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September 17, 2021

Via Email

Ms. Konnie Kendall
Pocatello City Clerk
911 7th Avenue
Pocatello, ID 83201
kkendell@pocatello.us

RE: *NOTICE OF CLAIM AND REQUEST FOR REGULATORY TAKING
ANALYSIS*

Dear Clerk:

In accordance with I.C. § 6-906 et al., the Herold L. Rupp Sr. Trust and the Veda J. Rupp Revocable Living Trust (Rupp Family Trust) hereby provides the following "Notice of Claim" against the City of Pocatello, Idaho (City) including its Mayor, employees and agents for their wrongful acts as indicated herein with regard to property owned by the trust (Rupp Property) that abuts the newly constructed I-15 Northgate Parkway interchange. Claimants also hereby request a "written takings analysis" with regard to the City's actions affecting the Rupp Family Trust's property rights, in accordance with I.C. § 67- 8003.

The Claimants' address is as follows:

Harold L. Rupp Sr. Trust and the Veda J. Rupp Revocable Living Trust
P.O. Box 5307
Chubbuck, Idaho

All correspondence with regard to this matter should be directed to the Claimants' attorneys Olsen Taggart PLLC and the address above.

In summary, the City has knowingly and willingly engaged in a fraudulent and illegal scheme to deprive the Rupp Family Trust of much of the value of the Rupp Property. The City and its accomplices have conspired with developers including in particular a Utah company Millennial Development Partners, LLC (Millennial) to breach an agreement based upon the original design of the intersection that would allow for sufficient access to the Rupp Property essential for the property's development value. Such actions in furtherance of this illicit endeavor include misrepresentations made to the Idaho Department of Transportation, the City Council and P&Z, the tampering of and destruction of public documents, and violations of the City's code – all with the intent to deprive the Rupp Family Trust of its development rights. Moreover, such acts were willful and malicious, taken because the Rupp Family Trust would not submit to the City's and Mayor's extortive demands to compel the trust to annex the Rupp Property into the City of Pocatello and punitive measures taken against the trust and the Rupp family when the Rupp Property was annexed into the City of Chubbuck.

The potential damages suffered by the Rupp Family Trust resulting from the loss of value well exceed \$21,000,000. Additionally, the inability to develop this property – which sits next to the Interstate has curtailed development and growth throughout the area, thus adversely affecting the communities of Pocatello and Chubbuck.

I. Background

The Rupp Property consists of a 930-acre farm and water rights which had its origins when one of the first settlers of the area Henry Jensen and his family arrived in 1923. The farm has been passed down the family generations, now preserved in the Rupp Family Trust, which currently has six living original beneficiaries and 95 living contingent beneficiaries – most of whom reside in Eastern Idaho. As the Cities of Pocatello and Chubbuck have grown northward toward the property, and the decision was made by the ITD to construct the Northgate Parkway Interchange, the Rupp Family Trust planned to devote a portion of its legacy land, approximately 380 acres, toward commercial development along the interstate as well as to construct affordable housing. (See enclosed map). This would not only benefit the numerous trust beneficiaries, but also the community as a whole – both in terms of job creation and much needed affordable housing in the region allowing families to live and work in the area.

The Northgate project was dependent upon the construction of a new road from the I-15 off ramp, i.e. Northgate Parkway. During the planning and approval stages of the interchange which involved the ITD, City Engineer Merrill Quail, Millennial and the Rupp Family Trust, a road design was submitted by Millennial and approved by the ITD. This design dated March 5, 2018, (attached) included a sufficient access point from the road to the Rupp Property for commercial and residential development. (See also the enclosed ITD map). This access point was negotiated between the trust and Millennial as part of the 150-foot right-of-way width and approximately 30 acres purchased by Millennial necessary to complete the road. The parties agreed that part of the consideration paid for

the road would include the Rupp intersection, along with water and sewer stubs and sewer line at no cost to the trust. In fact, the purchase price paid by Millennial was substantially lower than fair market value, again in consideration of the promised Rupp Property access point.

In preparation for the anticipated development, the Rupp Family Trust explored their options for annexation of 380 acres of the Rupp Property for development. While the family was initially interested in annexing the property into Pocatello, after nearly a year of investigation and discussions with the City officials and mayor, it became clear to the trust that the more viable and economic choice was to annex the land into the City of Chubbuck. This was due to the fact that the City of Pocatello would not agree prior to the annexation that it would be able to provide a water and sewer system to the development, which would have required the trust to construct a sewer pump and lift station and complex transportation system at a cost of \$4 to \$5 million. Additionally, the City wanted the trust to provide to the City much of the trust's water rights, which would be used for *other* developments initially and thus depriving the Rupp farm and developments on the property of water for two years or more. Alternatively, the City of Chubbuck was in a position to provide a water and sewer system to the development at a cost of only \$300,000 to the trust. Thus, to fulfill its fiduciary obligations to its beneficiaries which includes sound financial management, the only real option that the Rupp Family Trust had was to annex the property into Chubbuck.

When learning about the Rupp Family Trust's application to annex the property into Chubbuck, Pocatello Mayor Brian Blad called Mayor England of Chubbuck and issued a threat that if Chubbuck annexed the Rupp Property that the City of Pocatello would discontinue sewer service to the City of Chubbuck. Such act would have been a blatantly illegal violation of the City's agreement with Chubbuck. After the Rupp Family Trust entered into an annexation agreement with the City of Chubbuck on December 19, 2018, Pocatello officials including in particular Mayor Blad and several prominent City employees both publicly and privately expressed their displeasure and hostility toward the Rupp family. The family was immediately cut out of all discussion and decisions with regard to the development in and around the Northgate Interchange area. On several occasions the Rupp family was told directly and indirectly that the Rupp Property including its water rights would become part of the City "whether they wanted to or not."

The Rupp family was perplexed when after construction of the road occurred, that the agreed upon access point was not built and in fact barriers were placed at the designed point of access. Repeated requests made to Millennial to explain and remedy these breaches were rebuffed and ignored. Instead, Millennial and its partners were working hand in glove with the City of Pocatello to serve their own interests – which included the City's intent to deprive the Rupp Family Trust of its development rights and effectively compel the trust to sell the Rupp Property to Millennial or its other related entities at a fraction of its value.

This fraudulent plot came to fruition when on March 5, 2020, the City Council annexed into the City the right of way that had been purchased by Millennial for the Northgate interchange. In a blatant act of deception to the Pocatello's P&Z and Council, City employees and Millennial agents did not disclose that the developer had only used 130' of the 150' width of the right-of-way purchased from the trust. (This was also a misrepresentation to the ITD and the trust who would have most certainly held onto this valuable property). As such, a ten feet wide strip on each side of the road was annexed into the City of Pocatello. The map marking the annexation presented to the City Council and the public *did not show* the ten-foot-wide strip. (See enclosed). This now meant that the City of Pocatello had, without any prior notice or disclosure, effectively taken control of and permanently restricted the Rupp Family Trust from developing its own commercial and residential access points. In doing so, the City violated its own code Section 16.20.050 which states that "the use of a 'control strip' intended to control or prevent the future extension of public facilities or development of land is prohibited."

The City has attempted to cover up its fraudulent acts by expunging its records of any indication or evidence of the designated Rupp Property access point. Records showing the initial designed project with the access point disappeared from the City's website. Such records were also not provided as part of the public records request made to the City. The enclosed design maps showing the Rupp Property intersection were not obtained from the City of Pocatello, but rather from the ITD. Additionally, the Rupp's have become aware of a number of meetings that have occurred with the Mayor, City officials and complicit developers which would certainly classify as a public meeting but for which no notice was given or record of what occurred in the meetings has been disclosed.

The damage to the Rupp Family Trust and its beneficiaries resulting from the City's actions have already been felt. The trust has already had to turn down multi-million dollar offers from potential commercial developers due to a lack of access – at a time when commercial and residential land value is at an all time high. The tangential effects of the City's actions have also caused economic harm to the area and its communities. Due to the City's willful and spiteful acts against the Rupp family, potential development along the prime real estate abutting the interstate has come to a standstill. Additionally, planned development further east of the freeway has come to a halt due to the City caused stale mate that has effectively prevented a water purchase agreement to provide water to these developments. It appears that the City's current policy is to prevent the Rupp Family Trust – with its long heritage in the area – and the neighboring City of Chubbuck from benefitting from the Northgate Interchange at all cost, even if that means effectively shutting down economic growth and much needed affordable housing in the area, adversely affecting all.

II. Potential Claims

Regardless of intent, the City's blatant violation of Section 16.20.050 constitutes an arbitrary and capricious act that warrants declaratory and injunctive relief and an award of caused damages to the claimant. The conduct of the City also rises to the level of

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fraud and racketeering, to which there is no tortious immunity and which could subject the City and/or its complicit employees/officials to punitive and exemplary damages for their malicious conduct.

III. Regulatory Taking

The City's actions, in particular the annexation of the road in violation of Section 16.20.050 constitutes a Fifth Amendment taking of property without just compensation and 42 § 1983 deprivation of property rights, equal to the amount of the fair market value of the taking. The deprived property rights include in particular the developmental rights to the property which are already accruing and are substantial.

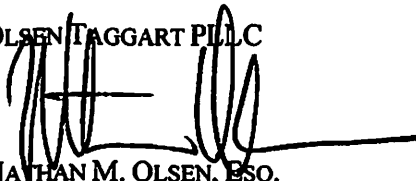
IV. Potential Damages

A conservative estimate of the developmental value of the Rupp Property is well in excess of \$21,000,000. Additionally, exemplary or punitive damages which are not capped in a federal case (which this would be) are typically double the amount of actual damages. The City would also likely be required to reimburse the claimant's attorneys fees and costs.

The claimant's foregoing tort claim and request for a regulatory claim analysis as provided for under law is now hereby submitted for the City of Pocatello's consideration.

Sincerely,

OLSEN TAGGART PLLC

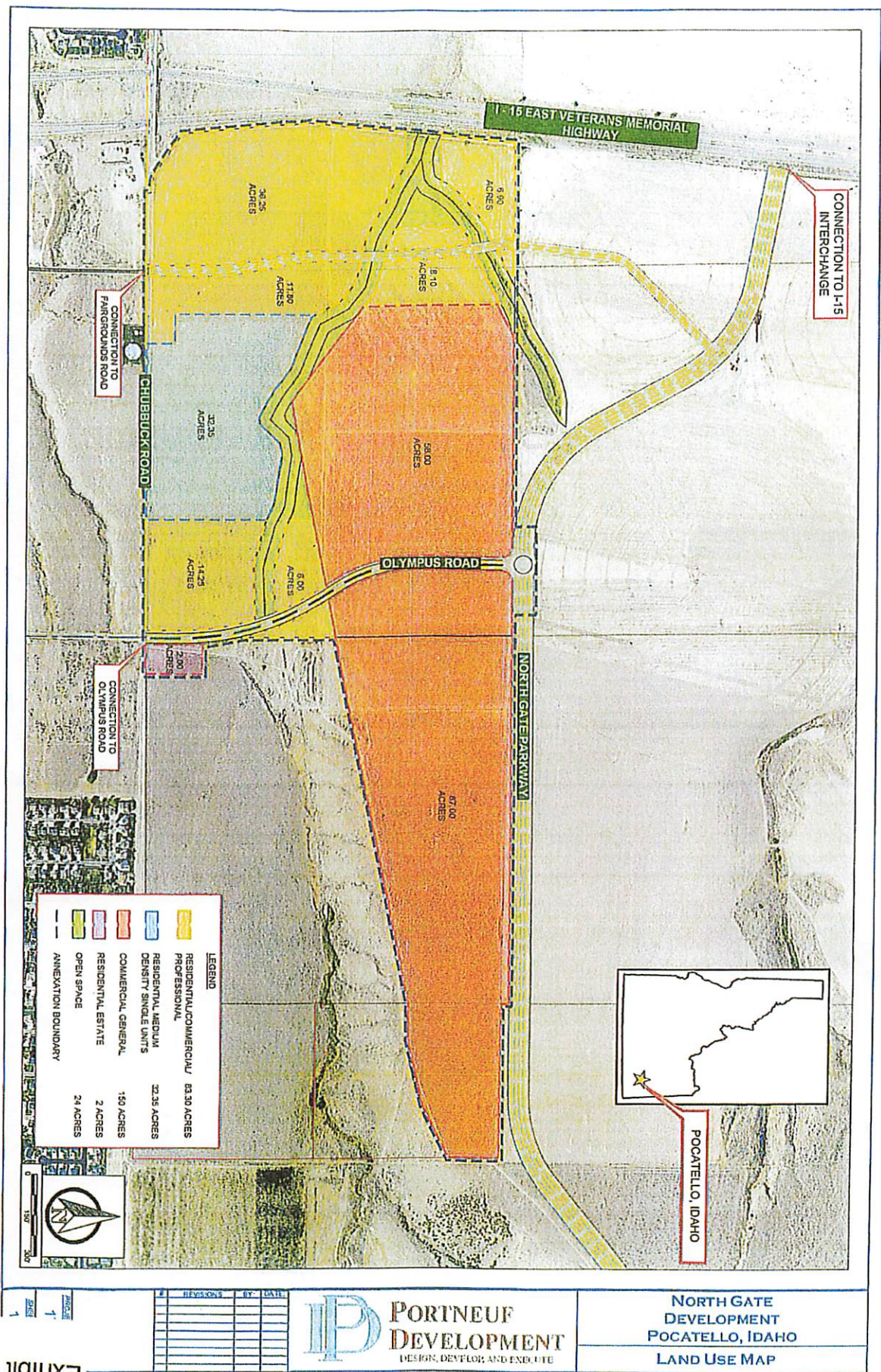
A handwritten signature in black ink, appearing to read 'Nathan M. Olsen', is written over the printed name and firm name.

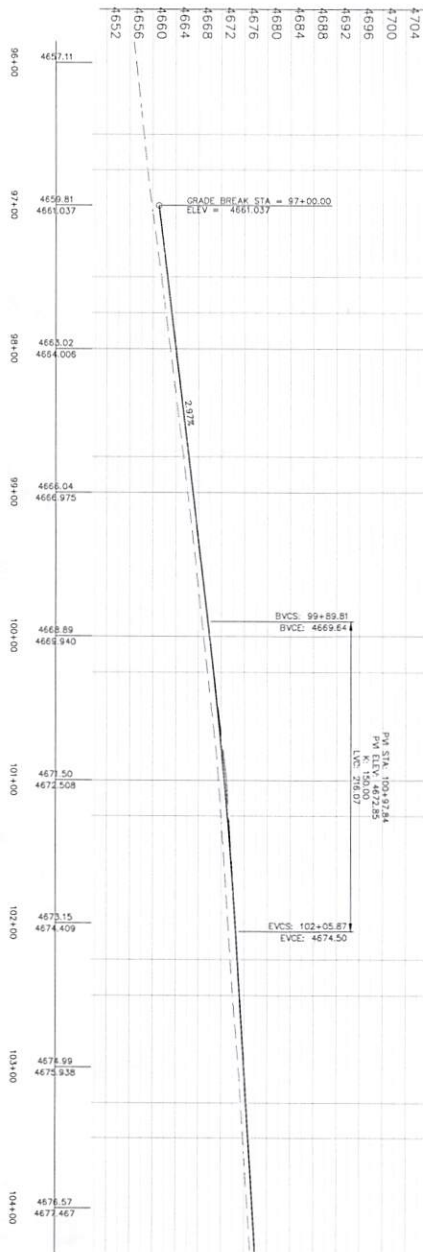
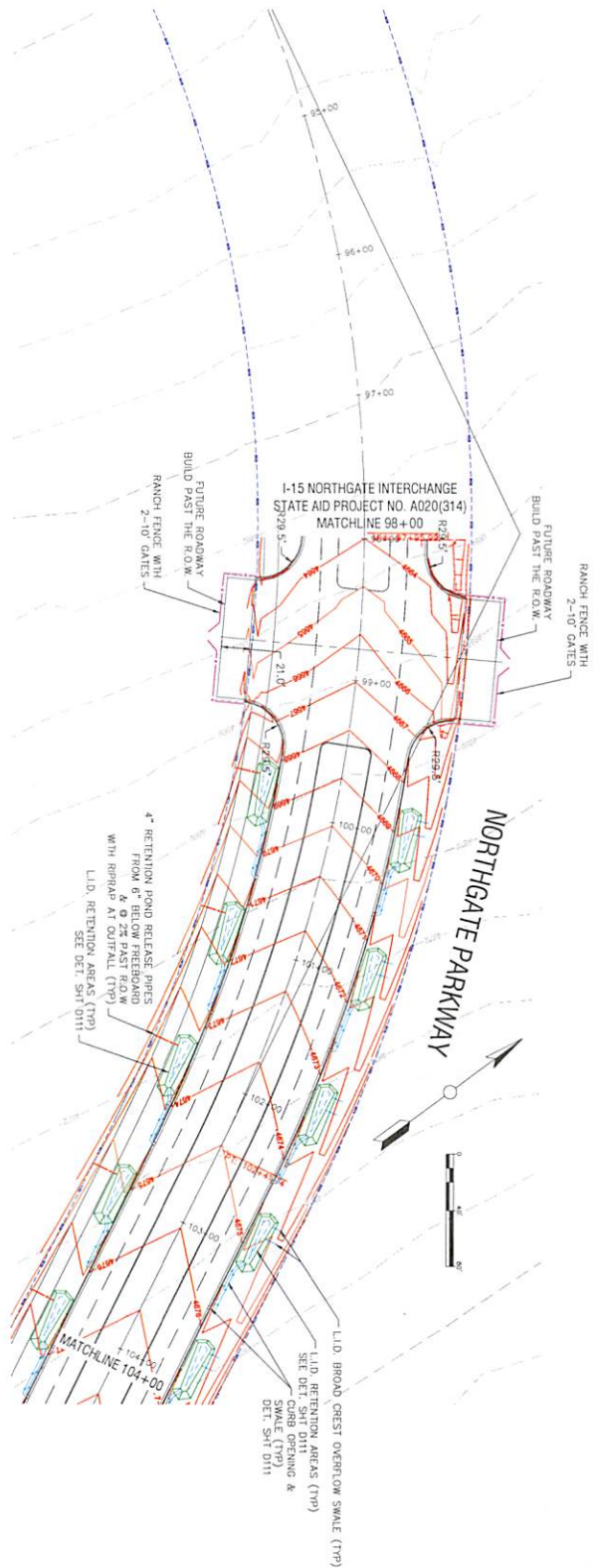
NATHAN M. OLSEN, ESQ.

ATTORNEY FOR CLAIMANT

HEROLD L. RUPP SR. TRUST AND THE VEDA J. RUPP
REVOCABLE LIVING TRUST

Dec. 7, 2017 - (Pocatello City Council) Exhibit 1 Shows Location of Intersection



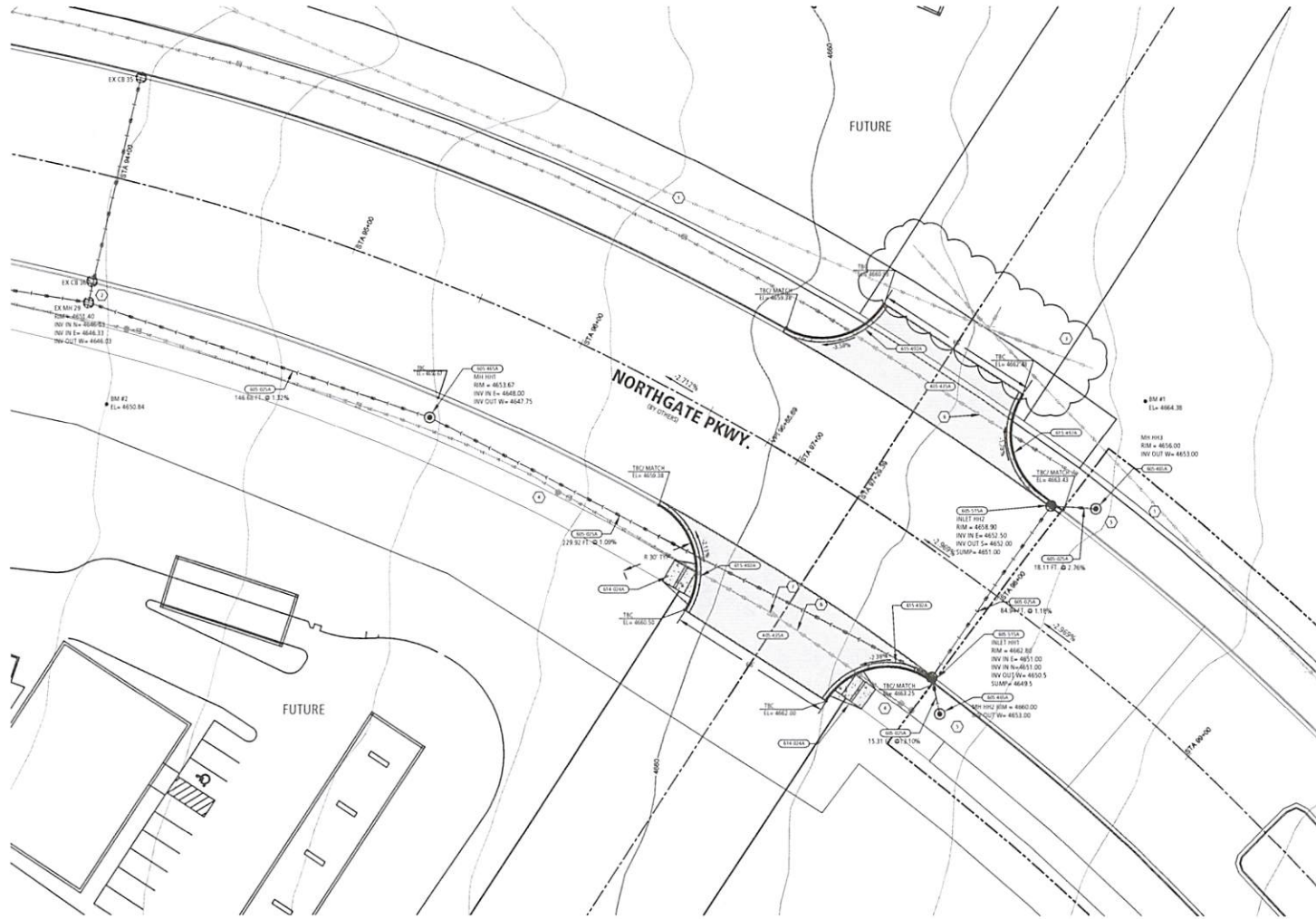


HILLCREST HEIGHTS

NORTHGATE PARKWAY APPROACH 97+29.39

HILLCREST HEIGHTS

NORTHGATE PARKWAY APPROACH 97+29.39



- CONSTRUCTION ITEMS**
- 1. INSTALL PLANT MIX PAVEMENT SECTION PER NORTHGATE PARKWAY TYPICAL SECTION 6A INCLUDE GRANULAR SUBBASE AND 2\"/>

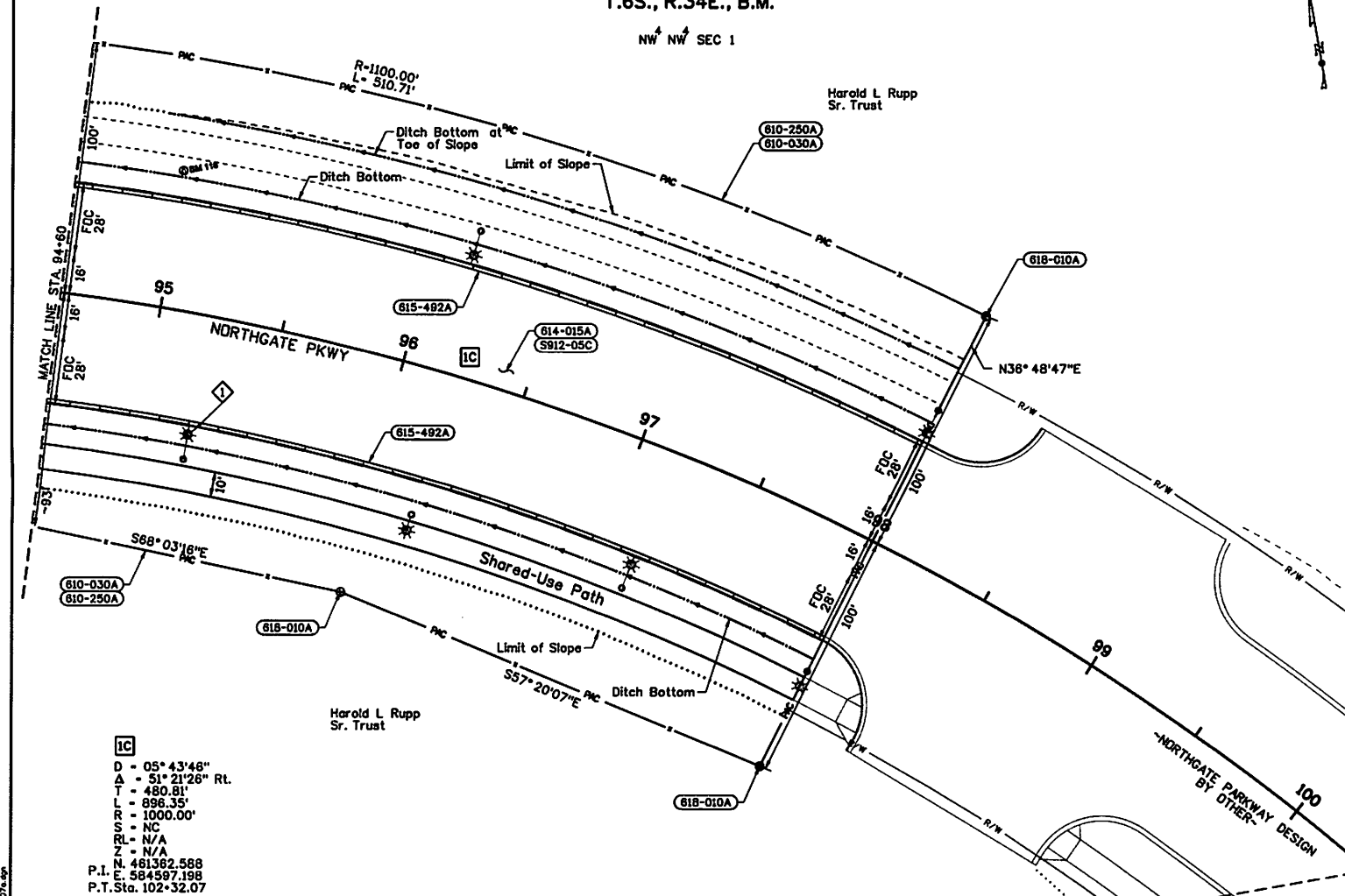
- CONSTRUCTION NOTES**
1. RETAIN AND PROTECT ALL EXISTING UNDERGROUND AND OVERHEAD UTILITIES. CALL 811 TO LOCATE EXISTING UTILITIES PRIOR TO THE START OF ANY WORK & COORDINATE AS NECESSARY DURING CONSTRUCTION.
 2. CORE DRILL INTO EXISTING MANHOLE. VERIFY LOCATION, MATERIAL AND DEPTH AND NOTIFY ENGINEER PRIOR TO CONSTRUCTION.
 3. EXISTING POWER POLE AND GUY SHALL BE RE-LOCATED BY GRID POWER. CONTRACTOR SHALL FACILITATE AND COORDINATE AS NEEDED.
 4. PATH CONSTRUCTION BY OTHERS.
 5. GRADE SWALE TO INLET.
 6. ADJUST UTILITY TO GRADE.
 7. RE-LOCATE JUNCTION BOX TO WEST SIDE OF APPROACH.

INTELLECTUAL PROPERTY NOTICE THE DESIGN, IDEAS, DRAWINGS, CONCEPTS ON THIS SHEET AND BETWEEN THIS SET OF ASSOCIATED DOCUMENTS ARE THE SOLE PROPERTY OF RMES AND SURVIVORS. ANY REUSE OR REPRODUCTION OF THESE DRAWINGS WITHOUT THE WRITTEN PERMISSION OF RMES AND SURVIVORS IS PROHIBITED. ANY REUSE OR REPRODUCTION OF THESE DRAWINGS WITHOUT THE WRITTEN PERMISSION OF RMES AND SURVIVORS IS PROHIBITED.	SHEET INFORMATION DESIGNER: C. NEWBERRY CREATED: M. GREEN LAST REVISED: 07/24/19 <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3">REVISIONS</th> </tr> <tr> <th>#</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>XXXXX</td> <td>XXXXX</td> </tr> <tr> <td>2</td> <td>XXXXX</td> <td>XXXXX</td> </tr> <tr> <td>3</td> <td>XXXXX</td> <td>XXXXX</td> </tr> <tr> <td>4</td> <td>XXXXX</td> <td>XXXXX</td> </tr> </tbody> </table>	REVISIONS			#	DATE	DESCRIPTION	1	XXXXX	XXXXX	2	XXXXX	XXXXX	3	XXXXX	XXXXX	4	XXXXX	XXXXX			RMES Engineers & Surveyors & Planners 301 Main St., W. #100 • Baltimore, MD 21201 • (771) 224-0110 800 E. Clark St. • Philadelphia, PA 19101 • (215) 224-0110	HILLCREST HEIGHTS APPROACH STA. 97+29.39 NORTHGATE PARKWAY ROADWAY APPROACH IMPROVEMENTS	ARCH B SCALE (12"x18") 1" = 40' FEET ARCH C SCALE (24"x36") 1" = 20' FEET	SHEET NUMBER C - 1.0
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4	XXXXX	XXXXX																							

T.6S., R.34E., B.M.

NW⁴ NW⁴ SEC 1

Harold L. Rupp
Sr. Trust



IC

D = 05° 43' 46"
A = 51° 21' 26" Rt.
T = 480.81'
L = 896.35'
R = 1000.00'
S = NC
RL = N/A
Z = N/A
P.I. N. 461362.588
E. 584597.198
P.T. Sta. 102+32.07

610-030A Fence Type B3
374 ft., 94+60-98+00, Lt.
307 ft., 94+60-98+00, Rt.

610-250A Braces
2 Ea., 94+60-98+00, Lt.
2 Ea., 94+60-98+00, Rt.

615-256A Curb Type 1
345 ft., 94+60-98+00, Lt.
335 ft., 94+60-98+00, Rt.

615-482A Curb & Gutter Type 2
355 ft., 94+60-98+00, Lt.
326 ft., 94+60-98+00, Rt.

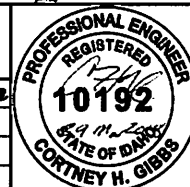
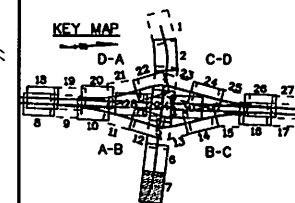
618-010A Right-Of-Way Marker
3 Ea., See Contractor Notes

NOTES

1 See Illumination Plans.

FDC = Face of Curb

KEY MAP



REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED	Z. Pratt
DESIGN CHECKED	P. Szaboyn
DETAILED	L. McKinnon
DRAWING CHECKED	J. Baker

SCALES SHOWN	ARE FOR 11" X 17" PRINTS ONLY
CADD FILE NAME	20314.dgn
DRAWING DATE	3/28/2018

IDAHO TRANSPORTATION DEPARTMENT

Stanley Consultants inc.

PROJECT NO.	A020(314)
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ROADWAY PLAN 7	I-15, NORTHGATE INTERCHANGE NORTHGATE PARKWAY Sta. 94+60 to Sta. 99+00
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English	COUNTY	Bannock
KEY NUMBER	20314	
SHEET	51 OF 291	

For Annexation



Map Given To City Council And P&Z Board,
For Annexation

10/19

