lane or other Public Utility Easement (PUE) expansion on either side become necessary.

14. Plaintiffs claim they have bona fide offers to purchase their real property. To date, MDP has never been contacted by any individual or company regarding availability of or potential agreements for access, including costs they may need to account in their analysis for development purposes, as is customary in real property development.

15. MDP’s commitments to Plaintiffs are limited to providing water and sewer stubs from the intersection of Northgate Parkway eastward. MDP’s commitments do not extend and are not connected to provision of any intersection anywhere beyond accommodation of a design that as of this date is still theoretical in nature.

16. Water and sewer stubs have no essential or necessary relationship to the presence or location of intersections, are commonly placed in locations other than intersections, and as such do not infer the intent or requirement for an intersection.

17. MDP has never taken any steps or actions to prevent construction of any intersection by Plaintiffs or their agents. MDP has never been presented with any intersection

traffic modeling, plans, engineering, drawing, design, or permits. MDP is not aware that any such information has been presented or delivered to the City of Pocatello or Portneuf Development for their participation, consent, or approval.

18. MDP has never been approached with an offer to purchase access or easements across its real property or any other similar proposal to accomplish the design of crossing MDP's ten-foot parcels for ingress and egress beyond agricultural purposes.

19. No intersections other than the one designed near the interchange, which was designed as a matter of agreement and contract compliance, are implied in the true ROWA Exhibit A.

20. No intersectional rights of way exist in the ROWA in connection with the water and sewer stubs, which have not been installed to date because there is no infrastructure east of the roundabout almost solely due to this litigation.

21. Water and sewer need to be provided at many points along any given Right of Way or roadway, a fact which illustrates that such infrastructure bears no essential connection to the location of intersections. Such stubs exist at each individual home in a development, which, it should go without saying, do not all include their own intersection.

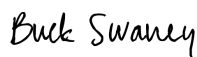
22. MDP did deliver roadway designs that consider the convenient future construction by a third party of an intersection at the location set forth in the ROWA (1,400' from the interchange), but MDP has never been presented with any agreement between Plaintiffs and the other named parties for the design, construction, or development of such.

23. The ROWA was not intended to imply anything. It states exactly what MDP agreed upon, and it omits nothing that was agreed upon.

24. Neither MDP nor myself personally entered into any agreement with any other person to deprive Plaintiffs of anything, nor would I ever be a part of such an agreement. MDP offered the access Plaintiffs are seeking many times and each time Plaintiffs either explicitly refused the offer or allowed it to lapse by its own terms without providing any response.

25. I know the foregoing facts to be true and accurate of my own personal knowledge, and as to those asserted on the basis of information and belief, I believe them to be true.

DATED Monday, October 27, 2025.

DocuSigned by:

80E34BFA94E045F...
Arvil "Buck" Swaney

CERTIFICATE OF SERVICE

I hereby certify that on Monday, October 27, 2025, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Nathan M. Olsen
Steven L. Taggart
OLSEN TAGGART PLLC
P.O. Box 3005
Idaho Falls, ID 83403
Telephone: (208) 552-6442
nolsen@olsentaggart.com
staggart@olsentaggart.com

- ☐ U.S. Mail – Plaintiff’s
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Electronic Mail (e-mail)
- ☒ E-filing

John M. Avondet, Esq.
Jared W. Allen, Esq.
BEARD ST. CLAIR GAFFNEY PA
955 Pier View Drive
Idaho Falls, ID 83402
Telephone: (208) 523-5171
javondet@beardstclair.com
allen@beardstclair.com

- ☐ U.S. Mail – Plaintiff’s
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Electronic Mail (e-mail)
- ☒ E-filing

Blake G. Hall, Esq.
Sam L. Angell, Esq.
Cory R. Steglemeier, Esq.
HALL ANGELL & ASSOCIATES, LLP
1075 s. Utah Avenue, Ste. 150
Idaho Falls, ID 83402
Telephone: (208) 522-3003
bhg@hasattorneys.com
sla@hasattorneys.com

- ☐ U.S. Mail – Plaintiff’s
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Electronic Mail (e-mail)
- ☒ E-filing

Patrick J. Davis
MERRILL & MERRILL, CHTD.

1.

EXHIBIT A

March 15, 2018

Lavelle Rupp
P.O. Box 5307
Chubbuck, Idaho 83202
208-241-3777

Mr. Buck Swaney
1685 E. Haven Brook Cir.
Salt Lake City, Utah 84121

RE: Purchase and Sales Agreement

Dear Buck;

I have received your Addendum No. 2 to the Purchase and Sales Agreement for the East ROW.

There are still some Contingencies noted in the original Sales and Purchase agreement that still have to be satisfied by the Seller before any other land will be sold.

- 1). According to Section 10, CONTINGENCIES TO CLOSING, Part a). Purchase of Development Properties; You need to provide to the Rupp family, proof of fully executed Real Estate Purchase and Sale Agreements from both the Mountain View Farms and the Hart Families with the dependant properties.
- 2). Part d). Development Funding; You need to show proof to the Rupp Family that you have secured third-party financing or funding to construct the MPC.
- 3). Part e). Additional Contracts; There needs to be a signed agreement that shows that there will be a sewer line installed parallel to Interstate 15 under the new Interchange connecting road to Olympus. This is also noted in Section 15 Paragraph b.

As soon as the Rupp's have these items met to our satisfaction, we will then continue with a sale and closing of the additional ROW.

Sincerely,

Lavelle Rupp - Trustee
Harold L Rupp Sr. Trust
Veda J. Rupp Trust

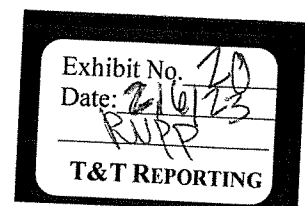


EXHIBIT B

May 01, 2018

Lavelle Rupp
P.O. Box 5307
Chubbuck, Idaho 83202
208-241-3777

Mr. Arvil "Buck" Swaney
1685 E. Haven Brook Cir.
Salt Lake City, Utah 84121
Email: buckswaney@gmail.com

Re: Right Of Way Purchase and Sales Agreement

Dear Buck;

This letter is to inform that as of the above date we have received no satisfactory response resolving the concerns set forth in our March 15, 2018, letter. For this reason, pursuant to Section 16., b., of the original Right Of Way Purchase and Sale Agreement, the Rupp Family has decided that the sale of any more of our land is not in the best interests of our family. Therefore: The Rupp Family, at the present time, will no longer entertain any offers for purchase or sale of any of our land.

Pursuant to the above, any and all previous agreements or contracts for the sale or purchase of any of the Rupp property shall be considered null and void by the Rupp Family.

Sincerely,

H. Lavelle Rupp Jr. - Trustee
Email: levelrupp@aol.com

cc: Christine R. Petersen - Trustee
Email: grannychristine@msn.com

cc: Lane V. Erickson, Esq
Email: lve@racinelaw.net

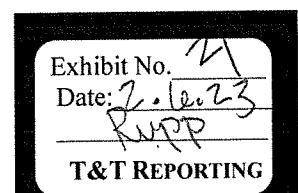
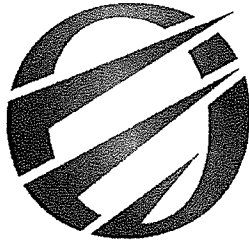


EXHIBIT C



ECHO HAWK
& OLSEN

MARK A. ECHO HAWK
ERIC L. OLSEN
JOSEPH T. PRESTON
PATRICK J. DAVIS
ATTORNEYS

505 PERSHING AVE., STE. 100
PO BOX 6119
POCATELLO, ID 83205-6119
208.478.1624
208.478-1670 FAX
WWW.ECHOHAWK.COM

May 4, 2018

Lavelle Rupp
P.O. Box
Chubbuck, Idaho 83202

Re: Cancellation of Right of Way Purchase Agreement

To whom it may concern:

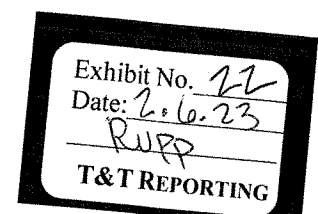
This office represents Millennial Development Partners, LLC ("Buyer") in relation to the Right-of-Way Purchase and Sale Agreement ("Agreement") dated April 6, 2017 and signed by Veda J. Rupp and Christine R. Petersen in their respective capacities as trustees for Veda J Rupp Revocable Living Trust and Harold L Rupp SR Trust (collectively "Seller").

We are in receipt of a letter from one Lavelle Rupp of March 15, 2018 requesting further assurances of performance under Section 10, parts a), d), and e) of the Agreement. We are also in receipt of an additional letter, also from Lavelle Rupp of May 1, 2018 letter cancelling the Agreement for an alleged failure to respond appropriately to your March 15 letter.

In the first instance, Mr. Rupp is not the signatory under the Agreement, and we have not been advised by either trustee that Mr. Rupp has authority to act on behalf of either trust.

Secondly, Mr. Rupp's interpretation of Section 10 is wrong. Section 10, regarding contingencies to closing, which both trustees initialed as having read, states very clearly by way of preface that specific outside transactions needed to occur "to Buyer's satisfaction," otherwise, "Buyer or Seller may terminate this Agreement at Buyer's sole discretion." In other words, it is Buyer, and only Buyer, who has the discretion to determine whether those transactions have occurred satisfactorily. In no case may Seller exercise discretion to terminate the agreement, except as allowed by Buyer. Buyer does not allow Seller to terminate and will not excuse Seller from performance under the Agreement.

Seller's letter of May 1, 2018 constitutes DEFAULT under the Agreement. Seller is hereby given notice that if Seller does not give further assurances of performance within 5 business days of this notice, Buyer will bring an action for specific performance, and seek damages against Seller.



Letter to Rupp Trusts

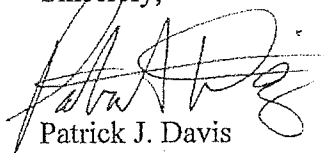
May 4, 2018

Page 2

Additionally, Section 34 of the Agreement provides that time is of the essence. Should Seller's non-performance cause Buyer to fail to perform in its obligation to other parties, Buyer will seek indemnification from Seller.

Additionally, the Agreement provides, in Section 19 that the unsuccessful party in a dispute would be responsible for the successful party's attorney's fees, which Seller has now wrongfully caused Buyer to incur. Should you have any questions or concerns, please contact our office at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick J. Davis', is written over a horizontal line.

Patrick J. Davis

cc: client

H:\WDOX\CLIENTS\1337\0001\00058368.DOCX

EXHIBIT D



**ECHO HAWK
& OLSEN**

MARK A. ECHO HAWK
ERIC L. OLSEN
JOSEPH T. PRESTON
PATRICK J. DAVIS
ATTORNEYS

505 PERSHING AVE., STE. 100
PO BOX 6119
POCATELLO, ID 83205-6119
208.478.1624
208.478-1670 FAX
WWW.ECHOHAWK.COM

May 30, 2018

Lane V. Erickson, Esq.
Racine Olson
201 E. Center Street
Pocatello, ID 83202

Sent Via Email: lve@racinelaw.net

Re: Rupp Family Trust - April 6, 2017 Right of Way Purchase and Sale Agreement

Mr. Erickson:

We are in receipt of your letter of May 22, 2018. I will respond point by point in the order in which you raise each issue in your letter, respectively.

1. Addendum No. 1

As to Addendum No. 1, your letter states that this Addendum alters the original agreement. That is true, but Addendum No. 1 explicitly stated that "All other terms of the CONTRACT ... not modified by this ADDENDUM remain the same." The two items from the Agreement altered by Addendum No. 1 were Section 9.a.i, regarding the first two closing dates (an action taken in part to accommodate Seller's assertion of tax purposes), and Section 6, regarding payment of purchase price and specifically which lands would be purchased on the two new closing dates. The Agreement was not altered in any other way. Both of those closings have come and gone. The money has changed hands. Addendum No. 1 has been performed (See Exhibit 1).

2. Addendum No. 2

Addendum No. 2, for all intents and purposes, no longer exists. Addendum No. 2 was an offer from Buyer that expired by its own terms at 5:00 p.m. on March 17, 2018 (See Exhibit 2).

3. Legal Description of the East Parcel

In the first instance, Section 3 of the Agreement was not modified in any way by Addendum No. 1, and that entire Section remains fully in force. Secondly, the parcel in question was surveyed with exact metes and bounds described on September 13, 2017 (See Exhibit 3). That legal description, with the official stamp of Gerald V. Evans is attached hereto for your review, as well as a survey map. This survey and its associated materials were delivered to Seller, and acknowledged and approved by Seller, prior to the first closing transaction, on the date of 9/22/2017. These materials were supplied to your client again as a reminder on March 15, 2018 via email. A copy of that email is also provided for your review (See Exhibit 4).

Lane Erickson, Esq.
May 30, 2018
Page 2

Finally, that portion of the "East Parcel," described in your letter is very clearly included within that legal description.

4. Connection Points

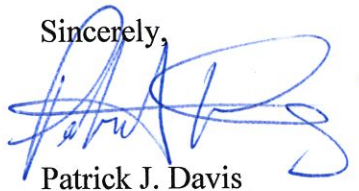
As Addendum No. 2 has expired, there is no need to address this particular issue. However, in order to facilitate a timely resolution of the present conflict, in exchange for removing all discussion of sewer and water from the current and enforceable Agreement, Buyer is willing to amend the Agreement to commit to provide a total of three access points along Buyer's future Northgate Parkway frontage. The first of these will be placed approximately 1400' east of the Interchange, as already designed and approved in the Olympus/Northgate road engineering documents. The remaining two access points will be provided as a *material condition subsequent*, and the placement of these two access points will be determined in good faith by Buyer (who has the relevant expertise in city planning to place them consistent with good traffic design). This modification would replace the expired Addendum No. 2, as an addendum to the Agreement. Otherwise, Buyer expects Seller to perform immediately.

5. Conclusion

At this point, Buyer's position is that Seller is engaging in bad faith delay. Everything that has been set forth in your letter of May 22, 2018 has been known to Seller for some time. There is simply no reason not to close on the remaining portion of the Agreement. This same letter raised issues not previously raised as justifications for not closing on this transaction, and they were not valid reasons as Addendum No. 1 has been performed, Addendum No. 2 has expired, and the land has been surveyed and legally described.

As to the initial issue of Section 10(e) not being completed, in the first instance, Buyer is satisfied with the current status of that portion of the Agreement, which is sufficient to trigger Seller's duty to perform. However, Buyer has obtained from both the City of Pocatello and City of Chubbuck "will serve" letters, indicating that each has the capacity and willingness to provide sewer and water to Seller's property (See Exhibit 5). Each is attached for your review. This letter constitutes a final demand to provide a final closing date, to occur on or before June 5, 2018. Should Seller fail to do so, Buyer will be left with no option other than to file suit, seek specific performance, and all legal fees incurred to date.

Sincerely,



Patrick J. Davis

PJD/jj
Enclosures
cc: client

EXHIBIT 1

**ADDENDUM NO. 1
TO
PURCHASE AND SALE AGREEMENT**

THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that RIGHT-OF-WAY PURCHASE AND SALE AGREEMENT CONTRACT (the "CONTRACT") with an Offer Reference Date of April 6, 2017, including all prior addenda and counteroffers, between MILLENNIAL DEVELOPMENT PARTNERS, LLC as Buyer, and the HAROLD L RUPP SR TRUST and VEDA J RUPP REVOCABLE LIVING TRUST as Seller, regarding 30-40 acres of property located in Bannock County Idaho. The following terms are hereby incorporated as part of the CONTRACT:

1. Section 9.a.i. of the CONTRACT is amended to provide for a "First Closing Date" of no later than Saturday, September 30, 2017, if interchange approval and essential requirements have been met by August 14; and a "Second Closing Date" of no earlier than January 18, 2018. The First Closing Date shall address purchase of the lands west of the Olympus Extension, and the Second Closing Date shall address purchase of the lands east of the Olympus Extension, as outlined in item 2 below.

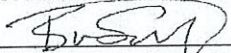
2. Purchase price of the property shall remain as outlined in Section 5 of the CONTRACT. Payment of the Purchase Price as outlined in Section 6 of the Contract is adjusted as follows:

a. All lands from the connection of the Olympus Extension westward to the future interchange, including all lands in the West Parcel and a portion of the lands in the Middle Parcel, shall be purchased on the First Closing Date.

b. All lands from the connection of the Olympus Extension eastward, including a portion of lands in the Middle Parcel and all lands in the East Parcel, shall be purchased on the Second Closing Date.

BUYER AND SELLER AGREE THAT THE DEADLINES REFERENCED IN SECTION 10 OF THE CONTRACT ARE CHANGED AS DESCRIBED IN ITEMS 1 AND 2 ABOVE.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the CONTRACT, including all prior addenda and counteroffers, these terms shall control. All other terms of the CONTRACT, including all prior addenda and counteroffers, not modified by this ADDENDUM remain the same. Buyer shall have until 5 ☐ AM ☒ PM Mountain Time on JULY 25, 2017 (Date), to accept the terms of this ADDENDUM. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

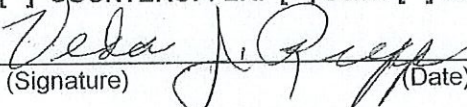
 7/20/2017 10:31 AM
[x] Buyer [] Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ **ACCEPTANCE:** ☒ Seller [] Buyer hereby accepts the terms of this ADDENDUM.

☐ **COUNTEROFFER:** [] Seller [] Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.

 7/24/17 7 PM
(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** [] Seller [] Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

EXHIBIT 2

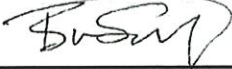
**ADDENDUM NO. 2
TO
PURCHASE AND SALE AGREEMENT**

THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that RIGHT-OF-WAY PURCHASE AND SALE AGREEMENT CONTRACT (the "CONTRACT") with an Offer Reference Date of April 6, 2017, including all prior addenda and counteroffers, between MILLENNIAL DEVELOPMENT PARTNERS, LLC as Buyer, and the HAROLD L RUPP SR TRUST and VEDA J RUPP REVOCABLE LIVING TRUST as Seller, regarding property located in Bannock County Idaho. The following terms are hereby incorporated as part of the CONTRACT:

1. Section 9.a.i. of the CONTRACT is amended to provide for a "Final Closing Date" of March 23, 2018. The Final Closing Date shall address purchase of the lands east of the Olympus Extension (the "East Parcel"), as outlined in Exhibit 1 attached. Purchase price of the property shall remain as outlined in Section 5 of the CONTRACT and as previously agreed. This East Parcel consists of: 14.77 ac., to be sold at an average price of \$12,778/ac, for a total of \$188,731.
2. Buyer shall provide property access stubs to the Rupp property along the eastern extension of Northgate Parkway as described in the original contract. These will be located at approximately the east section line, and then midway between that location and the roundabout. Seller specifies and herewith agrees that the water and sewer stubs specified in Section 15.a of the CONTRACT are no longer required, and this requirement of the CONTRACT is removed.

BUYER AND SELLER AGREE TO ITEMS 1 AND 2 ABOVE.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the CONTRACT, including all prior addenda and counteroffers, these terms shall control. All other terms of the CONTRACT, including all prior addenda and counteroffers, not modified by this ADDENDUM remain the same. **Buyer** shall have until 5 ☐ AM ☒ PM Mountain Time on MARCH 17, 2018 (Date), to accept the terms of this ADDENDUM. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.



3/15/2018 10:31 AM

☒ Buyer ☐ Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ **ACCEPTANCE:** ☐ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM.

☐ **COUNTEROFFER:** ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.

(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

EXHIBIT 3

Roadway Description thru
Rupp Property East Portion

A parcel of land located in the Northeast 1/4 of Section 1, Township 6 South, Range 34 East, Boise Meridian, and also located in Government Lot 5, Township 6 South, Range 35 East, Boise Meridian being a portion of the land described in deed instrument 21514114, of the records of Bannock County, Idaho, more particularly described as follows:

Beginning at the Center 1/4 corner of Section 1, being marked by a 2 1/2" aluminum cap stamped PLS-10786, and recorded under Corner Perpetuation and Filing Record, instrument 21617873 of the records of Bannock County, Idaho, from which the South 1/4 corner of said Section 1 bears South 00°14'04" East, 2650.48 feet, **THE TRUE POINT OF BEGINNING;**

Thence North 00°14'04" West along the Meridional centerline of Section 1, a distance of 150.00 feet;

Thence South 89°54'40" East, parallel with and a 150.00 feet north of the latitudinal centerline of said Section 1, a distance of 2624.50 feet, to a point on the East line of said Section 1;

Thence continuing South 89°54'40" East a distance of 643.19 feet to a point of tangency of a 1000.00 foot radius curve, whose center bears North 0°05'20" East;

Thence Northeasterly along said curve, thru a central angle of 28°06'07", and an arc distance of 489.75 feet, to a point of non-tangency, said point being on the East line of Government Lot 5, Section 6, Township 6 south Range 35 East, Boise Meridian;

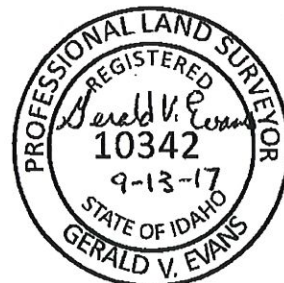
Thence South 00°01'08" West, along the East line of said Government Lot 5, a distance of 326.59 feet, to the Southeast corner of Government Lot 5;

Thence North 89°47'38" West, along the south line of Government Lot 5, a distance of 1114.34 feet, to the West 1/4 corner of Section 6, Township 6 South, Range 35 East, Boise Meridian, said point being marked with a 2" dia. Aluminum Cap stamped RMES, PELS-2341, and recorded under Corner Perpetuation and Filing Record instrument 21707718;

Thence North 00°10'45" East, along the West line of Section 6, a distance of 56.76 feet, to the East 1/4 corner of Section 1, said point being marked by a 2" dia. Aluminum Cap, stamped City of Pocatello horizontal control, and recorded under Corner Perpetuation and Filing Record, instrument 94013315;

Thence North 89°54'40" West, along the Latitudinal centerline of Section 1, a distance of 2623.41 feet, to **THE TRUE POINT OF BEGINNING.**

COMPRISING 14.77 acres more or less



THE NORTHGATE INTERCHANGE

NW CORNER OF SECTION 1.
NOTHING FOUND OR SET.
COMPUTED POSITION PER
CP & F INST. NO. 20616614

CURVE TABLE						
NUMBER	DELTA ANGLE	CHORD DIRECTION	TANGENT	RADIUS	ARC LENGTH	CHORD LENGTH
C1	48°40'36"	N 54°39'24" W	226.16'	500.00'	424.78'	412.12'
C2	35°53'28"	N 12°22'22" W	323.87'	1000.00'	626.42'	616.23'
C3	72°20'22"	N 41°44'33" E	255.88'	350.00'	441.90'	413.13'
C4	23°05'34"	N 89°27'31" E	71.50'	350.00'	141.06'	140.11'



FILE LOCATION: R:\17\MILLENNIAL DEVELOPMENT PARTNERS\ROW RECORD OF SURVEY - 17060\SURVCAD

EXHIBIT 4



Buck Swaney <buckswaney@gmail.com>

Addendum and final closing details

1 message

Buck Swaney <buckswaney@gmail.com>

Thu, Mar 15, 2018 at 3:11 AM

To: Lavelle Rupp <levelrupp@aol.com>

Lavelle,

Okay, now that we have the IC parcel wrapped, this is the last one. This addendum adds the final closing date, and the requirement to place access stubs at the intervals you requested. I'm sending it in word version so that you can make any changes you need to. If you need to make some adjustments, please let me know. Otherwise, if this meets our discussed intent, you can sign it and we will close next week or on a date you otherwise specify.

Thanks for everything. It is going to be fun watching things take shape this summer.

Buck

 **rupp_addendum.docx**
21K

EXHIBIT 5



Planning & Development Department

PO Box 5604 – 5160 Yellowstone Avenue, Chubbuck, ID 83202

208.237.2430 – Fax 208.237.2409

www.CityofChubbuck.us

May 22, 2018

To Whom It May Concern:

As previously indicated in the *Agreement Regarding Sewer to Service the Northgate Interchange*, dated Fall 2017, the City of Chubbuck, through current and future sewer infrastructure phases, has or will have sufficient transmission capacity to provide sewer service to lands east of I-15, up to 5,000 equivalent dwelling units. This ability to provide connection(s) and capacity into the system may be contingent upon conditions including, but not limited to: annexation, development agreements, developers' ability to fund and construct necessary improvements, and connection and utility fees.

Sincerely,

A handwritten signature in black ink, appearing to read "Devin Hiram", written over a horizontal line.

Devin Hiram, Planning & Development Director

Cc:

Mayor Kevin England

Public Works Director Rodney Burch



OFFICE OF THE MAYOR

911 North 7th Avenue
P.O. Box 4169
Pocatello, Idaho 83205

Office: (208) 234-6163
Fax: (208) 234-6297
www.pocatello.us

BRIAN C. BLAD
Mayor

Pocatello City Council:

HEIDI ADAMSON
ROGER BRAY
RICK CHEATUM
W. JAMES JOHNSTON
LINDA LEEUWRIK
BEENA MANNAN

May 22, 2018

To Whom It May Concern:

This letter is to acknowledge that the City of Pocatello will allow the Rupp property developers to connect to City water and sewer after the property is annexed into the City of Pocatello.

For more information, please call my office at 208.234.6163 or Public Works Director Jeff Mansfield at 208.234.6225.

Sincerely,

Brian C. Blad
Mayor

EXHIBIT E



Patrick Davis <pdavis@beardstclair.com>

Fwd: 1657.0004 Actual Damages currently being sustained

1 message

Buck Swaney <buckswaney@gmail.com>
To: Patrick Davis <pdavis@mmlawid.com>

Sun, Mar 5, 2023 at 10:07 PM

Begin forwarded message:

From: Lane Erickson <lve@racinelaw.net>
Date: June 4, 2018 at 4:41:10 PM MDT
To: Patrick Davis <patrick@echohawk.com>
Cc: Buck Swaney <buckswaney@gmail.com>, "Eric L. Olsen" <elo@echohawk.com>, Diana Meyers <diana@echohawk.com>, Jaycie J <jaycie@echohawk.com>
Subject: RE: 1657.0004 Actual Damages currently being sustained

Patrick,

The Rupps do not see a need to change anything else in the agreement. Thank you.

Lane V. Erickson

Partner



201 E. Center Street / P.O. Box 1391
Pocatello, Idaho 83204
(208)232-6101 - Phone
(208)232-6109 - Fax

www.racinelaw.net

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From: Patrick Davis <patrick@echohawk.com>

Sent: Friday, June 1, 2018 4:31 PM

To: Lane Erickson <ive@racinelaw.net>

Cc: Buck Swaney <buckswaney@gmail.com>; Eric L. Olsen <elo@echohawk.com>; Diana Meyers <diana@echohawk.com>; Jaycie J <jaycie@echohawk.com>

Subject: RE: 1657.0004 Actual Damages currently being sustained

Lane,

That is good news. Thank you for your assistance in this matter.

As a matter of clarification: does your client wish for us to reduce our offer contained in our May 30, 2018 letter (regarding removing all language regarding sewer and water, in exchange for installation of access stubs) to an addendum to the agreement?

Kind regards,

Patrick J. Davis, Esq.



505 Pershing Ave., Suite 100, P.O. Box 6119

Pocatello, Idaho 83205-6119

Office: (208) 478-1624 / Fax: (208) 478-1670

Email: patrick@echohawk.com

Website: www.echohawk.com

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From: Lane Erickson <lve@racinelaw.net>
Sent: Friday, June 1, 2018 4:26 PM
To: Patrick Davis <patrick@echohawk.com>
Cc: Buck Swaney <buckswaney@gmail.com>; Eric L. Olsen <ELO@echohawk.com>; Diana Meyers <diana@echohawk.com>; Jaycie J <jaycie@echohawk.com>
Subject: RE: 1657.0004 Actual Damages currently being sustained

Patrick,

After review of the two letters that you provided on Wednesday, May 30th, together with all of the attached documents as we requested, the Rupps authorized me to agree to a closing on Tuesday, June 5th. The Rupps will be available that day any time from 2:00 pm or after. We understand that closing will take place at the title company as before.

Please confirm your receipt of this e-mail and let me know of any questions or concerns you have.

Lane V. Erickson

Partner

201 E. Center Street / P.O. Box 1391
Pocatello, Idaho 83204
(208)232-6101 - Phone
(208)232-6109 - Fax

www.racinelaw.net

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From: Patrick Davis <patrick@echohawk.com>

Sent: Friday, June 1, 2018 11:45 AM

To: Lane Erickson <ive@racinelaw.net>

Cc: Buck Swaney <buckswaney@gmail.com>; Eric L. Olsen <elo@echohawk.com>; Diana Meyers <diana@echohawk.com>; Jaycie J <jaycie@echohawk.com>

Subject: 1657.0004 Actual Damages currently being sustained

Lane,

I know we just sent our latest response out a couple of days ago, and that you are likely currently working on a response thereto with your client. This email is sent by way of notification. As of this morning, there is a downstream transaction that is currently being held up because of, and only because of, the fact that the final Right of Way closing has not occurred. The value of this transaction to my client is estimated to be far in excess of 1 million dollars. The monies that are to be received by my client pursuant to this downstream contract are vital to the continued viability of the project as a whole. Please respond to our most recent letter on this issue at your earliest convenience.

Kind regards,

Patrick J. Davis, Esq.

<image001.png>

505 Pershing Ave., Suite 100, P.O. Box 6119

Pocatello, Idaho 83205-6119

Office: (208) 478-1624 / Fax: (208) 478-1670

Email: patrick@echohawk.com

Website: www.echohawk.com

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