

EXHIBIT 16

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF BRUCE KIDD

March 19, 2021

Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

<p style="text-align: right;">Page 18</p> <p>1 A. Equipment operator.</p> <p>2 Q. Similar to what you were doing at</p> <p>3 Diamond D?</p> <p>4 A. No.</p> <p>5 Q. What type of equipment were you</p> <p>6 operating?</p> <p>7 A. An excavator.</p> <p>8 Q. And how long did you work for Remedial?</p> <p>9 A. Until February of '20.</p> <p>10 Q. And where did you go to work in February</p> <p>11 of '20?</p> <p>12 A. R.A. Knapp.</p> <p>13 Q. R.A. -- and what was that?</p> <p>14 A. Knapp.</p> <p>15 Q. Knapp. K-N-A-P --</p> <p>16 A. K-N-A-P-P.</p> <p>17 Q. All right. Same as Mr. Reed.</p> <p>18 Is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what do you do for</p> <p>21 R.A. Knapp?</p> <p>22 A. I was an SM&P.</p> <p>23 Q. What's an SM&P?</p> <p>24 A. Safety maintenance procedures.</p> <p>25 Q. All right. And how long did you work</p>	<p style="text-align: right;">Page 19</p> <p>1 for R.A. Knapp?</p> <p>2 A. Until April.</p> <p>3 Q. Until April of --</p> <p>4 A. Of '20.</p> <p>5 Q. Okay. And then where did you go?</p> <p>6 A. Went to BT Redi-Mix.</p> <p>7 Q. What did you do at BT Redi-Mix?</p> <p>8 A. Started as a truck driver, and I'm their</p> <p>9 safety manager now.</p> <p>10 Q. All right. All right.</p> <p>11 Now, during the period of time --</p> <p>12 Strike that.</p> <p>13 From the time that you started working</p> <p>14 for Diamond D Industries through BT Redi-Mix, did</p> <p>15 any of your work experience relate to the</p> <p>16 construction or modification of interstate</p> <p>17 highways?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. What employments --</p> <p>20 A. R.A. Knapp.</p> <p>21 Q. All right. All right.</p> <p>22 And then from June 2017 to December of</p> <p>23 2018, you were working with Penhall?</p> <p>24 A. I'm sorry. Say that again.</p> <p>25 Q. June 2017 to December 2018, you were</p>
<p style="text-align: right;">Page 20</p> <p>1 working with Penhall, were you?</p> <p>2 A. From June of '17 --</p> <p>3 Q. Right.</p> <p>4 A. -- to December of '18.</p> <p>5 Q. That is correct. That's what I asked.</p> <p>6 A. Yes.</p> <p>7 Q. And what job capacity did you work with</p> <p>8 Penhall in during that period of time?</p> <p>9 A. Superintendent.</p> <p>10 Q. All right. How many projects did you</p> <p>11 work on with Penhall in that capacity during that</p> <p>12 period?</p> <p>13 A. Five.</p> <p>14 Q. Other than the I-84 Five Mile to Orchard</p> <p>15 and Ramps project, which we'll refer to as</p> <p>16 "the project" in this deposition, did any of those</p> <p>17 other projects that you worked for Penhall on</p> <p>18 involve either the construction or improvement of</p> <p>19 interstate highways?</p> <p>20 A. Yes.</p> <p>21 Q. How many of them?</p> <p>22 A. All of them.</p> <p>23 Q. All right. Before your employment with</p> <p>24 Penhall, did you have any work experience in the</p> <p>25 construction or revision of highways?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. No.</p> <p>2 Q. And I should have asked at the</p> <p>3 beginning: In preparation for this deposition, did</p> <p>4 you review any documents?</p> <p>5 A. I'm sorry. Say that again.</p> <p>6 Q. In preparation for this deposition here</p> <p>7 today, did you review any documents?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. What documents did you review?</p> <p>10 A. We looked at the site map -- or maps.</p> <p>11 We looked at some of our pre-trip -- our pre-task</p> <p>12 plans.</p> <p>13 Q. Okay.</p> <p>14 A. And that's it.</p> <p>15 Q. The site map and pre-task plans, and</p> <p>16 we've got some of the pre-task plans.</p> <p>17 Did you happen to see any pre-task plan</p> <p>18 for the date of June 16, 2018?</p> <p>19 A. I did not.</p> <p>20 Q. Do you know if one was created for that</p> <p>21 date?</p> <p>22 A. I'm certain it was.</p> <p>23 Q. And if it was created, it would have</p> <p>24 been created by you, I take it?</p> <p>25 A. That's correct.</p>

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1 Q. And do you have any idea where that plan
 2 may be at the present time?
 3 A. Have no idea.
 4 Q. All right. Those plans were submitted,
 5 though, to Penhall by you?
 6 A. Yes.
 7 Q. Okay. And the site map, when we say --
 8 when you refer to "site map," are you talking about
 9 the temporary traffic control plan on the site?
 10 A. There's -- it's -- there was a group of
 11 47 pages.
 12 Q. Yes, there was.
 13 A. And those were -- those were what I --
 14 that is what I'm referring to as the site map.
 15 Q. Let me ask you, please, sir, to take a
 16 look at Exhibit 1-A, and I'll ask you to look at
 17 Tab 9. And I'll ask you just to open up those
 18 documents, a few of them.
 19 My question initially to you is: Are
 20 those the site maps that you reviewed prior to your
 21 deposition here today?
 22 A. Yes.
 23 Q. Okay. Were there any particular pages
 24 of those site maps, as you call them, that you
 25 focused on in your pre-deposition review?

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1 Q. I'll ask you to take a look at page 256.
 2 Did you take a look at that?
 3 A. We did not.
 4 Q. All right. Now, directing your
 5 attention to page 254 on Tab 9, do you recall
 6 having seen that particular, as you term it, site
 7 map page during the time of your work on the I-84
 8 project?
 9 A. I do not.
 10 Q. Okay. All right, sir.
 11 Do you have a recollection of reviewing
 12 any of the pages of the site maps that are
 13 contained in Exhibit 9 during the period of time
 14 that you worked on the I-84 project?
 15 A. I'm sorry. Say that again.
 16 Q. Do you recall having reviewed any of the
 17 pages of the site maps that are encompassed within
 18 Tab 9 during the period of time that you worked on
 19 the I-84 project?
 20 A. Yes.
 21 Q. Which ones did you look at while you
 22 were working on the project?
 23 A. The ones that referred to my scope of
 24 work.
 25 Q. Okay. Just the ones that you pointed

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1 A. We looked at 8 of 47.
 2 Q. You looked at page 8 --
 3 A. 8 of 47.
 4 Q. Which is located at page 252?
 5 A. Yes.
 6 Q. All right. And --
 7 A. And that was because I was asked about
 8 my scope of work.
 9 Q. All right. And what is it about page 8
 10 of 47 that reflects your scope of work?
 11 A. That is the partial depth
 12 replacements --
 13 Q. Okay.
 14 A. -- known as the spall repair.
 15 Q. Okay.
 16 A. And that gives the -- the specifications
 17 as to how we had to remove and replace.
 18 Q. All right. Did you also take a look at
 19 page 254?
 20 A. Yes, we did.
 21 Q. All right. And I'll ask you to take a
 22 look at page 255.
 23 Did you take a look at that part of the
 24 site map as well?
 25 A. No, I did not.

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1 out before?
 2 A. Yes.
 3 Q. The spall?
 4 A. Yes.
 5 Q. All right. Now, on the projects that
 6 you worked on while you were with Penhall, other
 7 than the I-84 project, did any of those other
 8 projects involve a temporary traffic control plan?
 9 A. Yes.
 10 Q. All right. Were you involved in the
 11 preparation of that temporary traffic control plan?
 12 A. No.
 13 Q. Were you involved in the --
 14 A. Excuse me.
 15 Q. -- implementation of the temporary
 16 traffic control plan?
 17 A. No.
 18 Q. Okay. On those other projects, was
 19 there a controlled -- a temporary control
 20 manager --
 21 A. Yes.
 22 Q. -- employed? Okay.
 23 Was that a manager -- on the projects
 24 other than the I-84 project, was that a project --
 25 was that someone other than Specialty Construction?

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1 A. Yes.

2 Q. Okay. And during the period of time

3 that you worked as a superintendent on these

4 projects other than the I-84 project, were any of

5 your job duties and responsibilities involved with

6 the monitoring of the manner in which the temporary

7 traffic control plan was implemented on those other

8 projects?

9 A. No.

10 Q. On any of those other projects, was

11 there a change in the temporary traffic control

12 plan, as you can recall?

13 A. Not to my knowledge.

14 Q. All right. On the I-84 plan, though,

15 there was a change in the --

16 Strike that.

17 On the I-84 project, however, there was

18 a change in the temporary traffic control plan?

19 A. Yes.

20 Q. All right. And were you involved in the

21 discussions leading up to the change in the

22 temporary traffic control plan?

23 A. Yes.

24 Q. Okay. Now, prior to June of 2017 -- and

25 if I asked you this, I apologize -- had you been

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1 A. No.

2 Q. All right. Did you ever ask to review

3 the provisions of the contract between Idaho

4 Department of Transportation and Penhall?

5 A. No.

6 Q. At any time before you became involved

7 with the I-84 project, did you review the temporary

8 traffic control plan?

9 A. No.

10 Q. At any time before your involvement in

11 the I-84 project, did you ever review the special

12 provisions pertaining to the temporary traffic

13 control plan?

14 A. No.

15 Q. All right. At any time before your

16 involvement with the I-84 project, did you ever

17 take a look at the contract between Penhall and

18 Specialty Construction?

19 A. No, sir.

20 Q. All right. Were you ever involved in

21 providing to Specialty Construction the contract

22 documents between Penhall and State of Idaho

23 Department of Transportation?

24 A. I'm sorry. Say that again.

25 Q. Were you ever involved in providing

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1 involved in any work concerning the construction or

2 modification of highways?

3 A. No.

4 Q. Okay. Do you have a recollection of

5 when it was that you first became involved with the

6 I-84 project, the date?

7 A. Initially?

8 Q. Yes, sir.

9 A. That would have been the fall of '17.

10 Q. All right. And do you recall what month

11 in the fall of '17 it was?

12 A. I do not.

13 Q. All right. We have looked through some

14 documents here that shows that there was work being

15 performed from August through October of 2017.

16 Was your involvement in the I-84 --

17 Strike that.

18 Did your involvement in the I-84 project

19 come about in the August time frame or closer to

20 the October time frame?

21 A. Probably the August time frame.

22 Q. Okay. When you started your involvement

23 on the I-84 project, did you have available to you

24 the contract between the State of Idaho Department

25 of Transportation and Penhall?

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1 Specialty with the contract documents between Idaho

2 Department of Transportation and Penhall?

3 A. No.

4 Q. Okay. Do you know whether or not

5 Specialty ever received the Idaho -- the

6 IDT/Penhall contract documents?

7 A. I can't say.

8 Q. Okay. At the time of your introduction

9 to the I-84 project, did you attend a

10 pre-construction conference that was held in July

11 of 2017 concerning the I-84 project?

12 A. No.

13 Q. Do you know if anybody from Penhall

14 attended a pre-construction conference meeting that

15 was held July 26, 2017?

16 A. I do not.

17 Q. Okay. When you started the I-84 project

18 with Penhall, you started and continued your

19 involvement as a superintendent?

20 A. Yes.

21 Q. Okay. And when you started the project,

22 the I-84 project in that capacity, did you ever

23 hear that a question had been asked of Idaho

24 Department of Transportation as to what Penhall

25 should do if traffic was backed up during the

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1 course of work on any given day of the project?
 2 A. No.
 3 Q. Okay. And the project, for this --
 4 Strike that.
 5 The work for this project was to take
 6 place at night?
 7 A. Yes.
 8 Q. During the course of the work on the
 9 project in the fall of 2017, are you aware of any
 10 occasions where the lanes in a four-lane stretch of
 11 highway were reduced down to a single lane in order
 12 to perform the work that was being done out there?
 13 A. No, not to my knowledge.
 14 Q. You were the superintendent for Penhall
 15 in the I-84 project in September -- in the August
 16 through October 2017 time frame.
 17 Was there any other superintendent
 18 working with Penhall on the project at that same
 19 time period?
 20 A. No.
 21 Q. Okay. Who was the project
 22 superintendent, if there was one?
 23 A. Simmitt Bankston at the time.
 24 Q. All right. Did you, during the fall
 25 2017 time frame, have any discussions with Simmitt

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1 A. From my understanding in the original
 2 traffic control plan, we could take a four-lane
 3 section to two lanes.
 4 Q. Right.
 5 And there was a modification of the
 6 original temporary traffic control plan.
 7 Is that your understanding?
 8 A. That's my understanding, yes.
 9 Q. Was that modification made in writing,
 10 if you know?
 11 A. Not to my knowledge.
 12 Q. All right. And if that --
 13 Strike that.
 14 Do you know if that modification was
 15 done in 2017?
 16 A. Not to my knowledge.
 17 Q. Your understanding is that modification
 18 first occurred in 2018?
 19 A. Yes.
 20 Q. All right.
 21 A. To my understanding.
 22 Q. In 2017, did you have any interaction
 23 with the traffic control manager?
 24 A. Almost daily.
 25 Q. All right. And what was the nature of

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1 Bankston regarding the temporary traffic control
 2 plan?
 3 A. No.
 4 Q. As you sit here today, do you know one
 5 way or the other as to whether the written
 6 temporary traffic control plan and its special
 7 provisions allowed for the reduction of lanes on
 8 the portion of the highway being worked on if it
 9 was a four-lane or greater section down to one
 10 lane?
 11 A. I'm sorry. Ask that again.
 12 Q. Yeah. It's a --
 13 MR. PERKINS: Objection to form.
 14 MR. ROBBINS: Yeah, no question.
 15 MR. PERKINS: Objection to form.
 16 MR. ROBBINS: Yeah, we got you, we got you.
 17 I'm going to change it.
 18 [Discussion held off the record.]
 19 Q. (BY MR. ROBBINS) Okay. So let me ask
 20 you this: Are you aware as to whether the
 21 temporary traffic control plan as originally
 22 adopted and approved allowed for the reduction of
 23 lanes in a four-lane stretch of highway down to
 24 less than two open lanes during the construction
 25 activities?

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1 that interaction with the traffic control manager
 2 on a daily basis?
 3 A. I would tell him which lanes I needed
 4 closed, from what point to which point.
 5 Q. Right.
 6 A. From Point A to Point B.
 7 Q. And was there ever a time you told him
 8 what lanes you would need closed that the traffic
 9 control manager told you he could not do that
 10 because of the terms of the traffic control plan
 11 itself?
 12 A. No.
 13 Q. All right.
 14 A. Not that I recall.
 15 Q. All right. As you sit here today, you
 16 don't recall any time in the fall of 2017 where a
 17 four-lane stretch of highway, at least while you
 18 were out on the project site, was reduced down to a
 19 single open lane?
 20 A. Not that I recall.
 21 Q. Okay. Who was the traffic control
 22 manager that you were working with during the fall
 23 of 2017, if you recall?
 24 A. I think his name was Josh.
 25 Q. Okay. And there's another gentleman by

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1 the name of Mason Garling.
 2 Do you recall having worked with him?
 3 A. I remember the name.
 4 Q. All right.
 5 Yes, sir?
 6 MR. GRAHAM: Go ahead.
 7 THE WITNESS: He's in my phone, so I'm sure I
 8 spoke with him.
 9 Q. (BY MR. ROBBINS) Okay. All right. All
 10 right.
 11 Now, on these occasions when you would
 12 have interactions with the traffic control manager
 13 when you would tell them how many lanes that you
 14 needed to have reduced, was there ever a discussion
 15 of the requirements of the temporary traffic
 16 control plan during the course of those
 17 discussions?
 18 And here we're talking about the 2017
 19 time frame.
 20 A. No.
 21 Q. Okay. Now, do you recall when in 2018
 22 it was that the temporary traffic control plan for
 23 the I-84 project was modified to allow for the
 24 reduction of lanes in a four-lane stretch of
 25 highway down to a single open lane?

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1 few -- just a few days before we started work in
 2 the spring.
 3 Q. It is my understanding in this project,
 4 the work proceeded from August through sometime in
 5 October and then work stopped because of weather
 6 and then it started back up again in the spring?
 7 A. That is correct.
 8 Q. Did you attend a re-startup meeting, for
 9 want of a better term, held either at the offices
 10 of IDT or there at the site where the re-startup of
 11 the project was discussed?
 12 A. Yes, at the office.
 13 Q. It was at the office. And was that at
 14 the Division 3 office, District 3 office?
 15 A. I -- I don't know what district it was.
 16 Q. It wasn't out on the site, though? It
 17 was --
 18 A. No, it was not on site. It was in their
 19 office building.
 20 Q. All right. And can you tell me who
 21 attended that meeting?
 22 A. Myself, Scott Reed, Bob Bleeker, and a
 23 handful of IDOT employees.
 24 Q. IDOT, Idaho Department of
 25 Transportation?

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1 A. I'm sorry. Say that again.
 2 Q. Yes. I was asking: Do you recall when
 3 in 2018 it was that the temporary traffic control
 4 plan for the I-84 project was modified to allow for
 5 the reduction of lanes in a four-lane stretch of
 6 highway down to a single open lane?
 7 A. To my knowledge, the formal plan was not
 8 altered.
 9 Q. The formal plan was not altered. I
 10 understand. But there was an agreement to deviate
 11 from the formal plan.
 12 Is that my understanding of your
 13 testimony?
 14 A. That is my --
 15 MR. MOORE: Object to the form.
 16 THE WITNESS: Yes.
 17 Q. (BY MR. ROBBINS) Okay. And that
 18 agreement to deviate, as I have termed it, was an
 19 oral agreement?
 20 A. Yes.
 21 Q. Who participate --
 22 Strike that.
 23 When was that agreement reached, if you
 24 remember?
 25 A. I don't remember the date, but it was a

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1 A. Yes.
 2 Q. All right. And do you remember the
 3 names of any of those IDOT employees?
 4 A. I do not.
 5 Q. Do you remember if Bryon Breen was
 6 there?
 7 A. I do not.
 8 Q. Do you recognize the name Bryon Breen?
 9 A. I recognize the name, but I don't -- I
 10 don't remember who was in attendance other than the
 11 Penhall personnel.
 12 Q. Okay. Let me try a couple other names
 13 on you.
 14 Do you know the name David Statkus?
 15 A. Yes.
 16 Q. Was he present at the meeting?
 17 A. I don't remember.
 18 Q. Okay. Do you remember the name
 19 Jon Mensinger?
 20 A. Yes.
 21 Q. Was he at the meeting?
 22 A. Not that I -- I --
 23 Q. No, just what you recall.
 24 A. I don't recall.
 25 Q. Was any representative from Specialty

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1 **Construction at this meeting?**
 2 A. Not to my knowledge.
 3 **Q. All right. Can you tell me, as best as**
 4 **you can recall, what was discussed --**
 5 **Strike that.**
 6 **Can you tell me, as best as you recall,**
 7 **who it was that broached the issue of reducing the**
 8 **lanes of a four-lane stretch of highway down to a**
 9 **single open lane?**
 10 A. What do you mean by "broached"?
 11 **Q. Oh, raised the issue. Addressed it.**
 12 A. I believe it was Scott.
 13 **Q. Scott Reed?**
 14 A. Yes.
 15 **Q. Okay. And do you recall what Scott Reed**
 16 **said in that request?**
 17 A. He said it was asked for because of the
 18 safety of the personnel on the ground.
 19 **Q. Okay. And what was said about the**
 20 **safety of the personnel on the ground?**
 21 A. Had -- had it not been done, there would
 22 have been traffic on both sides of the -- of the
 23 workers.
 24 **Q. Right.**
 25 A. And that's just too dangerous.

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1 **"Is this a good idea to do," given the demands of**
 2 **the traffic during the period of time that**
 3 **construction is going on and the traffic capacity**
 4 **of the lanes that are open.**
 5 MR. MOORE: Object to the form. Foundation.
 6 Go ahead.
 7 **Q. (BY MR. ROBBINS) That's what I'm talking**
 8 **about.**
 9 A. I did not hear what he said.
 10 **Q. He objected, but that's okay.**
 11 A. Oh.
 12 **Q. You can respond to the question.**
 13 MR. MOORE: Go ahead.
 14 THE WITNESS: Okay.
 15 **Q. (BY MR. ROBBINS) In other words, don't**
 16 **listen to Mike, just listen to your attorney.**
 17 A. Ask the question again, please.
 18 **Q. Yes, sir.**
 19 **Do you recall there being any**
 20 **discussions between the Penhall personnel and the**
 21 **IDOT personnel as to whether it was a good idea to**
 22 **reduce the traffic lanes from four open lanes to a**
 23 **single open lane in a four-lane stretch in light of**
 24 **the capacity requirements of the lanes to deal with**
 25 **the volume demands of traffic?**

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1 **Q. Was there anything else stated by**
 2 **Mr. Reed to the IDOT representatives present?**
 3 A. Not that I can recall.
 4 **Q. Do you know if the project engineer for**
 5 **IDOT was present during this meeting?**
 6 A. I do not.
 7 **Q. Okay. Do you know what needed to be**
 8 **done under the terms of the contract to amend the**
 9 **traffic control plan?**
 10 A. I do now.
 11 **Q. Okay. Did you know at the time, though?**
 12 A. No.
 13 **Q. All right. What you know now, though,**
 14 **is that it needed to be presented in writing?**
 15 A. 14 days prior.
 16 **Q. All right. When did you learn that for**
 17 **the first time, sir?**
 18 A. Yesterday.
 19 **Q. Okay. Was there ever any question**
 20 **raised during the course of this meeting at the IDT**
 21 **office by IDT representatives about the**
 22 **advisability of reducing the open lanes from four**
 23 **to one open lane in the area of the construction?**
 24 A. What do you mean by "advisability"?
 25 **Q. Was it a good idea? If somebody asked,**

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1 A. I don't recall.
 2 **Q. Okay. Do you know what type of**
 3 **evaluations go into the determination of a**
 4 **temporary traffic control plan insofar as lane**
 5 **capacity and volume demand is concerned?**
 6 A. I do not.
 7 **Q. Okay. Did you have any discussions with**
 8 **the temporary traffic control manager or the**
 9 **traffic control manager concerning what evaluations**
 10 **should be undertaken before a request is made to**
 11 **reduce open lanes of a freeway from four open lanes**
 12 **down to a single open lane where the project**
 13 **temporary traffic control plan specifies that two**
 14 **lanes are to remain open?**
 15 A. No.
 16 **Q. Okay. Did you have any --**
 17 **To your knowledge, did any**
 18 **representative of Penhall have any discussions with**
 19 **the traffic control manager about his opinion**
 20 **regarding reducing lanes in a four-lane stretch**
 21 **down to one open lane before this meeting was held;**
 22 **the restart meeting, if you will?**
 23 A. Not to my knowledge.
 24 **Q. Okay. And this restart meeting, did**
 25 **that occur in May of 2018? Does that sound about**

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1 right to you?
 2 A. That sounds about right.
 3 Q. Okay. And was there any written memo
 4 prepared or any e-mail prepared memorializing the
 5 agreement to reduce lanes from four lanes to a
 6 single lane in a four-lane stretch of highway?
 7 A. Not to my knowledge.
 8 MR. MOORE: Object to the form. Foundation.
 9 Go ahead.
 10 Q. (BY MR. ROBBINS) Okay. Was there ever
 11 anything stated during the course of this meeting
 12 that that procedure -- that is, reducing four lanes
 13 to a single lane -- had been done earlier in the
 14 project during the fall 2017 span?
 15 A. It wasn't done for me, and I can't speak
 16 for Kenny Hinton who was the superintendent for the
 17 grinders.
 18 Q. Yeah, no.
 19 What I'm asking, though, is: During the
 20 course of this May 2018 meeting, was it ever
 21 addressed that this request that is being made is
 22 similar to the process that was followed in 2017
 23 when work was being performed on the opposite side
 24 of I-84?
 25 A. I'm sorry. You're going to have to ask

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1 the traffic control manager is the one who was
 2 setting up the temporary traffic control devices
 3 for this project?
 4 A. Yes.
 5 Q. Okay. And so the traffic control
 6 manager would have to be informed that there is a
 7 deviation from the temporary traffic control plan
 8 as written and approved, agreed?
 9 A. Yes.
 10 Q. Okay. And so who told the traffic
 11 control manager that there had been an agreement to
 12 deviate from the terms -- the written terms of the
 13 temporary traffic control plan?
 14 A. I don't know.
 15 Q. It wasn't you?
 16 A. It wasn't me.
 17 Q. Okay. Do you know if it was Mr. Reed?
 18 A. I don't know.
 19 Q. Do you know if any member --
 20 And I understand you told me that you
 21 don't know, but I'm just following up on this?
 22 Do you know if any member from
 23 Penhall -- from IDOT communicated with the traffic
 24 control manager and informed him that it would be
 25 all right to reduce four open lanes to a single

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1 that one more time.
 2 Q. Yeah. I'm wondering whether during this
 3 May 2018 meeting --
 4 A. Okay.
 5 Q. -- did anybody from Penhall tell the
 6 IDOT representatives that they had followed a
 7 similar procedure of reducing four-lane stretches
 8 down to a single open lane?
 9 A. Not that I can recall.
 10 Q. Okay. After this meeting in May of
 11 2018, were you the one that informed the traffic
 12 control manager that when the eastbound I-84 lanes
 13 would be worked on in the spring, that lanes would
 14 be reduced from four to a single lane?
 15 A. No.
 16 Q. Do you know who did?
 17 A. That would be a Diamond representative.
 18 Q. Okay. A Diamond representative would
 19 have told them to reduce three lanes -- or four
 20 lanes down to one?
 21 A. A Diamond representative would have set
 22 up their own enclosure -- would have set up and
 23 scheduled their own -- the enclosures for their --
 24 for what they were wanting to do.
 25 Q. Okay. But is it your understanding that

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1 open lane during the work being performed on
 2 eastbound I-84 in the spring of 2018?
 3 A. I don't know.
 4 Q. Okay. Now, in discovery responses that
 5 were provided by Specialty Construction Supply in
 6 response to interrogatories from the plaintiff in
 7 this case, there was some identification of
 8 discussions held between Penhall and Specialty
 9 regarding this issue of reducing four lanes down to
 10 one. Let me read this to you and see if you have
 11 any awareness of this having taken place.
 12 This one says that Specialty
 13 Construction Supply states that, "In or around
 14 May 31, 2018, through June 2, 2018, Specialty
 15 Construction Supply had multiple verbal
 16 communications with Defendant Penhall Company
 17 regarding the decision to close three lanes of
 18 travel in a four-lane section of Interstate 84."
 19 Do you recall there being multiple
 20 conversations that you were aware of between
 21 Penhall and Specialty regarding the reduction of
 22 lanes?
 23 A. Not -- not that I was aware of, no.
 24 Q. Okay. The next, it says, "The Defendant
 25 Penhall stated that it had cleared the closure with

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1 Idaho Transportation Department who had an
 2 inspector on site during this time."
 3 Do you recall any conversation between
 4 Specialty and Penhall wherein the Penhall
 5 representative stated that Penhall had cleared the
 6 proposal to close to a single open lane in a
 7 four-lane stretch?
 8 A. No.
 9 Q. Okay. It proceeds that, "Defendant,"
 10 that's Specialty Construction Supply, "expressed
 11 concern with exceeding the contract specifications
 12 to close a third lane during an on-site meeting."
 13 Are you aware at any time of Specialty
 14 expressing any concern about exceeding the contract
 15 specifications to close a third lane in a four-lane
 16 stretch of highway?
 17 A. No.
 18 Q. You never received any e-mails in that
 19 regard?
 20 A. No, I did not.
 21 Q. Never received any written memoranda of
 22 any type?
 23 A. No, sir.
 24 Q. And you don't recall any verbal
 25 communications with the Specialty representative on

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1 Q. Okay. You don't know -- you don't --
 2 simply don't recall that conversation taking place?
 3 A. No.
 4 Q. Okay. My statement is correct, you
 5 don't recall that conversation? Yes?
 6 A. That is correct.
 7 Q. Okay. What is your understanding of the
 8 purpose of the traffic control plan in a highway
 9 construction project?
 10 A. For the safety of the workers.
 11 Q. All right. Does it also apply for the
 12 safety of the motoring public traveling through the
 13 work zone?
 14 A. Absolutely.
 15 Q. All right. And is the purpose of that
 16 temporary traffic control plan to reduce the
 17 occurrence of unexpected stoppages or traffic
 18 queues through the work zone?
 19 MR. MOORE: Object to the form. Foundation.
 20 Q. (BY MR. ROBBINS) If you know.
 21 A. I'm sorry. Say that again.
 22 MR. ROBBINS: Yeah.
 23 MR. MOORE: Go ahead.
 24 Q. (BY MR. ROBBINS) Do you understand that
 25 the purpose of the traffic control plan is to

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1 site to that effect?
 2 A. No, sir.
 3 Q. Okay. Next, it says that, "Penhall and
 4 Jon Mensinger, an inspector with the Idaho
 5 Transportation Department, directed Specialty
 6 Construction Supply to do such," which I take to
 7 mean to reduce four open lanes down to a single
 8 open lane during the construction project.
 9 Are you aware of any Penhall
 10 representative, in conjunction with Jon
 11 Mensinger --
 12 You recognize him as being an inspector
 13 from IDOT?
 14 A. I do recognize it.
 15 Q. Are you aware of any time that a Penhall
 16 representative, along with Jon Mensinger, directed
 17 Specialty to reduce open lanes down to a single
 18 open lane in a four-lane stretch?
 19 A. No.
 20 Q. It says, "These communications were
 21 between Bruce Kidd and Scott Reed of Penhall
 22 Company and Mason Garling and Josh Roper of
 23 Specialty Construction Supply, LLC."
 24 Are you familiar with that at all?
 25 A. I don't recall.

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1 reduce the occurrence of unexpected traffic
 2 stoppages and the development of traffic queues or
 3 traffic blockages in a work zone area?
 4 A. Yes.
 5 Q. All right. And do you recognize that
 6 the existence of a traffic queue or a traffic
 7 backup in a work zone area presents a potential
 8 hazard to both workers and to motorists?
 9 A. Yes.
 10 Q. And one of the hazards to the motorists
 11 would be the risk of rear-end collisions,
 12 particularly at night?
 13 A. Yes.
 14 Q. Are you familiar with the term "advanced
 15 warning area"?
 16 A. Yes.
 17 Q. All right. Is the purpose of an
 18 advanced warning area to provide sufficient warning
 19 to drivers about a potential upcoming hazard? Say
 20 either a construction project or a traffic backup.
 21 A. Yes.
 22 Q. Okay. Based upon your involvement on
 23 the I-84 project, did you see the on-site
 24 inspectors for the Department of Transportation,
 25 IDOT, overseeing the placement of the temporary

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1 Q. All right. It's just whoever was
 2 available?
 3 A. Yes.
 4 Q. All right. And who routinely was the
 5 representative from Penhall in these nightly
 6 meetings between Penhall and Specialty?
 7 A. Me.
 8 Q. All right. During the course of those
 9 nightly meetings, can you recall having any
 10 discussions with Specialty where the subject of the
 11 temporary traffic control plan was discussed?
 12 And here we're talking during the spring
 13 2018 time frame.
 14 A. That's what we discussed. I would give
 15 them my start point, my finish point --
 16 Q. Right.
 17 A. -- the lanes I wanted to work.
 18 Q. All right. And when was the first time
 19 that you recall telling Specialty that you wanted
 20 them to reduce the lanes in a four-lane stretch of
 21 highway down to a single --
 22 A. I did not.
 23 Q. Okay. I thought what you said was that
 24 you had informed Specialty what lanes you wanted to
 25 work on a particular night.

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1 lane was a decision that was made between Penhall
 2 and IDOT.
 3 Is that correct?
 4 MR. MOORE: Object to the form. Foundation.
 5 Go ahead.
 6 THE WITNESS: To the best of my knowledge.
 7 Q. (BY MR. ROBBINS) Okay. Did Penhall have
 8 any representative over on the eastbound lanes of
 9 I-84 in June of 2018, to the best of your
 10 knowledge?
 11 A. Somebody may go over there for a brief
 12 period of time, but as far as somebody there the
 13 entire time that work was being done, not to my
 14 knowledge.
 15 Q. Okay. Was there a custom and practice
 16 that Penhall followed where either you or Mr. Reed
 17 would go over to the eastbound lanes and see what
 18 work was being done over there --
 19 A. That would --
 20 Q. -- in June of 2018?
 21 A. That would have been Mr. Reed.
 22 Q. Okay. And do you recall Mr. Reed ever
 23 telling you on one of the occasions that he had
 24 gone over to the eastbound I-84 lanes while work
 25 was being performed in June of 2018 where he

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1 A. Okay. Can I clarify, please?
 2 Q. Yes, please.
 3 A. My work was done on the westbound side.
 4 Q. Okay.
 5 A. I did not work any on the eastbound side
 6 in the spring.
 7 Q. Okay.
 8 A. So Diamond set up their own -- they made
 9 arrangements with the traffic control company to
 10 set up their enclosures.
 11 Q. All right. So the arrangements were
 12 between Diamond and the traffic control company?
 13 A. That is correct.
 14 Q. Do you know whether Diamond ever
 15 received a set of plans for the temporary traffic
 16 control plan?
 17 A. I do not.
 18 Q. Okay. Did you ever hear from the
 19 Diamond representatives that Specialty ever
 20 objected to reducing lanes from a four-lane stretch
 21 down to a single open lane?
 22 A. No.
 23 Q. But the decision to change the temporary
 24 traffic control plan to go from no less than two
 25 open lanes in a four-lane stretch down to one open

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1 remarked about a traffic backup that had formed
 2 leading from the work zone?
 3 A. Not that I recall.
 4 Q. Okay. Did you ever receive any
 5 information from Idaho State Police about the
 6 formation of traffic queues or traffic jams in the
 7 area of the work being performed on I-84 eastbound
 8 in June of 2018?
 9 A. I listened to a phone call today.
 10 Q. Did you ever receive a phone call while
 11 you were on site in June of 2018 from Idaho State
 12 Police where Idaho State Police informed you that
 13 there was traffic queues in the -- extending from
 14 the work zone --
 15 A. Not that I recall.
 16 Q. -- on I-84 east?
 17 A. Not that I recall.
 18 Q. Okay. Did you ever receive any phone
 19 calls from Idaho State Police where the Idaho State
 20 Police informed that drivers were having difficulty
 21 navigating the reduction of lanes at I-84 eastbound
 22 prior to June 16 of 2018?
 23 A. I received a phone call that -- and I
 24 don't believe it was from the Idaho State Police --
 25 Q. All right.

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1 A. -- that said that some of the vehicles
 2 were going through the median to go around.
 3 **Q. Right. All right.**
 4 **Do you recall receiving more than one**
 5 **such phone call?**
 6 A. No.
 7 **Q. Did you do anything in response to that**
 8 **phone call?**
 9 A. I called --
 10 And I don't recall what section he said
 11 it was on.
 12 **Q. Right.**
 13 A. But I told him that I would call my
 14 people in that section.
 15 **Q. When you said "my people in that**
 16 **section" --**
 17 A. My Penhall people.
 18 **Q. All right. But I thought you said that**
 19 **Penhall didn't have people on I-84 eastbound.**
 20 A. I don't -- I don't know if he was
 21 talking about the eastbound side. He didn't say
 22 which side he was talking about. I --
 23 **Q. Let me do this. We had produced by**
 24 **Idaho State Police a recording --**
 25 A. Okay.

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1 A. No.
 2 **Q. All right. Now, in that call, you say**
 3 **that you're going to "call my guy that's over**
 4 **there."**
 5 **Who were you referring to?**
 6 A. If they were on the westbound side, it
 7 would have been Gerald Johnson or a Diamond --
 8 someone from Diamond.
 9 **Q. All right. The westbound? You mean the**
 10 **eastbound side?**
 11 A. Yes, eastbound side. I'm sorry.
 12 **Q. It would be someone Johnson, you said?**
 13 A. I think it's Gerald Johnson.
 14 **Q. Is he Diamond?**
 15 A. Yes.
 16 **Q. Why didn't you call the --**
 17 **Why would you not call the traffic**
 18 **control manager?**
 19 A. Because if they're driving in the
 20 median, traffic control is in place.
 21 **Q. Well, yeah. But, I mean, aren't there**
 22 **some --**
 23 **Whatever the reason, you wouldn't have**
 24 **called the traffic control manager, though, to**
 25 **address that issue?**

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1 **Q. -- of a telephone conversation. Let's**
 2 **see if I can bring it up. It's anybody's guess.**
 3 **All right. This has been identified --**
 4 **and I'll stop right here -- as State_COMM00010.**
 5 **And I'll play that to you and see if this refreshes**
 6 **your recollection of that phone call.**
 7 MR. MOORE: Do you know the date on that,
 8 Clay?
 9 [Audio recording played.]
 10 **Q. (BY MR. ROBBINS) All right. I've**
 11 **stopped that recording.**
 12 **Sir, is that the telephone conversation**
 13 **that you just testified about?**
 14 A. Yes.
 15 **Q. All right. So it was from the State**
 16 **Communications, perhaps not directly from Idaho**
 17 **State Police?**
 18 A. Yes.
 19 **Q. All right. And had you heard prior to**
 20 **that phone call any complaints from the public**
 21 **about the signage on I-84 eastbound?**
 22 A. No.
 23 **Q. Okay. And had you heard anything about**
 24 **a traffic jam causing problems for motorists on**
 25 **I-84?**

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1 A. I saw no reason to.
 2 **Q. Right. You saw a reason to call**
 3 **Diamond?**
 4 A. If it's going to put his personnel in
 5 danger for people driving erratically.
 6 **Q. Yeah. Okay. But the person involved**
 7 **with the traffic control in that area wasn't**
 8 **Diamond. It was the traffic control manager,**
 9 **Specialty, correct?**
 10 A. Yep.
 11 **Q. Okay. But you wouldn't think to call**
 12 **him if there were problems with traffic in the area**
 13 **of a work zone?**
 14 A. No.
 15 **Q. Okay. What would you expect Diamond to**
 16 **do to address the problems with traffic in the work**
 17 **zone that was addressed in this phone call?**
 18 A. I'm not expecting Diamond to do anything
 19 with the traffic control. That was just to let his
 20 guys know, "Hey, there's some people doing some
 21 crazy things out there. Y'all be on the lookout."
 22 **Q. Okay. All right.**
 23 **Did you ever attend a meeting held by**
 24 **the NTSB in August of 2018 about this accident in**
 25 **June of 2018?**

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1 A. I know that name, yes.

2 **Q. Do you recall any statement having been**
 3 **made by Mason Garling during the course of that**
 4 **meeting wherein it was related that when they began**
 5 **the final stage of the construction to replace the**
 6 **pavement seals in the I-84 eastbound lanes on**
 7 **Thursday, June 14, 2018, that he was told by**
 8 **Penhall to use the same three-lane closure that he**
 9 **had previously used in the westbound lanes in**
 10 **September and October of 2017?**

11 A. I'm not aware of that, no.

12 **Q. You don't recall that having been**
 13 **stated --**

14 A. No.

15 **Q. -- by Mr. Garling?**

16 A. I do not.

17 **Q. Okay. It's also related that you,**
 18 **"Bruce Kidd, the superintendent for Penhall,**
 19 **indicated that in the second pre-construction**
 20 **conference on May 31, 2018, he had brought this**
 21 **matter up to Bryon Breen, the ITD resident**
 22 **engineer. Bryon Breen indicated the conversation**
 23 **did occur but that no minutes were recorded of the**
 24 **meeting and he could not recall the exact details**
 25 **of the conversation."**

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1 **the exact details of the conversation"?**

2 **Do you recall that exchange?**

3 MR. MOORE: Same objection.

4 THE WITNESS: I do not remember bringing that
 5 up.

6 **Q. (BY MR. ROBBINS) All right. Do you**
 7 **recall Bryon Breen saying anything or anyone from**
 8 **IDOT saying anything about the subject of reduction**
 9 **of lanes?**

10 A. I do not.

11 **Q. All right. Do you recall Mr. Breen**
 12 **later relating that he had specifically told**
 13 **Penhall that a written request to change the plan**
 14 **had to be submitted?**

15 A. I do not.

16 **Q. Were you ever told by any representative**
 17 **of IDOT that a written request to change the**
 18 **temporary traffic control plan would have to be**
 19 **submitted before approval of that reduction would**
 20 **be allowed?**

21 A. I was not.

22 **Q. And, in fact, no written request was**
 23 **ever --**

24 A. Not to my knowledge.

25 **Q. -- presented?**

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1 **Do you recall that exchange occurring**
 2 **during the course of the meeting?**

3 MR. MOORE: Object to the form and
 4 foundation. Didn't continue to read the entire
 5 paragraph.

6 Go ahead, sir.

7 MR. ROBBINS: I don't mean to, Mike, and
 8 there's a real damn good reason for it. So let's
 9 not get into coaching witnesses like you've done
 10 before.

11 MR. MOORE: I'm setting a record.

12 MR. ROBBINS: You're not setting a record.
 13 You're coaching.

14 If you can respond, sir.

15 MR. MOORE: Go ahead, sir.

16 THE WITNESS: Can you ask the question again.

17 **Q. (BY MR. ROBBINS) Yes.**

18 **Do you recall during the course of that**
 19 **meeting that you as the superintendent of Penhall**
 20 **indicated that in the second pre-construction**
 21 **conference on May 31, 2018, "He had brought this**
 22 **matter up to Bryon Breen, the ITD resident**
 23 **engineer, and Bryon Breen indicated the**
 24 **conversation did occur but that no minutes were**
 25 **recorded of the meeting and he could not remember**

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1 **All right. Do you recall that subject**
 2 **matter being discussed at all during the course of**
 3 **this August 17, 2018, meeting? That is, the**
 4 **reduction of lanes from four down to a single lane.**

5 A. Yes, I do.

6 **Q. All right. And what is it that you can**
 7 **recall having been related about that subject**
 8 **during this meeting?**

9 A. I recall that the subject was brought
 10 up. The subject was brought up and something was
 11 said about extra signage, and that's all I can
 12 remember.

13 **Q. All right. And what about extra signage**
 14 **do you recall being addressed during this meeting?**

15 A. That extra signage would be needed to
 16 do -- to close three lanes.

17 **Q. In other words, extra signage that**
 18 **wasn't otherwise available on site would be needed?**

19 A. That extra signage would have to be put
 20 on the roadway.

21 **Q. Right.**

22 **And what would that extra signage say**
 23 **that was being discussed during this meeting?**

24 A. "Three Lanes Closed Ahead," I believe is
 25 what it said, or three-something lanes closed.

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1 Is it your recollection that on June 16,
 2 the night of the accident, you were involved with
 3 hot seal joints?
 4 A. It's very possible.
 5 Q. Okay. But that would have been over on
 6 the westbound side of I-84?
 7 A. Yes.
 8 Q. Okay. Going back to -- and I hate to
 9 take you back again, to page 717. It's indicated
 10 again "Leon Vaughan" -- under the "Scott Reed"
 11 entry, "Leon Vaughan," and there's a number to the
 12 right of Leon Vaughan.
 13 Is that his employment ID number or is
 14 that --
 15 A. That's his employee ID number.
 16 Q. Over to the right, "TMA for Diamond."
 17 So there, again, it's indicating that
 18 Mr. Vaughan was driving the truck-mounted
 19 attenuator for Diamond that night?
 20 A. Yes.
 21 Q. Now, a truck-mounted attenuator is a
 22 type of signage, correct?
 23 A. It is.
 24 Q. And what was the truck-mounted
 25 attenuator signage that was being used on the

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1 eastbound I-84 on June 16?
 2 A. I don't know what they had on it.
 3 Q. Okay.
 4 A. But it would most probably would have
 5 been an arrow --
 6 Q. All right.
 7 A. -- pointing to the open lanes.
 8 Q. All right. And the fact that it's a
 9 truck-mounted attenuator, does that mean that that
 10 signage could be moved?
 11 A. It's mounted on the truck.
 12 Q. Okay.
 13 A. And when -- the attenuator is basically
 14 there for -- if a vehicle comes inside the
 15 enclosure --
 16 Q. Right.
 17 A. -- for it to hit the attenuator before
 18 it gets to the personnel.
 19 Q. All right. So the truck-mounted
 20 attenuator, the truck itself and the attenuator on
 21 top of the truck, that's parked somewhere in the
 22 advanced warning area?
 23 A. It's parked inside the work zone.
 24 Q. In the work zone itself?
 25 A. Yes, in the work zone itself.

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1 Q. Not the advanced warning area?
 2 A. No.
 3 Q. All right. And is Mr. Vaughan within
 4 the truck while it is parked there in the work
 5 zone?
 6 A. I do not know.
 7 Q. Okay. Did Mr. Vaughan receive any
 8 instructions from Penhall as to how he was to
 9 handle his work of the TMA for Diamond?
 10 A. I don't recall what was told to
 11 Mr. Vaughan.
 12 Q. Okay. Let me ask you to take a look at
 13 Tab 28, and we'll go over to page 912.
 14 A. I'm sorry. What page?
 15 Q. 912.
 16 We spoke of this briefly with Mr. Reed.
 17 This appears to be a safety pre-task plan card for
 18 the date of June 15, 2018.
 19 Do you recognize the handwriting on
 20 this?
 21 A. Yes, I do.
 22 Q. All right. And is it your handwriting?
 23 A. It is.
 24 Q. All right. Now, under "Written Plans,"
 25 there's a reference to traffic control.

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1 What does -- and it says, "Check all
 2 applicable." What does the fact that the box next
 3 to "traffic control" having been checked indicate
 4 on this?
 5 A. It indicates that traffic control,
 6 first, knows we're going to work and, second, knows
 7 where we're going to work and that they are -- they
 8 are to set up that section.
 9 Q. Okay. So whatever it is traffic control
 10 is to do, you have advised them or someone from
 11 Penhall has advised them you're going to be working
 12 or there's going to be work to be performed in a
 13 particular area?
 14 A. Yes.
 15 Q. On June 15 on I-84 eastbound, it would
 16 not have been Penhall working. It would have been
 17 a subcontractor for Penhall?
 18 A. That is correct.
 19 Q. All right. Now, up under "Prior to
 20 start of task," there's a reference to "Understand
 21 and review scope of work with the entire crew."
 22 Within the context of that review and
 23 understanding, is the temporary traffic control
 24 plan addressed?
 25 A. Not with the crew, no.

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1 Q. All right. And you were the one that's
 2 handling the presentation to the crew?
 3 A. More times than not.
 4 Q. All right. Here it says "Bruce Kidd and
 5 Scott Reed."
 6 So both of you were present during this
 7 safety pre-task --
 8 A. Yes.
 9 Q. -- plan meeting?
 10 A. Yes.
 11 Q. All right. And this was a meeting that
 12 was held just with Penhall representatives?
 13 A. That is correct.
 14 Q. And the next box checked is, "Identify
 15 and communicate task hazards to all crew members,
 16 subcontractors, and affected personnel."
 17 Does that mean that subcontractors were
 18 present during this meeting too?
 19 A. No, they were not.
 20 Q. All right. And among the task hazards
 21 that would have been addressed since you were
 22 dealing with the traffic control reducing down to a
 23 single lane, would the hazards inherent to --
 24 A. I'm sorry. Say that again.
 25 Q. Since we're dealing with a task -- to a

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1 A. If we were working, there were lane
 2 closures.
 3 Q. Okay. The next page, there's a list of
 4 individuals. Do you recognize those as all being
 5 employees of Penhall?
 6 A. Yes.
 7 Q. Okay. All right.
 8 Let me ask you to take a look at
 9 Exhibit 1-B, Tab 18, page 680.
 10 A. Tab what?
 11 Q. Tab 18, page 680.
 12 A. Okay.
 13 Q. All right. 680 to 681 is an e-mail
 14 chain that involves various individuals identified
 15 there.
 16 Do you know a gentleman by the name of
 17 Eric Blackburn?
 18 A. I met him once, I think.
 19 Q. Do you know what, if any, position he
 20 held for Penhall insofar as the I-84 project was
 21 concerned?
 22 A. He helped me get equipment.
 23 Q. He helped you get equipment?
 24 A. Yes, sir.
 25 Q. Okay. What kind of equipment did he

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1 traffic control that was reducing traffic from four
 2 lanes into a single lane on eastbound I-84, would
 3 the task hazards associated with such reduction
 4 have been addressed?
 5 MR. GRAHAM: I'm going to object to the form.
 6 MR. MOORE: I'll object to foundation. Form.
 7 THE WITNESS: I don't know what Diamond
 8 addressed with them.
 9 Q. (BY MR. ROBBINS) Okay. Was Diamond
 10 making a presentation during the course of this
 11 meeting?
 12 A. Not in my meeting.
 13 Q. Right. That's what I'm getting at is --
 14 A. This is for the west -- we were working
 15 the westbound side.
 16 Q. Okay. So this is only related to the
 17 westbound side?
 18 A. That is correct.
 19 Q. All right. Were there traffic closures
 20 on the westbound side when you were -- or excuse
 21 me.
 22 Were there lane closures on the
 23 westbound side when you were working on June 15?
 24 A. I'm sure of it.
 25 Q. Do you know --

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1 help you get?
 2 A. The truck-mounted attenuators.
 3 Q. Okay. Anything else?
 4 A. Some of the other work trucks that we
 5 had.
 6 Q. Why is it that Penhall was obtaining the
 7 truck-mounted attenuators if it was something
 8 within the scope of work of the traffic control
 9 group, that is Specialty?
 10 A. I don't know.
 11 Q. Okay. Here, this is -- seems to be an
 12 e-mail chain that addresses a request for a change
 13 in the traffic control plan.
 14 Were you ever a recipient of any of
 15 these e-mails that took place in August of 2017?
 16 A. No.
 17 Q. Down at the bottom of 680, there's an
 18 e-mail from Dave Statkus to Vince Coletta.
 19 Do you know who Vince Coletta was
 20 insofar as the I-84 --
 21 A. He was the original project manager on
 22 this --
 23 Q. All right.
 24 A. -- on this project.
 25 Q. Did Mr. Coletta ever advise you that

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1 in Boise, was that the first time you'd ever been
 2 to Boise?
 3 A. No.
 4 Q. When had you been to Boise?
 5 A. I had driven -- I had driven through. I
 6 just -- I mean, I'd never stopped to visit, but I
 7 had driven through.
 8 Q. But the project here was your
 9 opportunity to kind of actually live here, although
 10 maybe in hotels --
 11 A. Yes.
 12 Q. -- and get familiar with the Boise area.
 13 Is that fair?
 14 A. Yes.
 15 Q. You shared with us earlier that in
 16 August of 2017 was when you thought the project
 17 started in terms of your involvement.
 18 Do I have that correct?
 19 A. Yes.
 20 Q. And when do you think you discontinued
 21 the project work in that 2017 season?
 22 A. I want to say October or November.
 23 Q. Okay. Where did you go after that?
 24 A. To Greensboro, North Carolina.
 25 Q. Okay. Did you return to Idaho at any

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1 was a meeting. You don't remember what day, but
 2 just sometime before the startup of work on May 31,
 3 either that day or earlier, where you went to
 4 District 3 and spoke with some ITD engineers,
 5 correct?
 6 A. I don't know what their employment
 7 status was.
 8 Q. Well, let me say it a different way.
 9 You spoke with ITD personnel?
 10 A. Yes.
 11 Q. And you don't remember the names of
 12 those people?
 13 A. I do not.
 14 Q. Okay. And it's your recollection that
 15 you spoke with those people with Scott Reed being
 16 in attendance and a Mr. Belcher?
 17 A. Bleeker.
 18 Q. Bleeker. Okay.
 19 Prior to that date, had you ever had any
 20 other meetings with ITD personnel about this
 21 project?
 22 A. No, not that I recall.
 23 Q. Okay. Do you recall having any other
 24 meetings with ITD people about this project at any
 25 time after that but up through the June 16, 2018,

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1 time in the balance of 2017 or the first three
 2 months of 2018?
 3 A. No.
 4 Q. I'm looking at the notes here. These
 5 field notes, which are the -- it's Exhibit 25,
 6 roughly page 712.
 7 Do you remember --
 8 A. Which -- which book?
 9 Q. Well, it's the -- Exhibit 3.
 10 MR. ROBBINS: Exhibit 2, Volume 3.
 11 MR. MOORE: I stand corrected. He's right.
 12 Exhibit 2.
 13 MR. GRAHAM: Tab 25.
 14 MR. ROBBINS: Yeah. Yes, sir.
 15 THE WITNESS: What page?
 16 Q. (BY MR. MOORE) Oh, just try -- the one
 17 we were just talking about, 712.
 18 From what I can tell in these records,
 19 you were back in Idaho in May of 2018 --
 20 A. Yeah.
 21 Q. -- in a position to now begin work on
 22 your -- the Boise project in May of 2018.
 23 Is that fair?
 24 A. That would be fair to say.
 25 Q. Now, you've testified earlier that there

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1 accident?
 2 A. When you say "meeting," are you talking
 3 about a -- a formal meeting --
 4 Q. Any type of meeting.
 5 A. -- in their office building?
 6 Q. Yes, sir. Yes.
 7 A. Not in their office building, no. But
 8 our meetings, when I would deal with the IDOT
 9 personnel, they were normally in our laydown yard,
 10 and I would tell them, "This is what we're going to
 11 do today. We'll work from Point A to Point B, this
 12 lane and this lane."
 13 Q. We're getting a little ahead of where I
 14 wanted to. I was going to cover that too, but I
 15 appreciate you sharing that with me.
 16 At least with regard to meetings at
 17 District 3, their District 3 office, that was the
 18 only one you recall?
 19 A. Yes.
 20 Q. Okay. Mr. Mortimer already broached
 21 with you one of the subjects that I was going to
 22 take up dealing with the time issues concerning the
 23 discussions with ITD and what Mr. Reed has told us.
 24 Let me share with you it's my recollection that
 25 Mr. Reed indicated that the discussion that took

1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

5 I, ANDREA J. WECKER, Certified Shorthand Reporter
6 and Notary Public in and for the State of Idaho, do hereby
7 certify:

8 That prior to being examined, the witness named in
9 the foregoing deposition was by me duly sworn to testify
10 to the truth, the whole truth and nothing but the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and
13 thereafter reduced to typewriting under my direction,
14 and that the foregoing transcript contains a full, true
15 and verbatim record of said deposition.

16 I further certify that I have no interest in the
17 event of the action.

18 WITNESS my hand and seal this 5th day of April,
19 2021.

20 *Andrea J. Wecker*
21



22 ANDREA J. WECKER
23 CSR, RDR, CRR, CRC and Notary
24 Public in and for the
25 State of Idaho.

24 My Commission Expires: 02-14-23

EXHIBIT 17

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF SCOTT REED
March 19, 2021
Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

<p style="text-align: right;">Page 26</p> <p>1 Q. How long was your involvement on the 2 Houston Katy Freeway project, if you recall? 3 A. Six to eight months. 4 Q. And how about the Seattle project? 5 A. Two months. 6 Q. And both of those were highway projects? 7 A. Yes. 8 Q. Obviously, the Katy Freeway was a 9 highway project. 10 A. Yes. They both were. 11 Q. All right. And after your involvement 12 with the I-84 project, were you involved in any 13 other freeway construction projects during your 14 time at Penhall? 15 A. No. 16 Q. So the I-84 was your last project 17 working with Penhall? 18 A. No. You said prior to the I-84 project. 19 Q. Excuse me. After the I-84 project, were 20 you involved in any other freeway or highway 21 projects? 22 A. Yes. 23 Q. What other ones? 24 A. One in Mount Airy, North Carolina. 25 Q. Is that A-I-R-I-E [sic]?</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Yes. Better known as Mayberry. 2 Q. Okay. How long was your involvement in 3 that project? 4 A. I'll estimate four to six months. 5 Q. Any others after Mount Airy? 6 A. No. 7 Q. Okay. Let's go through these. 8 Your position on the Houston Katy 9 Freeway project, what was your position during that 10 project? 11 A. Project superintendent. 12 Q. Okay. Your job duties and 13 responsibilities were there on site during the 14 construction project? 15 A. On site, at the laydown yard, as well as 16 out on the highway, yes. 17 Q. Okay. And was there a traffic control 18 plan involved in that construction project, the 19 Houston Katy? 20 A. Yes. 21 Q. Okay. And was Penhall involved in the 22 creation of that temporary traffic control plan? 23 A. I don't believe so. 24 Q. All right. Was there a contractor that 25 was brought onboard to manage the temporary traffic</p>
<p style="text-align: right;">Page 28</p> <p>1 control plan? 2 A. Yes. 3 Q. Okay. Do you recall the name of that 4 manager? 5 A. No, I do not. 6 Q. Either the company or the individual? 7 A. I don't recall at this time. 8 Q. All right. Did Penhall have any 9 involvement in either the inspection or the 10 implementation of the temporary traffic control 11 plan on the Houston Katy Freeway project? 12 A. Yes. 13 Q. What was their involvement? 14 A. They had a subcontractor that set it up 15 and tore it down every night. 16 Q. Right. And was Penhall involved in the 17 inspection of their activities, the activities of 18 that subcontractor? 19 A. No. 20 Q. All right. Was Penhall involved in the 21 evaluation of the adequacy of the temporary traffic 22 control plan during the construction project on the 23 Katy Freeway project? 24 A. No. I was not. 25 Q. Was anyone at Penhall involved in those</p>	<p style="text-align: right;">Page 29</p> <p>1 types of activities, evaluating the adequacy of the 2 temporary traffic control plan? 3 A. Can you describe "adequacy"? 4 Q. Whether the plan was working to address 5 the conditions that were on site during the course 6 of the project. 7 A. No. 8 Q. Did you have contact with the 9 temporary -- 10 Well, strike that. 11 Was there a temporary traffic control 12 manager on the Katy project? 13 A. Yes. 14 Q. Did you interact with the temporary 15 traffic control manager on that project? 16 A. On a very limited basis because of my 17 position. 18 Q. When you say "very limited basis" 19 because of your position, what -- could you explain 20 what you mean by that? 21 A. Yes. 22 As a project superintendent, I was not 23 on the project every day as far as the working area 24 of the jobsite. I was more of a support role to 25 the superintendents that actually ran the crews</p>

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1 the Department of Transportation on the Katy
 2 project who was involved in the communications
 3 between Penhall and the traffic control manager?
 4 A. There was a project inspector that was
 5 out there on a nightly basis.
 6 Q. And were there contract documents that
 7 specified for that particular project that the
 8 appropriate representative of the Department of
 9 Transportation for the purpose of changing the
 10 temporary traffic control plan would be the project
 11 inspector?
 12 A. Can you repeat that?
 13 Q. Yeah.
 14 Did the contract --
 15 Did the project documents, project
 16 contract, specify that if a change to a temporary
 17 traffic control plan was to be made, that the
 18 appropriate individual to contact for the purpose
 19 of approving that change with the Department of
 20 Transportation would be the on-site Department of
 21 Transportation inspector?
 22 A. I am not familiar with that.
 23 Q. Okay. Why is it that the inspector was
 24 the individual who was contacted to obtain approval
 25 for the change as opposed to some other

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1 A. Project superintendent.
 2 Q. All right. And did that project involve
 3 either the creation or implementation of a
 4 temporary traffic control plan?
 5 A. Yes.
 6 Q. All right. And did you have any
 7 involvement in either the creation or
 8 implementation of that temporary traffic control
 9 plan?
 10 A. Once again, as I repeated, similar to
 11 the previous question, only on a limited basis if I
 12 was covering for the superintendents who were on
 13 rotation.
 14 Q. Okay. Do you know if the temporary
 15 traffic control plan for that project was amended
 16 or changed at any time during the course of your
 17 involvement with the project?
 18 A. I don't recall of any at this time.
 19 Q. During your involvement on the Houston
 20 Katy Freeway project, was there ever a time where a
 21 traffic queue developed through a work zone that
 22 extended beyond a mile?
 23 A. Almost every night.
 24 Q. All right. Was there ever a decision
 25 made because of the extent of that queue that work

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1 representative of the DOT?
 2 A. Because he was the one working with us
 3 that night.
 4 Q. Okay. Was there a resident engineer
 5 assigned to that project by the Department of
 6 Transportation, if you know?
 7 A. I do --
 8 I cannot definitively answer that.
 9 Q. Okay. All right.
 10 How about on the Seattle project? Did
 11 the --
 12 What was your position on the Seattle
 13 project?
 14 A. I was the project superintendent who
 15 traveled out there for a very specific reason.
 16 Q. And what was the reason that you
 17 traveled out there for?
 18 A. I needed to negotiate and resolve some
 19 union issues of the unions we were dealing with.
 20 Q. Did you have any involvement in that
 21 project with the temporary traffic control plan?
 22 A. No, I did not.
 23 Q. Okay. How about the Mount Airy,
 24 North Carolina, project? What was your position
 25 there?

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1 should be stopped?
 2 A. No.
 3 Q. Were there any changes to the temporary
 4 traffic control plan to accommodate or ameliorate,
 5 if you will, the development of that traffic queue
 6 through the work zone?
 7 A. Not that I'm aware of.
 8 Q. In your position with Penhall, did you
 9 recognize that the existence of a traffic queue
 10 through a work zone presents a potential hazard to
 11 workers as well as motorists moving through the
 12 work zone?
 13 A. Yes.
 14 Q. And that hazard is involved with the
 15 potential for rear-end accidents at the end of the
 16 queue?
 17 A. Yes.
 18 Q. As well as other types of vehicular
 19 accidents?
 20 A. Yes.
 21 Q. Okay. Is it your experience and
 22 expectation that temporary traffic control plans
 23 then should be able to be modified in order to
 24 address the development of queues through work
 25 zones to reduce the risk of injury to either

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1 and saw the mile-long traffic queue through the
 2 work zone.
 3 Under those circumstances, would it have
 4 been your custom and practice to address the
 5 concern to the traffic control manager?
 6 MR. MOORE: Object to the form and
 7 foundation.
 8 THE WITNESS: I would reach out to the
 9 traffic control manager to find out if they were
 10 aware of it.
 11 Q. (BY MR. ROBBINS) All right. Would it be
 12 just to find out his awareness or to find out what
 13 he was doing to respond to it?
 14 A. That would be up to him --
 15 MR. PERKINS: Object to the form.
 16 THE WITNESS: That would be up to him and his
 17 responsibilities.
 18 Q. (BY MR. ROBBINS) All right. But if he
 19 did not address that or respond to the development
 20 of the queue, is that a circumstance when you would
 21 expect the issue to be escalated to the client?
 22 A. I would not know.
 23 Q. Okay. All right.
 24 Is it your understanding that the
 25 purpose of a traffic control plan is to facilitate

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1 A. Yes.
 2 Q. Are you familiar with the term
 3 "advanced warning area" when we're dealing with
 4 temporary traffic control measures?
 5 A. With the term, yes.
 6 Q. All right. Is the purpose of an
 7 advanced warning area in a highway construction
 8 project to warn drivers about a potential upcoming
 9 hazard?
 10 MR. PERKINS: Object to the form.
 11 THE WITNESS: From my general knowledge, yes.
 12 Q. (BY MR. ROBBINS) Okay. And one of those
 13 hazards would be a development of a queue or
 14 stopped traffic?
 15 A. I'm not sure how you mean.
 16 Q. Well, in the advanced warning area, is
 17 one of the issues that drivers are to be warned of
 18 is the occurrence of stopped traffic ahead or the
 19 development of a traffic queue or traffic lineup?
 20 A. I would not be qualified to identify the
 21 actual definition of that.
 22 Q. Let's get to your involvement on the
 23 I-84 project. And your involvement came around in
 24 the spring of 2018, I think you testified, correct?
 25 A. Yes.

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1 the safe passage of motorists through a work zone?
 2 A. To the best of my knowledge, yes.
 3 Q. And is it to reduce the occurrence of
 4 unexpected stoppages or traffic queues through a
 5 work zone?
 6 MR. PERKINS: Object to the form.
 7 Q. (BY MR. ROBBINS) To the extent you know.
 8 A. Repeat that question.
 9 Q. Sure.
 10 Is the purpose of a temporary traffic
 11 control plan to reduce the occurrence of unexpected
 12 stoppages or traffic queues through a work zone?
 13 MR. PERKINS: Same objection.
 14 THE WITNESS: Yes, partially.
 15 Q. (BY MR. ROBBINS) What's the other
 16 purpose of a temporary traffic control plan, as
 17 you --
 18 A. The workers' safety.
 19 Q. So, again, safety of workers and safety
 20 of motorists passing through the work zone --
 21 A. Yes.
 22 Q. -- correct? Okay.
 23 And is that issue, that is the purpose
 24 to facilitate safe passage, particularly important
 25 where you're dealing with nighttime construction?

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1 Q. And what was your position on the
 2 project in the spring of 2018?
 3 A. Project superintendent.
 4 Q. All right. How often were you actually
 5 out at the project acting as project superintendent
 6 for Penhall on the I-84 project?
 7 A. When you say "out on the project," do
 8 you mean work zone?
 9 Q. On site in the work zone, yes.
 10 A. Occasionally, periodically. I don't
 11 know exactly how to quantify that. I mean --
 12 Q. Well, with what frequency per week, if
 13 you have a recollection?
 14 A. A couple times a week.
 15 Q. And would you stay there out on the site
 16 through -- at the work zone throughout the period
 17 of time that work was being conducted on those
 18 occasions where you were actually on site?
 19 A. Only if I was covering for a
 20 superintendent who was off.
 21 Q. Okay. How would we be able to find out
 22 on what days you were actually out on site for this
 23 project?
 24 A. I'm not sure how Penhall would have
 25 tracked that.

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1 Q. Well, did you submit time records, for
 2 example, that would indicate when you were --
 3 A. No.
 4 Q. -- on site?
 5 A. I was a salary position.
 6 Q. Okay. Do you recall who the
 7 superintendents were on that project?
 8 A. Yes.
 9 Q. Who were they?
 10 A. Bruce Kidd and Bob Bleeker. Bob
 11 Bleeker.
 12 Q. Got it.
 13 And Mr. Kidd --
 14 Well, strike that.
 15 Do you know during what period of time
 16 Mr. Bleeker was on-site superintendent on this
 17 project?
 18 A. No.
 19 Q. All right. Did you create any diaries
 20 or reports regarding your involvement in this
 21 project?
 22 A. Not specifically, no.
 23 Q. Now, in looking through some documents
 24 that have been produced, let me ask you to take a
 25 look -- open up Exhibit 2. Let's take a look at

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1 A. -- and job safety observation.
 2 Q. Anything else?
 3 A. There were some documents in regards to
 4 the subcontract of Specialty, traffic control
 5 subcontractor.
 6 Q. What documents did you look at with
 7 regard to Specialty?
 8 A. Stipulations of the contract.
 9 Q. All right. Did you take a look at the
 10 special provisions?
 11 A. Yes.
 12 Q. All right.
 13 A. I'm sorry. I called them the wrong
 14 name.
 15 Q. That's all right.
 16 Did you take a look at the actual
 17 temporary traffic control plans themselves?
 18 A. Yes.
 19 Q. Okay. Now, when you said "PTP," what --
 20 Is that a safety pre-task plan card?
 21 A. Yes.
 22 Q. Did you happen to see a safety pre-task
 23 plan card for the date of June 16, 2018?
 24 A. I don't remember what date was on it.
 25 Q. How many safety pre-task plan cards did

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1 Tab 25.
 2 These are field -- if you have them in
 3 front of you, field log notes summary, taking a
 4 look at page 705.
 5 Are you familiar with the format of
 6 those -- the documents that I've shown you?
 7 A. Vaguely, yes.
 8 Q. All right. Did you create or keep field
 9 notes that were ultimately reduced to a summary
 10 form for this project?
 11 A. I think everything I created was via
 12 e-mail.
 13 Q. Okay. I've had discussions with your
 14 counsel's office yesterday, and it's my
 15 understanding that there were e-mails that are
 16 going to be produced.
 17 Have you reviewed any of those e-mails
 18 in preparation for this deposition?
 19 A. No.
 20 Q. Okay. Did you review any documents in
 21 preparation for this deposition?
 22 A. Yes.
 23 Q. What documents did you review?
 24 A. The PTP, pre-task planning card --
 25 Q. Okay.

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1 you review?
 2 A. One.
 3 Q. All right. Do you recall whether that
 4 was for --
 5 Strike that.
 6 Let me ask you to take a look at Tab 28,
 7 page 912.
 8 A. Page 912?
 9 Q. Yeah, 910. It's up on the right-hand
 10 margin.
 11 A. This one is on the bottom, but that's
 12 okay.
 13 Q. Oh.
 14 A. You say 912?
 15 Q. Yes, sir.
 16 A. Okay.
 17 Q. All right. Is that the safety pre-task
 18 plan card you reviewed?
 19 A. No.
 20 Q. All right. By looking through Tab 28,
 21 are you able to identify the safety pre-task plan
 22 cards that you did review?
 23 A. I don't remember the specific date of
 24 which one was -- which one I viewed.
 25 Q. Okay. Do you recall who was identified

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1 as the supervisor on the safety pre-task plan card
 2 you did review?
 3 A. Kenny Hinton.
 4 Q. All right. And did reviewing that --
 5 Was it just a single pre-task plan card
 6 that you reviewed?
 7 A. Yes.
 8 Q. All right. And did the review of that
 9 particular pre-task plan card refresh your
 10 recollection concerning this event at all?
 11 A. That particular card I reviewed
 12 yesterday, no.
 13 Q. Okay. Let me ask you then to take a
 14 look at what I've asked you to look at before as
 15 page 912 from Exhibit -- from Tab 28, and that is
 16 the safety pre-task plan card for June 15, 2018.
 17 Do you recognize the handwriting on
 18 that?
 19 A. Yes.
 20 Q. Whose handwriting is it?
 21 A. Bruce Kidd's.
 22 Q. Okay. And under "Supervisor," it
 23 reflects Bruce Kidd and yourself.
 24 Does that indicate you were on site on
 25 June 15, 2018?

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1 Q. Does that indicate that the traffic
 2 control plan for this project was reviewed during
 3 the course of this meeting?
 4 A. No. It just references that there is
 5 one in place that's being used. It doesn't get --
 6 When you say traffic control plan, was
 7 it reviewed --
 8 Q. Yeah. During the course of the meeting.
 9 A. What this means here is --
 10 Are you talking about the formal written
 11 temporary traffic control plan?
 12 Q. Yeah, the formal written temporary
 13 traffic control plan and/or the special provisions
 14 pertaining to that plan.
 15 A. No.
 16 Q. Okay. What, if anything, about the
 17 traffic control plan was addressed?
 18 A. The area of the project that we'll be
 19 working in, what lanes we were setting up our
 20 temporary closure for, and where we would be
 21 working that night.
 22 Q. Okay. And did you, before your
 23 involvement with this I-84 project, familiarize
 24 yourself with the temporary traffic control plan?
 25 A. In general, yes.

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1 A. No, it does not.
 2 Q. All right. Do you know whether you were
 3 on site on June 15, 2018?
 4 A. In the work zone, no. I don't recall.
 5 Q. Where were you if you were not in the
 6 work zone on June 15, 2018?
 7 A. I don't remember the specific date, but
 8 typically I would always be in the laydown yard at
 9 the beginning of the work shift.
 10 Q. All right. And what is the purpose of
 11 the safety pre-task plan card?
 12 A. The purpose of a safety pre-task plan
 13 card is multifunctional.
 14 Primarily, it's a tool that a supervisor
 15 uses to conduct their safety meeting, and all of
 16 the categories here are to trigger his mind in the
 17 safety mindset of what his crew may or may not be
 18 involved with.
 19 Q. All right.
 20 A. So it --
 21 Q. Under --
 22 A. Go ahead.
 23 Q. Under "Written Plans," there's a
 24 reference to traffic control.
 25 A. Yes.

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1 Q. Well, by "in general, yes," what is it
 2 that you mean by that? Did you review it? Did you
 3 read the temporary traffic control plan?
 4 A. I would read it and review it, but once
 5 again, we had a subcontractor, so it --
 6 I knew that there was one in place, but
 7 that was pretty much the only involvement in it.
 8 Q. And you knew what the requirements of
 9 the temporary traffic control plan were for this
 10 project?
 11 A. Yes.
 12 Q. Okay. All right. Up under --
 13 Again, directing your attention to
 14 page 912 of Tab 28, "Prior to start of task,"
 15 there's a few boxes checked underneath. There's a
 16 reference to, "Understand and review scope of work
 17 with the entire crew."
 18 Would that include a review of the
 19 temporary traffic control plan?
 20 A. No.
 21 Q. Would it include a reference to how many
 22 lanes you expected to be placed out of service for
 23 that night's work?
 24 A. Yes.
 25 Q. So there is something about the

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1 temporary traffic control plan that is addressed
 2 with the crew?
 3 A. In regards to that night's work, yes.
 4 Q. Yes. Okay.
 5 Next, it says, "Identify and communicate
 6 task hazards to all crew members, subcontractors,
 7 and affected personnel."
 8 Would the identification and
 9 communication task hazards include the development
 10 of traffic queues in the work zone?
 11 A. No.
 12 Q. Why is that?
 13 A. Because the crew is not going to be
 14 involved in -- that's not something that they need
 15 to be aware of at the time. They need to be aware
 16 of what their surroundings are in their work area.
 17 Q. All right.
 18 A. A traffic queue usually develops outside
 19 the work area.
 20 Q. In the area leading up to the work zone
 21 itself?
 22 A. Yes.
 23 Q. Now, on "Jobsite Specific," there's
 24 various boxes underneath that, and among that is a
 25 box checked "traffic" and a box checked

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1 mentioned was traffic flow through the work zone.
 2 A. No. If traffic came into your -- into
 3 the enclosure.
 4 Q. Only if it comes into the enclosure?
 5 A. And be aware of what's around, what's
 6 happening.
 7 For instance, if -- I can't relate to
 8 the 84 project, but on occasion, if I was doing a
 9 safety meeting in Katy thruway, at 2:00 a.m. there
 10 was always a cycle of UPS trucks, UPS semis.
 11 Q. Right.
 12 A. So I would remind them to be aware of
 13 that; that's their surrounding, that's traffic
 14 coming through the work zone even though it's
 15 outside our enclosure, but there's an overabundance
 16 of semis. So that would be an issue. This card
 17 helps me think, "Oh, yeah, I need to talk to them.
 18 Remind you guys after your 1:30 break, pay
 19 attention."
 20 Q. Was the I-84 eastbound an area, as you
 21 were aware during the course of your involvement,
 22 where there was a prevalence of semi traffic; that
 23 is, tractor-trailer traffic through that area?
 24 MR. MOORE: Object to the form and
 25 foundation.

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1 "lane closures."
 2 Do you know what those two boxes were
 3 meant to indicate?
 4 A. Yes.
 5 Q. What were they meant to indicate,
 6 starting first with "traffic."
 7 A. When you start with traffic, you are
 8 always reminding --
 9 One of the biggest problems in
 10 construction -- highway construction, especially
 11 working at night, is complacency. So you always
 12 make sure that your employees are paying attention
 13 to their surroundings, whether or not somebody hits
 14 a pylon, what traffic flow is.
 15 It's more or less a topic of being aware
 16 of your surroundings, always looking both ways
 17 before you do anything, before you move anywhere,
 18 never step outside the traffic -- the temporary
 19 enclosure. Never -- never take any equipment or
 20 yourself outside that enclosure.
 21 Flashing lights, be aware of them behind
 22 you because it may be a drunk driver that's come
 23 into the enclosure and that from the traffic
 24 standpoint.
 25 Q. All right. One of the issues you

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1 THE WITNESS: Not -- not anything above what
 2 you normally would see, no.
 3 Q. (BY MR. ROBBINS) The next box below, it
 4 references lane closures.
 5 What is that meant to address?
 6 A. That's just, once again, to remind them
 7 where we're working and what lanes we have closed.
 8 Q. All right. Now, on the next page, 913,
 9 there's a list of names.
 10 Are those all Penhall personnel that
 11 were on the project or also contract personnel on
 12 the project?
 13 A. To the best of my knowledge, these are
 14 just the Penhall employees.
 15 Q. All right. Were subcontractors ever
 16 involved during the I-84 project in the Penhall
 17 safety pre-task meetings?
 18 A. No.
 19 Q. Okay. Let me ask you to turn back to
 20 Tab 25.
 21 Now, in these documents -- and let's
 22 take a look at, for example -- well, let's look at
 23 page 716.
 24 Up at the top, there's a reference to
 25 field log notes, the foreman indicated as Bruce

<p style="text-align: right;">Page 82</p> <p>1 answering your question, ITD is a formal name of 2 Idaho Department of Transportation. 3 Q. Correct. 4 A. If I refer to them as "DOT," that's 5 because generally they're all DOT. There's a few 6 states that have their own name. 7 Q. Understood. 8 A. So if I say "DOT," that's what I'm 9 talking about. 10 Q. ITD. Right. Okay. 11 All right. What next do you recall 12 during the course of that first conversation with 13 Mr. Kidd? 14 A. That was it. I said I'd be on my way 15 out there, and I headed out to the enclosure area 16 work zone. 17 Q. All right. And once you got to the work 18 zone, did you have another conversation with 19 Mr. Kidd? 20 A. Yes. 21 Q. All right. And what was the content of 22 that conversation? 23 A. We were just verifying and trying to 24 determine whether or not we should keep working. 25 Q. Okay.</p>	<p style="text-align: right;">Page 83</p> <p>1 A. If it was as bad of an accident as what 2 we had heard it to be. Bruce informed me that he 3 did hear the explosion. 4 Q. All right. 5 A. At some point, I don't know exactly when 6 the explosion took place, but I would assume it was 7 within minutes after the -- the impact. 8 I asked him if he contacted traffic 9 control, and he said yes and that traffic control 10 had -- 11 When I say "traffic control," I'm 12 referring to our subcontractor. 13 Q. Specialty? 14 A. Specialty. 15 Q. Do you know who the manager was on site 16 that night? 17 A. No, I do not recall. 18 Q. Does the name Mason Garling ring a bell 19 with you? 20 A. The name sounds familiar, but I can't 21 verify that he was the one on site that night. 22 Q. Okay. 23 A. But he informed me he had contacted 24 traffic control and that traffic control informed 25 him that the traffic control was set up according</p>
<p style="text-align: right;">Page 84</p> <p>1 to plan. 2 Q. According to what plan? 3 A. Whatever specifications they were 4 supposed to follow. 5 Q. When you were out there after the 6 accident had happened, did you see how many lanes 7 had been closed in the area leading up to the work 8 zone? 9 A. No, because I can never get to -- I 10 never -- I was on the other side of the interstate. 11 We never got anywhere close to the accident. 12 Q. All right. When you say when you were 13 out -- 14 Strike that. 15 Do you have a recollection of being in 16 the work zone on I-84 eastbound earlier that 17 evening? 18 A. Is eastbound the side of the accident? 19 I don't remember. 20 Q. Yeah. 21 A. Okay. No, I don't recall being on that 22 side of the work zone. 23 Q. Okay. Was there another work zone on 24 the other side of I-84? 25 A. On the westbound side, yes.</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. All right. 2 A. That's where Penhall was working. 3 Q. All right. When you say Penhall was 4 working on the westbound, were there Penhall 5 representatives on the eastbound -- 6 A. No. 7 Q. Was there no Penhall work zone in the 8 eastbound lanes of I-84? 9 A. There was a Penhall work zone, but a 10 subcontractor was working over there. 11 Q. All right. There were no Penhall 12 representatives over on -- at that work zone on 13 eastbound I-84 on June 16, 2018? 14 A. Can you be more specific? 15 Q. Yeah. I'm -- 16 A. Occasionally, there may -- I may have 17 driven through that work zone, but at the time of 18 the accident, no, there was no Penhall employees 19 over there. 20 Q. All right. Before the accident 21 happened, do you know one way or the other as to 22 whether there were Penhall employees over in the 23 work zone of eastbound I-84 on June 16, 2018? 24 A. I cannot specifically state that, no. 25 Q. All right. Did work proceed that night</p>

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1 [Break taken from 9:42 a.m. to 9:56 a.m.]
 2 THE VIDEOGRAPHER: All right. So the camera
 3 is rolling. The time is 9:56 a.m., and we are back
 4 on the record.
 5 Q. (BY MR. ROBBINS) All right, sir. During
 6 the course of the break, were there any aspects of
 7 your testimony up to this point that you'd like to
 8 change or modify in any respect?
 9 A. No.
 10 Q. Now, I briefly touched upon it earlier,
 11 but prior to your involvement in the I-84 project,
 12 did you have occasion to review the contract
 13 between the State of Idaho and Penhall pertaining
 14 to this project?
 15 A. No.
 16 Q. All right. Did you have a chance to
 17 take a look at the special provisions pertaining to
 18 the temporary traffic control plan for this
 19 project?
 20 A. Could you better clarify that question,
 21 please?
 22 Q. Yeah.
 23 You understand what the term
 24 "special provisions" as it would relate to the
 25 temporary traffic control plan for the I-84 project

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1 A. Okay.
 2 Q. Do you recall seeing the contract that
 3 is reflected at Tab 6 between the State of Idaho
 4 Transportation Department and Penhall?
 5 A. No.
 6 Q. All right. Let me ask you to take a
 7 look specifically at page 23 in Tab 6.
 8 Do you recall --
 9 Strike that.
 10 Do you recognize that page as being the
 11 first page of the special provisions?
 12 A. No.
 13 Q. Okay. Let me ask you to take a look at
 14 page 27, and specifically under "Staging and
 15 Temporary Traffic Control Plans" under the heading
 16 "Ultimate Staging and Temporary Traffic Control
 17 Plan."
 18 There's two paragraphs under that. I'll
 19 give you a chance to review that.
 20 A. Page 27, "Ultimate" what?
 21 Q. Under "Staging and Temporary Traffic
 22 Control Plan."
 23 A. Oh, okay.
 24 Q. Specifically under "Alternate Staging
 25 and Temporary Traffic Control Plan." And the two

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1 relates to?
 2 A. Yes.
 3 Q. Where did you see those special
 4 provisions?
 5 A. Yesterday.
 6 Q. Okay. Prior to your involvement in the
 7 I-84 project, did you have occasion to review the
 8 special provisions?
 9 A. No.
 10 Q. Okay. Prior to your involvement in the
 11 I-84 project, did you have occasion to review the
 12 provisions of the temporary traffic control plan?
 13 A. No.
 14 Q. So you never saw the sheets of the
 15 engineering drawings laying out the temporary
 16 traffic control plan?
 17 A. The specific temporary traffic control
 18 plan or the plans of the project?
 19 Q. The specific plans as it would relate to
 20 the temporary traffic control plan.
 21 A. Only as they were noted on the general
 22 plans of the project.
 23 Q. All right. Let me ask you to take a
 24 look at -- on Exhibit 1-A, Tab 6. Specifically,
 25 page 1 and going over to page 2.

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1 paragraphs under that, I'd ask you to take a look
 2 at it, and I'll --
 3 My question to you is: Do you recall
 4 having seen either those paragraphs or otherwise
 5 being informed as to how alternate staging of the
 6 temporary traffic control plan could be presented
 7 to the State?
 8 A. Could you repeat your question one more
 9 time?
 10 Q. Yes. I'm asking you to take a look at
 11 the two paragraphs under "Alternate Staging."
 12 A. Yes.
 13 Q. Once you review that, my question to you
 14 is: Do you recall being informed, either prior to
 15 your involvement in the I-84 project or during your
 16 involvement in the project, that there were
 17 specific procedures that had to be followed if the
 18 temporary traffic control plan was going to be
 19 modified or changed?
 20 A. No.
 21 Q. Were you not involved -- informed during
 22 the course of your involvement in the I-84 project
 23 prior to June 16, 2018, that any request for an
 24 alternative to the temporary traffic control plan
 25 had to be presented to the engineer of the Idaho

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1 Department of Transportation 14 days before any
 2 change in the traffic control plan could be
 3 implemented?
 4 MR. PERKINS: Object to the form.
 5 THE WITNESS: Could you restate that question
 6 from the beginning?
 7 Q. (BY MR. ROBBINS) Yeah.
 8 My question to you is: Were you
 9 informed in any fashion during the course of your
 10 involvement with the I-84 project prior to June 16,
 11 2018, that the only way to change the terms of the
 12 accepted temporary traffic control plan was to
 13 submit in writing the request for such a change to
 14 the Department of Transportation for the State of
 15 Idaho?
 16 A. No.
 17 Q. Is there any reason why you did not
 18 inform yourself of the provisions of the agreement
 19 between the State of Idaho and Penhall concerning
 20 this particular project before your involvement in
 21 the I-84 project?
 22 A. No.
 23 Q. Is there any reason why you didn't
 24 inform yourself about the provisions of the
 25 contract between the State of Idaho and Penhall

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1 Bruce Kidd for that.
 2 Q. All right. Let me ask you to take a
 3 look at page 28 of the same tab under
 4 "Working Hours."
 5 A. Yes.
 6 Q. Do you have any recollection of having
 7 seen the block that's indicated under "Working
 8 Hours" at any time before June 16, 2018, during the
 9 time of your involvement in this project?
 10 A. No.
 11 Q. Were you aware that for existing
 12 four-lane sections and greater, a minimum of two
 13 lanes shall be maintained in each the eastbound and
 14 westbound direction or as shown in the temporary
 15 traffic control plans?
 16 A. No.
 17 Q. Do you know whether, prior to June 16 of
 18 2018, there was ever a request to change the
 19 temporary traffic control plan that was approved
 20 for this project?
 21 MR. MOORE: Could you rephrase that, Counsel?
 22 MR. ROBBINS: Well, I can repeat it.
 23 Q. (BY MR. ROBBINS) Do you have a
 24 recollection as to whether, prior to June 16 of
 25 2018, there was ever a request by any party out at

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1 during the course of your involvement of the I-84
 2 project prior to June 16, 2018?
 3 A. No.
 4 The last two questions you asked me, is
 5 there any reason why or are you asking me if I did?
 6 Q. No. Is there any reason --
 7 You've already testified that you did
 8 not and --
 9 A. That's correct. I did not look at it.
 10 Q. Was there a reason why you did not look
 11 at it either before your involvement of the project
 12 or during the course of your involvement in this
 13 project?
 14 A. Yes.
 15 Q. Why?
 16 A. Because as I stated before in my
 17 testimony, I was a very limited basis of being out
 18 on the work zones. Therefore, I didn't need to be
 19 involved in that, so it wasn't part of my
 20 responsibilities.
 21 Q. Do you know whether Mr. Kidd informed
 22 himself as to the terms of the special provisions
 23 of the temporary traffic control plan before his
 24 involvement in I-84?
 25 A. I would not know. You'd have to ask

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1 the project to change the provisions of the
 2 temporary traffic control plan that had been
 3 approved on this project?
 4 A. Could you better clarify your question?
 5 Q. Yeah.
 6 Was there ever any discussion about
 7 changing the temporary traffic control plan prior
 8 to June 16 of 2018?
 9 A. Yes.
 10 Q. Okay. And when was the first time you
 11 heard that discussion about a change to the
 12 temporary traffic control plan?
 13 A. At a meeting with ITD a few days before
 14 we restarted work that spring, and I believe it was
 15 sometime in May.
 16 Q. Okay. When you say "restarted work that
 17 spring," Penhall had been out on the project in
 18 2018 in the fall -- 2017 in the fall, correct?
 19 A. Yes.
 20 Q. You were not out there, though.
 21 Is that right?
 22 A. No, I was not.
 23 Q. All right. So we have heard testimony
 24 of a re-startup, for want of a better term, meeting
 25 that was held in either April or May of 2018.

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1 **Did you attend that meeting?**
 2 A. I attended a meeting in May.
 3 **Q. All right. Do you recall what day in**
 4 **May?**
 5 A. I do not recall at this time.
 6 **Q. Did you make any memos of what took**
 7 **place during the course of that meeting?**
 8 A. No, I did not.
 9 **Q. Do you know if anybody made any writings**
 10 **that reflected or memorialized the content of what**
 11 **was discussed during that meeting?**
 12 A. Yes.
 13 **Q. Who memorialized the content of the**
 14 **discussions at that meeting, to the best of your**
 15 **knowledge?**
 16 A. Two different gentlemen from ITD were
 17 taking notes. As to what was in those notes, I
 18 don't know.
 19 **Q. That's fine.**
 20 **Do you know who the names of those two**
 21 **ITD individuals were?**
 22 A. I do not recall those names. I'm sorry.
 23 **Q. Did you see them out on the site at any**
 24 **time after this re-startup meeting, for want of a**
 25 **better term?**

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1 A. I do not know.
 2 **Q. Okay. And as you sit here today, you**
 3 **can't recall the names or identities of any of the**
 4 **ITD representatives that were present during that**
 5 **meeting?**
 6 A. I cannot speculate on that, no.
 7 **Q. What was discussed during the course of**
 8 **this meeting about revising the temporary traffic**
 9 **control plan?**
 10 A. There was a concern brought up in
 11 regards to the lanes that needed to be worked in on
 12 the eastbound side and the traffic developing on
 13 both sides of the work zone.
 14 Therefore, we had to close an extra lane
 15 and divert the traffic to the right, which would be
 16 referred to as Lane 1 or the slow lane in the
 17 industry, because there is a working shoulder
 18 there.
 19 **Q. So there was some discussion about**
 20 **utilizing --**
 21 **Well, strike that.**
 22 **If it was a working shoulder, that means**
 23 **your workers would be on the shoulder doing their**
 24 **work?**
 25 A. No.

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1 A. No.
 2 **Q. Okay. Who else do you recall being**
 3 **present during this meeting?**
 4 A. There were five or six people from ITD.
 5 **Q. Do you know the names of any of those**
 6 **five or six people?**
 7 A. I honestly do not recall.
 8 **Q. Do you recall the identity of any ITD**
 9 **representative who was present during that meeting?**
 10 A. I believe there was a project engineer,
 11 and I believe there was some form of a project
 12 manager. Whether it was a project manager or
 13 assistant project manager, I do not specifically
 14 remember that.
 15 **Q. Do you --**
 16 A. And --
 17 **Q. I'm sorry. Go ahead.**
 18 A. And two other people from Penhall, and I
 19 want to say there was a total of five or six -- I'm
 20 going to say four to six people from ITD.
 21 **Q. And the two other people from Penhall in**
 22 **addition to yourself were whom?**
 23 A. Bruce Kidd and Bob Bleeker.
 24 **Q. Do you know whether Mr. Kidd or**
 25 **Mr. Bleeker kept any notes from that meeting?**

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1 **Q. Okay.**
 2 A. When I say "working shoulder" --
 3 I'll let you ask the question.
 4 **Q. When you say "working shoulder," that**
 5 **means that that was available to accommodate**
 6 **traffic through the work zone?**
 7 A. Yes.
 8 **Q. Okay. So you'd have the Number 1, or**
 9 **slow lane, and then the shoulder that would be used**
 10 **to accommodate traffic going through that area?**
 11 A. Yes.
 12 **Q. When you say that there was a project**
 13 **engineer, do you recall that Bryon Breen was the**
 14 **individual -- one of the individuals for ITD that**
 15 **was present during the course of this May 2018**
 16 **re-startup meeting?**
 17 A. Not specifically, no.
 18 **Q. Was any representative from the traffic**
 19 **control subcontractor present?**
 20 A. I do not recall.
 21 **Q. Do you recall what the response was from**
 22 **any of the ITD representatives to the request for a**
 23 **change in the temporary traffic control plan for**
 24 **eastbound I-84?**
 25 A. Repeat that question --

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1 Q. Yeah.

2 A. -- please.

3 Q. Do you recall what the response was from

4 any representative of the ITD who was present at

5 this meeting concerning the request for a change in

6 the traffic control plan as it would relate to the

7 work zone in eastbound I-84?

8 A. Yes, I do.

9 Q. What was that?

10 A. We brought up the concern of how the

11 traffic was going to flow around the work zone and

12 the need to reduce it down. It was never a formal

13 request. It was a general discussion, and we

14 determined -- it was --

15 Several people commented from IDT, and

16 they asked us several questions about our concern

17 of why we wanted to do that and the safety concern

18 that we had as well as that we could close -- we

19 could do our normal closure and then extend the

20 closure out that one extra lane at a later time in

21 the shift because the traffic would have diminished

22 as we went later into the shift.

23 Q. And what was the response from any of

24 the ITD representatives there to that proposal?

25 A. The discussion was that they approved us

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1 Q. Now, was there ever any traffic volume

2 or traffic capacity evaluation that was made to

3 support the request of the change of the temporary

4 traffic control plan to allow for a reduction to a

5 single lane, to your knowledge?

6 A. To my knowledge, no.

7 Q. And to the best of your recollection,

8 during the course of this meeting, you don't recall

9 any representative of ITD telling Penhall

10 representatives that Penhall would have to submit a

11 written request as required under the contract to

12 change the traffic control plan?

13 A. No.

14 Q. Was the result of that meeting

15 communicated to the traffic control manager at any

16 time after this meeting?

17 A. Not to my knowledge by me, no.

18 Q. Okay. Do you know how, if at all, the

19 traffic control manager was informed about the

20 proposal to reduce the active lanes from four down

21 to one lane in the work zone of eastbound I-84?

22 MR. MOORE: Object to the form. Foundation.

23 Go ahead.

24 THE WITNESS: I do not know how.

25 Q. (BY MR. ROBBINS) Do you recall during

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1 doing that.

2 Q. All right. Was there ever a comment

3 made by the ITD engineer that any such request

4 would have to be presented in writing?

5 A. No, not to me.

6 Q. Okay. Just so I understand what the

7 proposal was, the proposal was to reduce the number

8 of open lanes in a four-lane section of eastbound

9 I-84 from four open lanes down to a single open

10 lane of travel?

11 A. Down to a single open lane of travel,

12 knowing that there was an ability or a term that's

13 used in the highway industry, an escape route, of

14 having the extra berm so if you needed to -- if you

15 needed an extra feet or two. It wasn't using the

16 berm as -- or the shoulder as a full lane --

17 Q. All right.

18 A. -- but it was giving you extra access of

19 room --

20 Q. Okay.

21 A. -- to the traffic --

22 Q. But the only open lane for travel would

23 be, as you termed it, the slow lane or the Number 1

24 lane?

25 A. That would be correct.

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1 the course of this re-startup meeting in May of

2 2018 that there was any discussion about the fact

3 that lanes had been reduced from four down to a

4 single open lane during the course of the

5 construction activities on westbound I-84 in the

6 August through October 2017 time frame?

7 A. No.

8 Q. Was there ever after the May 31, 2018,

9 meeting a written proposal submitted to ITD by

10 Penhall, to the best of your knowledge, regarding

11 the reduction of active lanes from four down to one

12 in eastbound I-84?

13 MR. MOORE: Counsel, you've now stuck in a

14 date that he's not provided. He said it was in May

15 and you're now putting a date on it, and I object

16 to the form and foundation.

17 Q. (BY MR. ROBBINS) All right. This

18 re-startup meeting in May of 2018, is that your

19 recollection of when it occurred?

20 A. I believe so, yes.

21 Q. All right. Was there ever a point in

22 time after the May 2018 re-startup meeting where a

23 written proposal for a change of the temporary

24 traffic control plan was ever provided by Penhall

25 to the Idaho Department of Transportation?

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1 A. I was not privileged of that knowledge
 2 to know whether it was or not.
 3 **Q. All right. Do you know how it was that**
 4 **Penhall determined that a single open lane of**
 5 **traffic during the work hours for this project**
 6 **would -- on I-84 eastbound would be able to**
 7 **accommodate the volume demand during the work**
 8 **hours?**
 9 A. No, I do not.
 10 **Q. Do you think that's something that would**
 11 **have to have been evaluated before a proposal to**
 12 **reduce down to a single lane in a construction zone**
 13 **on a highway should be implemented?**
 14 A. Repeat that question.
 15 **Q. Yeah.**
 16 **Do you think that an evaluation as to**
 17 **whether a single lane of open traffic could**
 18 **accommodate the volume demand through the area of**
 19 **the work zone is something that should be evaluated**
 20 **before the decision is made to reduce from four**
 21 **lanes down to a single open lane of traffic?**
 22 MR. GRAHAM: I object to the form.
 23 Foundation.
 24 THE WITNESS: That would not be mine to
 25 determine.

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1 aware of that.
 2 **Q. Okay. What was said about that during**
 3 **the course of that meeting?**
 4 A. What was said about what?
 5 **Q. What was said about the fact that the**
 6 **specifications prohibited reduction of lanes from**
 7 **four down to one?**
 8 A. It was a general discussion that that
 9 was part of the traffic control plan and that there
 10 was an issue with traffic ending up on both sides
 11 of a work zone because of the lanes they wanted to
 12 work in because of where the work -- workers were
 13 going to be working and what the traffic was going
 14 to be trying to do when they passed that work zone,
 15 therefore, was the reason for requesting the
 16 reduction where we requested it to stop from having
 17 traffic on two -- two sides of the workers.
 18 **Q. All right. Once you were informed that**
 19 **there was a provision of the contract that**
 20 **prohibited the reduction of lanes in a work zone**
 21 **from four down to one, did you do anything to**
 22 **familiarize yourself with the provisions of the**
 23 **temporary traffic control plan?**
 24 A. No, I did not.
 25 **Q. Okay. Do you recall there being any**

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1 **Q. (BY MR. ROBBINS) Within the context of**
 2 **this project, whose would it be to determine, to**
 3 **the best of your knowledge?**
 4 MR. MOORE: Object to the form. Foundation.
 5 THE WITNESS: Who would be responsible for a
 6 study --
 7 **Q. (BY MR. ROBBINS) Yeah.**
 8 A. -- or whether a study needs to be done?
 9 **Q. Whether the study needs to be done and**
 10 **then, if it needs to be done, who would be**
 11 **responsible for doing it. Both questions.**
 12 MR. GRAHAM: Same objection.
 13 THE WITNESS: I am assuming ITD.
 14 **Q. (BY MR. ROBBINS) Okay.**
 15 A. They're the owner of the project, and
 16 they wrote the specs.
 17 **Q. Okay. At the time of this meeting in**
 18 **May of 2018, were you aware that the specs**
 19 **prohibited reduction of lanes in a four-lane**
 20 **stretch of highway from four down to a single lane?**
 21 A. Repeat that for me one more time.
 22 **Q. Were you aware that the specifications**
 23 **for this project prohibited the reduction of lanes**
 24 **in a four-lane stretch from four down to one?**
 25 A. At the time of that meeting, I became

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1 **other conversations between Penhall and the Idaho**
 2 **Department of Transportation about reducing travel**
 3 **lanes in work zones from four lanes down to a**
 4 **single open lane prior to June 16, 2018?**
 5 A. No, I do not.
 6 **Q. Do you remember the name of a**
 7 **gentleman --**
 8 **Strike that.**
 9 **Do you recall a gentleman by the name of**
 10 **Jon Mensinger on this project?**
 11 A. That name sounds vaguely familiar.
 12 **Q. All right. Do you know whether**
 13 **Mr. Mensinger was present during the course of this**
 14 **May 2018 meeting that you just described?**
 15 A. No, I do not recall at this time.
 16 **Q. Do you recall whether the permission by**
 17 **ITD to reduce the four-lane stretch down to a**
 18 **single lane was given by the engineer for the**
 19 **project or was it by an inspector on the project**
 20 **for ITD or neither?**
 21 MR. MOORE: Object to the form. It's vague.
 22 And I'm assuming, Counsel, you're talking about --
 23 MR. ROBBINS: I don't know, Mike.
 24 MR. MOORE: -- in this meeting, but it's not
 25 stated in your question. And that's the -- that's

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1 the process.
 2 But go ahead.
 3 THE WITNESS: I don't recall who.
 4 Q. (BY MR. ROBBINS) In answers to
 5 interrogatories that have been provided by
 6 Specialty Construction in this case just recently,
 7 specifically they were the interrogatories
 8 propounded by Plaintiff Daisy Johnson, specifically
 9 Interrogatory 15 that asked to identify any
 10 communication between Defendant Penhall, including
 11 any of its employees, agents, and/or contractors
 12 and yourself regarding the decision to close three
 13 lanes of travel leaving only one travel lane in the
 14 work zone at issue in this lawsuit. It gives some
 15 additional information.
 16 The answer that was given on behalf of
 17 Specialty after the objections is that, "The
 18 defendant states that in or around May 31, 2018,
 19 through June 2, 2018, Defendant," that is Specialty
 20 Construction, "had multiple verbal communications
 21 with Defendant Penhall Company regarding the
 22 decision to close three lanes of travel in a
 23 four-lane section of Interstate 84."
 24 I'll just start there.
 25 Do you recall participating in or

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1 contract specifications to close a third lane
 2 during the course of an on-site meeting?
 3 A. No, I do not.
 4 Q. It continues that, "Penhall and Jon
 5 Mensinger, an inspector with Idaho Transportation
 6 Department, directed Defendant," and that is
 7 Specialty Construction, "to do so."
 8 Were you, on behalf of Penhall, ever
 9 involved in a conversation along with a gentleman
 10 by the name of Jon Mensinger during which Specialty
 11 Construction was directed to reduce three open
 12 lanes down to a single open lane in a four-lane
 13 stretch of highway on I-84?
 14 A. I don't recall at this time.
 15 Q. The answer continues, "These
 16 communications," that I've just read, "were between
 17 Bruce Kidd and Scott Reed of Penhall Company and
 18 Mason Garling and Josh Roper of Specialty
 19 Construction Supply, LLC."
 20 Do you recall participating in any such
 21 conversations as I have described in this reading
 22 of the interrogatory response?
 23 MR. MOORE: Object to the form.
 24 Go ahead, sir.
 25 THE WITNESS: I do not specifically remember,

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1 hearing of multiple verbal communications between a
 2 representative of Specialty and representatives of
 3 Penhall Company regarding the decision to close
 4 three lanes of travel?
 5 A. I do not recall of those, no.
 6 Q. All right. It continues, "Defendant
 7 Penhall Company stated that it had cleared the
 8 closure with Idaho Transportation Department, who
 9 had an inspector on site during this time."
 10 Do you recall any such conversation
 11 between Penhall Company and Specialty?
 12 A. No, I do not recall.
 13 Q. Do you recall hearing that any such
 14 conversation took place between another
 15 representative of Penhall and Specialty?
 16 A. I do not recall, no.
 17 Q. All right. Next, it continues,
 18 "Defendant," that's Specialty Construction,
 19 "expressed concern with exceeding the contract
 20 specifications to close a third lane" -- I've lost
 21 myself here -- "during an on-site meeting."
 22 Let me rephrase that.
 23 Do you recall at any time that a
 24 representative of Specialty expressed concern to a
 25 representative of Penhall about exceeding the

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1 no.
 2 Q. (BY MR. ROBBINS) Let me ask you, please,
 3 to turn to Tab 9. This is in Exhibit 1-A.
 4 A. Okay.
 5 Q. And specifically, I'll ask you to go to
 6 page 254. And in order to look at page 254, you'll
 7 have to open up the pages a little bit.
 8 Are you at page 254?
 9 A. Yes.
 10 Q. Do you ever have a recollection prior to
 11 your involvement in the I-84 project of reviewing
 12 this document?
 13 A. No.
 14 Q. Do you ever recall reviewing something
 15 that was identified as the temporary traffic
 16 control general notes for this project prior to
 17 your involvement in the I-84 project?
 18 A. No.
 19 Q. All right. During the course of your
 20 involvement in the I-84 project before June 16,
 21 2018, did you ever review something entitled the
 22 "Temporary Traffic Control General Notes"?
 23 A. No.
 24 Q. Okay. Let me ask you to take a look at
 25 page 256, and I'll ask: Prior to your involvement

Page 114

1 in the I-84 project, did you ever review this
 2 document that describes a double-lane drop?
 3 A. No.
 4 Q. During the course of your involvement in
 5 the I-84 project, did you ever review this document
 6 that describes the double-lane drop details?
 7 A. No.
 8 Q. During the course of your involvement in
 9 the I-84 project, did you ever review the signs
 10 that were approved to be utilized in the I-84
 11 project insofar as the temporary traffic control
 12 plan is concerned?
 13 A. No.
 14 Q. Prior to your involvement in the I-84
 15 project in the spring of 2018, did you have any
 16 discussions with the Penhall personnel who were
 17 involved in the project during the fall of 2017
 18 with regard to the operation of the temporary
 19 traffic control plan?
 20 A. No.
 21 Q. All right. Let me ask you to turn to
 22 Exhibit 1-B, Tab 10, and specifically to page 302.
 23 My question to you, sir, is: Did you
 24 ever review this document prior to your involvement
 25 in the I-84 project?

Page 116

1 monitoring activities?
 2 A. Monitoring of --
 3 Q. The temporary traffic control plan.
 4 A. Can you define "monitoring"?
 5 Q. Going out and seeing whether the plan
 6 was being set up as required in the --
 7 A. As per specifications?
 8 Q. Correct.
 9 A. No.
 10 Q. You wouldn't have been able to do that
 11 because you never saw the specifications for the
 12 temporary traffic control plan, correct?
 13 A. Nor am I qualified to determine whether
 14 it was set up to specifications.
 15 Q. Well, you'd be qualified to know whether
 16 the open lane had been reduced beyond what had been
 17 allowed in the specifications, wouldn't you?
 18 A. No, because I didn't review the
 19 specifications.
 20 Q. Precisely. But had you reviewed the
 21 specifications, you would have been able to see
 22 that the lanes had been reduced down below what had
 23 been approved in the written temporary traffic
 24 control plan?
 25 MR. GRAHAM: Objection. Calls for

Page 115

1 A. No.
 2 Q. During the course of your involvement in
 3 the I-84 project prior to June 16 of 2018, did you
 4 ever review this document?
 5 A. No.
 6 Q. Let me ask you: Did you ever have any
 7 discussions with any of the individuals at Penhall
 8 who were involved in the negotiations for the
 9 subcontract regarding temporary traffic control
 10 between Specialty and Penhall?
 11 A. No.
 12 Q. Between June 14 and June 16 of 2018,
 13 were you aware of any concerns that were expressed
 14 by the temporary control plan manager regarding the
 15 traffic queues that had been generated by the
 16 reduction of lanes from four open lanes to a single
 17 open lane in eastbound I-84?
 18 A. I don't recall of any, no.
 19 Q. During the course of your involvement in
 20 the I-84 project, was there anyone with Penhall who
 21 was involved in monitoring the adequacy of the
 22 temporary traffic control plan as it was
 23 implemented?
 24 A. I do not know.
 25 Q. You were not involved in any such

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1 speculation.
 2 THE WITNESS: Repeat how you're asking me
 3 that.
 4 Q. (BY MR. ROBBINS) Yeah. I'm asking you
 5 whether had you reviewed --
 6 Strike that.
 7 If you had reviewed the temporary
 8 traffic control plan, you would have known that
 9 reducing lanes of a four-lane stretch down to a
 10 single lane were prohibited under those
 11 specifications, agreed?
 12 MR. GRAHAM: Same objections.
 13 THE WITNESS: Not necessarily, no. Not
 14 agreed.
 15 Q. (BY MR. ROBBINS) Why would you not agree
 16 with that?
 17 A. Because my interpretation of the
 18 specifications, I'm not qualified to determine
 19 what's right or wrong, and I don't carry that
 20 certification to do that.
 21 Q. All right. Were you present after this
 22 accident happened at any meeting that was held by
 23 the NTSB in August of 2018 regarding this accident?
 24 A. No.
 25 Q. Do you know of anyone who was present

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1 closed when you proceeded to where you ended up
 2 that morning? How many lanes had been closed?
 3 MR. GRAHAM: Objection. Vague.
 4 THE WITNESS: You're going to have to be
 5 more --
 6 Are you talking about the westbound side
 7 or the eastbound side?
 8 Q. (BY MR. ORLER) Well, you were traveling
 9 on the westbound side, right?
 10 A. Yes.
 11 Q. So my question is: On the westbound
 12 side, how many lanes were closed?
 13 A. I don't remember.
 14 Q. Okay. You had referenced a
 15 communication that you had with Mr. Kidd --
 16 A. Uh-huh.
 17 Q. -- at the scene that morning, and he had
 18 told you that based on his communication with the
 19 traffic control manager at Specialty, that he was
 20 informed that the traffic control was set up
 21 correctly. Is that --
 22 Did I understand your testimony
 23 correctly?
 24 A. That is correct.
 25 Q. What else did you two discuss about that

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1 backups, those lengthy backups, had been reported
 2 to you?
 3 MR. GRAHAM: Objection. Calls for
 4 speculation.
 5 MR. PERKINS: Object to the form.
 6 THE WITNESS: I wouldn't have done anything.
 7 Q. (BY MR. ORLER) Why not?
 8 A. Because it's not my responsibility as to
 9 what needs to happen.
 10 MR. ORLER: I don't have any other questions
 11 at this time.
 12
 13 EXAMINATION
 14 BY MR. MORTIMER:
 15 Q. Mr. Reed, my name is Evan Mortimer. I
 16 represent the family of one of the airmen that
 17 passed away, the Johnson family.
 18 A. Sure.
 19 Q. I appreciate you being here today.
 20 So I do have some follow-ups, and
 21 they're going to kind of jump around, so I
 22 apologize for that, but I've been just writing
 23 notes, okay?
 24 You discussed earlier you were involved
 25 while at Penhall in this -- the Houston Katy

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1 or was that the extent of it?
 2 A. Repeat that question.
 3 Q. What else did you discuss with Mr. Kidd
 4 about the setup of the traffic control plan?
 5 A. That was it.
 6 Q. When did you come to find out that
 7 actually it had not been set up properly?
 8 MR. PERKINS: Object to the form.
 9 THE WITNESS: I don't admit that it wasn't
 10 set up properly.
 11 Q. (BY MR. ORLER) Do you believe that it
 12 was set up properly that morning?
 13 A. I believe we had permission for it to be
 14 set up the way it was.
 15 Q. From ITD?
 16 A. ITD in that meeting in May.
 17 Q. Okay. A bit ago, counsel had walked you
 18 through some of the traffic control diaries that
 19 referred to the lengthy backups that were being
 20 reported on eastbound.
 21 Do you recall those diaries that you
 22 just reviewed?
 23 A. That I just reviewed? Yes.
 24 Q. Yes.
 25 What would you have done if those

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1 project.
 2 A. Yes, Katy thruway.
 3 Q. And you discussed during that project,
 4 there was an amendment to the traffic control plan,
 5 and I think you said that there was just one.
 6 Is that correct?
 7 A. I said I remembered of one.
 8 Q. Okay. That's fair.
 9 So with regard to that one amendment,
 10 can you describe what that -- the change to the
 11 temporary traffic control plan was?
 12 A. Specifically, no.
 13 Q. Generally?
 14 A. Okay. It was an incident where I
 15 believe it involved an HOV lane, which is a
 16 high-occupancy volume lane, and the way that we
 17 were doing the enclosure involved that lane
 18 somehow, if I'm not mistaken.
 19 It didn't arise because we didn't think
 20 our volume of work that night would have reached
 21 that area of the project, of the site, so when we
 22 realized that our production was going faster than
 23 what we thought and we needed to extend our
 24 enclosure beyond what the specifications called
 25 for, we spoke with the inspector out there, the

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1 A. Yes.

2 **Q. But you said that -- I think you said**

3 **approximately 80 percent, you were what I would**

4 **call boots on ground. You were here on location --**

5 A. Yes.

6 **Q. -- in Idaho?**

7 A. Yes.

8 **Q. Is that a --**

9 **Are we understanding each other now?**

10 A. Yes.

11 **Q. Okay. So with regard to -- with that**

12 **understanding, who would be the highest boss,**

13 **supervisor, however you want to describe that --**

14 A. The boss of the project was the project

15 manager.

16 **Q. Okay. And that would have been**

17 **Mr. Bankston?**

18 A. No.

19 **Q. Okay.**

20 A. Mr. Bankston was a general

21 superintendent.

22 **Q. And who was the project manager?**

23 A. When?

24 **Q. In May and June 2018.**

25 A. I believe it was either Jeromy Magill or

Page 140

1 **when we were talking about the field notes.**

2 A. Yes.

3 **Q. What's the name of that software?**

4 A. I do not know.

5 **Q. Would it have just been on your laptop?**

6 A. I didn't have access to it.

7 **Q. Who had access to it?**

8 A. Project management and above.

9 **Q. So above your -- above you?**

10 A. Yes.

11 **Q. So you had no way of inputting**

12 **information into that software?**

13 A. No.

14 **Q. That information would have been put --**

15 **to the best of your knowledge, that information**

16 **would have been put into that software based on**

17 **your reports and notes, documents, et cetera?**

18 A. Yes.

19 **Q. Earlier you testified with regard to**

20 **the conversation -- there was mention that maybe**

21 **May 31st, 2018, but we described it as the May 2018**

22 **pre-startup meeting.**

23 **And you testified that there was**

24 **essentially an agreement that later in the shift,**

25 **you were allowed to reduce more than two lanes in a**

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1 Daniel Worth.

2 **Q. And would he have been -- either of them**

3 **been your supervisor?**

4 A. Not my supervisor, but they had

5 authority over me.

6 **Q. And would they have been, quote/unquote,**

7 **boots on ground --**

8 A. No.

9 **Q. -- in Idaho?**

10 A. No.

11 **Q. Okay. So with regard to boots on**

12 **ground, would you classify yourself as the person**

13 **with the highest authority with regard to the I-84**

14 **project on site?**

15 A. Yes.

16 **Q. And given that, you would have been the**

17 **highest, again, quote/unquote, boss or boots on**

18 **ground in the state of Idaho for the I-84 project.**

19 **Would you have --**

20 **Is it fair to say that one of your**

21 **duties would be to be familiar with the contract**

22 **that's related to the I-84 project?**

23 A. No.

24 **Q. Earlier you testified regarding a**

25 **project management software, and I believe it was**

Page 141

1 **four-lane stretch; you were allowed to go down to**

2 **just one open lane of travel.**

3 **Do you remember that testimony?**

4 A. Yes.

5 **Q. What do you mean by "later in the**

6 **shift"? When was that?**

7 A. To the best of my recollection, I

8 believe it's an hour after our normal setup time.

9 **Q. So earlier, you -- when we were**

10 **discussing that, I believe you testified that that**

11 **was because the traffic would have been less**

12 **congested or less -- less traffic, if you will;**

13 **less number of vehicles.**

14 **Is that correct?**

15 A. Yes.

16 **Q. So within one hour of your normal**

17 **startup time, traffic would have reduced to an**

18 **appropriate level, according to that conversation**

19 **you had in the pre-startup meeting?**

20 A. Yes.

21 **Q. You've been involved with Penhall on a**

22 **number of different highway projects. Earlier you**

23 **testified -- and we talked about the Houston one**

24 **and then in Seattle and then I believe there was**

25 **another one. I don't recall it.**

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1 A. Oh, no. It belonged to Penhall, as I
 2 stated earlier.
 3 **Q. Do you know, do they still have that**
 4 **laptop, to your knowledge?**
 5 A. You'll have to ask Penhall that. I have
 6 no idea.
 7 **Q. Okay. So what types of information**
 8 **would you keep on your Penhall laptop with regard**
 9 **to this particular project?**
 10 A. The same information I talked about that
 11 I've sent in to them.
 12 **Q. Okay. You've talked about some**
 13 **production reports.**
 14 A. Yes.
 15 **Q. And what else, sir?**
 16 A. Any of my correspondence with anybody
 17 involved, whether it be project manager or human
 18 resources, with personnel issues, accounts payable,
 19 approving invoices or disputing invoices; things
 20 like that.
 21 **Q. Okay. I'd like to talk to you about**
 22 **this meeting that you discussed in your testimony**
 23 **that occurred in May.**
 24 A. Uh-huh.
 25 **Q. Are you able to give me any specific**

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1 **group?**
 2 A. Yes.
 3 **Q. And was the purpose of this meeting --**
 4 **Strike that.**
 5 **What was the purpose of this meeting, to**
 6 **your knowledge?**
 7 A. It was my understanding from the
 8 direction I received from Penhall that the State
 9 wanted to get together and just --
 10 There was new people coming on site that
 11 they were not familiar with. The only person they
 12 were familiar with was Bruce, and they wanted to
 13 meet everybody and just kind of have a general --
 14 **Q. Meet and greet?**
 15 A. -- startup, yeah.
 16 **Q. Okay. What subjects do you recall being**
 17 **taken up in that meeting, generally?**
 18 A. Different types of closures with the
 19 holidays coming up of July 4th, which they -- I
 20 think, if I remember correctly, they were hoping
 21 that we would not be there by July 4th.
 22 Start times, removal times, time we had
 23 to be off the interstate. General safety like they
 24 do every meeting.
 25 **Q. In the course of the discussions, who do**

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1 **date on which that meeting occurred?**
 2 A. I don't remember, sir.
 3 **Q. Where was the meeting held?**
 4 A. At ITD's regional office.
 5 **Q. Is that what's known as the District 3**
 6 **office, to the best of your knowledge?**
 7 A. I believe so.
 8 **Q. Okay. So do you know our city? Do you**
 9 **know where Chinden is, Chinden Road?**
 10 A. That name sounds familiar.
 11 **Q. Okay. Do you recall, was the meeting in**
 12 **the morning, the afternoon, at night?**
 13 **When do you recall the meeting taking**
 14 **place?**
 15 A. I believe it was midmorning, but it
 16 could have been right after lunch too. I don't
 17 remember exactly what time it was.
 18 **Q. Okay. What individuals attended that**
 19 **meeting, to your recollection, from Penhall?**
 20 A. As I --
 21 MR. GRAHAM: Objection. Asked and answered.
 22 **Q. (BY MR. MOORE) Go ahead, sir.**
 23 A. As I mentioned earlier, myself, Bob
 24 Bleeker, and Bruce Kidd.
 25 **Q. And you were the senior person in that**

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1 **you recall bringing up these topics from the**
 2 **standpoint of ITD?**
 3 MR. GRAHAM: I'll object. He's already
 4 testified --
 5 **Q. (BY MR. MOORE) Go ahead.**
 6 MR. GRAHAM: -- that he didn't know who any
 7 of these people are.
 8 **Q. (BY MR. MOORE) As best you can, sir.**
 9 A. Once again, I don't remember any
 10 specific names. I believe I testified I thought
 11 the project manager was there, and I believe he
 12 conducted the meeting, but I -- I can't guarantee
 13 it.
 14 **Q. Do you know if --**
 15 **By "project manager," are you talking**
 16 **about the resident engineer?**
 17 A. No. I mean project manager for ITD.
 18 **Q. Was the resident engineer at that**
 19 **project -- meeting?**
 20 A. I can't answer that specifically.
 21 **Q. Okay. Who brought up the subject that**
 22 **you talked about earlier of reducing lanes**
 23 **different than what is provided for in the special**
 24 **provisions?**
 25 A. In that meeting, I think it was either

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1 that you have to do more work sometimes to keep a
 2 site safe.
 3 Is that fair?
 4 A. Yes.
 5 Q. Now, before Penhall, is it correct that
 6 you never had worked with a traffic control plan
 7 before?
 8 A. Yes.
 9 Q. When you were hired at Penhall, what
 10 type of training did you undergo?
 11 A. There was multiple management training
 12 and new-hire training, defensive driving school in
 13 order to operate a company vehicle, and some
 14 equipment training.
 15 Q. Did you go under -- undergo any specific
 16 training to review traffic control plans?
 17 A. No.
 18 Q. Did you undergo any specific safety
 19 training?
 20 A. Yes.
 21 Q. What type of safety training did you
 22 undergo?
 23 A. It was an annual safety training that
 24 the company put on in regards to general safety as
 25 well as silica safety.

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1 personal phone or the hotel phone?
 2 A. No.
 3 Q. Now, was anybody at Penhall specifically
 4 responsible for overseeing Specialty's work?
 5 A. The project manager.
 6 Q. And would that have been the two names
 7 that we weren't really sure because there was a
 8 transition? Is that who --
 9 Those two are the people you're
 10 referring to?
 11 A. Yes.
 12 Q. Had you worked with Specialty before
 13 this project?
 14 A. No.
 15 Q. Now, there was some discussion that you
 16 had a conversation with a Mason and a Josh at
 17 Specialty.
 18 Do you specifically recall those
 19 gentlemen today?
 20 A. As I testified earlier in regards to one
 21 of those names, I recognize those names. If they
 22 were out there at any time that I was out there,
 23 yeah, I'm sure I had conversations with them, but
 24 that happened on a daily basis.
 25 So to specifically say I remember a

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1 Q. What is that last part?
 2 A. Silica, S-I-L-I-C-A.
 3 Q. And what does that mean?
 4 A. Silica is a breathable, tangible product
 5 that is created from dust and other forms of
 6 construction, especially when you're -- saw
 7 concrete, which we did a significant amount of,
 8 that you can breathe. And if you are not
 9 properly -- if it's not properly maintained, you
 10 could get sick and die from it.
 11 Q. Did you have a cell phone issued by
 12 Penhall in the May 2018/June 2018 time frame?
 13 A. Yes, I did.
 14 Q. And did you use that to communicate with
 15 your coworkers or subcontractors or other people
 16 for this project?
 17 A. Yes.
 18 Q. And what was that cell phone number?
 19 A. I absolutely do not remember.
 20 Q. Did you turn that phone in when you no
 21 longer worked at Penhall?
 22 A. Yes, I did.
 23 Q. Did you use any other phones during that
 24 time period, May and June of 2018, to communicate
 25 with anybody on this project, whether it's a

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1 specific conversation, no.
 2 Q. Did you have any authority or
 3 supervision responsibilities over either one of
 4 those two?
 5 A. No.
 6 Q. Do you know if you ever talked to them
 7 on the phone?
 8 A. I don't remember, but possibly.
 9 Q. Do you know if you've ever sent any
 10 e-mails to anybody at Specialty?
 11 A. Once again, I don't remember
 12 specifically, but there could be a possibility.
 13 I'd have to review the e-mails.
 14 Q. I'm sure.
 15 This has been a while ago, but earlier
 16 in your testimony, you said that you had not
 17 reviewed the traffic control manager diaries or the
 18 standard construction diaries.
 19 Did I remember your testimony correctly?
 20 A. That is correct.
 21 Q. Who from Penhall, if anybody, would have
 22 been responsible for reviewing those documents?
 23 A. To make sure I understand the question
 24 correctly, you're asking me about Specialty's
 25 construction diaries, and you're asking me about

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1 available upon reasonable request and discussion
 2 with you.
 3 MR. GRAHAM: Yeah, that's correct. I think
 4 we can leave his deposition open and give you the
 5 opportunity to do that. Absolutely.
 6 The only thing we might consider is --
 7 and we'll leave it up to your discretion -- if it's
 8 a relatively small amount of questions, we might do
 9 it remotely.
 10 MR. ROBBINS: No question. That's exactly
 11 what I talked to Jake about. And rather than
 12 leaving it open, I think I understand what you
 13 mean. We'll provide for his review of this volume
 14 of his deposition transcript and sign under penalty
 15 of perjury and then we will address further, and if
 16 there is a second session, it will be another
 17 deposition, Volume II, that he'll review and sign
 18 under penalty of perjury.
 19 MR. GRAHAM: Correct. Yeah. I think the
 20 only thing would be, I don't think you need to
 21 re-swear him or anything like that for Volume II.
 22 He's still under oath, et cetera, et cetera.
 23 MR. ROBBINS: We'll address that at the time,
 24 but that would be fine.
 25 MR. GRAHAM: Right.

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1 MR. ROBBINS: With those understandings, I
 2 have no further questions.
 3 Mr. Reed, I thank you again for your
 4 time.
 5 THE WITNESS: You're more than welcome.
 6 THE VIDEOGRAPHER: Okay. So this concludes
 7 today's video deposition of Scott Reed on
 8 March 19th, 2021. The time is 12:17 p.m., and we
 9 are off the record.
 10
 11 (The videotaped deposition concluded at 12:17 p.m.)
 12 * * *
 13 (Signature was requested.)
 14
 15
 16
 17
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 24
 25

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VERIFICATION

1
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)

6 I, SCOTT REED, being first duly sworn on my oath,
 7 depose and say:
 8 That I am the witness named in the foregoing
 9 videotaped deposition taken the 19th day of March, 2021,
 10 consisting of pages numbered 1 to 191, inclusive; that
 11 I have read the said deposition and know the contents
 12 thereof; that the questions contained therein were
 13 propounded to me; that the answers to said questions
 14 were given by me, and that the answers as contained
 15 therein (or as corrected by me therein) are true and
 16 correct.

17 Corrections Made: Yes _____ No _____

18
 19 _____
 20 SCOTT REED

21 Subscribed and sworn to before me this _____
 22 day of _____, 2021, at _____, Idaho.

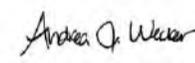
23
 24 _____
 25 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____.

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REPORTER'S CERTIFICATE

1
 2
 3 STATE OF IDAHO)
 4) ss.
 5 COUNTY OF ADA)

6 I, ANDREA J. WECKER, Certified Shorthand Reporter
 7 and Notary Public in and for the State of Idaho, do hereby
 8 certify:
 9 That prior to being examined, the witness named in
 10 the foregoing deposition was by me duly sworn to testify
 11 to the truth, the whole truth and nothing but the truth;
 12 That said deposition was taken down by me in
 13 shorthand at the time and place therein named and
 14 thereafter reduced to typewriting under my direction,
 15 and that the foregoing transcript contains a full, true
 16 and verbatim record of said deposition.
 17 I further certify that I have no interest in the
 18 event of the action.
 19 WITNESS my hand and seal this 5th day of April,
 20 2021.

21
 22 
 23 _____
 24 ANDREA J. WECKER
 25 CSR, RDR, CRR, CRC and Notary
 Public in and for the
 State of Idaho.

22 
 23
 24
 25 My Commission Expires: 02-14-23

EXHIBIT 18

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

REMOTE VIDEOTAPED DEPOSITION OF JEROMY MAGILL

May 24, 2021

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 14

1 A. It had to do with construction projects
 2 and oil field facilities and upkeep.
 3 **Q. Okay. Any of your job duties and**
 4 **responsibilities have anything to do with**
 5 **construction of highways during the period of time**
 6 **of your work with CDM?**
 7 A. No, sir.
 8 **Q. All right. What years did you work with**
 9 **CDM, if you recall?**
 10 A. 2016 to 2017.
 11 **Q. Okay. Prior to CDM, with whom were you**
 12 **employed?**
 13 A. Turnkey Specialists.
 14 **Q. What did you do for Turnkey Specialists?**
 15 A. Oil field construction. Project
 16 engineer, project manager, estimator, scheduler.
 17 **Q. Okay. Anything having to do with**
 18 **highway construction projects?**
 19 A. No, sir.
 20 **Q. All right. And during what period of**
 21 **time was it that you were employed with Turnkey?**
 22 A. 2012 to 2016.
 23 **Q. And prior to Turnkey, with whom were you**
 24 **employed?**
 25 A. That's going back.

Page 15

1 **Q. It's going back. I know.**
 2 A. Turtle & Hughes.
 3 **Q. Turtle --**
 4 A. Turtle.
 5 **Q. -- T-U-R-T-L-E?**
 6 A. Yes, sir.
 7 **Q. And Hughes, is it H-U-G-E-S?**
 8 A. H-U-G-H-E-S.
 9 **Q. H-U-G-H-E-S. Right.**
 10 **What period of time did you work for**
 11 **Turtle & Hughes?**
 12 A. 2007 to 2012.
 13 **Q. What did you do for them during that**
 14 **period of time?**
 15 A. Inside sales. They were an electrical
 16 distributor.
 17 **Q. Okay. Prior to your employment with**
 18 **Penhall, did you ever have any involvement in the**
 19 **creation of temporary traffic control plans?**
 20 A. No, sir.
 21 **Q. Did you ever have any involvement in the**
 22 **implementation of temporary traffic control plans?**
 23 A. No, sir.
 24 **Q. Did you ever have any involvement in the**
 25 **supervision or monitoring of a temporary traffic**

Page 16

1 **control plan in place?**
 2 A. No.
 3 **Q. Okay. During your employment with**
 4 **Penhall, did you receive any instruction or**
 5 **training with regard to the creation of temporary**
 6 **traffic control plans?**
 7 A. No.
 8 **Q. How about with regard to their**
 9 **implementation or monitoring?**
 10 A. Will you rephrase the question, the
 11 first question?
 12 **Q. Sure. I'm wondering whether you had any**
 13 **instruction or training with Penhall during the**
 14 **period of your employment with them with regard to**
 15 **the implementation and/or monitoring of temporary**
 16 **traffic control plans on construction projects.**
 17 A. No.
 18 **Q. Okay. What was your position with**
 19 **Penhall during that one-year period of time, 2017**
 20 **to 2018?**
 21 A. Project management.
 22 **Q. Okay. And what is it that you did,**
 23 **generally speaking, as a project manager?**
 24 A. From a high level or more -- more, you
 25 know, nuts and bolts type of thing?

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1 **Q. Both.**
 2 A. Okay.
 3 **Q. Just generally an overview, and then I**
 4 **guess for the nuts and bolts, I'll take you down to**
 5 **this particular project.**
 6 **But if you --**
 7 A. Sure.
 8 **Q. -- could just generally tell me: While**
 9 **you were working at Penhall, what generally are the**
 10 **job duties and responsibilities as you understood**
 11 **it of a project manager?**
 12 A. Manage the financials, cost analysis,
 13 budget control, purchase orders, relationships with
 14 vendors, relationships with owners, DOTs, and then
 15 subcontractors.
 16 **Q. All right. Does that take you out to**
 17 **the site of the construction project itself or do**
 18 **you do most of that -- or did you do most of that**
 19 **while you worked with Penhall at the -- whatever**
 20 **office you had?**
 21 A. It would take me out to the jobsite, but
 22 it was mostly pop-in, you know, to see the work,
 23 you know, build morale with the crew, and then
 24 leave.
 25 Most of this work took place at night,

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1 so being a project manager with Penhall, you know,
 2 required me to have a lot of work during the day,
 3 so to try and pull double duty at night and during
 4 the day was not always the -- you know, the best
 5 thing for me.
 6 **Q. Right.**
 7 **Where was your base office during that**
 8 **one-year period of time while you worked at**
 9 **Penhall?**
 10 A. I had two base offices: Greenville,
 11 North Carolina, for about eight to ten months, and
 12 then Houston, Texas.
 13 **Q. All right. Now, at some point in time,**
 14 **you became involved in a project in Idaho known as**
 15 **the I-84 Five Mile to Orchard and Ramps project.**
 16 **Do you recall that?**
 17 A. Yes, sir.
 18 **Q. Okay. Who is it that gave that**
 19 **assignment to you? Do you recall?**
 20 A. This project, I believe, had three or
 21 four different project managers.
 22 At the time that I took over, I don't
 23 have -- I don't remember the exact person to give
 24 me that. I think I more or less took the project
 25 because I was one of the only project managers

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1 **Does that ring a bell with you?**
 2 A. Yes, sir.
 3 **Q. And who is Mr. Nordberg?**
 4 A. Mr. Nordberg was the -- he was a lateral
 5 position from myself. He was a project manager
 6 from the Denver office who had, you know, I guess
 7 been given the assignment from Vince to manage the
 8 project.
 9 When Patrick left, I -- he did give me
 10 contact information as to who to send the billings
 11 to or who to get the money from, the DOT. But
 12 other than that, you know, there was a link on our
 13 Share File that gave the project documents, and
 14 that was -- that was the only, you know,
 15 information that I was able to obtain from the
 16 project.
 17 **Q. All right. So you took over the**
 18 **position of project manager for the I-84 Five Mile**
 19 **to Orchard and Ramps project from Mr. Nordberg, was**
 20 **it?**
 21 A. That's correct, yes.
 22 **Q. And at the time you took over for**
 23 **Mr. Nordberg, he provided you with a copy of the**
 24 **contracts pertaining --**
 25 A. He -- he provided me with a contact

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1 left. You know, I knew that the work had to start,
 2 and so I grabbed the bull and ran with it.
 3 **Q. All right. Now, the point in time when**
 4 **you began your involvement on this project was in**
 5 **the spring of 2018.**
 6 **Would that generally be correct?**
 7 A. That would be correct.
 8 **Q. Looking through some documents, I see**
 9 **that there was an individual who was originally the**
 10 **project manager on this, and that was Vince**
 11 **Coletta.**
 12 **Did you ever have any discussions with**
 13 **Mr. Coletta about the project?**
 14 A. No, I did not.
 15 **Q. I see another name of an individual**
 16 **who -- his nickname is Shields Sullivan. I think**
 17 **that was Harold Sullivan.**
 18 **Do you recognize that name?**
 19 A. I do know Shields, yes.
 20 **Q. All right. Did you ever have any**
 21 **discussions with Shields Sullivan about the project**
 22 **before you started working on it?**
 23 A. No.
 24 **Q. There's another individual by the name**
 25 **of Patrick Nordberg.**

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1 person with the DOT. The contracts were on our
 2 Share File, and that's where I pulled that
 3 information from.
 4 **Q. All right. And prior to you beginning**
 5 **your work on this project -- we'll call it**
 6 **"the project" -- did you ever have an opportunity**
 7 **to review the contract documents for the project?**
 8 A. From a high-level perspective, yes, but
 9 not down into the details.
 10 **Q. In other words --**
 11 A. No.
 12 **Q. -- did you review the contract documents**
 13 **between the State of Idaho and Penhall for this**
 14 **project?**
 15 A. No.
 16 **Q. Okay. Did you ever review the temporary**
 17 **traffic control plan for this project?**
 18 A. No, sir.
 19 **Q. Did you ever review the special**
 20 **provisions underlying the temporary traffic control**
 21 **plan for this project?**
 22 A. No.
 23 **Q. Did Mr. Nordberg provide you with any**
 24 **information concerning how the temporary traffic**
 25 **control plan was going to be operated for this**

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1 project?
 2 A. No, sir.
 3 Q. In looking through some of these
 4 documents as well, I see another name is
 5 Bruce Kidd.
 6 Do you recognize that name?
 7 A. Yes, sir.
 8 Q. Was Mr. Kidd involved on this project?
 9 A. Yes, sir.
 10 Q. What was his position on the project, if
 11 you recall?
 12 A. He was a superintendent.
 13 Q. Okay. He was the representative of
 14 Penhall on site on a night-in and night-out basis,
 15 I take it?
 16 A. Yes, sir.
 17 Q. And Mr. Kidd then would respond to you?
 18 By that, I mean the hierarchy is Mr. Kidd was
 19 responsible directly to you or was he responsible
 20 directly to someone else?
 21 A. I mean, he would have reported to me or
 22 Simmitt Bankston, who was the operations manager.
 23 But I don't remember if Bruce reported to Scott,
 24 and then Scott, you know, came to me and Simmitt or
 25 if they were kind of on a level field and they

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1 you direct your inquiry?
 2 Would it be Mr. --
 3 A. It would be Scott Reed.
 4 Q. Okay. Mr. Reed, was he, in your way of
 5 thinking, on the project site on a fairly routine
 6 basis --
 7 A. Yes, sir.
 8 Q. -- during that --
 9 A. Yes. Yes.
 10 THE REPORTER: Sir, if you can just make sure
 11 to let him finish his question before you answer,
 12 that will be really helpful.
 13 THE WITNESS: Sorry.
 14 THE REPORTER: Thank you.
 15 Q. (BY MR. ROBBINS) I've sort of asked you
 16 this before, but I'm just curious: Was there any
 17 hierarchy between Mr. Kidd and Mr. Reed there at
 18 the site? Is there somebody who was more senior to
 19 the other or did they have equal seniority, at
 20 least as far as you were concerned?
 21 A. As far as I was concerned, they were
 22 probably equal in seniority, but one was more
 23 responsible for the crews, one was more responsible
 24 for materials depending on how things set up.
 25 Q. Okay. Who was more responsible for the

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1 reported both to Simmitt and myself.
 2 Q. Okay. And when you say "Scott," you
 3 mean Scott Reed?
 4 A. That's correct, yes, sir.
 5 Q. Okay. What was Mr. Reed's position on
 6 this project?
 7 A. Superintendent.
 8 Q. So I take it then Mr. Bruce Kidd was
 9 assistant superintendent for the project and Scott
 10 Reed was the superintendent on the project?
 11 A. Well, I mean, I think both of their
 12 titles were superintendent. I don't think you had
 13 assistant; you know, one or the other. I think it
 14 was a lateral title for both of them.
 15 Q. Okay. What is your understanding of
 16 how, if at all, the job duties and responsibilities
 17 for Mr. Kidd on the project differed from those of
 18 Mr. Reed?
 19 A. I don't -- I don't think that they --
 20 that they did differ. I believe that a lot of my
 21 communication came from Scott because he was a
 22 little bit more organized, you know, with vendors
 23 and, you know, materials and stuff like that.
 24 Q. If you wanted to find out what was going
 25 on at the site on any particular day, to whom would

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1 crews? Would that be Mr. Kidd?
 2 A. I would believe so, yes.
 3 Q. And then that would mean Mr. Reed was
 4 more responsible for materials?
 5 A. Yes, sir.
 6 Q. Do you happen to know where Mr. Nordberg
 7 is at the present time?
 8 A. I know that he took another job in
 9 Denver. I know he's -- I know he's in Denver,
 10 Colorado. I haven't -- but I haven't talked to him
 11 since he -- since he left.
 12 Q. Do you happen to know with whom he took
 13 that job in Denver?
 14 A. I do not.
 15 Q. Okay. How about Simmitt Bankston? Do
 16 you happen to know where Mr. Bankston is currently
 17 located?
 18 A. I do -- I mean, I've talked to Simmitt
 19 probably in the past four or five months. But I
 20 don't -- I don't know who he works for. And I know
 21 he's from Louisiana, but I don't know if that's
 22 where he's working or if that's where he's at.
 23 Q. Okay. But your last knowledge of where
 24 he lived was Louisiana?
 25 A. Yes, sir.

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1 Q. Okay. Since your departure from
 2 Penhall, have you had any discussions about this
 3 particular project with Mr. Bankston?
 4 A. No, sir.
 5 Q. How about with Mr. Nordberg?
 6 A. No, sir.
 7 Q. Let me ask you to take a look at
 8 Exhibit 7, Tab 170. We'll start -- we'll just take
 9 a look at page 4085, if I could.
 10 A. 4085. Let me try to get these --
 11 Tell me the tab number again.
 12 Q. The tab number is 170, page number 4085.
 13 MR. BOTTARI: And I can share my screen if
 14 you need me to, Jeromy.
 15 THE WITNESS: Yeah, that would help.
 16 MR. BOTTARI: What's the document number,
 17 Clay?
 18 MR. ROBBINS: Document number is Tab Number
 19 170, page 4085.
 20 MR. BOTTARI: Okay. I've got it pulled up.
 21 MR. ROBBINS: All right.
 22 Q. (BY MR. ROBBINS) Sir, I'll ask you to
 23 take a look at that. That's a document that's been
 24 produced in this litigation. It's identified as a
 25 roadwork information from -- it appears to be an

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1 document or any document like this document: Is it
 2 your recollection that during the time of this
 3 project, that one of the specifications for the
 4 work to be performed was that in four-lane
 5 stretches of highway, no fewer than two lanes were
 6 to be closed down?
 7 In other words, two lanes were to remain
 8 open?
 9 MR. BOTTARI: Object to the form.
 10 You can go ahead and answer, Jeromy.
 11 Q. (BY MR. ROBBINS) You can respond, sir.
 12 A. Okay.
 13 I believe so.
 14 Q. What do you base that belief on as you
 15 sit here today?
 16 A. Just communication with my -- with my
 17 guys in the field.
 18 Q. With whom did you have those
 19 communications during which it was addressed that
 20 two lanes would remain open in a four-lane stretch
 21 of highway at all times during the construction
 22 project?
 23 A. I believe Scott Reed.
 24 Q. When do you first recall having such a
 25 conversation with Mr. Reed?

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1 Idaho Transportation Department document.
 2 Have you ever seen a document similar to
 3 this during the period of time that you worked on
 4 the project?
 5 A. No, sir.
 6 Q. Okay. It appears to have contacts,
 7 ITD contacts and contractor contacts. Under
 8 "ITD Contacts," there's a reference to Dave
 9 Statkus.
 10 Did you ever have any conversations with
 11 Mr. Statkus concerning this project during your
 12 involvement?
 13 A. No, sir.
 14 Q. Steve Erichson, did you ever have any
 15 discussions with Mr. Erichson?
 16 A. No, sir.
 17 Q. Bryon Breen, any discussions with
 18 Mr. Breen?
 19 A. No.
 20 Q. Down at the bottom, there's a section
 21 that references traffic impact, and a box is
 22 checked next to that box, "Reduced to two lanes.
 23 Direction: Eastbound and westbound."
 24 And I'll ask you this question, even
 25 though you've said that you haven't seen this

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1 A. At the beginning of the project -- or
 2 the beginning of the remobilization of the project.
 3 MR. ROBBINS: All right. Let's move forward
 4 to the same tab number but page 4112, Jake.
 5 A few more pages up, Jake.
 6 MR. BOTTARI: I'm sorry. My computer is --
 7 MR. ROBBINS: No, no, don't worry. Don't
 8 worry.
 9 [Discussion held off the record.]
 10 Q. (BY MR. ROBBINS) Okay. All right, sir.
 11 We've called up a document, Tab 170, page 4112. I
 12 will tell you that's the first of these documents,
 13 the roadwork information document, that I see with
 14 your name on it. You'll see in the contractor
 15 contacts, just immediately above your name, there's
 16 a reference to Specialty Construction and Josh
 17 Roper.
 18 Did you ever have any discussions with
 19 Josh Roper concerning this project?
 20 A. Only about invoicing.
 21 Q. Only about invoicing?
 22 A. Yes. Maybe it wasn't Josh Roper. But
 23 that's the only communication I had with Specialty
 24 Construction.
 25 Well, was that the -- Specialty

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1 Construction, that was the traffic control company,
 2 correct?
 3 **Q. That is absolutely correct, sir.**
 4 A. Okay. Yeah. So the only communication
 5 I ever had with Specialty Construction was about
 6 invoicing and payments.
 7 **Q. Okay. You never had any conversations**
 8 **with any representative of Specialty Construction**
 9 **concerning the temporary traffic control plan or**
 10 **the implementation of the plan?**
 11 A. No, sir.
 12 **Q. Did you ever have any discussions with**
 13 **any representative of Specialty Construction with**
 14 **regard to traffic conditions on the highway after**
 15 **the temporary traffic control plan had been placed**
 16 **in operation?**
 17 A. No.
 18 **Q. Okay.**
 19 THE REPORTER: Clay, I think we've lost Jake.
 20 [Discussion held off the record.]
 21 THE VIDEOGRAPHER: We are off the record at
 22 12:37 p.m.
 23 [Discussion held off the record.]
 24 THE VIDEOGRAPHER: We are back on the record
 25 at 12:38 p.m.

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1 A. I do not recall, no.
 2 **Q. Okay. Do you ever recall whether there**
 3 **was any revision, amendment, or modification of the**
 4 **original temporary traffic control plan that had**
 5 **been approved for this project?**
 6 A. I do not recall.
 7 **Q. Now, on page 4114 --**
 8 **And, again, I understand that this is**
 9 **not a document that you prepared. I'm just asking**
 10 **for your recollection concerning information I'm**
 11 **going to address.**
 12 **But under the "Additional Information"**
 13 **section, there's a reference to, "During**
 14 **construction, traffic lane reductions will occur in**
 15 **both directions."**
 16 **Is it your understanding that there**
 17 **would be lane reductions to accommodate**
 18 **construction activities in both the eastbound and**
 19 **westbound directions of I-84 during the project?**
 20 A. Yes, sir.
 21 **Q. And was that true during the time of**
 22 **involvement in the project?**
 23 A. Yes, sir.
 24 **Q. Do you have any knowledge or information**
 25 **concerning what purpose is served by a temporary**

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1 **Q. (BY MR. ROBBINS) Okay. Going down to**
 2 **the bottom of that page, that is page 4112 of**
 3 **Tab 170, you can see a section again that we**
 4 **referred to earlier referring to traffic impact,**
 5 **and the box is checked next to "Reduce to two**
 6 **lanes."**
 7 **And during the period of time of your**
 8 **involvement in this project, is it your**
 9 **understanding that the project documents only**
 10 **allowed for lane reduction down to two open lanes**
 11 **but not less than two lanes open?**
 12 MR. BOTTARI: Object to form.
 13 MR. MOORE: Object.
 14 **Q. (BY MR. ROBBINS) You can respond.**
 15 A. Yes.
 16 **Q. All right. At the beginning of your**
 17 **involvement in this project, had you ever had any**
 18 **discussions with any representative of Penhall**
 19 **during which they told you that in the initial**
 20 **phases of the project -- that is, during the fall**
 21 **of 2017 -- that provisions had been allowed for the**
 22 **reduction of four open lanes of highway down to a**
 23 **single open lane to accommodate construction**
 24 **activities?**
 25 **Did you ever hear anything like that?**

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1 **traffic control plan on a highway project?**
 2 A. Will you rephrase -- will you repeat the
 3 question?
 4 **Q. Sure.**
 5 **Do you have any knowledge or**
 6 **understanding of the purpose served by a temporary**
 7 **traffic control plan as applied to a highway**
 8 **construction project?**
 9 A. Yes.
 10 **Q. What is your information in that regard?**
 11 A. It's an opinion. I can provide my
 12 opinion.
 13 **Q. An opinion on what?**
 14 A. Just, I mean, the -- a temporary closure
 15 on a construction project is for, you know -- it
 16 provides a safe working zone for your employees.
 17 **Q. Does it also provide for the smooth**
 18 **transition of traffic through a construction zone?**
 19 MR. BOTTARI: Object to form.
 20 MR. MOORE: Foundation.
 21 THE WITNESS: I believe so.
 22 **Q. (BY MR. ROBBINS) Does it also provide**
 23 **for the safety of motorists traveling through the**
 24 **construction zone?**
 25 MR. MOORE: Same objection.

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1 MR. BOTTARI: Object to form.
 2 THE WITNESS: I believe so.
 3 **Q. (BY MR. ROBBINS) Do you understand that**
 4 **at least part of its purpose is to reduce or**
 5 **eliminate the occurrence of abrupt changes or**
 6 **stoppage of vehicle traffic through a construction**
 7 **zone?**
 8 MR. MOORE: Same objection.
 9 THE WITNESS: Yes, sir.
 10 **Q. (BY MR. ROBBINS) And do you have a**
 11 **further understanding that another of its purposes**
 12 **is to avoid the development of traffic queues**
 13 **through a work zone?**
 14 MR. MOORE: Same objection.
 15 MR. BOTTARI: Object to the form.
 16 THE WITNESS: Yes.
 17 **Q. (BY MR. ROBBINS) Do you have an opinion**
 18 **that traffic queues through construction zones**
 19 **present a potential hazard to the safety of workers**
 20 **and motorists in the construction zone?**
 21 MR. MOORE: Object to the form. Foundation.
 22 THE WITNESS: No.
 23 **Q. (BY MR. ROBBINS) No, you don't think**
 24 **that --**
 25 A. No --

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1 **Would that be correct?**
 2 A. Yes, that is correct.
 3 **Q. I didn't ask you before and I should**
 4 **have, but by whom are you currently employed?**
 5 A. Restocon Corporation.
 6 **Q. What do you do for Restocon?**
 7 A. I'm a regional manager.
 8 **Q. What is it that Restocon does?**
 9 A. Restocon does commercial parking garage
 10 airport restoration.
 11 **Q. Anything having to do with highway**
 12 **construction or maintenance?**
 13 A. No, sir.
 14 **Q. Okay. And did you go to work for**
 15 **Restocon just after your employment with Penhall?**
 16 A. Yes.
 17 **Q. Okay. During the period of --**
 18 **Well, strike that.**
 19 **When you started on the project, did you**
 20 **initially have involvement in the preparation of**
 21 **scheduling for the restart of the subject project**
 22 **itself?**
 23 **Is that what you were involved in**
 24 **initially?**
 25 A. Yes. Yes.

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1 **Q. -- traffic queues through construction**
 2 **zones present a hazard to workers and motorists?**
 3 MR. MOORE: Same objection to form and
 4 foundation.
 5 THE WITNESS: I'm sorry. Repeat the question
 6 again so I answer that right.
 7 **Q. (BY MR. ROBBINS) Sure.**
 8 **My question is whether you hold the**
 9 **opinion that traffic queues through construction**
 10 **zones present a hazard to both workers in the zone**
 11 **and motorists traversing through the zone.**
 12 MR. MOORE: Object to the form and
 13 foundation.
 14 THE WITNESS: I believe, yes. Or that's my
 15 opinion, yes.
 16 **Q. (BY MR. ROBBINS) Was that your opinion**
 17 **at the time of your involvement in this project as**
 18 **well?**
 19 MR. MOORE: Object to the form and
 20 foundation.
 21 THE WITNESS: Yes.
 22 **Q. (BY MR. ROBBINS) The only time you have**
 23 **had involvement with temporary traffic control**
 24 **plans has been during the course of your employment**
 25 **with Penhall.**

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1 **Q. And in developing the schedules, did you**
 2 **have any contact with the temporary traffic control**
 3 **company that was involved in the project?**
 4 A. Yes.
 5 **Q. And who was your contact at the**
 6 **temporary traffic control company when you were**
 7 **developing the schedule?**
 8 A. I do not recall.
 9 **Q. What information did you obtain from**
 10 **that individual, whomever it was?**
 11 A. Remobilization dates, expected return
 12 dates, and when they were available.
 13 **Q. Did you have any discussions with the**
 14 **temporary traffic control company as to the number**
 15 **of lanes that would be left open during the course**
 16 **of the construction project?**
 17 A. No, sir.
 18 **Q. Let me ask you to go to Tab 170, and**
 19 **further down --**
 20 MR. ROBBINS: Jake, if I could ask you to
 21 pull up pages 4169 through -- actually, it will go
 22 through 4182.
 23 **Q. (BY MR. ROBBINS) While Jake is pulling**
 24 **up those documents, sir, I'll tell you that what**
 25 **I've pulled up. What you'll be taking a look at**

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1 are e-mails that involve you either as recipient or
 2 the generator of the e-mail that pertain to
 3 development of the schedule itself, and then we
 4 also have some documents that appear to be schedule
 5 documents.
 6 And I'll just -- we'll go through these,
 7 and we'll just kind of discuss these various
 8 e-mails, if we could.
 9 Okay. So starting at 4169, it's an
 10 e-mail from Mr. Statkus that you are not, at least,
 11 explicitly a recipient of pertaining to a request
 12 to Mr. Cartwright -- is that Pat Cartwright? -- and
 13 Simmitt for a schedule.
 14 Is that when you became involved in
 15 the -- creating the schedule for this project?
 16 MR. MOORE: Object to the form.
 17 THE WITNESS: That is correct.
 18 Q. (BY MR. ROBBINS) All right. Now, at
 19 least at the time of this e-mail from Mr. Statkus,
 20 it appears that Mr. Bankston was still involved.
 21 Was that your understanding, that
 22 Mr. Bankston was still involved, at least in the
 23 point in time when you were developing the schedule
 24 or proposed schedule?
 25 A. Yes.

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1 the direct PM.
 2 But very shortly after this e-mail, I
 3 think Pat Cartwright quit as well, so I was the
 4 only one left.
 5 Q. You were the last Indian standing, I
 6 take it?
 7 A. That's exactly right, yes, sir.
 8 Q. All right. Do you know where Mr. --
 9 Strike that.
 10 Did Mr. Cartwright have any involvement
 11 with this project, to the best of your knowledge,
 12 during the fall 2017 phase of the project?
 13 A. No.
 14 Q. Okay. Let me ask you to take a look at
 15 page 4172. And up at the top, it just -- you pull
 16 a portion of your e-mail -- and I -- I'll admit,
 17 I'm just a little bit confused. Looking at 5400
 18 and then going to 5401, it's an e-mail that I
 19 simply am not able to connect up the right one.
 20 But in any event, the e-mail on 4172 up
 21 at the top purports to be from you to Jim, and it
 22 is in response to Mr. Hoffecker's e-mail to you,
 23 and it states that you are working with WHPacific
 24 to obtain the records, and there it talks about a
 25 record of existing pavement markings.

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1 Q. Now, taking a look at pages 4173 and
 2 41 --
 3 Well, actually, I've got them
 4 reorganized a little bit here. But looking at
 5 page 4173 and then looking at 4171, I'm trying to
 6 catch the same e-mail, and it's an e-mail from you
 7 dated May 30 of 2018 to Mr. Jim Hoffecker.
 8 A. Okay.
 9 Q. And on, I believe, what is the
 10 continuation of that e-mail from 4173, which is
 11 4171, it states that you will be assisting with the
 12 PM duties for the duration of the project.
 13 A. That's correct.
 14 Q. Okay. Was it your impression that you
 15 would be assisting with the PM duties or were you
 16 the PM; that is, the project manager?
 17 A. Due to the high rate of turnover on this
 18 and not knowing who --
 19 Because I think Pat Cartwright actually
 20 took over some of the PM duties for this project.
 21 And due to the high turnover, I led the DOT to
 22 believe that I was going to assist on this while,
 23 you know, Patrick -- or Pat Cartwright helped out a
 24 little bit. That way, if Penhall was to hire
 25 another project manager, they could step in to be

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1 Who is WHPacific, if you know?
 2 A. My recollection, it would have to be a
 3 vendor or whoever -- you know, a material supplier.
 4 Because everything with the DOT had to have certs,
 5 certifications. I believe these were the pavement
 6 marking certifications.
 7 Q. Okay. Now, this e-mail continues on
 8 another note. Penhall, "Due to the schedule flow,
 9 we are subcontracting half of the remaining seal
 10 activities. Attached is the subcontractor approval
 11 form for Diamond Services. Please let me know if
 12 you have any questions or concerns. FYI, Diamond
 13 will be starting their portion of the work around
 14 the 12th of June."
 15 Can you elaborate for me what it was
 16 about schedule flow that caused Penhall to
 17 subcontract the seal activities to Diamond Services
 18 for this project?
 19 A. Absolutely. When we remobilized to the
 20 site, we only had an allotted number of days to
 21 perform the work. Those days, the allotted number
 22 of days that we had available, were beyond what our
 23 capacity was with the crews that we had, so we
 24 subcontracted Diamond Services to help us stay on
 25 schedule and avoid liquidated damages by the DOT.

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1 Q. Did you have any involvement in the
 2 retention of Diamond Services for this project?
 3 A. To what degree?
 4 Q. I'm asking you. In any degree, what
 5 was, if at all, your involvement in retaining
 6 Diamond Services in this project?
 7 A. My -- the only relationship with Diamond
 8 Services was coordination with their project
 9 manager and then verification of quantities. But
 10 most of that took place at the field level between
 11 Scott and Gerald, I bet.
 12 Q. What's the other individual?
 13 A. Gerald --
 14 Isn't his name Gerald Johnson?
 15 Q. Who is Gerald Johnson?
 16 A. Maybe Gerald --
 17 I'm trying to think of the -- the lead
 18 superintendent for Diamond Services.
 19 Q. Ah. Okay.
 20 A. That -- that was who the coordination
 21 between those two guys were; Scott and the lead
 22 superintendent for Diamond Services.
 23 Q. All right. Did you ever have any
 24 discussions with any representative of Diamond
 25 Services concerning the number of lanes that would

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1 Q. Okay. And what did Mr. Nordberg tell
 2 you in that regard, if you recall?
 3 A. From my recollection, it was we had --
 4 you know, I think we had a -- maybe 60 days or
 5 30 days. I can't remember the exact number of
 6 days, but to complete, basically, three months'
 7 worth of work in, you know, a third of the amount
 8 of time due to the first phase of the project going
 9 over and us not completing it on time.
 10 Q. Did you understand that there were some
 11 penalties that would apply to Penhall if they did
 12 not finish the project on time?
 13 A. Yes.
 14 Q. And what were those penalties, as you
 15 understood it?
 16 A. Liquidated damages. But to the effect
 17 of dollar figure, I do not recall.
 18 Q. So it was the intent of Penhall to
 19 finish the project on time on an expedited basis in
 20 order to avoid liquidated damages?
 21 MR. BOTTARI: Object to the form.
 22 THE WITNESS: Yes.
 23 Q. (BY MR. ROBBINS) Getting back to the
 24 schedule that was being prepared by you in May of
 25 2018, did you work with anyone at Penhall to

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1 remain open during the course of their involvement
 2 in the project?
 3 Mr. Magill?
 4 A. No, sir, I did not.
 5 Q. Okay. Do you know if anyone with
 6 Penhall had any discussions with any representative
 7 of Diamond Services pertaining to the number of
 8 lanes that would remain open during the period of
 9 time that Diamond Services was involved in the
 10 project?
 11 A. I do not recall. Or I do not know.
 12 Q. Okay. Now, you mentioned that there was
 13 an allotted number of days for Penhall to do the
 14 work.
 15 When you became involved in the
 16 recommencement of the project in the spring of
 17 2018, did you form an impression that there was
 18 some urgency to get the project done on an
 19 expedited basis?
 20 A. Yes.
 21 Q. Okay. And who did you derive that
 22 understanding from; that is, information from what
 23 source?
 24 A. I believe that was some of the handoff
 25 information I received from Patrick Nordberg.

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1 develop that schedule or is it just something you
 2 developed certain options and then you circulated
 3 it around to people in Penhall for their input?
 4 A. Yes, sir, just like that. I created --
 5 yes, I created the schedule and circulated it among
 6 my team members, my leadership and got their
 7 buy-in, and then submitted to the State or to the
 8 DOT.
 9 Q. All right. Do you recall anyone at
 10 Penhall making any suggestions for a modification
 11 in the schedule that you had drafted?
 12 A. I do not recall.
 13 Q. All right. Let me ask you to take a
 14 look at pages -- what we've marked as pages 4179,
 15 4180, 4181, and 4182. Once we get those called up
 16 for you, my question to you is whether those
 17 documents comprise the scheduling options that you
 18 had developed.
 19 A. Will you ask the question one more time?
 20 Q. Yeah. I'm wondering whether the -- what
 21 is depicted on those pages, those four pages,
 22 comprises the schedule that you developed for this
 23 project.
 24 A. I do believe so, yes.
 25 Q. Okay. And do you recall there being two

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1 MR. BOTTARI: Object to the form.
 2 **Q. (BY MR. MOORE) Do you remember the**
 3 **subject of this meeting -- or, excuse me, this**
 4 **e-mail when you first saw it?**
 5 MR. BOTTARI: Object to the form.
 6 THE WITNESS: I do not recall.
 7 **Q. (BY MR. MOORE) And do you have any idea**
 8 **who wrote this?**
 9 A. I do not.
 10 MR. MOORE: Mr. Magill, thank you. I have no
 11 further questions today.
 12
 13 EXAMINATION
 14 BY MR. ORLER:
 15 **Q. Mr. Magill, my name is Mark Orler. I**
 16 **represent Plaintiff Dorine Norko.**
 17 **Prior to the project restart in May of**
 18 **2018, did you have any communication with either**
 19 **Scott Reed or Bruce Kidd?**
 20 A. Yes.
 21 **Q. And when would that communication have**
 22 **taken place?**
 23 A. I was in communication with Scott and
 24 Bruce probably on a daily basis, either by e-mail
 25 or text message or phone call.

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1 **Q. Did you also discuss with either one the**
 2 **current status of the project as far as the**
 3 **progress that had been made and what still needed**
 4 **to be made to complete it?**
 5 A. Maybe from a high level perspective, but
 6 not intimate details. Just duration, just
 7 remaining duration, and how important it was for us
 8 to finish on time.
 9 **Q. Had you been --**
 10 **It sounds like you had worked with**
 11 **either one prior to this project, that you knew who**
 12 **they were and you'd worked with them.**
 13 **Is that fair?**
 14 A. That -- yes. I worked with them on
 15 different projects.
 16 **Q. Did either Mr. Kidd or Mr. Reed inform**
 17 **you that there had been deviations from the**
 18 **approved traffic control -- temporary traffic**
 19 **control plan or special provisions governing the**
 20 **project in the fall of 2017?**
 21 MR. BOTTARI: Object to the form.
 22 THE WITNESS: No.
 23 **Q. (BY MR. ORLER) As the project manager**
 24 **for the project, would you have expected either one**
 25 **of them to inform you of that?**

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1 **Q. And the communication that you had with**
 2 **them was specifically related to this project, to**
 3 **the restart?**
 4 A. It was not specifically related to the
 5 project.
 6 **Q. So let's narrow it down to --**
 7 **I'm interested in communication that you**
 8 **would have had with either one of those two**
 9 **gentlemen regarding the project at issue in this**
 10 **case.**
 11 A. So communication prior to restart?
 12 **Q. Yes, sir.**
 13 A. I'd say once or twice, just to discuss
 14 game plan and manpower.
 15 **Q. And as you sit here today, do you have**
 16 **any -- can you tell me about the substance of that**
 17 **communication that you would have had with either**
 18 **one?**
 19 A. As previously stated, manpower; to
 20 discuss how many people we're going to need, where
 21 we're going to get them from, discuss equipment
 22 needs, where our equipment was located, you know,
 23 in correspondence to the project, and then how we
 24 were going to get the equipment to the project and
 25 then materials.

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1 A. I -- yes, I guess. Yeah. I believe
 2 I --
 3 **Q. As the incoming project manager, that's**
 4 **something that you would have wanted to know, true?**
 5 A. True.
 6 **Q. As Penhall's project manager for the**
 7 **project, would you expect the superintendents,**
 8 **Mr. Reed and Mr. Kidd, to have reviewed the**
 9 **contract documents governing the project?**
 10 A. Yes.
 11 **Q. Would you have also expected them to**
 12 **be -- to have knowledge and to have reviewed the**
 13 **temporary traffic control plan and the special**
 14 **provisions governing the project?**
 15 A. Yes.
 16 **Q. And you would have expected them,**
 17 **as superintendents of Penhall, to follow the**
 18 **temporary traffic control plan and also the special**
 19 **provisions.**
 20 **Is that also true?**
 21 A. That is true.
 22 **Q. You testified earlier regarding the**
 23 **allotted number of days to finish the project.**
 24 **How did you know -- because you**
 25 **referenced the liquidated damages. How did you**

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1 know about that provision in the contract?
 2 A. From my handoff meeting with Patrick
 3 Nordberg.
 4 Q. Is there anything else in the meeting
 5 with Mr. Nordberg that was covered with you
 6 regarding this project or was that the focus, the
 7 liquidated damages?
 8 A. So repeat the question again.
 9 Q. Was there anything else that sticks out
 10 in your mind regarding this meeting with
 11 Mr. Nordberg aside from the liquidated damages?
 12 A. No. The liquidated damages was the most
 13 important because it's the financial.
 14 Q. Was one of the ways that Penhall
 15 believed it could expedite completion of the
 16 project and avoid liquidated damages under the
 17 contract to close three out of a four-lane section
 18 of the roadway during construction activities?
 19 MR. BOTTARI: Object to the form.
 20 THE WITNESS: I don't -- I don't believe so.
 21 Q. (BY MR. ORLER) Well, one of the ways
 22 that more work could be done, true, is if more
 23 lanes were closed.
 24 Would you agree with me?
 25 A. I would agree, sure.

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1 MR. ORLER: I don't have any other questions.
 2 Thank you.
 3 MR. ROBBINS: We're up to the board.
 4 MR. WETHERELL: The estate of Tsar has no
 5 questions.
 6 MR. ROBBINS: Okay. Mr. Magill, I guess that
 7 is all the questions we have for you here today.
 8 Thank you so much for your time, sir.
 9 THE WITNESS: Awesome. Thank you, guys.
 10 THE VIDEOGRAPHER: Okay. This concludes the
 11 videotaped deposition of Jeromy Magill, and the
 12 time is 2:21 p.m. We are now off the record.
 13
 14 (The remote videotaped deposition concluded at 2:21 p.m.)
 15 ***
 16 (Signature was requested.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 VERIFICATION
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)
 6
 7 I, JEROMY MAGILL, being first duly sworn remotely
 8 on my oath, depose and say:
 9 That I am the witness named in the foregoing remote
 10 videotaped deposition taken the 24th day of May, 2021,
 11 consisting of pages numbered 1 to 95, inclusive; that
 12 I have read the said deposition and know the contents
 13 thereof; that the questions contained therein were
 14 propounded to me; that the answers to said questions
 15 were given by me, and that the answers as contained
 16 therein (or as corrected by me therein) are true and
 17 correct.
 18
 19 Corrections Made: Yes _____ No _____
 20
 21 _____
 22 JEROMY MAGILL
 23
 24 Subscribed and sworn to before me this _____
 25 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____.

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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF IDAHO)
 4) ss.
 5 COUNTY OF ADA)
 6
 7 I, ANDREA J. WECKER, Certified Shorthand Reporter
 8 and Notary Public in and for the State of Idaho, do hereby
 9 certify:
 10 That prior to being examined, the witness named in
 11 the foregoing deposition was by me duly sworn remotely to
 12 testify to the truth, the whole truth and nothing but the
 13 truth;
 14 That said deposition was taken down by me in
 15 shorthand at the time and place therein named and
 16 thereafter reduced to typewriting under my direction, and
 17 that the foregoing transcript contains a full, true
 18 and verbatim record of said deposition.
 19 I further certify that I have no interest in the
 20 event of the action.
 21 WITNESS my hand and seal this 8th day of June,
 22 2021.
 23
 24 _____
 25 ANDREA J. WECKER
 CSR, RDR, CRR, CRC and Notary
 Public in and for the
 State of Idaho.
 My Commission Expires: 02-14-23

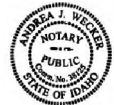


EXHIBIT 19

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

REMOTE VIDEOTAPED DEPOSITION OF VINCENT COLETTA
February 19, 2021

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 18

1 1997.
 2 **Q. All right. And your registration --**
 3 **Strike that.**
 4 **You are a registered electrical**
 5 **engineer?**
 6 A. I am a registered professional engineer,
 7 active in Virginia, inactive in Washington, D.C.
 8 **Q. All right. And your employment**
 9 **background? Let's go back the past 15 years.**
 10 A. I am -- I'll start from the present and
 11 go backwards.
 12 Currently, I'm employed by Overland
 13 Contracting, Inc. It's a subsidiary of
 14 Black & Veatch. I am an associate vice president
 15 in charge of local transmission construction
 16 activities. Prior --
 17 **Q. Let me ask you, by "local transmission,"**
 18 **you're talking about electrical transmission?**
 19 A. Electrical transmission, yes.
 20 **Q. Okay.**
 21 A. Substations -- substations and
 22 transmission lines.
 23 **Q. Okay. So you're doing work for the**
 24 **local public utilities, I take it?**
 25 A. We're doing work with the major

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1 roles, including engineering manager to assignments
 2 such as field engineering manager, construction
 3 manager, site manager, chief of construction, and
 4 other various increasing roles and capacities.
 5 **Q. Let me --**
 6 **I think that takes us back a good enough**
 7 **period of time. But let me ask you: With your**
 8 **experience through Shaw and CB&I, did you have**
 9 **experience doing either new or maintenance highway**
 10 **construction projects?**
 11 A. Not specifically to highway.
 12 **Q. When you say "not specifically," that**
 13 **always prompts attorneys to wonder what --**
 14 **Is there some other general answer that**
 15 **would apply? In other words, not specifically to**
 16 **highways, but perhaps roadways?**
 17 A. No. Specific to --
 18 I've been involved in construction
 19 projects in both conventional and nuclear power
 20 primarily.
 21 **Q. Okay. And that was true with both CB&I**
 22 **and Shaw?**
 23 A. Yes.
 24 **Q. More structural construction rather than**
 25 **anything having to do with roadways themselves,**

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1 utilities throughout the United States and
 2 internationally.
 3 **Q. All right. And that's the construction**
 4 **of new facilities or repair of existing --**
 5 **maintenance of existing facilities or exactly what?**
 6 A. We have contracts in both markets.
 7 **Q. Okay. I didn't mean to interrupt you.**
 8 **Or I did, and I apologize. Please continue.**
 9 A. Prior -- prior to Overland Contracting,
 10 I worked with General Electrical for approximately
 11 three years. I was the construction -- global
 12 construction expert for substations and
 13 transmission line work activities.
 14 **Q. Okay.**
 15 A. Similar capacity as what I'm doing now.
 16 Prior to General Electric, I worked with
 17 Penhall for approximately 11 months as the manager
 18 of projects for the grinding and grooving highway
 19 improvement projects.
 20 **Q. Okay.**
 21 A. Prior to Penhall, I worked with a
 22 company called Chicago Bridges, CB&I. They
 23 acquired Shaw, which is where I worked for
 24 approximately 10 years.
 25 Shaw, then CB&I, I was -- I had various

Page 21

1 **except as maybe serviced the particular structure**
 2 **that was being constructed?**
 3 A. That's correct.
 4 **Q. All right. So I take it that your CB&I**
 5 **and Shaw work did not involve any work with**
 6 **temporary traffic control plans for highways?**
 7 A. Not in the work that I was involved
 8 with.
 9 **Q. All right. And would I be correct in**
 10 **assuming that the same answer would be true for the**
 11 **three years that you worked with GE? In other**
 12 **words, you didn't have any involvement in either**
 13 **creating or implementing temporary traffic control**
 14 **plans for highways?**
 15 A. That is correct.
 16 **Q. And with Overland, similarly, any**
 17 **background or experience in developing or**
 18 **implementing temporary traffic control plans for**
 19 **highways?**
 20 A. Not directly. We do work with some
 21 distribution work that includes traffic control
 22 components within it. Those are managed out of --
 23 at the project levels.
 24 **Q. And was that with GE or --**
 25 **Strike that.**

Page 22

1 Was that with Overland or with GE or
 2 both?
 3 A. That is with Overland Contracting.
 4 Q. Okay. Any of those having to do with
 5 either the creation or implementation of temporary
 6 traffic control plans?
 7 A. Implementation.
 8 Q. Okay. And would they be with regard to
 9 the reduction of available lanes of travel to
 10 the --
 11 A. I have -- I have no knowledge as to what
 12 contents they have. They are part of the projects
 13 that are -- they are --
 14 Those details are part of the
 15 project-level information that I'm not involved
 16 with.
 17 Q. Okay. All right. How about let's just
 18 go back historically.
 19 At any time prior to your work
 20 experience with Shaw, had you had any direct work
 21 experience or indirect work experience in either
 22 the creation or implementation of temporary traffic
 23 control plans for highway construction or
 24 maintenance projects prior to your involvement with
 25 Shaw?

Page 24

1 A. Yes.
 2 Q. Okay. How many other projects?
 3 A. I don't know exactly how many.
 4 Q. All right. In any of the projects,
 5 including the I-84 Five Mile to Orchard project,
 6 did you have any involvement in the actual creation
 7 of the temporary traffic control plan?
 8 A. No.
 9 Q. That was handled by other engineering
 10 companies, I take it?
 11 A. Yes.
 12 Q. Okay. How about insofar as the
 13 implementation of the temporary traffic control
 14 plan?
 15 Did you ever get to the point in the
 16 I-84 Five Mile to Orchard project where the
 17 temporary traffic control plan was actually
 18 implemented during the course of the progress of
 19 work?
 20 A. Yes. The traffic control plan was
 21 implemented while -- while I was there, yes.
 22 Q. All right. And for what period of time
 23 were you --
 24 Strike that.
 25 What, if any, involvement did you have

Page 23

1 A. No.
 2 Q. Okay. How about with Penhall? Did you
 3 have involvement with projects wherein temporary
 4 traffic control plans were involved, both in the
 5 creation and/or the implementation thereof?
 6 A. Yes.
 7 Q. Okay. Now, the 11 months with Penhall,
 8 we do know that you had involvement for a brief
 9 period of time with a project that we've identified
 10 as I-84 Five Mile to Orchard and Ramps project that
 11 we'll refer to in this deposition as "the project."
 12 Did you have any involvement in either
 13 the creation or implementation of temporary traffic
 14 control plans in any highway construction or
 15 maintenance project other than that which I've just
 16 identified as "the project"?
 17 A. My apologies, but your question was very
 18 confusing.
 19 Q. It was very long and confusing. I'm
 20 just wondering whether -- other than your
 21 involvement in the I-84 Five Mile to Orchard
 22 project, did you have any involvement in any other
 23 projects while you worked with Penhall where
 24 temporary traffic control plans were either
 25 addressed or created?

Page 25

1 in the implementation of the temporary traffic
 2 control plan for the I-84 Five Mile to Orchard
 3 project?
 4 A. I was not directly involved with the
 5 implementation of the traffic control plan.
 6 Q. All right. And you weren't involved in
 7 the actual creation of the temporary traffic
 8 control plan either?
 9 A. I was not involved in the creation of
 10 the traffic control plan at all.
 11 Q. All right. Did you involve yourself in
 12 the review of the temporary traffic control plan
 13 that was adopted by the State of Idaho for the
 14 project insofar as the implementation of the
 15 project is -- of the TTCP was concerned?
 16 A. I had -- I have limited knowledge of the
 17 actual traffic control plan. As the project
 18 manager, that -- that knowledge level of the
 19 details of the traffic control plan were managed by
 20 the execution team and -- in the execution of work.
 21 My role as a project manager or manager
 22 of projects was, in this part, facilitating
 23 questions or dialogue between the execution team
 24 and other entities such as the State or
 25 subcontractors.

<p style="text-align: right;">Page 26</p> <p>1 Q. Okay. Who was the execute -- 2 Or strike that. 3 Do you know who the execution team was 4 for the temporary traffic control plan that was 5 adopted for the I-84 Five Mile to Orchard project? 6 A. Specialty Contractors. 7 Q. Okay. That was pursuant to a 8 subcontract that had been entered into between 9 Penhall and Specialty? 10 A. That is correct. 11 Q. And were you involved in the 12 negotiations of that subcontract with Specialty? 13 A. I was involved with that, yes. 14 Q. All right. And what was the nature of 15 your involvement in those negotiations? 16 A. They -- they had provided the proposal 17 that the bid was submitted to the State on, and 18 prior to -- after -- 19 Once we get the project awarded, my 20 involvement was in the facilitation of the contract 21 documents and other pieces that are necessary to 22 start into -- to enter into the contract phase. 23 We have multiple -- we had multiple 24 people in the organization, including a contracts 25 manager, vice president, and other people -- that</p>	<p style="text-align: right;">Page 27</p> <p>1 would be either the recipients of that information 2 or the signers of those documents from the Penhall 3 side. 4 Q. Okay. 5 A. So I was involved in a -- in part of 6 that, communications between parties depending on a 7 specific topic or task. 8 Q. Was the contract between Specialty and 9 Penhall entered into before Penhall was awarded the 10 contract for the I-84 Five Mile to Orchard project 11 by the State? 12 A. No. We don't enter into an actual 13 contract until the actual -- until after award by 14 the State. 15 Q. Okay. So once the contract was awarded 16 by the State, then you had available to you the 17 contract documents, which included the temporary 18 traffic control plan and the special provisions 19 governing the implementation of the plan? 20 A. Yes. 21 Q. All right. And then were those 22 documents then forwarded to Specialty at the time 23 they were awarded or -- 24 Strike that. 25 Were those contracts -- were those</p>
<p style="text-align: right;">Page 28</p> <p>1 documents, that is the temporary traffic control 2 plan and the special provisions, forwarded to 3 Specialty in order to allow them to provide a bid 4 for that project? 5 A. The -- 6 I don't know the answer to that. I 7 wasn't part of the bid component for that contract. 8 Q. All right. What, if anything -- 9 Well, strike that. 10 Were you at all involved in the 11 discussions with Specialty regarding the parameters 12 of the temporary traffic control plan and the 13 special provisions with regard to that plan? 14 A. My understanding is that they were 15 included as part of the contract with Specialty 16 Contractors -- 17 Q. Okay. 18 A. -- which I was involved with. 19 Q. All right. Who at Specialty -- 20 Strike that. 21 Did you have discussions with Specialty 22 about the temporary traffic control plan? 23 A. Yes. 24 Q. All right. And who at Specialty was 25 your primary contact with regard to those</p>	<p style="text-align: right;">Page 29</p> <p>1 discussions? 2 A. I think it's -- I think his name is 3 Daniel Kircher. 4 Q. Daniel Kircher? Okay. 5 Did you have discussions with anyone 6 else? 7 A. Not to my knowledge. 8 Q. Okay. Do you recall having any 9 discussions with Daniel Kircher during your 10 11 months with Penhall wherein the procedures that 11 had to be followed if the temporary traffic control 12 plan was going to be amended were discussed? 13 A. There was conversation with Daniel 14 Kircher on his ability to provide revisions to the 15 traffic control plan. 16 Q. Okay. And we'll get to those. I know 17 that there are some e-mails going between -- that 18 you were a participant of between Specialty and 19 Penhall where changes in the -- in the temporary 20 traffic control plan were discussed. 21 But other than as might be addressed 22 within those e-mails, do you recall any other 23 discussions, like over-the-phone or 24 person-to-person discussions -- in-person, if you 25 will -- with Mr. Kircher about the subject of how</p>

Page 50

1 A. Oh, absolutely.
 2 Q. Okay.
 3 MR. ROBBINS: Nick, similarly, if I could ask
 4 just to be provided with copies of those documents
 5 as well.
 6 MR. CRAWFORD: Yeah. If there's anything
 7 else, we'll do it.
 8 MR. ROBBINS: Appreciate it.
 9 Q. (BY MR. ROBBINS) All right. So going
 10 back, if we could, sir, please, to the
 11 State/Penhall contract, let me ask you to take a
 12 look at pages -- starting at page 23 of Tab 6,
 13 please.
 14 Do you have those in front of you, sir?
 15 A. You said page 30 of Tab 6?
 16 Q. I'm sorry, no. Page 23.
 17 A. Page 23.
 18 Q. Thank you.
 19 Just while you're pulling that up, my
 20 question to you is: Do you recognize those as
 21 being the special provisions that would address the
 22 implementation of the temporary traffic control
 23 plan?
 24 A. Page 23 of Tab 6?
 25 Q. Yes, sir.

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1 Do you have that in front of you, sir?
 2 A. Yes.
 3 Q. All right. Look at under "Time," and it
 4 speaks of weekday nights, Sunday through Friday,
 5 and then weekend nights, Friday through Saturday
 6 morning. And under "Restrictions," the second
 7 paragraph, it speaks of, "For existing four-lane
 8 sections and greater, a minimum of two lanes shall
 9 be maintained in each the eastbound and westbound
 10 direction or as shown in the temporary traffic
 11 control plans."
 12 Did you understand that those were the
 13 governing provisions of the temporary traffic
 14 control plans; that is, where you had a four-lane
 15 stretch of highway, two lanes were to remain open
 16 during work on this project?
 17 A. I recall as it states in the contract as
 18 to what the provisions are, yes.
 19 Q. Do you recall there being any question
 20 between Penhall and Specialty during the course of
 21 your tenure with Penhall on this project in which
 22 Specialty expressed to you any confusion as to
 23 whether that was the governing provision of this
 24 contract on how the temporary traffic control plans
 25 would be implemented?

Page 51

1 A. Yes.
 2 Q. Okay. All right.
 3 Directing you further to page 27 of that
 4 same tab, Tab 6, there we're talking about staging
 5 and temporary traffic control plans and the
 6 provisions under alternate staging of temporary
 7 traffic control plan.
 8 Do you recognize those as being the
 9 approved procedures that governed this contract
 10 concerning how the temporary traffic control plan
 11 could be amended if that was the request?
 12 A. Yes.
 13 Q. All right. And that was forwarded to
 14 Specialty, I take it, correct?
 15 A. Yes.
 16 Q. All right. And did you have any reason
 17 to believe that Specialty did not understand what
 18 it is this contract provided insofar as how the
 19 temporary traffic control plan could be amended?
 20 A. No.
 21 Q. Okay.
 22 A. I -- I --
 23 [Witness indicates.]
 24 Q. All right. The next page, page number
 25 28, under "Working Hours."

Page 53

1 A. No.
 2 Q. Okay.
 3 A. Nor -- nor with -- nor with our own
 4 team, with Penhall.
 5 Q. Understood that completely.
 6 So insofar as your communications with
 7 your team at Penhall, you understood Penhall to
 8 understand that if there was going to be a change,
 9 there would have to be a written change stamped by
 10 an engineer approved by the State of Idaho,
 11 correct?
 12 A. That is correct. That is correct.
 13 Q. All right. Now, who were your crew
 14 members --
 15 And there may be too many to address,
 16 but for the purpose of this project, while you were
 17 on board with Penhall, who were the project members
 18 from Penhall on this project?
 19 A. I think our superintendent was Bruce
 20 Kidd.
 21 Q. All right. Was there only a single
 22 superintendent for this project or were there two
 23 superintendents assigned by Penhall?
 24 A. I don't recall two superintendents. We
 25 had identified Bruce Kidd as the point of contact

Page 54

1 and person in charge at the field.

2 **Q. All right. So he was the person in**

3 **charge on behalf of Penhall in the field during the**

4 **course of this project?**

5 A. At my time there, yes.

6 **Q. During your period of time, yes.**

7 **Did you have any understanding of what**

8 **Mr. Kidd's responsibility was as superintendent on**

9 **behalf of Penhall for this project insofar as**

10 **monitoring the implementation of the temporary**

11 **traffic control plan during construction?**

12 A. The traffic control plan was the

13 responsibility of our subcontractor. Mr. Kidd's

14 responsibility was coordination of what his needs

15 were associated with the work front.

16 The implementation and adherence to the

17 traffic control plan and its requirements were

18 that -- the responsibility of the subcontractor.

19 **Q. Okay. But was there anybody for Penhall**

20 **on site whose responsibility it was to make sure**

21 **that the temporary traffic control plan was being**

22 **properly implemented by Specialty?**

23 MR. CRAWFORD: Object to the form.

24 You can go ahead, Vince.

25 THE WITNESS: The Specialty contractors,

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1 **Mr. Kidd, your expectation as the project manager**

2 **of Mr. Kidd as superintendent for this project.**

3 **Did you --**

4 A. I -- I --

5 Please -- please continue your question.

6 **Q. Did you have an expectation that**

7 **Mr. Kidd would familiarize himself with the**

8 **temporary traffic control plan and the special**

9 **provisions governing the implementation of that**

10 **plan for this project?**

11 A. I would ask my supervisors in the field

12 to familiarize themselves with the general contract

13 and specifically the items that were relevant to

14 their specific work.

15 **Q. Okay. My question was a little bit**

16 **different, was a little more specific, and it**

17 **specifically addressed your expectations as to**

18 **whether or not Mr. Kidd would review the temporary**

19 **traffic control plan and its special provisions in**

20 **the course of his duties and responsibilities for**

21 **Penhall as superintendent for this project.**

22 A. I would expect him to have general

23 familiarity with it.

24 **Q. Okay. And when you say "general**

25 **familiarity," what is it that you mean by that? I**

Page 55

1 which are the experts in the traffic control plan,

2 were contracted for the implementation as requested

3 by the State.

4 **Q. (BY MR. ROBBINS) Okay.**

5 A. Our -- our crews were not -- are not

6 experts in traffic control, and they relied on the

7 subcontractor into the execution of the traffic

8 control plan.

9 **Q. Okay. I appreciate that.**

10 **Now, in terms of what Mr. Kidd was given**

11 **in order for him to do the job of superintendent**

12 **for the project, do you know whether Mr. Kidd had**

13 **available to him for his review the temporary**

14 **traffic control plan and its special provisions?**

15 A. It is our normal to make sure all of the

16 site team has a copy of the whole package of the

17 contract with the State.

18 **Q. And was it your expectation that**

19 **Mr. Kidd would have familiarized himself with the**

20 **details of the temporary traffic control plan and**

21 **the special provisions governing its implementation**

22 **for this project in his position as superintendent?**

23 A. I think you're asking me to speak for

24 Mr. Kidd.

25 **Q. No, sir. I'm asking your expectation of**

Page 57

1 **mean, would you expect him to review it and to at**

2 **least be cognizant of what the provisions of the**

3 **TTCP were for the project?**

4 A. They would have general knowledge of the

5 traffic control plans and requirements,

6 specifically things of the start time, their stop

7 times, and -- and have a general understanding of

8 the traffic control plans; not a detailed knowledge

9 of them.

10 **Q. Okay. Would you expect that he have**

11 **knowledge enough of the temporary traffic control**

12 **plan to know that reduction of open traffic lanes**

13 **to a single lane of open traffic in a four-lane**

14 **stretch would be violative of the provisions of the**

15 **temporary traffic control plan? Would he have**

16 **that --**

17 MR. CRAWFORD: Object to the form.

18 **Q. (BY MR. ROBBINS) Would he have that**

19 **level of familiarity, in your expectation?**

20 A. I -- I can't say yes or no.

21 **Q. Why is that?**

22 A. I -- I -- because I -- because they're

23 experts in grinding or they're experts in grooving.

24 I don't -- I don't know if I --

25 I don't think that I would have that

Page 66

1 A. I don't recall --

2 **Q. All right.**

3 A. -- working with them before.

4 **Q. All right. Now, under "Construction**

5 **Requirements," that's the second paragraph under**

6 **"Traffic Control Manager," there's a reference that**

7 **the TCM will be ATSSA certified.**

8 **Do you know what that means?**

9 A. [No audio]

10 THE REPORTER: You're muted, Mr. Coletta.

11 THE WITNESS: I'm sorry.

12 Yes. It's a third-party certification,

13 American Traffic Safety something. But it's a

14 specific third-party specification.

15 **Q. (BY MR. ROBBINS) Okay. It's basically**

16 **some certification process that the individual has**

17 **to go through that would reflect that at least this**

18 **third-party -- in their opinion, this -- the**

19 **applicant is qualified to act as a traffic control**

20 **manager?**

21 A. That's correct.

22 **Q. And there's a reference also that the**

23 **minimum of five years of work zone traffic control**

24 **experience, et cetera, et cetera, through the rest**

25 **of that paragraph, that sentence.**

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1 A. I'd have to go back to the meeting

2 notes. I want to say Josh, but I could be

3 incorrect in that. Josh Roper or something --

4 **Q. Josh Roper? All right.**

5 **Had you ever heard of an individual by**

6 **the name of Mason Garling?**

7 A. I don't recall.

8 **Q. Okay. So your best recollection is the**

9 **TCM approved for this project was Josh Roper?**

10 A. That's correct.

11 **Q. All right.**

12 A. That was submitted by -- as part of

13 their submittals.

14 **Q. Okay. Down furthermore in that section,**

15 **there's a reference to the TCM maintaining a daily**

16 **diary and document the design and approval of all**

17 **work zones and any changes in the configuration to**

18 **an established work zone, et cetera, et cetera.**

19 **Was there anybody at Penhall whose**

20 **responsibility on this project it was to review the**

21 **traffic control manager daily diaries?**

22 A. I don't recall anybody having a specific

23 task or responsibility to review the diaries.

24 **Q. Okay. Do you recall there being any**

25 **discussions between Penhall and the representatives**

Page 67

1 **Did you have any involvement in vetting**

2 **the traffic control manager that was proposed for**

3 **this particular project?**

4 A. I personally did not vet this

5 individual. At the kickoff meeting and in

6 subsequent submittal documents, it was presented to

7 the Idaho -- the individual that would be filling

8 this role, and the State at the kickoff meeting

9 happily endorsed his inclusion to the -- to this

10 role.

11 **Q. All right. So do I understand your**

12 **question to be that you left it to the State to**

13 **approve the proposed TCM for this project rather**

14 **than there being some person at Penhall whose**

15 **responsibility it was to approve the TCM?**

16 A. It was -- it was as part of my

17 responsibility to transmit to the client the

18 certifications and/or components that were required

19 to be submitted to meeting the conditions of the

20 contract.

21 So these items would have been submitted

22 by our subcontractor and either directly or

23 indirectly involved us to the State.

24 **Q. Do you recall the name of the TCM for**

25 **this project?**

Page 69

1 **of the State of Idaho concerning whose**

2 **responsibility it would be to review the daily**

3 **diaries of the TCM?**

4 A. No. They -- they were required to be

5 submitted to the State in a -- in a timely fashion

6 in order for a proof of payment.

7 **Q. All right. In order to approve payment**

8 **for the subcontractor, Specialty in this case?**

9 A. That is correct.

10 **Q. All right. So the subcontractor was**

11 **paid directly by the State of Idaho? It wasn't a**

12 **flow-through --**

13 A. No.

14 **Q. -- to Penhall?**

15 A. It was a flow-through --

16 **Q. Okay.**

17 A. -- but -- and the traffic control

18 diaries also -- my understanding were expected to

19 be reviewed by the person on site from the State.

20 **Q. All right. But nobody from Penhall was**

21 **charged with reviewing those diaries?**

22 A. Nobody, to my understanding -- to my

23 knowledge, would be part of that review.

24 **Q. Okay. Let's go back just a moment to**

25 **"Contract Administration." And insofar as the**

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1 Q. Yes, sir. It looks to be an electronic
 2 signature for Mr. Miller?
 3 A. I have to get to that.
 4 Q. Okay.
 5 A. That's correct.
 6 Q. Okay. Now, under "Contract Documents,"
 7 Section 1.1, it identifies the various documents
 8 that form a part of this subcontract.
 9 My question to you is --
 10 A. Please pause. What sheet number are you
 11 referring to?
 12 Q. Excuse me. Page 302. 302. So I'm
 13 bringing you back to the beginning again.
 14 A. Okay. Thank you.
 15 Q. Paragraph 1.1 thereof identifies the
 16 contract documents. And within that paragraph,
 17 does that indicate then that part of the contract
 18 is the temporary traffic control plan and the
 19 special provisions that we've previously looked at?
 20 A. That's correct.
 21 Q. All right. So those documents would
 22 have been provided to Specialty for their use in
 23 this project?
 24 A. That is correct.
 25 Q. Okay. Looking at page 312, same tab,

Page 84

1 Q. That's a certificate of liability
 2 insurance? It's a COI, in the parlance, I think,
 3 of what I've heard, at least during the -- the
 4 pre-construction meeting.
 5 A. That's what it shows, yes.
 6 Q. And under "Description of Operations,"
 7 it identifies the project and then additional
 8 insured, Penhall and Idaho Department of
 9 Transportation.
 10 Based upon your background and
 11 experience, is it your belief that that reflects
 12 that both Penhall and IDT were named as additional
 13 insureds under the Specialty policy of liability
 14 coverage?
 15 MR. MOORE: Object --
 16 MR. PERKINS: Object to the form. Also calls
 17 for a legal conclusion.
 18 THE WITNESS: I am not privy to or on -- I
 19 don't -- I don't know. This is not my area of
 20 expertise. I rely on Barbara, who reviews these
 21 items, and to the flow-down requirements for her
 22 review and interpretation.
 23 Q. (BY MR. ROBBINS) Okay. So you're not
 24 able to say one way or the other whether
 25 confirmation was received other than as in this

Page 83

1 there's a reference to insurance.
 2 A. Okay.
 3 Q. It continues on to page 313.
 4 Do you recall there being a requirement
 5 that Specialty name and identify both Penhall and
 6 the State of Idaho as an additional insured under
 7 its policy of liability insurance?
 8 A. According to --
 9 On page 313, it says, "The contractor,
 10 prime contractor, and the owner and other parties
 11 under the general contract shall be named as
 12 additional insureds on the subcontractor's
 13 automobile insurance policy and its commercial
 14 liability policy."
 15 Q. And do you know whether that was
 16 accomplished in this project, sir?
 17 A. No, I do not know.
 18 Q. Okay. Let me ask you to take a look
 19 at --
 20 A. That would be the responsibility of both
 21 Billy Miller and Barbara who reviewed those
 22 components.
 23 Q. Let me ask you to take a look at Tab 24,
 24 page 700.
 25 A. Okay.

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1 certificate of liability insurance that Idaho
 2 Department of Transportation and Penhall Company,
 3 for that matter, were named as additional insureds
 4 under the Specialty policy of liability coverage?
 5 MR. PERKINS: Objection to the form.
 6 Q. (BY MR. ROBBINS) If you know.
 7 A. I can only read to what it -- say to
 8 what it reads here, and it says, "Additionally
 9 insured, Penhall Company and Idaho Department of
 10 Transportation."
 11 Q. Based upon your background and
 12 experience of working with Penhall, is it your
 13 expectation that somebody, I believe it was either
 14 Billy or Barbara, would have confirmed that, in
 15 fact, Penhall and Idaho Department of
 16 Transportation had been named as additional
 17 insureds under Specialty's insurance policy?
 18 A. That is correct, as well as the -- Idaho
 19 because -- IDT because all these items get
 20 submitted to them.
 21 Q. Okay. Understood. But I'm just --
 22 All I can ask is your knowledge and
 23 experience based upon your having worked with
 24 Penhall, is that Penhall would have ensured that,
 25 in fact, the additions of -- as insureds of both

1 VERIFICATION

2 STATE OF _____)
3) ss.
4 COUNTY OF _____)

5 I, VINCENT COLETTA, being first duly sworn
6 remotely on my oath, depose and say:
7 That I am the witness named in the foregoing
8 deposition taken the 19th day of February, 2021,
9 consisting of pages numbered 1 to 145, inclusive; that
10 I have read the said deposition and know the contents
11 thereof; that the questions contained therein were
12 propounded to me; that the answers to said questions
13 were given by me, and that the answers as contained
14 therein (or as corrected by me therein) are true and
15 correct.

16 Corrections Made: Yes _____ No _____

17
18
19 _____
20 VINCENT COLETTA

21 Subscribed and sworn to before me this _____
22 day of _____, 2021, at _____, Idaho.

23
24 _____
25 Notary Public for Idaho
Residing at _____, Idaho
My Commission Expires: _____

1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

5 I, ANDREA J. WECKER, Certified Shorthand Reporter
6 and Notary Public in and for the State of Idaho, do hereby
7 certify:

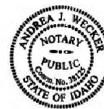
8 That prior to being examined, the witness named in
9 the foregoing deposition was by me duly sworn remotely to
10 testify to the truth, the whole truth and nothing but the
11 truth;

12 That said deposition was taken down by me in
13 shorthand at the time and place therein named and
14 thereafter reduced to typewriting under my direction, and
15 that the foregoing transcript contains a full, true
16 and verbatim record of said deposition.

17 I further certify that I have no interest in the
18 event of the action.

19 WITNESS my hand and seal this 1st day of March,
20 2021.

21 *Andrea J. Wecker*



22 ANDREA J. WECKER
23 CSR, RDR, CRR, CRC and Notary
24 Public in and for the
25 State of Idaho.

My Commission Expires: 02-14-23

EXHIBIT 20

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

REMOTE VIDEOTAPED DEPOSITION OF ERIC BLACKBURN

April 27, 2021

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 18

1 and understand questions and give truthful
 2 responses?
 3 A. Yes.
 4 Q. All right. Mr. Blackburn, I note from
 5 your shirt that you apparently are currently an
 6 employee of Diamond Drilling or -- either that or
 7 you're a great proponent of them.
 8 Which is it, sir?
 9 A. Employee.
 10 Q. All right. And in what position are you
 11 employed currently by Diamond Drilling?
 12 A. I am the senior project manager of
 13 national contracts.
 14 Q. All right. And for what period of time
 15 have you been employed by Diamond Drilling?
 16 A. Started in December of 2017.
 17 Q. Okay. And immediately prior to December
 18 of 2017, by whom were you employed?
 19 A. Penhall Company.
 20 Q. All right. And how long had you been
 21 employed by Penhall Company?
 22 A. 19 1/2 years.
 23 Q. All right. And would you just give me a
 24 brief overview of what your positions were with
 25 Penhall during that 19 1/2-year period of time?

Page 20

1 the quotes to -- to customers for their project.
 2 So if the project was won, the project manager side
 3 would take over, and then you would manage the
 4 project from start to finish.
 5 Q. Was it more often the case during your
 6 employment with Penhall during the period of time
 7 that you wore the dual hat of estimator and project
 8 manager that if you bid a project and that project
 9 was awarded, that you then continued your
 10 relationship with the project as project manager?
 11 A. Yes.
 12 Q. Okay. Now, when you were superintendent
 13 with Penhall, were there times where you were
 14 called upon to oversee the implementation of a
 15 temporary traffic control plan on a highway
 16 project?
 17 A. Yes.
 18 Q. On how many occasions before December of
 19 2017 had you had occasion to be on a project -- so
 20 now I'm just talking about the number of
 21 projects -- where you would be called upon to
 22 oversee the implementation of the temporary traffic
 23 control plan where we're talking about a highway
 24 construction project?
 25 A. Explain "implementation." Is that me

Page 19

1 A. I started in the field as a laborer and
 2 a concrete saw operator and did that for about two
 3 years, and then I accepted a promotion to a
 4 superintendent role, more of a field supervising
 5 position, and then that morphed into more of an
 6 estimator/project manager role after a few years of
 7 being a superintendent.
 8 It actually kind of turned into a --
 9 wearing several hats, if you will, with -- with the
 10 aspect of what I did for the company.
 11 Q. And when you say you wore different hats
 12 with the company, was that in your position as an
 13 estimator?
 14 A. Yes.
 15 Q. All right. Now, you've mentioned
 16 estimator and project manager.
 17 Did I hear you correctly, sir?
 18 A. Correct.
 19 Q. How was it that your position as an
 20 estimator differed from that as a project manager
 21 for a particular construction project?
 22 And if it differed depending upon the
 23 project, please let me know.
 24 A. Estimating would be the -- to put the
 25 project together, the bid, and actually send out

Page 21

1 providing traffic control or directing someone to
 2 do traffic control?
 3 Q. Excellent question. And what I'm really
 4 asking for in the first instance is you're actually
 5 supervising what some other entity or individual is
 6 doing in the actual implementation. And by that, I
 7 mean setting out of the traffic control devices in
 8 accordance with the temporary traffic control plan.
 9 A. It would be, I would say, more than a
 10 dozen times where we would have a subcontractor
 11 hired on as a traffic control company, and the
 12 direction would be what we would need for traffic
 13 control for that particular shift. That's really
 14 about as much of the correspondence that would
 15 occur.
 16 Q. During the 19 1/2 period of time while
 17 you were with Penhall, on those occasions where you
 18 acted as project manager, would you, as a matter of
 19 routine, oversee the implementation of the
 20 temporary traffic control plan where a
 21 subcontractor was hired to actually implement the
 22 plan itself?
 23 A. No.
 24 Q. On what occasions would your attention
 25 be directed to do that oversight work that I just

Page 42

1 **special provisions, a set procedure for how, if it**
 2 **was going to be amended, the temporary traffic**
 3 **control plan would be amended?**
 4 A. The set procedure would be the drawings.
 5 Within the construction drawings, they're typically
 6 located in the back of every plan set of, "This is
 7 the plans that are proposed for the project."
 8 **Q. Yeah. I guess what I'm getting at is:**
 9 **Do you know from your having reviewed the I-84**
 10 **specs and special provisions as to whether the**
 11 **procedure for amending the temporary traffic**
 12 **control plan of the I-84 project was any different**
 13 **from the procedure outlined in the contract**
 14 **documents for the Wye interchange project?**
 15 A. No different.
 16 **Q. Okay. All right.**
 17 **Now, from your involvement with**
 18 **Specialty in the Wye interchange project, did you**
 19 **have any understanding of Specialty's ability to**
 20 **provide engineering input to change a temporary**
 21 **traffic control plan if there was a request to do**
 22 **so?**
 23 A. No. No knowledge.
 24 **Q. Okay. All right.**
 25 MR. ROBBINS: We've been going almost an

Page 44

1 **the e-mail documents that I saw that there was a**
 2 **short period of time during which you were**
 3 **identified as the project manager.**
 4 **Is that contrary to your recollection?**
 5 A. Identified as in an e-mail signature?
 6 **Q. No. Just somebody identifying you as**
 7 **the PM for the project.**
 8 A. No.
 9 **Q. Okay.**
 10 A. That would have been Vince Coletta.
 11 **Q. All right. So --**
 12 **And I saw that. Vince Coletta was the**
 13 **project manager, and then after Mr. Coletta, there**
 14 **were other individuals who were appointed as**
 15 **project manager.**
 16 **Was that at a point in time after you**
 17 **had taken leave of Penhall?**
 18 A. Yes. There --
 19 I did attend the pre-construction
 20 meeting with Vince Coletta and Henry Shields, which
 21 in that capacity, I was an estimator assisting them
 22 with just getting the project underway or at least
 23 sitting in on that meeting with ITD.
 24 **Q. Okay.**
 25 A. Or Henry Sullivan. Did I say Shields?

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1 hour. Why don't we take just a 5-minute break here
 2 at least so I can get a cup of coffee, and then
 3 we'll launch off again.
 4 THE WITNESS: Okay.
 5 THE VIDEOGRAPHER: We are off the record at
 6 10:47 a.m.
 7 [Break taken from 10:47 a.m. to 10:55 a.m.]
 8 THE VIDEOGRAPHER: We are back on the record
 9 at 10:55 a.m.
 10 **Q. (BY MR. ROBBINS) All right.**
 11 **Mr. Blackburn, having come back from this brief**
 12 **break, are there any aspects of the testimony that**
 13 **you have given up to this point that you would like**
 14 **to amend or change in any respect?**
 15 A. No.
 16 **Q. All right. Let me direct your attention**
 17 **to the I-84 project, the I-84 to Five Mile -- I-84**
 18 **Five Mile to Orchard and Ramps project, which we'll**
 19 **just refer to now as "the project."**
 20 **You're, sir, the estimator on that**
 21 **project?**
 22 A. Yes.
 23 **Q. Were you also the project manager?**
 24 A. No.
 25 **Q. All right. It seemed from a couple of**

Page 45

1 That was actually his nickname.
 2 **Q. "Shields" is his nickname.**
 3 A. Yeah.
 4 **Q. Henry Sullivan is his given name,**
 5 **correct?**
 6 A. Correct. Yep.
 7 **Q. Okay.**
 8 A. And Henry Sullivan was to be the
 9 oncoming project manager, and Vince -- he reported
 10 to Vince.
 11 **Q. Okay. Now, what was that? Mr. Sullivan**
 12 **was the what project manager?**
 13 A. He was the oncoming project manager.
 14 That was the intent.
 15 **Q. Ah. Okay.**
 16 **So when the project actually got**
 17 **started, the intent -- at least as you understood**
 18 **it -- was that Mr. Sullivan would be the acting**
 19 **project manager for the I-84 project?**
 20 A. Yes.
 21 **Q. Okay. Is there a reason why you were**
 22 **not appointed as project manager since you had been**
 23 **the estimator for this project?**
 24 A. It was a structure that Penhall -- or
 25 this particular division of Penhall I was part of

Page 46

1 is -- had created an estimating department, if you
 2 will, and then a project management department.
 3 So the estimators would hand the project
 4 over to the project management team.
 5 **Q. Okay. And that division was the saw and**
 6 **sealing division?**
 7 A. It was actually the highway
 8 rehabilitation group, which was -- consisted of
 9 sawing and sealing and diamond grinding.
 10 **Q. Okay. Now, we know that Diamond**
 11 **Drilling was involved in this project.**
 12 **What was their involvement to the extent**
 13 **that you have an understanding?**
 14 A. Diamond Drilling was hired to saw and
 15 seal the direction of I-84 in -- in conjunction
 16 with Penhall's saw and seal crew.
 17 **Q. All right. When you began your work**
 18 **with Diamond Drilling in December of 2017, did you**
 19 **have any involvement in the I-84 project?**
 20 A. No.
 21 **Q. Okay. Was that by choice or just**
 22 **happenstance?**
 23 A. I attended the pre-construction, I
 24 believe it was August of 2017.
 25 **Q. It was, sir.**

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1 A. And I was off onto the -- my other
 2 estimating assignments. So Vince and Henry
 3 Sullivan were taking the project on as project
 4 management, and I was on to -- on the Penhall side,
 5 on to estimating.
 6 As far as December of 2017, this
 7 particular project wasn't even a discussion until
 8 June of -- or May or June of 2018 when we were
 9 actually on the project.
 10 **Q. That is correct, because the project had**
 11 **gone on hiatus after October of 2017 and then**
 12 **started back up again somewhere around May of 2018.**
 13 **But that's what I'm asking. In May of**
 14 **2018, during the period of time that you worked**
 15 **with Diamond Drilling, did you reconnect with the**
 16 **I-84 job?**
 17 A. Yes.
 18 **Q. Okay. And in what respect?**
 19 A. To provide Penhall Company a saw and
 20 seal price to take on some of the joint sealing
 21 work. It was -- it was my understanding they had
 22 already had the joint sealing underway, and they
 23 needed -- they wanted to bring on another crew,
 24 which was the Diamond Drilling crew.
 25 **Q. Okay. Was it your understanding that**

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1 **Penhall was doing their own saw and sealing on one**
 2 **side of I-84, and they needed another crew to do**
 3 **the saw and sealing on the other side?**
 4 A. Yes.
 5 **Q. Okay. And that other crew ultimately**
 6 **was Diamond Drilling?**
 7 A. Yes.
 8 **Q. All right. What was your on-site**
 9 **involvement, if any, in the work that Diamond**
 10 **Drilling did on the I-84 project?**
 11 A. It consisted of a one-day meeting with
 12 Scott Reed prior to our crew starting in June.
 13 **Q. All right. And do you have any notes or**
 14 **memos from that meeting?**
 15 A. No, other than a conversation of what
 16 direction we were starting and which lanes so I
 17 could pass it on to my oncoming crew.
 18 **Q. All right. Was it your understanding**
 19 **that Diamond Drilling was called upon to do the**
 20 **sawing and sealing on the I-84 eastbound direction?**
 21 A. Yes.
 22 **Q. During the conversation that you had**
 23 **with Scott Reed --**
 24 **And you said it was in June of 2018, was**
 25 **it?**

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1 A. I believe it was June. It was only a
 2 few days before we arrived on site, our Diamond
 3 Drilling crew had arrived on site.
 4 **Q. And do you have a recollection of the**
 5 **day in June -- the date in June that Diamond**
 6 **Drilling arrived on site?**
 7 A. It was June 14th.
 8 **Q. Okay. You seem to be looking at some**
 9 **notes.**
 10 **Can you identify what it is you were**
 11 **looking at there?**
 12 A. It's my -- my composition book that I
 13 maintain for all projects that I have ongoing.
 14 **Q. All right. So to the extent that you**
 15 **maintain any notes concerning your involvement in**
 16 **the I-84 project commencing June of 2018, it would**
 17 **be in that composition book?**
 18 A. Yes.
 19 **Q. All right. Now, during this meeting you**
 20 **had with Scott Reed, did you and Mr. Reed have any**
 21 **discussions about the temporary traffic control**
 22 **plan?**
 23 A. No.
 24 **Q. At any time before June 16 of 2018, had**
 25 **you been advised by anyone associated with the**

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1 project that there had been a change in the
 2 temporary traffic control plan whereby four open
 3 lanes of highway would be reduced to a single open
 4 lane?
 5 A. No.
 6 Q. Okay. When, if at all, was the first
 7 time you became aware that four open lanes of
 8 I-84 east would be reduced down to a single open
 9 lane?
 10 A. When did I become aware?
 11 Q. Yeah. When did you first become aware
 12 that the open lanes of I-84 east were reduced
 13 during the course of construction activities from
 14 four open lanes down to a single open lane?
 15 A. I didn't get those specific lane
 16 closures. I just knew either if my crew was
 17 working on the left side of the highway or the
 18 right side, knowing that the tapers would either
 19 have to go to the right if we're taking Lanes 1 and
 20 2 and then, you know, just the opposite if we're
 21 doing 3 and 4.
 22 Q. Okay. During June of 2018, with respect
 23 to the work that Diamond Drilling was doing on the
 24 eastbound I-84 lanes, who was it that gave the
 25 directions to reduce four open lanes down to a

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1 with my crew, with Penhall, of what -- what our
 2 needs were for the next night -- next night of
 3 closures.
 4 Q. Okay. So --
 5 And the coordination between Diamond and
 6 Penhall would have been whoever your crew
 7 supervisor was for Diamond on the I-84 eastbound
 8 lanes with the representative of Penhall?
 9 A. Yes.
 10 Q. And is it your understanding that
 11 representative for Penhall at that time was Scott
 12 Reed?
 13 A. Yes.
 14 Q. What, if you know, was the involvement
 15 of Bruce Kidd during that time; that is, the
 16 June 2018 stage of the project.
 17 A. I know of Bruce Kidd's name, but I don't
 18 know what his involvement was on the project. When
 19 I -- when I scheduled time to visit the site, Scott
 20 Reed was my contact.
 21 Q. Okay. Did you not know Bruce Kidd from
 22 your prior involvement with Penhall Company?
 23 A. No. I knew he was an employee, but
 24 we -- we never crossed paths.
 25 Q. All right. So you never had the

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1 single open lane, if you know?
 2 MR. MOORE: Object to the form. Foundation.
 3 Go ahead, sir.
 4 THE WITNESS: That would have been
 5 correspondence between my field crew and if Scott
 6 Reed was still the point of contact, which I
 7 believe he still was on site.
 8 Q. (BY MR. ROBBINS) All right. Well, I
 9 guess what I'm getting at: Is it your
 10 understanding that the directive came from Scott
 11 Reed to reduce four open lanes down to a single or
 12 did it come elsewhere?
 13 MR. GRAHAM: Objection. Form.
 14 MR. MOORE: Object to the form.
 15 THE WITNESS: It wouldn't have --
 16 MR. MOORE: Foundation.
 17 THE WITNESS: It wouldn't have come from my
 18 crew. I don't know where it would have come from.
 19 Q. (BY MR. ROBBINS) Okay. And when you say
 20 correspondence between Diamond and your supposition
 21 was Scott Reed, when you say "correspondence," is
 22 that written or e-mail or do you mean to include
 23 also verbal communication?
 24 A. Verbal, text message. I don't know how
 25 they communicated, but I know it was coordinated

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1 occasion to work with Bruce Kidd at all during the
 2 time of your Penhall employment?
 3 A. Correct.
 4 Q. Had you worked with Scott Reed during
 5 the course of your employment at Penhall?
 6 A. No.
 7 Q. Who was the supervisor for Diamond on
 8 the ground on the I-84 eastbound project?
 9 A. Our foreman was Caleb Larson, and our
 10 superintendent was Gerald Johnson.
 11 Q. Superintendent was Gerald Johnson?
 12 A. Correct.
 13 Q. And what was Caleb Larson's involvement?
 14 A. He was our foreman that actually started
 15 the project those first few days.
 16 Q. The first few days of 2018?
 17 A. Correct.
 18 Q. Okay. At any time after June 16 of
 19 2018, did you have any discussions with either
 20 Mr. Larson or Mr. Johnson in which the subject of
 21 the number of lanes that had been reduced on I-84
 22 were discussed between you and either individual?
 23 A. No.
 24 Q. During your involvement with Diamond,
 25 did you ever anticipate that four open lanes of

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1 I-84 east would be reduced down to a single open
 2 lane?
 3 A. No.
 4 Q. Why is it that you never expected that
 5 four open lanes of I-84 east would be reduced to a
 6 single open lane?
 7 MR. GRAHAM: Objection. Form.
 8 THE WITNESS: Having a general knowledge of
 9 what the traffic control plans included, my -- the
 10 crew would typically say, "We're doing the inside
 11 lanes or the outside lanes," so that typically
 12 would just translate, "Okay. So our drawings
 13 are" -- or the standard drawings within the plans
 14 would show 1 and 2 lanes, so that's -- when they
 15 say, "I'm doing inside lanes," that's what I'm
 16 expecting they're doing.
 17 Q. (BY MR. ROBBINS) Okay. So when they're
 18 doing inside lanes, they're -- on a four-lane
 19 stretch, they're doing the innermost lanes -- two
 20 lanes of the highway, and if it's at the outermost,
 21 it's the outer two lanes of the four-lane stretch?
 22 A. Correct.
 23 Q. All right. So if they're doing the two
 24 lanes, inner or outer, you're not expecting the
 25 traffic would be going on either side of the

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1 that was it.
 2 Q. Okay. And who did you have that
 3 conversation with?
 4 A. Gerald Johnson.
 5 Q. All right. And did Mr. Johnson give you
 6 any details as to circumstances leading up to that
 7 accident?
 8 A. No.
 9 Q. Did Mr. Johnson tell you anything about
 10 traffic conditions that night; that is, the night
 11 of the accident?
 12 A. Other than a truck caught fire under a
 13 bridge.
 14 Q. Okay. Did Mr. Johnson say anything
 15 about the truck having caught fire under the bridge
 16 after it rear-ended vehicles in front of it?
 17 A. He didn't have those details, so I
 18 didn't know.
 19 Q. Okay. Once you found out about the
 20 accident the day after its occurrence, did you
 21 reach out to any representative at Penhall to get
 22 any additional information concerning that
 23 accident?
 24 A. No.
 25 Q. Okay. How about the Idaho Department of

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1 workers doing that work, correct?
 2 A. Correct.
 3 Q. Okay. Have you at any time since
 4 June 16 of 2018 had any discussions with anyone at
 5 Penhall concerning why it was that four open lanes
 6 on I-84 were reduced down to a single open lane?
 7 A. No.
 8 Q. Did you ever have any discussions with
 9 any representative of the Idaho Department of
 10 Transportation as to why four open lanes of I-84
 11 east were reduced down to a single open lane during
 12 construction activities?
 13 A. No.
 14 Q. Okay. Did you at any time since --
 15 Well, strike that.
 16 At any time during Diamond's involvement
 17 with the project from June of 2018 onward, did you
 18 have any discussions with any of the Diamond
 19 workers who were involved in the project in which
 20 traffic conditions during the course of the project
 21 were discussed?
 22 A. No. The only conversation, it was
 23 short, that, "There was an accident last night,"
 24 which was the -- the day after the June 16th
 25 closure. "There was an accident last night," and

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1 Transportation? Did you reach out to anyone there
 2 to get any details on the accident?
 3 A. No.
 4 Q. Okay. We'll get through a number of the
 5 documents that were sent over to me yesterday. We
 6 did get a number of documents. It looks like the
 7 majority of those documents have to do with the
 8 preparation of the bid and the obtaining of
 9 equipment to deal with the bid for the I-84
 10 project.
 11 But do you have a recollection, as you
 12 sit here today, how is it that you first became
 13 involved in the bidding of the I-84 project?
 14 A. It was the contact from Ken Colson from
 15 Parametrix.
 16 Q. All right. And when do you recall being
 17 contacted by Mr. Colson from Parametrix?
 18 A. I believe it was May of '17, shortly
 19 before the project advertised for bid.
 20 Q. Did you know Mr. Colson before this
 21 contact in May of 2017?
 22 A. No.
 23 Q. How is it that he reached out to you, if
 24 you know, in May of 2017?
 25 A. It was actually a fairly common

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1 practice. Consultants of the owners will reach out
 2 to contractors in the area to consult with them
 3 with, "Hey, we've got this upcoming project. We'd
 4 like to get your input or take a look at what --
 5 what we're thinking."
 6 So it was really just a --
 7 I'm in Salt Lake City, Utah, so we're --
 8 as Penhall, we were the closest location to Boise,
 9 and we've -- Penhall had completed projects prior
 10 in that area. So I believe that was the other
 11 reason for the call.
 12 **Q. Did you become aware that Mr. Colson, as**
 13 **an engineer, was involved in the development of the**
 14 **temporary traffic control plan?**
 15 A. Yes, because he was in -- he oversaw the
 16 entire development of the project drawings and the
 17 special provisions, to my knowledge.
 18 **Q. Right.**
 19 **Do you know what he did insofar as the**
 20 **development of the temporary traffic control plan**
 21 **was concerned?**
 22 A. No, other than a few scenarios that he
 23 had sent over -- closure scenarios that he had sent
 24 over for review in -- prior to the project bidding.
 25 **Q. Did he review -- send over to you any**

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1 **that anticipated where there would be traffic on**
 2 **either side of the workers during work -- doing**
 3 **work on I-84 east?**
 4 A. I believe it was about the midpoint of
 5 the project where -- I don't recall the roads, but
 6 there's -- there is a large ramp that comes in from
 7 the -- the right that --
 8 It seems like I-84 is four lanes wide.
 9 In this particular area, it almost doubles; it
 10 doubles the width, and that's where I recall that
 11 that would occur.
 12 **Q. And do you know whether Diamond Drilling**
 13 **was working in that area on the evening of June 16,**
 14 **2018?**
 15 A. Not in that particular closure.
 16 **Q. Okay. In other words, they were not**
 17 **working in that area on that evening?**
 18 A. Not in that ramp. It was the -- the
 19 left-hand lanes, the 1 and 2 lanes. I don't recall
 20 where they were in the project, how --
 21 I think the project was five miles long
 22 or so.
 23 **Q. Right.**
 24 A. I don't recall where they were.
 25 **Q. So on the night in question, do you know**

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1 **scenarios for the closure of four open lanes of**
 2 **highway down to a single open lane?**
 3 A. I don't recall.
 4 **Q. Okay. What was the purpose of his**
 5 **sending over scenarios, if he explained to you,**
 6 **regarding lane closure?**
 7 A. There was what they call stages, which
 8 I'm not sure if the stages coincided with where the
 9 work was on the project. But it would either be
 10 left lane closures or right lane closures.
 11 And there actually was a situation by --
 12 where the ramps meet I-84, the oncoming ramps where
 13 there was -- it showed traffic on both sides of the
 14 work zone, which was a concern.
 15 **Q. All right. Now, for Diamond Drilling**
 16 **during its involvement in the I-84 project in**
 17 **June 2018, were they ever expected -- that is,**
 18 **Diamond ever expected to perform work under**
 19 **circumstances where traffic would be passing on**
 20 **either side of the workers?**
 21 A. Yes. There is --
 22 **Q. Okay.**
 23 A. The drawing existed in the construction
 24 drawings that way.
 25 **Q. Okay. And what part of the project was**

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1 **whether it was anticipated that traffic would be**
 2 **passing on both sides of Diamond Drilling workers**
 3 **on I-84 east?**
 4 A. No.
 5 **Q. Okay. No, you don't know, or, no, they**
 6 **would not?**
 7 A. No, they would not because I knew that
 8 they were working on the 1 and 2 lanes.
 9 **Q. Okay. All right.**
 10 **Based upon your understanding of the**
 11 **project, did you perceive of any need to reduce**
 12 **four open lanes to a single open lane in order for**
 13 **Diamond to be doing the work that it was doing on**
 14 **June 16, 2018?**
 15 MR. GRAHAM: Objection. Foundation.
 16 THE WITNESS: No.
 17 **Q. (BY MR. ROBBINS) No, you don't know, or,**
 18 **no, there was no need?**
 19 A. As far as if I requested it personally?
 20 **Q. No. Did you perceive of a need --**
 21 A. Oh.
 22 **Q. -- for four open lanes to be reduced**
 23 **down to a single open lane in order to accommodate**
 24 **that which Diamond was doing on I-84 east on**
 25 **June 16, 2018?**

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1 MR. POLING: Objection.
 2 THE WITNESS: I wasn't directly involved with
 3 the operational side of that, so I never received
 4 any feedback from any of my crew from Diamond
 5 requesting that or voicing that.
 6 So I don't know.
 7 Q. (BY MR. ROBBINS) Based upon what you
 8 know, though, of the project and the work that was
 9 being performed by Diamond on June 16, 2018, did
 10 you in your position with Diamond perceive any need
 11 to reduce four open lanes of I-84 east to a single
 12 open lane in the area of that work being performed
 13 that night?
 14 MR. POLING: Objection. Form.
 15 THE WITNESS: No, but the -- the more lanes
 16 we have, it definitely ensures more safety for our
 17 crew, so I --
 18 I'm not really sure how to answer that.
 19 Q. (BY MR. ROBBINS) Well, you're saying the
 20 more lanes you have. You mean the more lanes that
 21 are closed you have, the more safety for the crew?
 22 A. Yes.
 23 Q. Okay. But the more lanes that are
 24 closed, the greater the probability is of the
 25 development of a traffic queue.

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1 A. I did not.
 2 Q. Okay. Let's go through some of the
 3 documents.
 4 Sir, I'll ask you, if you would, please,
 5 to take a look at the Binder 1-A, Tab 6, beginning
 6 illustriously enough at page 1, and that would be
 7 the Bates number down at the middle bottom of the
 8 page rather than the ITD Bates over at the
 9 right-hand.
 10 Do you have that document in front of
 11 you now, sir?
 12 A. Yes.
 13 Q. All right. Now, by having that first
 14 page in front of you, are you able to identify that
 15 document from your past experience with the project
 16 as being the contract between Idaho Department of
 17 Transportation and Penhall for the I-84 project?
 18 A. Yes.
 19 Q. Do you happen to know, based upon your
 20 past experience with Penhall, how much insurance
 21 coverage Penhall carried for the I-84 project?
 22 A. No.
 23 Q. Okay. Do you know whether the Idaho
 24 Department of Transportation was named as an
 25 additional insured on Idaho -- on --

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1 Would you agree?
 2 A. Yes.
 3 Q. Okay. And that potentially presents a
 4 risk not only to members of the crew working but
 5 also to motoring traffic traveling through the
 6 construction zone, agreed?
 7 A. Yes.
 8 Q. Okay. Well, did anybody from Diamond
 9 make the request on June 16, 2018, for the
 10 reduction of lanes from four open lanes down to a
 11 single open lane that night?
 12 A. No.
 13 Q. Okay. Did any member of Diamond make a
 14 request on any of the preceding nights from June 14
 15 to June 16 for a reduction of four open lanes down
 16 to a single open lane on I-84 east?
 17 A. No.
 18 Q. Do you know who made the request to
 19 close three of the four open lanes of travel on
 20 I-84 east on the nights prior to June 16, 2018?
 21 A. I don't.
 22 Q. Did you ever hear at any time after the
 23 accident who it is that made the request for the
 24 reduction of four open lanes down to a single open
 25 lane?

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1 Strike that.
 2 Do you know whether Idaho Department of
 3 Transportation was named as an additional insured
 4 on the Penhall policy of insurance with respect to
 5 the I-84 project?
 6 A. I don't.
 7 Q. Pardon me?
 8 A. I do not.
 9 Q. Okay. Is it not a standard requirement
 10 that the owner be named as an additional insured on
 11 Penhall's policy of insurance for construction
 12 projects?
 13 A. It is a standard, but I didn't see that
 14 particular policy for this project.
 15 Q. Okay. Who was it at Penhall who would
 16 have been involved in the procurement of additional
 17 insured endorsements for the State, if that was
 18 obtained for this project?
 19 MR. POLING: Object as to form.
 20 THE WITNESS: I don't recall.
 21 Q. (BY MR. ROBBINS) Okay. Now, on page 2,
 22 under "Notice of Letting," that's the
 23 identification of the fact that Penhall had gotten
 24 the -- had been awarded the contract for this
 25 project?

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1 A. Notice of Letting is -- is the --
 2 This document is very similar to the bid
 3 documents with the exception of a signature sheet.
 4 But this -- it's --
 5 That's the notice of letting that the
 6 project was advertising for bid.
 7 **Q. Ah. Okay. All right.**
 8 **Now, this -- if I understand correctly**
 9 **from taking a look at some of the documents that**
 10 **were produced yesterday, this project was awarded**
 11 **to Penhall earlier, and then for whatever reason,**
 12 **the board for Idaho Department of Transportation**
 13 **did not approve that original grant.**
 14 **Is that your understanding?**
 15 A. No. Where --
 16 Are you seeing that the date on the
 17 notice of letting versus the contract agreement?
 18 **Q. No, not at all. I'm just seeing some**
 19 **e-mails that indicate that the contract was first**
 20 **awarded, and then it was indicated that the board**
 21 **didn't approve the award at some point, and then it**
 22 **had to be resubmitted.**
 23 A. I don't recall that at all. I was the
 24 estimator on the project. We bid the job, and it
 25 was -- we won the job.

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1 at that first -- and it proceeds on for 23 pages
 2 thereafter, but does that appear to you to be the
 3 special provisions for this contract between the
 4 State and Penhall regarding the I-84 job?
 5 A. Let me get caught up with you. I've
 6 got --
 7 **Q. No worries.**
 8 A. -- a pretty big document.
 9 **Q. Yeah.**
 10 A. Yeah. So page 23 is the beginning of
 11 the special provisions.
 12 **Q. Okay. And directing your attention to**
 13 **page 27. We had previously been talking about the**
 14 **changing of temporary traffic control plans.**
 15 **Is this the provision of the special**
 16 **provisions that addresses the manner in which a**
 17 **temporary traffic control plan could be changed?**
 18 A. Yes.
 19 **Q. During the course of your involvement in**
 20 **the project, either with Penhall or thereafter with**
 21 **Diamond, are you aware of the State ever waiving**
 22 **that provision of the special provisions?**
 23 A. No.
 24 **Q. Did you ever hear it during the**
 25 **identified involvement with the I-84 project that**

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1 **Q. Okay. All right. Well, we'll go**
 2 **through that on the documents that were produced**
 3 **yesterday.**
 4 **On page number 2, there -- the resident**
 5 **engineer is identified as Bryon Breen. Are you**
 6 **familiar with Mr. Breen?**
 7 A. Yes.
 8 **Q. All right. Did you have any interaction**
 9 **with Mr. Breen during your involvement on this**
 10 **project?**
 11 A. Only on the estimating side, and I
 12 believe Bryon was present at the pre-construction
 13 meeting later that year.
 14 **Q. Okay. All right. We'll go through**
 15 **that.**
 16 **Now, there's a reference down under the**
 17 **identification of Mr. Breen where plans,**
 18 **specifications, form of contract, et cetera, are**
 19 **referenced at a website.**
 20 **Is that generally how the organic**
 21 **contract documents are referenced, if you know, on**
 22 **these contracts with State of Idaho?**
 23 A. Yes.
 24 **Q. Okay. Let's turn over to page 23. And**
 25 **I'll ask you from your recollection, taking a look**

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1 the State had agreed to accept a verbal request for
 2 a change in the temporary traffic control plan as
 3 opposed to a written submittal as contemplated in
 4 the special provisions for this particular -- for
 5 this particular project?
 6 A. No.
 7 **Q. Okay. Let's go to page 28. It gives**
 8 **working hours and restrictions.**
 9 A. Okay.
 10 **Q. And this was contemplated to be a**
 11 **nighttime project, was it?**
 12 A. Yes.
 13 **Q. Generally during the hours of 10:00 to**
 14 **5:00 a.m. on weekday nights and then weekend nights**
 15 **10:00 to 7:00 a.m.?**
 16 A. Yes.
 17 **Q. All right. And under "Restrictions," it**
 18 **gives the various restrictions that are provided.**
 19 **The center restriction then allows for five-lane**
 20 **sections and greater, "a minimum of two lanes shall**
 21 **be maintained in each eastbound and westbound**
 22 **direction," correct?**
 23 A. Two lanes or three lanes in the -- in
 24 the upper portion there on --
 25 **Q. No. I'm sorry. In the middle portion**

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1 where it says, "For existing four-lane sections and
 2 greater, a minimum of two lanes shall be maintained
 3 in each the eastbound and westbound direction or as
 4 shown in the temporary traffic control plans,"
 5 correct?
 6 A. Yes.
 7 Q. To your knowledge, was that restriction
 8 ever altered in any way during the course of your
 9 involvement with this project, both with Penhall
 10 and then subsequently with Diamond?
 11 A. No.
 12 Q. Let's take a look at page 34. That's
 13 the description of the traffic control manager.
 14 A. Okay.
 15 Q. All right. This basically sets forth
 16 the requirements of the State of Idaho for what the
 17 traffic control manager would have to be, agreed?
 18 A. Yes.
 19 Q. And under "Construction Requirements,"
 20 the provision is and the requirement from the State
 21 is the TCM, traffic control manager, will be ATSSA
 22 certified.
 23 I'll just stop there.
 24 Do you know what "ATSSA certified" is?
 25 A. No.

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1 did you receive bids from as a representative of
 2 Penhall?
 3 A. I didn't manage the project close-out
 4 when the bids come in during bid day, so I don't
 5 recall how many bids there were. But in the area,
 6 the Boise area, there's two to three --
 7 Q. Okay. Who made --
 8 A. -- at a time.
 9 Q. Who made the decision, though, on behalf
 10 of Penhall as to which company would be retained to
 11 provide traffic control management work for this
 12 project?
 13 A. Casey Holloway.
 14 Q. Is that Casey, K-A -- C-A-S-Y?
 15 A. C-A-S-E-Y.
 16 Q. There you go.
 17 Holloway, H-O-L-L-A-W-A-Y [sic]?
 18 A. Yes.
 19 Q. And is that a Mr. or Ms. Holloway?
 20 A. Mister.
 21 Q. Okay. And what was Mr. Holloway's
 22 background and experience in temporary traffic
 23 control, if you know?
 24 A. I don't.
 25 Q. Okay. Do you know what Mr. Holloway

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1 Q. Okay. "With a minimum of five years of
 2 work zone traffic control experience."
 3 I apologize for that.
 4 A. I recall those initials just being tied
 5 to a traffic control manager class. In order to be
 6 certified, you would have to take a class.
 7 Q. Correct. And it says that the
 8 requirement includes not only certification but a
 9 minimum of work zone traffic control experience to
 10 maintain, monitor, and manage traffic control,
 11 agreed?
 12 A. Yes.
 13 Q. Again, that was a requirement of the
 14 State of Idaho?
 15 A. Yes.
 16 Q. When you requested bids --
 17 Well, strike that.
 18 Did you, in your position with Penhall,
 19 request bids from more than one traffic control
 20 manager outfit?
 21 A. Yes.
 22 Q. How many did you submit -- did you
 23 request bids --
 24 Strike that.
 25 How many traffic control manager outfits

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1 based his decision as to who Penhall would hire to
 2 do traffic control management work for this
 3 project?
 4 A. Low bid.
 5 Q. Simply low bid?
 6 A. Yes.
 7 Q. Okay. Do you know whether the
 8 experience of the competing traffic control manager
 9 companies were the same or at all different?
 10 A. I don't know that, but it's -- again,
 11 based on past experience that Casey's had with
 12 Specialty would be a -- help the deciding factor,
 13 aside from low bid, knowing that they're a
 14 performing company.
 15 Q. In other words, your awareness was that
 16 Mr. Holloway had had prior experience with
 17 Specialty performing traffic control manager work
 18 on other projects?
 19 A. Yes.
 20 Q. Okay. On how many other projects, if
 21 you know, had he had experience with Specialty on?
 22 A. One, maybe two.
 23 Q. Do you know if either of those or both
 24 of those involved project -- construction projects
 25 with the State of Idaho?

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1 A. Yes.

2 Q. Okay. In looking through, again, some

3 of the documents that we'll be going through in a

4 little bit here, it appears to be the same form

5 that Penhall uses for all of its subcontractors

6 regardless of the purpose for which they're being

7 retained?

8 A. Yes. There's a -- a standard

9 subcontract agreement.

10 Q. Okay. And in subsection 1.1, it

11 identifies the contract documents.

12 And were these the documents as

13 identified here in 1.1 that would be provided by

14 Penhall to the subcontractor?

15 A. I don't know necessarily provided to,

16 but an understanding that these -- those documents

17 are part of the contract.

18 Q. All right. They would be given access

19 to it at least, would they?

20 A. Yes, and that would be from the -- the

21 standpoint of the invitation to bid. A lot of

22 times, these particular projects, the DOT will

23 provide multiple documents to share amongst the

24 attendees of the pre-construction meeting.

25 Q. Right. Okay. Well, I guess what I'm

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1 A. Yes.

2 Q. Okay. Let's take a look at pages 326

3 and 327. That's the provision for general

4 liability insurance, and then on the next page is

5 the umbrella coverage.

6 Is that the insurance coverage

7 requirements for Specialty on this project?

8 A. Yes.

9 Q. And was it your understanding that under

10 the terms of this subcontract agreement with

11 Specialty, that Specialty was to name Penhall an

12 additional insured under a policy that affords

13 2 million underlying and 5 million excess coverage?

14 A. Yes.

15 Q. Okay. During the course of this

16 project, did you ever review traffic control

17 maintenance diaries?

18 A. No.

19 Q. During the course of this project, did

20 you ever review standard construction diaries from

21 the Idaho Department of Transportation?

22 A. No.

23 Q. All right, sir. Let me ask you to take

24 a look at Tab 18, page -- let's go to page 640.

25 Now, I will tell you that we, I,

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1 trying to get at is: From these contract

2 documents, is there any doubt in your mind that

3 the -- prior to the signing of this subcontract

4 agreement between Penhall and Specialty, that

5 Specialty had been provided with the temporary

6 traffic control plan documents and special

7 provisions for the temporary traffic control plan

8 on this project?

9 A. Yes.

10 Q. They had been provided? Is that it?

11 A. Yes.

12 Q. Okay. On page 303, 1.2, there's the

13 standard provision that the subcontractor

14 represents and agrees that it has carefully

15 examined and understands this agreement and the

16 other contract documents.

17 Is that --

18 Did I read that correctly, sir?

19 A. Yes.

20 Q. All right. And by that provision, you

21 would expect that the subcontractor here,

22 Specialty, would be representing that it had

23 carefully examined and understands the temporary

24 traffic control plan and special provisions for

25 this project?

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1 obtained copies of pages 639 through 645 from the

2 NTSB docket regarding its investigation of this

3 accident.

4 But have you ever seen the

5 pre-construction conference agenda indicated on

6 page 640?

7 A. Yes.

8 Q. All right. And in looking at page 645,

9 you are identified as an attendee to that meeting,

10 correct?

11 A. That's right.

12 Q. All right. As well as Shields Sullivan

13 and Mr. Coletta, right?

14 A. Yes.

15 Q. Did you know that the meeting was being

16 audio recorded?

17 A. Yes.

18 Q. Did you ever listen to the recordation

19 of --

20 Strike that.

21 Did you ever listen to the recording

22 from that meeting?

23 A. No.

24 Q. Okay.

25 MR. ROBBINS: You know, why don't we take a

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1 break here for about five minutes, and then we'll
 2 dive back in here.
 3 THE WITNESS: Okay.
 4 [Discussion held off the record.]
 5 THE VIDEOGRAPHER: All right. We are off the
 6 record at 11:51 a.m.
 7 [Break taken from 11:51 a.m. to 11:59 a.m.]
 8 THE VIDEOGRAPHER: All right. We are now
 9 back on the record at 11:59 a.m.
 10 Q. (BY MR. ROBBINS) Sir, Mr. Blackburn,
 11 from the break that we just took, is there any
 12 aspect of the testimony up to this point that you'd
 13 like to change in any regard?
 14 A. No.
 15 Q. Okay. Before we move on to the
 16 pre-conference -- pre-construction conference
 17 agenda, I just wanted to confirm with you: Could I
 18 ask you to go back to Tab 10, page 322. It's the
 19 signature block for this agreement.
 20 A. Okay.
 21 Q. And you recognize that as being the
 22 signature block that officially brought Specialty
 23 in as the traffic control manager for this project?
 24 A. Yes.
 25 Q. All right. And there, you can see the

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1 points within the agenda.
 2 Q. All right. And down towards the end of
 3 the agenda on page 642, there's the reference of,
 4 "Submit any changes to the traffic control plan in
 5 writing. Changes require a new TCP with an
 6 engineer's stamp, and approval must be received
 7 prior to implementation."
 8 That's your understanding from the
 9 agreement between Penhall and State, correct?
 10 A. Yes.
 11 Q. And that had been provided to the
 12 temporary traffic control managers who were bidding
 13 on the project, correct?
 14 A. Yes.
 15 Q. To your knowledge, had that provision --
 16 that is, how the traffic control plan could be
 17 amended -- changed at all during the I-84 project?
 18 A. Yes.
 19 Q. Was it changed?
 20 A. Well, it's -- this is the process,
 21 whether or not it would get changed, but this is
 22 the process that was called out.
 23 Q. Yeah. What I'm asking is: Do you know
 24 whether the traffic control plan was ever changed
 25 during the course of this project?

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1 date of the contract as being August 8, 2017?
 2 A. Yes.
 3 Q. All right. So then if we can move
 4 forward in the exhibit book to Tab 18, page 640,
 5 which was the pre-construction conference agenda,
 6 do you see that --
 7 And I'll let you get a chance to get up
 8 to that.
 9 A. Okay.
 10 Q. That agenda purports to have related to
 11 a meeting held July 26, 2017?
 12 A. Yes.
 13 Q. So from the document that we just looked
 14 at before, the agreement between Penhall and
 15 Specialty, Specialty had not yet been retained as
 16 the traffic control manager on the project?
 17 A. Correct.
 18 Q. All right. And taking a look at
 19 page 642, it gives bullet point issues that were to
 20 be discussed during the course of this
 21 pre-construction conference.
 22 Do you recall the qualifications of the
 23 traffic control manager having been discussed
 24 during the course of this project?
 25 A. No, other than the -- just the bullet

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1 A. I don't know.
 2 Q. Okay. Well, you do know that four lanes
 3 were reduced down to a single open lane on the
 4 night of the accident, agreed?
 5 A. Yes.
 6 Q. All right. So that would be a change in
 7 the temporary traffic control plan as originally
 8 approved, right?
 9 A. Yes.
 10 Q. All right. But what you're not aware of
 11 is there having been any written submission as
 12 contemplated by the temporary traffic control plan
 13 and as addressed in this pre-construction
 14 conference agenda item, agreed?
 15 A. Correct.
 16 Q. Okay.
 17 A. I only learned about three lanes being
 18 closed 24 hours ago.
 19 Q. In other words, you didn't know even at
 20 the time of the -- or shortly after the accident
 21 happened, you weren't aware of the reduction of
 22 four lanes down to a single open lane?
 23 A. No.
 24 Q. Okay. Were you ever involved in the
 25 NTSB investigation of this project?

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1 really is just 43 -- it's the documents 4303
 2 through 4363.
 3 **Q. (BY MR. ROBBINS) And, Mr. Blackburn, I'm**
 4 **just curious: Can you identify what those**
 5 **documents are? Because there seems to be a number**
 6 **of them that are just blanked out.**
 7 I'm just curious as to if those are the
 8 performance executive summaries and, if so, what is
 9 an executive summary or a performance executive
 10 summary?
 11 MR. GRAHAM: And, Clay, before he answers, I
 12 think my recollection or my understanding is
 13 that -- is that we redacted some of those documents
 14 because there was some financial information and
 15 different things along those lines contained within
 16 those that didn't relate to this project, and so
 17 that will go on our privilege log.
 18 MR. ROBBINS: Okay. That's fine. But just
 19 generally -- and I --
 20 That's fine. I understand that.
 21 **Q. (BY MR. ROBBINS) But what is a**
 22 **performance summary meant to provide?**
 23 A. That title --
 24 I don't recognize this particular cover
 25 sheet or whatever it is, but the executive summary

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1 at the top is that, "The leader of the senior
 2 project management team requested I go," requested
 3 that you go.
 4 **Who did you mean to reference there by**
 5 **"senior project management team"?**
 6 A. Vince Coletta.
 7 **Q. Okay. On the next page, 4385, there's**
 8 **an e-mail from you, same subject, that was sent to**
 9 **Henry Sullivan, Casey Holloway, Mr. Beatty, and**
 10 **Simmitt Bankston.**
 11 **What was Simmitt Bankston's involvement**
 12 **in this project, if you know?**
 13 A. I don't know. I think his role working
 14 with Vince was a superintendent over
 15 superintendents, from what I recall.
 16 **Q. What is a superintendent over**
 17 **superintendents?**
 18 A. Yes. He was the overall manager of the
 19 superintendents, and he reported to Vince.
 20 **Q. Okay. Simmitt Bankston was the**
 21 **superintendent of this project and other projects?**
 22 A. Yes. He oversaw a few -- a few
 23 projects, East Coast; you know, all across the
 24 country.
 25 **Q. Okay. And, again, do you have a**

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1 would be a spreadsheet that would be shared amongst
 2 the -- the group on our weekly meetings --
 3 **Q. Right.**
 4 A. -- where we just talk about job
 5 performance, especially the main items of each job.
 6 **Q. All right. So it's basically financial**
 7 **and progress information for each project?**
 8 A. Yes. Financial and production.
 9 **Q. All right. All right.**
 10 MR. ROBBINS: Thanks, Chris.
 11 Let me ask you, Chris, if you could,
 12 lets jump to 4384 and 4385.
 13 **Q. (BY MR. ROBBINS) These two pages of**
 14 **e-mails are a chain where the subject is**
 15 **"Idaho 570140 project."**
 16 **Is that the I-84 project?**
 17 A. Yes.
 18 **Q. Okay. And it talks about or the inquiry**
 19 **is made by Mr. Beatty to you as to whether you're**
 20 **going to the ITD pre-con, and that's the**
 21 **pre-construction conference, the agenda for which**
 22 **we talked about before.**
 23 **Am I correct?**
 24 A. Yes.
 25 **Q. And your e-mail response back to him up**

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1 recollection as you sit here today as to what his
 2 direct involvement was, if any, on the I-84
 3 project?
 4 A. I don't. I think --
 5 I might have met with him when Diamond
 6 Drilling came on the project. That's --
 7 I do remember meeting Simmitt on the
 8 project, but I don't recall the exact time frame.
 9 **Q. To the best of your knowledge, is**
 10 **Mr. Bankston still with Penhall?**
 11 A. He is not.
 12 **Q. Do you know where he is currently?**
 13 A. I don't.
 14 **Q. Okay. All right.**
 15 **Your e-mail to Shields, and that's**
 16 **Mr. Sullivan I take it, is, "I suggest forwarding**
 17 **the pre-con invite to the subs, mainly the TC guy."**
 18 **Now, on July 13, 2017, "the TC guy"**
 19 **would have been somebody appointed by Specialty?**
 20 A. Yes.
 21 **Q. Okay. "There are a few areas of the**
 22 **project (because of the ramps) we will have traffic**
 23 **on both sides of the crew. It is important to get**
 24 **their input and proposal around this risk."**
 25 **Who is it that you were seeking input**

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1 regarding and a proposal for the risk?
 2 A. Input from the State, but have traffic
 3 control, which is Specialty, present to have a
 4 discussion.
 5 Q. Okay. And did you ever, in writing,
 6 request input from the State as to how to work
 7 around what you perceived as being this risk of
 8 having active traffic on either side of a work
 9 crew?
 10 A. No. That really ended with me attending
 11 the pre-con and Vince moving forward as project
 12 management.
 13 Q. Okay. So you left it up to Vince to
 14 follow up on that then?
 15 A. Yes, which we saw in previous e-mails.
 16 Q. Correct.
 17 And do you know whether a proposal was
 18 ever requested of Specialty for a manner in which
 19 to work around the risk that you identified in this
 20 e-mail?
 21 A. Not that I know of.
 22 Q. Okay. But the last portion of this is,
 23 "Which will mean a submittal of a new MOT plan
 24 beyond what is in the project drawings that will
 25 need to be approved."

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1 Are you aware of any conversations
 2 between you and Mr. Coletta wherein he believed
 3 that there was some reason to delay the
 4 pre-construction meeting?
 5 A. I believe Shields -- Shields had been
 6 tasked with, like Vince is indicating here, to
 7 develop a list of submittals required for the
 8 pre-con. So Shields was tasked with putting all of
 9 this together and likely submitted whatever to
 10 Vince for review, and this was the result right
 11 here, "We're not ready."
 12 Q. All right. Do you know if a written
 13 list of submittals was ever developed by
 14 Mr. Sullivan?
 15 A. I don't know.
 16 Q. Do you know what is meant by
 17 "submittals"?
 18 A. "Submittals" would be the same thing
 19 with the -- material submittals, any sort of
 20 certifications that we'd need to provide.
 21 Typically, there's a -- there's a table, either in
 22 a standard specification or in the special
 23 provisions, that outline the submittal requirements
 24 and due dates.
 25 Q. Okay. All right.

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1 What did you mean by "MOT plan"?
 2 A. Maintenance of traffic.
 3 Q. Okay. So that's another traffic control
 4 plan?
 5 A. Yes. A change or amendment of -- of the
 6 standards.
 7 Q. Okay. So you were communicating to
 8 everybody on this e-mail chain that, in your
 9 opinion, a change in the traffic control plan was
 10 warranted, and if that were to be the case, a
 11 written submittal would need to be provided to the
 12 State for their approval, agreed?
 13 A. Yes.
 14 Q. And then the last sentence says, "If
 15 nothing else gets submitted, we are obligated to
 16 follow what the State has provided."
 17 In other words, if there's no written
 18 submittal for State's review, then the contract has
 19 to be executed and performed as written?
 20 A. Yes.
 21 Q. Okay. Now, there's an e-mail from
 22 Mr. Coletta dated July 12 indicating that in his
 23 opinion, "We're not ready to have the
 24 pre-construction meeting next week. Please push
 25 this out a week. Eric and I will attend with you."

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1 And then the end -- most of the end of
 2 this -- of the documents that were provided appear
 3 to be unsigned copies of subcontract agreements,
 4 the first one being to JEC. It's starting at
 5 page -- at Penhall 4402.
 6 I don't know how best to go about it,
 7 but are you able to take a look at the pages behind
 8 4402?
 9 MR. GRAHAM: Give me just a second, Clay.
 10 I'll see what I can get pulled up, okay?
 11 MR. ROBBINS: Yeah, no worries. If we can't
 12 get to it, it's not all that important. It's just
 13 I had previously remarked to the witness about the
 14 subcontracts that were utilized by Penhall as being
 15 generally uniform, and I just wanted his
 16 confirmation that these subcontract agreements were
 17 copies of the subcontract agreements that were
 18 utilized in this project.
 19 Q. (BY MR. ROBBINS) Okay. So what we have
 20 first at 4403 is the subcontract agreement. Then
 21 scrolling down, you can see subparagraph 1.1. Just
 22 asking you to take a look at it.
 23 Is this an example of the form contracts
 24 that were utilized by Penhall for their
 25 subcontractors at or about the time of the I-84

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1 project?

2 A. Yes.

3 Q. All right. There are other similar

4 contracts that appear at pages 4450 and 4477, but

5 we'll not go through those right now or at all, at

6 least from my standpoint.

7 Let me go through --

8 MR. ROBBINS: Chris, I think that's all that

9 we'll need for your assistance on that. I'm not

10 going to go through the documents that were

11 submitted yesterday anymore.

12 MR. GRAHAM: Sounds good. I'm available for

13 any contract work for any of you other attorneys

14 out there.

15 MR. ROBBINS: God love you. You did a hell

16 of a job.

17 MR. GALE: We're going to need a fee

18 schedule, Mr. Graham.

19 MR. GRAHAM: I'm working cheap, I'll tell

20 you.

21 Q. (BY MR. ROBBINS) All right. Let me ask

22 you to take a look at Exhibit 2, Tab 28, page 912.

23 A. You said Tab 28?

24 Q. Tab, yes, 28. 28.

25 A. Which sheet?

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1 pre-task card for their subcontractor.

2 Q. From the deposition of Mr. Kidd and

3 Mr. Reed, we know that Penhall was out there

4 because they were doing work on the westbound

5 lanes.

6 Leon Vaughan, do you recognize that

7 name? He appears on page 913, on the list of

8 persons.

9 A. I do see his name. I don't know who

10 that is.

11 Q. Okay. Just a couple of questions I have

12 about terminology, and maybe you could assist.

13 Let me ask you to turn, please, to

14 Tab 25, page 717.

15 A. Okay.

16 Q. Now, from your background and experience

17 with Penhall, albeit you were not working with

18 Penhall at the time reflected here on page 717, do

19 you have an understanding of what a production

20 report was?

21 A. It could have been a report within the

22 B2W software, which is where this table came from.

23 Q. All right. Are you aware what generally

24 was contained within a production report in the

25 custom and practice of Penhall at the time of -- in

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1 Q. Sheet 912.

2 A. Okay.

3 Q. Are you familiar with this form of

4 document from your having worked with Penhall?

5 A. Yes.

6 Q. All right. Now, this is a document, at

7 least 912 to 913, that is dated June 15, 2018.

8 Is it your understanding from the custom

9 and practice of Penhall that there should be a

10 safety pre-task plan card for June 16, 2018?

11 A. Yes.

12 Q. Do you happen to have a copy of the

13 June 16, 2018, safety pre-task plan card for

14 Penhall?

15 A. I do not.

16 Q. I don't know why you would because you

17 weren't working for them at the time, but I don't

18 know whether these are documents that are exchanged

19 between Penhall and their subcontractors.

20 At least you don't have a copy of it, I

21 take it?

22 A. No. And the only conclusion I could

23 make from this is Penhall themselves was not

24 working. It was just Diamond.

25 So Penhall wouldn't necessarily do a

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1 June of 2018?

2 A. A location to enter the quantities

3 completed that particular shift.

4 Q. Okay. Now, on June 15, 2018, on

5 page 717, there's a reference to Bruce Kidd, the

6 entry -- the first entry that night, "Seal joints

7 and oversight of Diamond Drilling."

8 Are you familiar with what, if any,

9 oversight Mr. Kidd provided for what Diamond

10 Drilling was doing?

11 A. No.

12 Q. Okay. Let me ask you to take a look at

13 page -- excuse me, Tab 30, page 958.

14 Now, this is an e-mail from Mr. Kircher,

15 but since you were the estimator for the project,

16 this is a May 23, 2017. Who is --

17 Well, strike that.

18 Are you aware at that point of

19 communications between Specialty and Penhall

20 regarding this -- regarding this project?

21 A. Communications in reference to this

22 e-mail?

23 Q. Well, no. Just communications generally

24 concerning this project between Specialty and

25 Penhall.

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1 A. No.

2 **Q. All right. Did you ever have any**

3 **discussions with Mr. Kircher along the lines of if**

4 **there were any revisions on the temporary traffic**

5 **control plan, that the services of an engineer**

6 **would have to be retained?**

7 A. No.

8 **Q. Do you know who Jeromy Magill was or is?**

9 A. Jeromy was a project manager of Penhall

10 when I was there.

11 **Q. Okay. Do you know what, if any,**

12 **involvement Mr. Magill had with the I-84 project?**

13 A. I believe he got involved in 2018.

14 **Q. Did you have any contact with Mr. Magill**

15 **while you were with Diamond on this -- for this**

16 **project?**

17 A. We had a few phone conversations aside

18 from the face-to-face meeting I had with Scott

19 Reed.

20 **Q. Was he present during that face-to-face**

21 **meeting between you and Scott Reed?**

22 A. I don't recall if he was there that

23 particular time, but I do remember there was a time

24 where I met with Simmitt and Jeromy. We were all

25 in the same setting, and I don't recall when that

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1 EXAMINATION

2 BY MR. MORTIMER:

3 **Q. Like I said, my name is Evan Mortimer.**

4 **I represent the Johnson family. I have just a few**

5 **follow-up questions.**

6 **Earlier, you testified that there was**

7 **you had conducted a prior deposition.**

8 **Do you recall that testimony?**

9 A. Yes.

10 **Q. What was that deposition regarding?**

11 A. It was constructability issues on a

12 Caltrans project.

13 **Q. Constructability of what? What was --**

14 **What were the issues specifically?**

15 A. There was a -- meeting the profile,

16 spec, of the diamond grinding item of work and the

17 joint sealing construction.

18 **Q. Now, other than your attorneys, did you**

19 **speak with anybody in preparation for today's**

20 **deposition?**

21 A. No.

22 **Q. Earlier, there was discussion regarding**

23 **the process undertaken by Penhall in hiring a**

24 **traffic control manager, and I want to expand that**

25 **a little bit, okay?**

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1 was.

2 **Q. Do you recall having any conversations**

3 **with Mr. Magill regarding the temporary traffic**

4 **control plan on this project?**

5 A. No.

6 **Q. Let me ask you to take a look at**

7 **page 972 in that same tab. That's an e-mail from**

8 **Mr. Breen that you don't appear as a recipient on,**

9 **but it occurred in September of 2017.**

10 **And I'm wondering whether you have any**

11 **awareness or knowledge concerning the number of**

12 **concerns referenced by Mr. Breen in that e-mail**

13 **regarding the prosecution of the contract.**

14 A. I don't.

15 **Q. I'm just going to take a look at some**

16 **notes. I'm essentially done, but when we return**

17 **back around and we're asking follow-up questions, I**

18 **may have a couple of additional questions for you.**

19 **Mr. Blackburn, I appreciate your time.**

20 THE WITNESS: Okay.

21 MR. ROBBINS: Anybody else?

22 MR. MORTIMER: Mr. Blackburn, this is Evan

23 Mortimer. Can you hear me?

24 THE WITNESS: Yes.

25 ///

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1 **So can you generally explain, based on**

2 **your experience while working at Penhall, what**

3 **Penhall would do when hiring a traffic control**

4 **management subcontractor similar to Specialty on**

5 **highway construction projects?**

6 A. There's a rule called good faith effort,

7 so we would submit --

8 As a prime contractor, you generate an

9 invitation to bid, and I touched on that for a

10 little while about sending out invites to potential

11 subs. And that was within those e-mails that we

12 saw from Shea'l Rivas of who had been responsive to

13 our invites.

14 So it was really the process where

15 Shea'l would send out invitations to potential

16 subcontractors and get confirmation whether or not

17 they're going to bid, not bid. And then I think

18 there might have even been another column if we did

19 receive a bid from them.

20 **Q. Okay. And when you invited these bids**

21 **from potential subcontractors, how did you**

22 **determine who to send the invites to?**

23 A. It was, one, based on experience knowing

24 who is in the area that provides traffic control.

25 Same thing with striping. And we would have a --

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1 A lot of times, the planholder's list
 2 would show potential subcontractors as well. So we
 3 would reference to that planholder's list and make
 4 contact from there as well.
 5 **Q. With regard to the I-84 project that**
 6 **we've been discussing today, was there other**
 7 **companies that you -- Penhall invited to submit a**
 8 **bid besides Specialty?**
 9 A. I don't recall the other --
 10 I know that there's two or three traffic
 11 control companies, but I don't recall who was on
 12 that invite list.
 13 **Q. And so there were other individuals on**
 14 **the invite list? You just don't know who they**
 15 **were?**
 16 A. Correct.
 17 **Q. Okay. Do you know how many?**
 18 A. I don't.
 19 **Q. Other than sending the invite and**
 20 **getting the proposal or the bid, if you will, from**
 21 **the subcontractor for traffic control management,**
 22 **what would Penhall do to ensure that these**
 23 **companies were experienced enough to do what they**
 24 **needed to do under the contract?**
 25 A. As far as the experience, there wasn't

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1 **accepting their bid?**
 2 A. I -- I don't know.
 3 **Q. Do you know who at Penhall would check**
 4 **for those things?**
 5 A. Possibly Casey Holloway as he closed out
 6 the bid on bid day.
 7 **Q. Based on your 19 1/2 years working at**
 8 **Penhall as a project manager and an estimator --**
 9 **estimator, excuse me, was it the custom and**
 10 **practice of Penhall to verify that they met those**
 11 **sort of requirements for a contract bid?**
 12 A. Not on the -- on the front end. Not at
 13 bidding time. Because the subcontractors know that
 14 they have to submit the certifications to the
 15 State, so --
 16 **Q. How do they know that?**
 17 A. What was the question?
 18 **Q. How do they know that?**
 19 A. Because if they've done any work with
 20 ITD, they know that they're going to have to submit
 21 their certifications for their TCM.
 22 **Q. Okay. Was there a way that you**
 23 **certified or verified, excuse me, that the**
 24 **subcontractors had worked with ITD before?**
 25 A. Other than prior project experience,

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1 really a vetting of that. It was --
 2 If we would need to confirm their bid, a
 3 phone call would go out to the sub and confirm
 4 their items and discuss the items and the project
 5 in general.
 6 But as far as asking them about their
 7 pay items and, "Hey, are you guys certified to work
 8 here," that's -- or to do the work, that's --
 9 that's the -- the item that we're assuming that
 10 they're submitting their bid with.
 11 Because they're going to have to provide
 12 those certs anyway to the ITD. That was part of
 13 the submittal process.
 14 **Q. Okay. So with regard to the I-84**
 15 **project, there was earlier discussion with**
 16 **Mr. Robbins regarding the two requirements for the**
 17 **traffic control manager on this contract.**
 18 **Do you recall that discussion?**
 19 A. Yes.
 20 **Q. The ATSSA certification and five years**
 21 **of work experience. Are those --**
 22 **Those are the two requirements, right?**
 23 A. Yes.
 24 **Q. Did Penhall do anything to verify that**
 25 **Specialty had met those two requirements when**

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1 that's -- that would be the only correlation with
 2 that.
 3 **Q. You said that at that point, as in at**
 4 **the bid stage, if you will --**
 5 **Sorry.**
 6 **At the bid stage, they -- you**
 7 **wouldn't -- Penhall would not verify whether they**
 8 **met those two requirements because the expectation**
 9 **was they'd have to submit it to the ITD, right?**
 10 A. Yes.
 11 **Q. Was there anything done by Penhall**
 12 **during, you know -- that you're aware of to verify**
 13 **that that information was submitted to the ITD?**
 14 A. No, because that's -- that's a formality
 15 that would -- that would occur after award as part
 16 of the submittal process to --
 17 You're going to submit everything for
 18 your subcontractors and whatever items are required
 19 within the -- a submittal process.
 20 **Q. Okay. And do you know if that occurred**
 21 **on the I-84 project?**
 22 A. I don't. Typically, those are
 23 conditions of payment, so if -- if those items
 24 weren't received by ITD, Penhall didn't get paid.
 25 **Q. Now, I'm jumping around a little bit.**

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1 possible, please. Thank you."
 2 Are you aware --
 3 Now, you're not a recipient of that
 4 e-mail.
 5 Are you aware of that inquiry having
 6 been made by Mr. Coletta of Specialty?
 7 A. No. After -- really after my response,
 8 that August 22 response, I didn't know where he
 9 went from there.
 10 Q. Okay. Well, you've got a -- you're a
 11 recipient of an e-mail up at the top, August 23,
 12 where Mr. Coletta informs you, "Dead end." But in
 13 doing that, he forwards to you, I guess, I think, I
 14 presume, the e-mail from Specialty to Mr. Coletta
 15 where Specialty advises, "We don't have a staff
 16 engineer for designing and stamping these plans."
 17 Did you know that prior to Mr. Coletta's
 18 inquiry of Specialty?
 19 A. I did not.
 20 Q. Okay. Do you recall being aware of
 21 that, at least effective October -- or August 23,
 22 2017?
 23 A. Yes.
 24 Q. Okay. And from that, would you then
 25 understand that if there was to be a revision of

Page 139

1 the temporary traffic control plan, that the
 2 assistance of an engineer company to perform that
 3 revision of the temporary traffic control plan
 4 would need to be retained?
 5 A. Yes.
 6 MR. ROBBINS: OKAY. Mr. Blackburn, I
 7 appreciate your time. I do not have any other
 8 questions for you.
 9 THE WITNESS: Thank you.
 10 THE VIDEOGRAPHER: All right. This concludes
 11 the remote videotaped deposition of Eric Blackburn,
 12 and the time is 1:31 p.m. We are now off the
 13 record.
 14
 15 (The videotaped deposition concluded at 1:31 p.m.)
 16 ***
 17 (Signature was requested.)
 18
 19
 20
 21
 22
 23
 24
 25

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1 VERIFICATION
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)
 6
 7 I, ERIC BLACKBURN, being first duly sworn remotely
 8 on my oath, depose and say:
 9 That I am the witness named in the foregoing remote
 10 videotaped deposition taken the 27th day of April, 2021,
 11 consisting of pages numbered 1 to 139, inclusive; that
 12 I have read the said deposition and know the contents
 13 thereof; that the questions contained therein were
 14 propounded to me; that the answers to said questions
 15 were given by me, and that the answers as contained
 16 therein (or as corrected by me therein) are true and
 17 correct.
 18
 19 Corrections Made: Yes _____ No _____
 20
 21 _____
 22 ERIC BLACKBURN
 23
 24 Subscribed and sworn to before me this _____
 25 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____.

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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF IDAHO)
 4) ss.
 5 COUNTY OF ADA)
 6
 7 I, ANDREA J. WECKER, Certified Shorthand Reporter
 8 and Notary Public in and for the State of Idaho, do hereby
 9 certify:
 10 That prior to being examined, the witness named in
 11 the foregoing deposition was by me duly sworn to testify
 12 to the truth, the whole truth and nothing but the truth;
 13 That said deposition was taken down by me in
 14 shorthand at the time and place therein named and
 15 thereafter reduced to typewriting under my direction,
 16 and that the foregoing transcript contains a full, true
 17 and verbatim record of said deposition.
 18 I further certify that I have no interest in the
 19 event of the action.
 20 WITNESS my hand and seal this 30th day of April,
 21 2021.
 22
 23 _____
 24 ANDREA J. WECKER
 25 CSR, RDR, CRR, CRC and Notary
 Public in and for the
 State of Idaho.
 My Commission Expires: 02-14-23

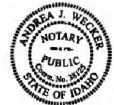


EXHIBIT 21

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF JOSH ROPER

May 26, 2021

Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 18

1 something differently," you can say that. You can
 2 say, "Clay, I'd like to make a change to what I
 3 said before," and that's fine. No harm, no foul.
 4 You can make that change. Reason being, everybody
 5 is here to ask follow-up questions if they so
 6 choose. If they choose not to, that's on us, not
 7 on you.
 8 Understood?
 9 A. Yep.
 10 Q. Okay. Now, I expect that this
 11 deposition is going to last for a couple, two hours
 12 or so. Is there any reason that you can think of,
 13 either emotionally or physically, why you can't sit
 14 and comfortably listen to questions and then give
 15 accurate responses to questions?
 16 A. No, there's no reason.
 17 Q. Okay. Have you taken any medication in
 18 the last 12 hours that you believe might impact
 19 your ability to understand questions and respond
 20 truthfully?
 21 A. No, I have not.
 22 Q. All right. Mr. Roper, what I'll do now
 23 is I'm going to go through a little background
 24 question period related to your experience and
 25 educational background.

Page 20

1 got my flagger's certification, and then I got --
 2 in 2015, got my TCS certificate.
 3 Q. That's traffic control supervisor
 4 certification?
 5 A. Yes, traffic control supervisor.
 6 Q. Did you get your traffic control
 7 technician certification at the same time?
 8 A. Yes.
 9 Q. And that was through American Traffic
 10 Safety Services Association?
 11 A. ATSSA?
 12 Q. Yes.
 13 A. Yes.
 14 Q. Did you ever obtain a traffic control
 15 design specialist certification?
 16 A. No.
 17 Q. I interrupted you.
 18 Any other certifications that you
 19 received?
 20 A. I believe that is all the certs that I
 21 possess.
 22 You said until the date of the accident,
 23 right?
 24 Q. Yes.
 25 A. Okay.

Page 19

1 And so in that regard, if I can ask you
 2 to describe any and all education, formal education
 3 and/or training that you received before June 16,
 4 2018, but after high school. So it's basically
 5 everything from high school up until the date of
 6 the accident that we're ultimately going to be
 7 talking about in this lawsuit.
 8 A. Okay.
 9 Q. So formal education and training, if you
 10 can describe for me.
 11 A. I was -- I joined the Army, 27; went to
 12 boot camp. When I finished that, I went to medic
 13 school, became a combat medic. Got my CPR license.
 14 National registry EMT. Multiple training exercises
 15 throughout the Army. Got -- went to Iraq, came
 16 back, did a quarter of college through Allied
 17 American University, I want to say the name was.
 18 Found out that I wasn't good at online
 19 school and it was just -- wasn't a good learning
 20 experience for me, so I stopped doing that. And
 21 that's pretty much all the college and education I
 22 did with that.
 23 Then I started at Specialty 2013, got
 24 hands-on experience building fence, putting up
 25 signs, and then went into traffic control where I

Page 21

1 Q. June 16, 2018.
 2 A. Yeah.
 3 Q. Okay. All right. And so you were
 4 employed with Specialty from 2013 until
 5 approximately what year?
 6 A. December 2020.
 7 Q. Okay. And, thereafter, you started
 8 employment with the State of Idaho Department of
 9 Transportation?
 10 A. That is correct.
 11 Q. And, sir, I didn't say so before, but I
 12 thank you very much for your service.
 13 A. Oh, thanks.
 14 Q. What year -- and if you told me, I do
 15 apologize, sir, but what year was it that you got
 16 your TCS certification, the traffic control
 17 supervisor certification?
 18 A. It was 2015.
 19 Q. And at that same time, you got your TCT,
 20 traffic control technician certification?
 21 A. That is correct.
 22 Q. Okay. And once you got your
 23 certification from ATSSA --
 24 Strike that.
 25 Prior to your receiving the

Page 22

1 certification, the TCS and TCT certification from
 2 ATSSA, had you worked with Specialty in the
 3 position of traffic control manager?
 4 A. No.
 5 Q. Okay. When was the first time you were
 6 assigned, during your employment with Specialty, to
 7 the position of traffic control manager on a
 8 highway construction project?
 9 A. This Five Mile to Orchard project was
 10 the first time.
 11 Q. All right. And we'll shortcut that and
 12 just refer to it as "the project," if we would.
 13 A. Okay.
 14 Q. But it is the I-84 Five Mile to Orchard
 15 and Ramps project that we'll just call
 16 "the project."
 17 A. Okay.
 18 Q. That was your first involvement?
 19 A. Yes.
 20 Q. All right. And that involvement took
 21 you -- from my review of the documents that we'll
 22 be talking about later on, from 2017 to about the
 23 early part of June 2018 with a hiatus; with
 24 a period of time in the middle where there was not
 25 being work done on that project, agreed?

Page 24

1 project on or about June 6th, or whenever that date
 2 was, do you know who took over your position with
 3 Specialty as traffic control manager for the
 4 project?
 5 A. I didn't know there was a traffic
 6 control manager. Mason Garling took over for me,
 7 but I did not know he was a traffic control manager
 8 on that.
 9 Q. You knew that you were a traffic control
 10 manager --
 11 A. That is correct.
 12 Q. -- for the project, correct? Okay.
 13 A. I thought I was -- continued the whole
 14 time.
 15 Q. Ah. So when you left, you left figuring
 16 that you would come back, be reassigned to the
 17 project?
 18 A. That is correct.
 19 Q. You would continue in your position?
 20 A. That is correct, yes.
 21 Q. But during the period of time that you
 22 were on assignment with the National Guard, were
 23 you communicating with anyone on the project about
 24 the project itself?
 25 A. No.

Page 23

1 A. That is correct.
 2 Q. All right. Now, in looking through the
 3 documents, I saw -- I didn't see any indication
 4 that you were involved in the project after
 5 about -- and I want to say, like, June 2 or June 3
 6 of 2018.
 7 Is that accurate, sir?
 8 A. I don't know the exact date, but it's
 9 somewhere in June. I was on a military training,
 10 so I wasn't there anymore.
 11 Q. Right. And I did see some documents
 12 that indicates --
 13 This is a document from Dan Kircher.
 14 It's identified as ITD 003862, and it's just a
 15 document after the time of this accident where an
 16 inquiry was made of Mr. Kircher by the State as to
 17 who the traffic control managers were on what
 18 dates.
 19 And in this document -- and I won't
 20 attach this, although I can -- it indicates that
 21 Joshua Roper was traffic control manager 5/31, 6/1,
 22 6/2, 6/3, 6/4, and 6/6, and then you went for
 23 National Guard advanced training?
 24 A. That is correct.
 25 Q. Okay. And once you departed from the

Page 25

1 Q. Okay. You were basically incommunicado
 2 focusing on what you needed to focus on for the
 3 National Guard?
 4 A. That is correct.
 5 Q. All right. We'll get into the area of
 6 the transition after you left and any
 7 communications that you may have had with
 8 Mr. Garling at that time in a moment.
 9 Who was your immediate supervisor on the
 10 project in 2017?
 11 A. Dan Kircher.
 12 Q. Okay. What was Mr. Kircher's position
 13 at Specialty at that time when he was your
 14 immediate supervisor?
 15 A. I don't recall his exact title, but he's
 16 in charge of all traffic control.
 17 Q. All right. And when do you recall --
 18 Can you give me a date as to when you
 19 recall first having a conversation with Mr. Kircher
 20 about the project and the traffic control plan for
 21 the project?
 22 A. I don't know when. It was not very long
 23 before the project started. I wasn't the original
 24 choice.
 25 Q. Who, if you know, was originally going

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1 to be the traffic control manager for the project?
 2 A. His name was Mike McGee.
 3 Q. All right. And why was it that Mike
 4 McGee ended up not being the traffic control
 5 manager?
 6 A. He left Specialty.
 7 Q. Okay. Do you know how long before the
 8 start of the project in the fall of 2017 it was
 9 that Mr. McGee left the project?
 10 A. I do not know.
 11 Q. How many discussions do you recall --
 12 Strike that.
 13 Do you recall having any discussions
 14 with anyone other than Mr. Kircher at Specialty
 15 about the project and the temporary traffic control
 16 plan for the project before you showed up on site
 17 for the first time?
 18 A. I only talked to Dan about any projects.
 19 So I don't -- didn't talk to anybody else.
 20 Q. Okay. Did you receive any documentation
 21 from Dan before you appeared on site at this
 22 project, at the I-84 project, that would comprise
 23 the -- or that did comprise the temporary traffic
 24 control plan?
 25 A. Yes. I received a plan set from him and

Page 27

1 a contract book.
 2 Q. All right. And when you say "plan set,"
 3 would that include both the set of plans and the
 4 special provisions pertaining to that or would the
 5 contract book be where you would look for the
 6 special provisions?
 7 A. Contract -- the contract book is the
 8 special provisions book.
 9 Q. All right. And before you appeared on
 10 site for this project, did you review the plan set?
 11 A. Yes, I did.
 12 Q. Did you have any conversations with
 13 Mr. Kircher about the plan set?
 14 A. Yes, I did.
 15 Q. What conversations do you recall having
 16 with Mr. Kircher about the plan set?
 17 A. I talked with Dan about getting a crew
 18 together to run this project as it was very
 19 extensive and long and trying to get the right crew
 20 together to get it done in an efficient manner and
 21 asked if I could have an experienced TCS with me as
 22 well. This was my first freeway project.
 23 Q. All right.
 24 A. And so I just wanted that extra help,
 25 and he said he'd give me help as needed.

Page 28

1 Q. All right. And did you get the
 2 assistance of an experienced TCS when you first
 3 arrived on the project?
 4 A. I did. I had Jake Loux come out and
 5 help me. He had experience with the Flying Wye and
 6 wanted to offer up knowledge to help me out with
 7 that --
 8 Q. Okay.
 9 A. -- when he could come out and help.
 10 Q. And how often did Jake Loux come out to
 11 the project site in the fall of 2017?
 12 A. He didn't show up probably for about a
 13 month into the project.
 14 Q. Okay. Before he showed up, were you
 15 given the services of any other experienced TCS?
 16 A. Yes, I was.
 17 Q. Who was that that appeared before
 18 Mr. Loux?
 19 A. Josh Hopkins.
 20 Q. Okay. Had you worked with Mr. Hopkins
 21 before this project, the I-84 project?
 22 A. Yes, I have.
 23 Q. Okay. But never before on a highway
 24 construction project?
 25 A. No, I have worked with him before. He

Page 29

1 was the TCS in charge of the Meridian interchange
 2 project, and I came out and helped him multiple
 3 times on that project.
 4 Q. All right. And the Meridian interchange
 5 project, that was another project that was for the
 6 Idaho Department of Transportation?
 7 A. I assume so, yes.
 8 Q. Do you recall reviewing the contract
 9 documents for that particular project?
 10 A. No, I did not on that one.
 11 Q. All right. So you had Mr. Hopkins for a
 12 period of time as an experienced TCS assisting you
 13 on site. And then, thereafter, Mr. Loux was on
 14 site to provide assistance?
 15 A. That is correct.
 16 Q. Any other experienced TCSs who were out
 17 to lend a hand to you in the fall of 2017?
 18 A. No.
 19 Q. Okay. All right.
 20 So I was going back and I was talking to
 21 you about the conversations you had with
 22 Mr. Kircher about the plan set, and you've
 23 described the one conversation in which you wanted
 24 to set up an experienced crew to assist you on
 25 this.

Page 30

1 **Can you recall any other conversations**
 2 **you had with Mr. Kircher regarding the plan set in**
 3 **the fall of 2017?**
 4 A. We discussed having the right amount of
 5 material for the job, where I was going to get it,
 6 and where my staging yard was going to be.
 7 **Q. Okay. Any other conversations with**
 8 **Mr. Kircher in the fall of 2017 about the plan set?**
 9 A. Not that I can recall.
 10 **Q. Okay. Same group of questions regarding**
 11 **conversations – what, if any, conversations you**
 12 **had with Mr. Kircher about the special provisions**
 13 **for the temporary traffic control plan for this**
 14 **project.**
 15 **Do you recall having any conversations**
 16 **with him about those?**
 17 MR. PERKINS: Is that also limited to the
 18 time period of 2017?
 19 MR. ROBBINS: Yes, sir. September -- the
 20 fall of 2017.
 21 THE WITNESS: Yes. We --
 22 I was informed that I was going to be a
 23 traffic control manager on this project, and in
 24 doing so, I would need to have better descriptive
 25 diaries on what happened out on the jobsite, and

Page 32

1 A. No.
 2 **Q. In the fall of 2017, are you aware of**
 3 **the temporary traffic control plan for this project**
 4 **ever having been revised?**
 5 A. I don't recall if it ever was.
 6 **Q. If it was to be revised, is it your**
 7 **understanding that that revision would have to have**
 8 **been in writing, approved by the engineer on the**
 9 **project for Idaho Department of Transportation?**
 10 A. That is --
 11 Yes.
 12 **Q. And that approval would have to have**
 13 **been obtained before any revision was implemented**
 14 **on the worksite?**
 15 A. Yes.
 16 **Q. Did you have any discussions in that**
 17 **regard with Mr. Kircher in the fall of 2017?**
 18 A. Are you taking anytime in between that
 19 time or before the project started? I guess that's
 20 where my questions are.
 21 **Q. Yeah.**
 22 A. I don't know if I'm answering beginning
 23 it or during it.
 24 **Q. That's my fault.**
 25 **For the purpose of this last question**

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1 then I would need to make sure that all diaries
 2 were turned in by 6:00 a.m., 7:00 a.m. that
 3 following day so he could have them reviewed and
 4 turned in by a certain time.
 5 **Q. (BY MR. ROBBINS) So you were directed by**
 6 **Mr. Kircher that your traffic control manager**
 7 **diaries were to be filled out and submitted by you**
 8 **to him for his review and then submitted ultimately**
 9 **to whom, if you know?**
 10 A. My understanding is it went to the
 11 inspectors on the job.
 12 **Q. All right. And those would be the**
 13 **inspectors for the Idaho Department of**
 14 **Transportation?**
 15 A. That is correct.
 16 **Q. All right. Any other discussions that**
 17 **you can recall having with Mr. Kircher in the fall**
 18 **of 2017 regarding the special provisions of the**
 19 **project?**
 20 A. Not at that time, no.
 21 **Q. Do you recall having any discussions**
 22 **with Mr. Kircher in the fall of 2017 concerning how**
 23 **the temporary traffic control plan could be revised**
 24 **if a decision was made to revise the temporary**
 25 **traffic control plan for the project?**

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1 **where I'm asking for any discussions that you may**
 2 **have had with Mr. Kircher about any revision of the**
 3 **temporary traffic control plan for the project**
 4 **having to be in writing, approved by the IDOT**
 5 **engineer --**
 6 **Let's take that throughout the fall time**
 7 **frame of 2017, both before you were actually on**
 8 **site and then through the end of Specialty's**
 9 **involvement in the fall of 2017 --**
 10 A. Yeah.
 11 **Q. -- for the project.**
 12 MR. PERKINS: Object to the form.
 13 You can answer.
 14 THE WITNESS: Okay.
 15 We never discussed having to change the
 16 traffic control plan. When problems arrived [sic],
 17 I went and talked with ITD and the -- the
 18 contractor, Penhall, and then we came up with game
 19 plans.
 20 And then the next morning, I would tell
 21 Dan -- after I woke up or beforehand, I would call
 22 him sometimes on the way there to let him know of
 23 any changes that we had made.
 24 **Q. (BY MR. ROBBINS) And when you say**
 25 **"changes," changes that had been made to the**

<p style="text-align: right;">Page 34</p> <p>1 temporary traffic control plan? 2 A. That is correct. 3 Q. Now, when you say "when problems 4 arrived," what is it that you mean to describe by 5 "when problems arrived"? You had these discussions 6 with Penhall -- 7 A. Yes. 8 Q. -- and then ITD inspectors. 9 A. Yes. So a problem would be -- 10 Plan sets are very linear. There's 11 other things that stop them from actually working. 12 Say a sign is supposed to go in a certain spot. 13 Well, you can't put a sign there because it's going 14 to be blocked by another sign or things like that. 15 So we have to adjust -- field adjust 16 things, and if we see a problem arise that -- that 17 would stop Penhall from doing their job or make 18 things unsafe, we'd all have a meeting and discuss, 19 "Okay. I can't do this because of X, Y, Z. What 20 is a plan that we can do?" 21 Q. All right. And so these discussions 22 that were held in the fall of 2017 when, as you 23 term it, problems would arise, would these be 24 discussions among you on behalf of Specialty, a 25 Penhall representative, and an ITD inspector on</p>	<p style="text-align: right;">Page 35</p> <p>1 site? 2 A. Yes. 3 Q. And then a decision would be made during 4 the course of those discussions as to how to 5 address the problem, and it would be agreed upon on 6 site? 7 A. Yes. 8 Q. All right. Do you know whether there 9 were any written modifications of the plan that 10 arose as a result of this problem-solving procedure 11 that you just described? 12 A. I do not know if there was any written 13 procedures for that. 14 Q. Okay. When these discussions would 15 arise -- and by that I mean how to address a 16 problem that arose on site -- and they were 17 discussed on site among yourself on behalf of 18 Specialty, the Penhall representative, and the ITD 19 inspectors, would you then report back to 20 Mr. Kircher as to what the results were of the 21 decision made during the course of those 22 discussions? 23 A. Yes. I would document it in my diary, 24 and I would call him or send him a text so he knows 25 what he was looking at in my diary to have better</p>
<p style="text-align: right;">Page 36</p> <p>1 clarification. 2 Q. Okay. In the fall of 2017, do you 3 recall participating in any of these 4 problem-solving discussions among yourself on 5 behalf of Specialty, Penhall representatives, and 6 ITD inspectors during which a decision was made to 7 reduce four open lanes of highway to a single open 8 lane during construction activities? 9 A. Yes. 10 Q. When do you recall that discussion and 11 decision first having taken place in the fall of 12 2017? 13 A. I don't remember the exact month or 14 anything, but I do know when we were grinding 15 westbound at the east limits of the project, a 16 problem arised that they could not -- the grinder 17 could not just have two lanes because the seat of 18 the grinder sits to the right, and he would be in 19 the open lane of traffic. 20 At this time, it was discussed that 21 Penhall felt uneasy about having traffic on both 22 sides of them for not having an escape route if a 23 car was to enter the work zone. 24 So a triple-lane closure, I don't know 25 if it was left or right, was authorized while they</p>	<p style="text-align: right;">Page 37</p> <p>1 were in that specific lane that they were working 2 in until they were -- it was no longer needed. 3 Q. Now, describe for me, if you would, the 4 hazard that prompted Penhall to express concern. 5 You said something about traffic going 6 on both sides of where work was being performed? 7 A. Yes. So you're working on the third 8 lane from the right shoulder. When he's in that 9 third lane on the right shoulder, his seat from the 10 grinder is now in the second lane. 11 So you would have to close both middle 12 lanes and you would have to have traffic split to 13 be either in the left lane and the right lane, 14 which now you have traffic running 55 miles an 15 hour, 60 miles an hour on both sides of you, and if 16 a vehicle was to enter your work space, you do not 17 have a safe spot to escape to. You don't have an 18 escape route. 19 Q. Okay. Let me see if I understand. 20 Are we talking about a section of 21 highway where there are four open lanes? 22 A. Yes. 23 Q. Okay. And are we talking about a 24 section of highway where in addition to the four 25 open lanes, there's also a "Y" where an exit comes</p>

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1 off from the four open lanes?
 2 A. I'm talking between Orchard Street and
 3 Overland --
 4 **Q. Right.**
 5 A. -- which, I think, is 50A.
 6 **Q. Right.**
 7 A. That section right there was where this
 8 was talked about.
 9 **Q. Okay. Well, I guess I'm having a little**
 10 **problem understanding that.**
 11 **If the grinding was being performed**
 12 **in -- let's call it the right-hand-most lane of the**
 13 **four-lane section --**
 14 A. Uh-huh.
 15 **Q. -- are you saying that the grinder**
 16 **would, because of its width, extend for an area**
 17 **over into the lane immediately to the left of the**
 18 **right-hand-most lane?**
 19 MR. PERKINS: Object to the form.
 20 **Q. (BY MR. ROBBINS) Yeah. I mean, I can --**
 21 **I can draw a little diagram.**
 22 **What I'm trying to see is you've got a**
 23 **left-hand lane here, and are you saying that the**
 24 **concern was voiced because the width of the grinder**
 25 **within the right-hand-most lane extended beyond the**

Page 40

1 zone.
 2 **Q. Is there a reason why the shoulder**
 3 **area -- and if we're talking about closing the left**
 4 **two lanes, why the shoulder area --**
 5 **Well, what I'm trying to understand is:**
 6 **Why is it that the grinder couldn't have moved over**
 7 **into the lane to the left or in the fast lane to**
 8 **accommodate the width of the third lane from the**
 9 **right so that you no longer have the seat extending**
 10 **into the second lane from the right.**
 11 A. My understanding is that when they
 12 grind, they're grinding up against --
 13 They're moving from left to right.
 14 **Q. Okay.**
 15 A. So they're constantly going over. You
 16 can't come over because the grinder wouldn't be
 17 where they needed it to be.
 18 **Q. Okay.**
 19 A. But I don't -- I'm not a grinding man,
 20 so I can't give you the --
 21 **Q. Understood.**
 22 A. -- the exact reasons, but that was their
 23 concern.
 24 **Q. All right. I understand. Understood.**
 25 **Do you know whether a formal proposal to**

Page 39

1 **right-hand-most lane into the next lane to the left**
 2 **over?**
 3 A. No. I'm saying that if he was in the
 4 third lane right --
 5 **Q. Right here?**
 6 A. Yeah. So if you're counting from the
 7 right shoulder and you go to the left three lanes,
 8 he's in that third lane.
 9 **Q. Right.**
 10 A. Now when he's grinding against that seam
 11 line, his seat is now into the second lane.
 12 **Q. Okay. Meaning the lane immediately --**
 13 A. Immediately to the right.
 14 **Q. -- to the right?**
 15 A. Yes.
 16 **Q. Okay.**
 17 A. And so that's where you would set -- we
 18 set a double left to give him those two left lanes.
 19 However, now when he's getting to that joint, he
 20 needed multiple lanes -- three lanes or a traffic
 21 split. And split traffic can put them either in
 22 the left lane, the fast lane, or the right lane.
 23 The problem with that is if you got
 24 pushed to the left lane and you wanted to take that
 25 exit, you would panic and cut across into the work

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1 **amend the temporary traffic control plan was ever**
 2 **prepared by any engineer on behalf of Specialty?**
 3 **And here we're talking about in the fall of 2017.**
 4 A. No, there was nothing that I'm aware of.
 5 **Q. All right. Do you know whether Penhall**
 6 **obtained an engineer-approved modification to the**
 7 **temporary traffic control plan that was then**
 8 **presented to Idaho Department of Transportation in**
 9 **the fall of 2017?**
 10 A. I do not know if they did.
 11 **Q. Did you ever see any such approved plan?**
 12 A. No, I did not.
 13 **Q. Okay. You, as the traffic control**
 14 **manager for the project, presumed that you would be**
 15 **given a copy of that plan if one existed, correct?**
 16 MR. PERKINS: Object to the form.
 17 THE WITNESS: If I -- if there was anything,
 18 yes, I would expect that I would be getting a copy
 19 of it.
 20 **Q. (BY MR. ROBBINS) Sure. Because as the**
 21 **traffic control manager, it's part of your job to**
 22 **implement the temporary traffic control plan,**
 23 **correct?**
 24 A. That is correct.
 25 **Q. And your job is to implement it as it is**

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1 approved within the plan drawings, agreed?
 2 MR. PERKINS: Object to the form.
 3 THE WITNESS: That is correct.
 4 Q. (BY MR. ROBBINS) Okay. Who do you
 5 recall being present from Penhall during the time
 6 these discussions in the fall of 2017 took place
 7 wherein it was discussed the concept of reducing
 8 four open lanes of traffic down to a single open
 9 lane?
 10 A. I'm sorry. Can you repeat that?
 11 Q. Yeah.
 12 A. I was trying to think of your answer as
 13 you were saying -- saying it, and then I kind of --
 14 Q. That's because my question was --
 15 I'm trying to find out who -- if you
 16 remember the identity of the other individuals that
 17 were present during these discussions in the fall
 18 of 2017 with respect to reducing four open lanes of
 19 highway down to a single open lane.
 20 A. You had Penhall's -- he was the spall
 21 repair guy's foreman, Bruce. I don't remember his
 22 last name.
 23 Q. Bruce Kidd?
 24 A. Yeah, I -- I don't know if that's his
 25 last name or not, but Bruce.

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1 anyone else from Specialty was with me --
 2 Q. All right.
 3 A. -- when this happened.
 4 Q. When this concept of reducing four open
 5 lanes of highway down to a single open lane was
 6 being discussed, did that cause you any safety
 7 concerns regarding the project?
 8 A. It did when traffic was heavy.
 9 Q. Okay. Did you notice once the decision
 10 to reduce four open lanes of highway to a single
 11 open lane during the construction project was
 12 implemented that traffic congestion increased?
 13 A. I don't know if it increased further
 14 than what it already had done. Westbound traffic,
 15 when I would set it, wasn't as busy by 10:30, 10:45
 16 at night when that was set.
 17 Q. Okay. And this was a night project,
 18 correct?
 19 A. That is correct.
 20 Q. All right. And when the implementation
 21 of the temporary traffic control plan was done on a
 22 nightly basis, what time was that that you started
 23 those activities when you were actually placing out
 24 the traffic control devices in the lanes of
 25 traffic?

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1 Q. Okay.
 2 A. And then I want to say the grinding
 3 foreman's name was Kenny.
 4 Q. Kenny Hinton?
 5 A. It's possible.
 6 Q. Maybe? Yes?
 7 A. Yeah.
 8 Q. Okay.
 9 A. And then Steve Erichson with ITD.
 10 Q. And Steve Erichson was the inspector at
 11 that time?
 12 A. Yes.
 13 Q. Did ITD have more than one inspector
 14 assigned to the project in the fall of 2017?
 15 A. Yes. David. Don't know his last name.
 16 Q. Van Lydegraf?
 17 A. It could be.
 18 Q. Okay.
 19 A. I'm sorry. I just --
 20 Q. No worries. No worries.
 21 A. I'm still trying to learn their names.
 22 Q. What I'm trying to do is prompt
 23 memories, and sometimes it just falls right against
 24 the wall, splat, so --
 25 A. Then myself, and I don't recall if

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1 A. When I was disrupting traffic? Is that
 2 the question, when was I doing that, or putting up
 3 signs?
 4 Q. Actually disrupting traffic, when you
 5 were actually --
 6 A. Okay.
 7 Q. -- putting the cones out in the lanes.
 8 A. We got authorization from ITD inspectors
 9 that we could start eastbound. Due to traffic
 10 volume being lower, we could start at 10:40 -- I
 11 mean 9:40 p.m. That way, we could have it pulled
 12 on by 10:15ish so Penhall could start. Westbound
 13 we couldn't touch until 10:00 p.m.
 14 Q. Okay. And during the time that you
 15 worked on the project, was that the start time for
 16 both eastbound and westbound; that is, 9:40 for
 17 eastbound, no earlier than 10:00 for westbound?
 18 A. I don't recall ever discussing with the
 19 new inspectors in 2018 if the time change was
 20 different or not. So I don't know on 2018.
 21 Q. Okay. Did you express any concerns --
 22 With the implementation of the change of
 23 the temporary traffic control plan to reduce four
 24 open lanes of highway to a single open lane, did
 25 you discuss any concerns that you had regarding

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1 that with Steve Erichson? And here we're talking
 2 the fall of 2017.
 3 A. I don't recall if I discussed any
 4 concerns with him or not.
 5 Q. All right. How about with Dave, the ITD
 6 individual by the name of Dave?
 7 A. I don't recall.
 8 Q. All right. Did you discuss any concerns
 9 that you had with the lane reductions down to a
 10 single open lane in the fall of 2017 with Bruce
 11 with Penhall?
 12 A. I don't recall if I did.
 13 Q. How about with Kenny with Penhall?
 14 A. I don't recall if I did.
 15 Q. How about with Mr. Kircher at Specialty?
 16 A. I don't recall.
 17 Q. Okay. When these discussions were held,
 18 did anybody raise the point that in order to
 19 properly change the temporary traffic control plan
 20 on this project, a written proposal would have to
 21 be prepared by an engineer licensed in Idaho and
 22 approved by the State of Idaho before
 23 implementation of any change?
 24 A. No, no one brought that point up.
 25 Q. Okay. Do you know a gentleman by the

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1 A. You said fall?
 2 Q. Yes, fall of 2017.
 3 A. I don't know if I did or did not.
 4 Q. Does the name ring a bell with you?
 5 A. It sounds kind of familiar.
 6 Q. Does that familiarity have anything to
 7 do with the project or just --
 8 A. Well, they -- they had multiple
 9 managers, and it was hard to keep track of who was
 10 who.
 11 Q. "They" being Penhall?
 12 A. Yes, Penhall.
 13 Q. Okay. Was it your impression that the
 14 representative of Penhall on site who was basically
 15 in charge was this gentleman by the name of Bruce
 16 that you identified before?
 17 A. Yes.
 18 Q. Let me do this. Let me just ask you --
 19 Well, I'm not going to do that right
 20 now.
 21 Let's do the following: I'm going to
 22 ask you, sir, if you could, please, to open up
 23 Exhibit 1-A, and I'll ask you to turn to Tab 6, and
 24 let's go to page 23, if we could, please.
 25 We've discussed --

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1 name of Bryon Breen?
 2 A. Does not ring a bell.
 3 Q. Do you know who the project engineer,
 4 the resident engineer, was for the project while
 5 you were out there?
 6 A. That's him.
 7 Q. Okay.
 8 A. Okay.
 9 Q. Do you ever recall having any
 10 discussions with Mr. Breen about the concept of
 11 reducing four open lanes of highway to a single
 12 open lane?
 13 A. I've never talked with him.
 14 Q. Okay. Dave Statkus, does that ring a
 15 bell with you?
 16 A. The name does, yes.
 17 Q. Okay. Do you recall having any
 18 discussions with Mr. Statkus about the proposal to
 19 reduce four open lanes of highway to a single open
 20 lane during the fall of 2017?
 21 A. No, I do not.
 22 Q. Okay. Do you recall in September of
 23 2014 having any contact with an individual
 24 affiliated with Penhall by the name of Patrick
 25 Nordberg?

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1 Well, strike that.
 2 Let me orient you so that we can do this
 3 in a marginally organized fashion. Let me ask you
 4 to take a look at page 1, and I'll ask whether you
 5 can identify that as being the contract between the
 6 State of Idaho and Penhall for the I-84 Five Mile
 7 to Orchard Road and Ramps project.
 8 A. Yes.
 9 Q. Okay. Now let's proceed onward to
 10 page 23, and my question to you is: Can you
 11 identify, beginning at page 23, that that page and
 12 the several pages thereafter, actually 1 through
 13 23, comprise the special provisions for the
 14 temporary traffic control plan for this project?
 15 A. Yes. This says "Special Provisions" at
 16 the top.
 17 Q. And does it look to you --
 18 Do you recognize that as being comprised
 19 of the special provisions that you reviewed before
 20 your involvement in this project?
 21 A. Yes.
 22 Q. All right. And let's take a look at
 23 page 27 under the heading "Staging and Temporary
 24 Traffic Control Plans," and immediately under that,
 25 a bullet point, "Alternate Staging and Temporary

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1 lanes were closed ahead?
 2 A. Can you define that question? How --
 3 Are you asking if I obtained the signs
 4 or --
 5 Q. Yeah.
 6 A. -- if I saw written documentation for
 7 those signs?
 8 Q. Well, both.
 9 Did you see any written documentation
 10 reflecting an order for signs that indicated either
 11 three left or three right lanes closed ahead?
 12 A. No, I did not get written --
 13 Q. And did you see any actual signs brought
 14 out on site during the course of the fall 2017 that
 15 indicated either three left or three right lanes
 16 closed ahead?
 17 A. Yes, there was those signs out on the
 18 project.
 19 Q. All right. And who obtained those
 20 signs, if you know.
 21 A. I grabbed those signs.
 22 Q. Where did you grab those signs from?
 23 A. From Specialty. I actually made those
 24 signs.
 25 Q. All right. And how is it that you made

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1 A. A change order for that would be, my
 2 understanding, submitted by ITD to approve it, and
 3 then Dan would submit copies of everything for pay
 4 items.
 5 Q. Okay. So the process would be Specialty
 6 would submit the change order to ITD for approval,
 7 ITD would either approve or not, and then it would
 8 be sent back, and then the actual accounting would
 9 be set in place to get payment?
 10 A. No. I think I said that Specialty --
 11 that ITD would approve -- would request or approve
 12 the change order for Specialty to have said signs
 13 and then would submit the signs.
 14 Q. Would you have caused those signs saying
 15 three right and left lanes closed ahead to be made
 16 if you had not received written approval from IDT
 17 for this change order?
 18 MR. MOORE: Object to the form.
 19 THE WITNESS: I would not make anything
 20 without approval.
 21 Q. (BY MR. ROBBINS) Okay. Do you recall
 22 receiving approval in writing from ITD for the
 23 creation of the three right and left lane closed
 24 signs in the fall of 2017?
 25 A. I do not believe anything was in

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1 those signs?
 2 A. Just printed them up.
 3 Q. Okay. And you had them printed up at
 4 Specialty?
 5 A. Yes.
 6 Q. Did you have any discussions with
 7 Mr. Kircher that these three-lane closure signs
 8 were being prepared by you for use on this project?
 9 A. I don't know if I did or didn't.
 10 Q. Okay. Did you have any discussions with
 11 any representative of Penhall regarding your
 12 obtaining the three-lane closure signs for this --
 13 the project in fall of 2017?
 14 A. I don't know if I had conversations with
 15 them about it.
 16 Q. Okay. Was the owner charged for those
 17 additional signs --
 18 A. Yes.
 19 Q. -- that were obtained by you?
 20 A. Yes, they were.
 21 Q. Was there a change order issued for the
 22 charge on those signs?
 23 A. I don't know if there was or wasn't.
 24 Q. Would that have been something issued by
 25 Specialty, though?

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1 writing.
 2 Q. Do you have any reason to believe that
 3 Specialty was paid for that change, for the
 4 creation of the signs that you caused to --
 5 A. That was above my pay grade.
 6 Q. That's something that would have been
 7 addressed to Mr. Kircher to handle?
 8 A. That is correct.
 9 Q. Okay. Were you directed by Mr. Kircher
 10 to proceed and create those signs saying three
 11 right and three left lanes closed?
 12 A. No.
 13 Q. Who, if anyone, did you receive
 14 authority from to create those signs?
 15 A. That would be ITD inspectors.
 16 Q. Okay. Do you recall which of the
 17 inspectors it was?
 18 A. Steve Erichson.
 19 Q. Steve Erichson? Okay.
 20 Do you recall when it was you received
 21 this direction from Mr. Erichson?
 22 A. I do not know the exact time.
 23 Q. Okay. Let's take a look at page 256.
 24 That's Sheet 12 of 47. Those are the schematics
 25 for a two-lane drop. That is a two-lane closure,

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1 agreed?
 2 A. Yes.
 3 Q. Okay. And the signage over on the
 4 right-hand side reflects the signage that would
 5 accommodate that reduction in lanes?
 6 A. Yes.
 7 Q. Okay. And going to page 257, which is
 8 Sheet 13 of 47, that is a single-lane closure?
 9 A. Yes.
 10 Q. Okay. And the signs over on the
 11 right-hand side of that page, those are the signs
 12 to accommodate that change in traffic?
 13 A. Yes.
 14 Q. Mr. Roper, what understanding do you
 15 have of the purpose that is served by a temporary
 16 traffic control plan on a highway project?
 17 A. So everyone is in the same understanding
 18 of what's happening.
 19 Q. Well, let me ask it this way: Do you
 20 hold an understanding and did you hold it in 2017
 21 that one purpose of a temporary traffic control
 22 plan was to facilitate the smooth flow of traffic
 23 through a work zone?
 24 A. That would be correct.
 25 Q. Okay. Did you have an understanding at

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1 Q. Sure.
 2 Do you have another understanding --
 3 Strike that.
 4 In 2017, did you have an understanding
 5 that another purpose of a temporary traffic control
 6 plan was to preserve the safety of the workers
 7 working in the work zone on a highway project as
 8 well as the safety of motorists traveling through
 9 the work zone on the highway that has been
 10 adjusted?
 11 A. I'd say that's a fair statement, yes.
 12 Q. Okay. Is it your understanding that
 13 another purpose of a temporary traffic control plan
 14 is to reduce as much as possible the development of
 15 traffic queues through a work zone on a highway
 16 project?
 17 MR. PERKINS: Object to the form.
 18 THE WITNESS: Yes.
 19 Q. (BY MR. ROBBINS) Okay. And did you have
 20 an understanding in 2017 that the development of
 21 traffic queues through work zones presented a
 22 hazard to workers in the work zone as well as
 23 motorists traveling through the work zone?
 24 MR. PERKINS: Object to the form.
 25 THE WITNESS: I don't know if I ever thought

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1 that time as well that another purpose of the
 2 temporary traffic control plan was to reduce
 3 unexpected changes in traffic flow?
 4 A. I don't -- don't know if I had that
 5 understanding or not.
 6 Q. Do you have that understanding at the
 7 present time?
 8 A. I do understand that now.
 9 Q. Okay. In 2017, did you understand that
 10 a purpose of the temporary traffic control plan was
 11 to preserve the safety of the motoring public
 12 traveling through a work zone as well as the
 13 workers working in the work zone itself?
 14 MR. PERKINS: Object to the form of the
 15 question.
 16 Q. (BY MR. ROBBINS) Here we're talking
 17 about temporary traffic control plans for highway
 18 construction projects.
 19 MR. PERKINS: Same objection.
 20 THE WITNESS: I don't know how to answer that
 21 question.
 22 Q. (BY MR. ROBBINS) Is it because I, once
 23 again, was inartful in my expression of the
 24 question?
 25 A. If you could word it how you --

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1 of it that way.
 2 Q. (BY MR. ROBBINS) Okay. Do you currently
 3 have an understanding that a traffic queue through
 4 a work zone on a highway construction project
 5 presents a potential hazard to workers in the area
 6 as well as motorists traveling through the area?
 7 A. Yes.
 8 Q. And that hazard, one of the hazards,
 9 relates to the possibility of rear-end collisions
 10 involving motorists traveling through the work
 11 zone?
 12 A. Yes.
 13 Q. Okay. Let us take a look, if you
 14 could -- let's transition for a moment to
 15 Binder 1-B. We can close up that one for the time
 16 being, I think. And I think I'm going to go to --
 17 All right. So let us go to a document
 18 that is part of Tab 18, and let me please direct
 19 you to page 614. And these are some documents --
 20 they're excerpts from the docket created by the
 21 NTSB relating to its investigation of this traffic
 22 accident.
 23 Perhaps I should ask: Did you ever have
 24 any communication with the NTSB regarding their
 25 investigation of the June 16, 2018, accident?

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1 road and did not have the manpower to get it to go
 2 longer.
 3 **Q. All right. And was this a discussion**
 4 **you had with Penhall where you informed Penhall**
 5 **that extending traffic control for a longer area on**
 6 **the highway was contrary to the temporary traffic**
 7 **control plan?**
 8 A. My recollection of the event was Jake
 9 was actually getting in an argument with Penhall,
 10 and I came upon the situation. And then we had a
 11 meeting about why we cannot right now extend it out
 12 longer.
 13 **Q. Okay. And were you successful in your**
 14 **position that you could not extend it any further**
 15 **that night?**
 16 A. No. We were giving more time to find
 17 the material.
 18 **Q. Who gave you more time to find that**
 19 **material that night?**
 20 A. I'm assuming it's --
 21 It was ITD and Penhall both were told
 22 that they weren't going to get it until we got it.
 23 **Q. Until you got the material out on site**
 24 **that you would be --**
 25 A. Yes.

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1 A. Yes.
 2 **Q. And what was the end of result of that**
 3 **discussion, if you recall?**
 4 A. I don't recall. But from reading this
 5 diary, it -- I was pretty firm in my standpoint
 6 that I would not set a double left until I felt
 7 safe to do so --
 8 **Q. Okay.**
 9 A. -- on 1 -- on I-184.
 10 **Q. All right. Now, the part of this note**
 11 **above that talks about extending the traffic**
 12 **control area, would that have been something that**
 13 **would have been considered a revision of the**
 14 **temporary traffic control plan?**
 15 A. Yes.
 16 **Q. Okay. And were you provided with any**
 17 **written document approved by an engineer to**
 18 **authorize the change of the temporary traffic**
 19 **control plan to elongate the area of traffic**
 20 **control in the area being discussed here?**
 21 A. No, I was not given anything.
 22 **Q. Did you ask for a written approval**
 23 **from -- approved by the State of Idaho?**
 24 A. No, I did not ask for a written.
 25 **Q. Down at the bottom on 345, and the note**

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1 **Q. -- able to extend the traffic control**
 2 **area?**
 3 A. Yes.
 4 **Q. Okay. And were you able to get the**
 5 **material out on site that night?**
 6 A. From reading this, yes, it looks like I
 7 was able to extend it another half mile.
 8 **Q. Do you recall what impact extending the**
 9 **area of traffic control had on traffic that night?**
 10 A. On that night in particular?
 11 **Q. Yes, sir.**
 12 A. No.
 13 **Q. Okay. Where it says, "Argued with ITD,**
 14 **Dave, about how to do this safely," do you recall**
 15 **what that related to?**
 16 A. Yes.
 17 **Q. Okay. And what did that relate to?**
 18 A. The problem was setting lane closures on
 19 the Connector, on 184. There isn't a lot of room
 20 at 10:00 at night to set it safely. There is no
 21 left shoulder.
 22 **Q. Okay. And so what was the end result of**
 23 **that concern that was addressed to Dave with ITD?**
 24 **Was that the inspector, Dave, who was an**
 25 **inspector there?**

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1 continues over to 346 as well, but it says, "Talked
 2 with Kenny and Dustin and Dave about Friday night,
 3 and if traffic is bad on I-84 WB, we won't set
 4 double left until it's safe."
 5 A. That's -- it's 184, not I.
 6 **Q. Ah. It's 184?**
 7 A. Yes.
 8 **Q. Okay. All right.**
 9 **Do you recall what the substance of that**
 10 **conversation was, other than is reflected in the**
 11 **note?**
 12 MR. MOORE: You're reading from where,
 13 Counsel?
 14 MR. ROBBINS: Down at the bottom of 345.
 15 MR. MOORE: Thank you.
 16 MR. ROBBINS: "Talked with Kenny and Dustin
 17 and Dave."
 18 THE WITNESS: Yes. That was that I could not
 19 safely set a lane closure leftbound [sic] due to
 20 the fact there was no shoulder going west, and so I
 21 would not set one until traffic had died down.
 22 **Q. (BY MR. ROBBINS) Do you recall when it**
 23 **was that construction halted on the project in the**
 24 **fall of 2017?**
 25 A. I don't know when it halted, no.

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1 Q. After the project had ceased in the fall
 2 of 2017 or at least that portion of the project had
 3 ceased, did you, thereafter, have any discussions
 4 with Mr. Kircher regarding the changes that had
 5 been made to the temporary traffic control plan
 6 during the fall of 2017 phase of the project?
 7 A. Not that I recall.
 8 Q. Do you recall having any discussions
 9 with any representative of Penhall after the
 10 closure of the project in the fall of 2017
 11 regarding the changes that had been implemented to
 12 the temporary traffic control plan during the fall
 13 2017 phase of the project?
 14 A. No, I do not recall.
 15 Q. Same question insofar as the ITD
 16 inspectors.
 17 Any such discussions?
 18 A. I do not recall.
 19 Q. Okay. Let me show you -- and I'll just
 20 do it out of this tab rather than going to
 21 Exhibit 5.
 22 Let's go to Exhibit 1-B, Tab 18,
 23 page 639. This, again, is a document that was
 24 contained in the NTSB docket pertaining to its
 25 investigation of the June 16, 2018, accident. This

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1 A. No.
 2 Q. -- of this project if it had been held,
 3 correct?
 4 My statement was correct, sir?
 5 A. Yes, I did not know if there -- I did
 6 not know of any pre-con meeting that took place. I
 7 just know they have them.
 8 Q. Okay. At any time during the fall 2017
 9 phase of the project, had you ever heard any
 10 concerns voiced by Penhall with regard to what to
 11 do if traffic was backed up during the course of
 12 work activities on the project?
 13 A. No. Penhall never voiced concerns to me
 14 about that.
 15 Q. Are you aware any time during the
 16 September 2017 phase --
 17 Strike that.
 18 Are you aware at any time during the
 19 fall of 2017 phase of the project that there was a
 20 request for Idaho State Police presence in the
 21 project, within the confines of the project itself
 22 to provide traffic assistance?
 23 MR. MOORE: Object to the form.
 24 THE WITNESS: Yes. Penhall asked why we
 25 don't have ISP.

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1 is a pre-construction conference agenda dated
 2 July 26, 2017. It identifies a number of
 3 individuals on page 641, and then there is a
 4 sign-in sheet, albeit redacted, on 645.
 5 Were you aware that there was a
 6 pre-construction conference being held pertaining
 7 to the project in or around July 26, 2017?
 8 MR. MOORE: Object to the form.
 9 Go ahead.
 10 THE WITNESS: Not that I recall.
 11 Q. (BY MR. ROBBINS) Okay. Do you recall
 12 having any discussions with Mr. Kircher after this
 13 July 26, 2017, date regarding the issues that were
 14 discussed during the pre-construction conference?
 15 MR. PERKINS: Object to the form.
 16 THE WITNESS: I do not recall.
 17 Q. (BY MR. ROBBINS) When you appeared on
 18 site at the project for the first time in the fall
 19 of 2017, were you aware that there had been a
 20 pre-construction conference held for this project
 21 before your appearance on site?
 22 A. I assumed so just for knowledge of all
 23 projects have them.
 24 Q. Okay. You had assumed it, but you
 25 didn't know any of the particulars --

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1 Q. (BY MR. ROBBINS) Who at Penhall made
 2 that inquiry?
 3 A. I don't know who actually said it.
 4 Q. Okay. And to whom did Penhall direct
 5 that inquiry?
 6 A. Asked me.
 7 Q. All right. And what was your response?
 8 A. That we typically do not have ISP on our
 9 projects. It's not in the job bid that I've been
 10 on.
 11 Q. Did the representative from Penhall ask
 12 that you make a special request of Idaho Department
 13 of Transportation for such assistance on this
 14 project?
 15 A. No.
 16 Q. What, if any, response did Penhall
 17 provide for you when you informed him that you
 18 typically don't have ISP assistance?
 19 A. They just told me that it was typical on
 20 most of their projects that there is always a law
 21 enforcement officer.
 22 Q. And did they tell you what purpose the
 23 law enforcement officer served during the course of
 24 work on the project that Penhall had been involved
 25 in in the past?

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1 A. No.

2 MR. PERKINS: Object to the form.

3 THE WITNESS: No, I already knew.

4 **Q. (BY MR. ROBBINS) What was it?**

5 A. It scares people to slow down and --

6 **Q. An additional form of traffic control?**

7 A. Yes.

8 **Q. The project started up again in the**

9 **spring of 2018.**

10 **Is that correct?**

11 A. Yes.

12 **Q. All right. And so between the cessation**

13 **of activities of the project in the fall of 2017**

14 **and the spring of 2018, were you assigned by**

15 **Specialty to work on other projects --**

16 A. Yes.

17 **Q. -- if you remember.**

18 **Do you recall what other projects those**

19 **were or what other project that was?**

20 A. I want to say it was Sand Hollow bridge

21 project, but I'm not 100 percent sure.

22 **Q. Is that another project that was**

23 **performed for Idaho Department of Transportation?**

24 A. Yes.

25 **Q. Was that a highway project?**

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1 **Q. Okay. Whether you were the original**

2 **person there or not, during the course of your**

3 **involvement with that project, are you aware of the**

4 **temporary traffic control plan for that project**

5 **ever being revised during the course of the project**

6 **itself?**

7 A. Not that I know of.

8 **Q. Okay. Were you assigned to any project**

9 **other than that one in the interim between fall**

10 **2017 and the re-startup of our project in spring**

11 **2018?**

12 A. I honestly don't remember what projects

13 I've been on.

14 **Q. All right. Do you recall attending a**

15 **meeting on or about May 31, 2018, right before the**

16 **startup of the project that was attended by ITD and**

17 **Penhall wherein a discussion of the re-startup of**

18 **the project was addressed?**

19 MR. MOORE: Object to the form. Foundation.

20 Go ahead, sir.

21 **Q. (BY MR. ROBBINS) Yeah. In other words,**

22 **I'm trying to find out whether you know of there**

23 **being a meeting between ITD and Penhall in or**

24 **around May 31, 2018, before the startup of this**

25 **project wherein this project was discussed.**

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1 A. Yes.

2 **Q. Were there inspectors before IDT present**

3 **on that project?**

4 A. They had consultants on that project.

5 **Q. Okay. No actual presence on the part of**

6 **IDT personnel on that project?**

7 A. Not that I'm aware of.

8 **Q. And did you provide traffic control**

9 **management assistance on that project?**

10 A. I was a traffic control supervisor on

11 that project.

12 **Q. Was there a traffic control plan -- a**

13 **temporary traffic control plan that was developed**

14 **for that project?**

15 A. Yes.

16 **Q. Was that temporary traffic control plan**

17 **revised in any way to reduce the number of lanes**

18 **that were available on the freeway?**

19 A. It had typical lane closures on it.

20 **Q. Okay. I'm asking whether --**

21 **Are you aware of that traffic control**

22 **plan having been revised as originally approved**

23 **during the course of the project?**

24 A. No. I wasn't the original person out

25 there.

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1 A. I do not know of any meeting that

2 happened before the initial -- the re-startup of

3 this project.

4 **Q. Okay. Were you ever told upon your**

5 **appearing out at the site or prior thereto, for**

6 **that matter, that there had been a meeting in**

7 **May of 2018 between ITD and Penhall in which the**

8 **subject of lane closure was discussed?**

9 A. I guess I'm trying to figure out this --

10 the time frame you're --

11 **Q. Sure.**

12 A. -- talking about.

13 **Q. So we're talking about the time frame**

14 **right before work commences, starts up again, on**

15 **the project in the spring of 2018.**

16 **It's our information there was a meeting**

17 **that was held on May 31, 2018, that was attended by**

18 **ITD and Penhall during which the question of lane**

19 **closures was addressed, and I'm just wondering**

20 **whether -- upon your arrival to the project, were**

21 **you given any information about such a meeting**

22 **having been held.**

23 MR. MOORE: Object to the form and

24 foundation.

25 Go ahead.

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1 THE WITNESS: No. I do not know if they had
 2 a meeting before the project, if -- what --
 3 anything was discussed before the startup of the
 4 project.
 5 **Q. (BY MR. ROBBINS) Okay. Do you recall**
 6 **being told that there had been a discussion between**
 7 **ITD and Penhall before the restart of the project**
 8 **in spring of 2018 during which it was addressed**
 9 **that if there was to be a change in the temporary**
 10 **traffic control plan, that that proposal would have**
 11 **to be submitted to ITD in writing for approval**
 12 **before implementation?**
 13 A. No.
 14 MR. PERKINS: Object.
 15 MR. BOTTARI: Object to form.
 16 THE WITNESS: No, I did not know.
 17 MR. ROBBINS: Why don't we take a quick
 18 break. Actually, it's noon. Do you guys want to
 19 take a break for lunch? I don't know how much
 20 longer I've got, but it's going to be a while.
 21 MR. MOORE: Might be a good idea. Just not a
 22 long one.
 23 [Discussion held off the record.]
 24 THE VIDEOGRAPHER: All right. We are now off
 25 the record at 12:09 p.m.

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1 **that direction to make the lane reduction that I**
 2 **just described by Penhall when an ITD inspector was**
 3 **present and heard those directions?**
 4 MR. BOTTARI: Object to the form.
 5 THE WITNESS: Penhall was never the one
 6 directing me to do anything. They were a part of
 7 the conversation. ITD was the final approval for
 8 said lane closures.
 9 **Q. (BY MR. ROBBINS) All right. So when you**
 10 **got the direction to close four open lanes of**
 11 **highway down to a single open lane in the fall of**
 12 **2017 that we had discussed about, those were**
 13 **occasions when the direction was given to you by**
 14 **the ITD inspectors directly, correct?**
 15 MR. MOORE: Object to the form.
 16 THE WITNESS: Yes. I was given approval to
 17 set those lane closures.
 18 **Q. (BY MR. ROBBINS) By the ITD inspectors?**
 19 A. Yes, by the ITD inspectors.
 20 **Q. Okay. Now, during that same period of**
 21 **time in fall 2017 when you had implemented the four**
 22 **open lanes down to a single open lane change to the**
 23 **temporary traffic control plan, did you ever see a**
 24 **traffic queue develop that extended more than a**
 25 **mile through the advanced warning area?**

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1 [Lunch break taken from 12:09 p.m. to 1:07 p.m.]
 2 THE VIDEOGRAPHER: We are back on the record
 3 at 1:07 p.m.
 4 **Q. (BY MR. ROBBINS) Welcome back,**
 5 **Mr. Roper.**
 6 **From the break, is there any aspect of**
 7 **the testimony that you've given to us up to this**
 8 **point that you'd like to amend or revise in any**
 9 **way?**
 10 A. No.
 11 **Q. Okay. We spoke about changes to the**
 12 **temporary traffic control plan for this project**
 13 **that were implemented during the fall 2017 phase of**
 14 **the project.**
 15 **Would it be correct to say insofar as**
 16 **those changes where four lanes of open highway were**
 17 **reduced down to a single open lane were implemented**
 18 **by you at the direction of Penhall with the**
 19 **approval of ITD inspectors?**
 20 MR. MOORE: Object to the form. Foundation.
 21 Go ahead.
 22 THE WITNESS: Yes, I was directed by Penhall
 23 and ITD to set those.
 24 **Q. (BY MR. ROBBINS) All right. And**
 25 **specifically, were you present when you were given**

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1 A. No, I did not.
 2 **Q. You returned to the project in the**
 3 **spring of 2018.**
 4 **Is that correct?**
 5 A. Yes.
 6 **Q. When do you recall first appearing back**
 7 **in Idaho for the resumption of the project?**
 8 A. I got notification that the project was
 9 going to kick off again in May-ish.
 10 **Q. You got the notification in May or you**
 11 **were told that the project would kick off again in**
 12 **May?**
 13 A. In May. Both.
 14 **Q. Both? Okay.**
 15 **Were you given --**
 16 **Strike that.**
 17 **Who did you receive that notification**
 18 **from, if you recall?**
 19 A. I actually called Bruce and picked his
 20 brain on if he's heard when they were coming back.
 21 **Q. And by "Bruce," is that Bruce with**
 22 **Penhall?**
 23 A. Bruce with Penhall, yes.
 24 **Q. Okay. And --**
 25 MR. MOORE: Did you say Bruce Kidd?

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1 MR. ROBBINS: Well, he didn't say Bruce Kidd
 2 because I don't think he identified Bruce Kidd
 3 before.
 4 **Q. (BY MR. ROBBINS) Do you understand Bruce**
 5 **as being Bruce Kidd?**
 6 A. Yes, I do understand Bruce's name now.
 7 **Q. All right. All right.**
 8 MR. MOORE: Sorry. I didn't --
 9 MR. ROBBINS: You were correct. I didn't.
 10 Because I -- in the earlier testimony, I don't know
 11 that he identified Bruce Kidd.
 12 **Q. (BY MR. ROBBINS) But it was Bruce Kidd**
 13 **whom --**
 14 A. Yes.
 15 **Q. -- you contacted?**
 16 **And what did Bruce tell you when you**
 17 **reached out to him?**
 18 A. He told me, from what I remember, that
 19 he does not know the exact time. It just will be
 20 happening very soon.
 21 **Q. All right. During that conversation,**
 22 **did you and he discuss the concept of adopting the**
 23 **reduction of lanes from four lanes down to a single**
 24 **lane at some point during the spring 2018**
 25 **resumption of the project?**

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1 **Q. Okay. Do you recall having any other**
 2 **discussions with Mr. Kircher about how the**
 3 **temporary traffic control plan would be operated**
 4 **during the spring 2018 resumption of the project?**
 5 A. No, I did not.
 6 **Q. At some time upon your return to the**
 7 **project in the spring of 2018, did you have**
 8 **discussions with representatives of Penhall and IDT**
 9 **regarding the subject of adopting the four-lane**
 10 **closure down to a single open lane that had been**
 11 **adopted in the fall 2017 portion of the project?**
 12 MR. PERKINS: Object to the form.
 13 MR. MOORE: Object to the form.
 14 Go ahead.
 15 THE WITNESS: I'm trying to --
 16 MR. ROBBINS: What happened to, you know --
 17 MR. MOORE: I know.
 18 MR. ROBBINS: -- a single objection being for
 19 all?
 20 **Q. (BY MR. ROBBINS) Excuse me. Go ahead.**
 21 A. I'm trying to understand your question.
 22 Are you asking --
 23 **Q. Yeah. That's because it was a crappy**
 24 **question.**
 25 **I'm wondering whether you had any**

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1 A. No.
 2 **Q. Okay. After this conversation you had**
 3 **with Mr. Kidd, did you reach out to Mr. Kircher at**
 4 **Specialty regarding the project and what you had**
 5 **heard from Mr. Kidd?**
 6 A. Yes. I called Dan and asked him if he
 7 had heard anything other.
 8 **Q. And do you recall what he responded, if**
 9 **anything?**
 10 A. I do not know what he said after that.
 11 **Q. Okay. How long was it -- after this**
 12 **conversation that you had with, first, Mr. Kidd and**
 13 **then Mr. Kircher was it that you returned to the**
 14 **site here in Boise?**
 15 A. I'm not exactly sure, but it wasn't --
 16 It was within a couple weeks. It wasn't
 17 very long.
 18 **Q. Okay. In the interim between the**
 19 **conversations you had with Mr. Kidd and Mr. Kircher**
 20 **and when you returned to Boise for the resumption**
 21 **of the project, did you review any documents or**
 22 **other materials for the resumption -- that**
 23 **addressed the resumption of the project in spring**
 24 **of 2018?**
 25 A. No.

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1 discussions when you returned to the project in the
 2 spring of 2018 with a representative of Penhall --
 3 let's break it down, with a representative of
 4 Penhall wherein the subject of reduction of three
 5 open lanes of a stretch of highway being reduced
 6 down to a single open lane was discussed again?
 7 A. Yes. It was discussed the very first
 8 night --
 9 **Q. Okay.**
 10 A. -- of operations.
 11 **Q. And was that in or around May 31, 2018?**
 12 **Do you know?**
 13 A. I don't know the exact day that --
 14 Whatever my diary -- the first diary I
 15 wrote, probably.
 16 **Q. Yeah. We're going to pull that, and I**
 17 **will have that. That should be in Volume 1-B,**
 18 **Tab 10.**
 19 MR. MOORE: 349.
 20 MR. ROBBINS: 3 which?
 21 MR. MOORE: 349.
 22 MR. ROBBINS: God love you all. I love this
 23 team effort. 349.
 24 THE WITNESS: It was 12, wasn't it?
 25 MR. ROBBINS: It was Tab 11. Oh, excuse me,

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1 12.
 2 **Q. (BY MR. ROBBINS) All right. Do you have**
 3 **in front of you the traffic control maintenance**
 4 **diary for May 31, 2018?**
 5 A. May 31st, 2018?
 6 **Q. Yes, sir.**
 7 A. Yes.
 8 **Q. All right. And that is your handwriting**
 9 **on this document?**
 10 A. Yes, it is.
 11 **Q. Now, on the document, it reflects you**
 12 **are present. Mason --**
 13 **I take it that is Mason Garling?**
 14 A. Yes.
 15 **Q. -- and David.**
 16 **And that's David whom?**
 17 A. I do not know his last name.
 18 **Q. Did Mason serve the same function that**
 19 **Mr. Loux did in the fall 2017 project, aspect of**
 20 **the project, and that is an experienced TCS to**
 21 **assist you on the spring aspect of the project?**
 22 MR. PERKINS: Object to the form.
 23 THE WITNESS: No. Mason was there to be
 24 trained on what's happening when I leave.
 25 **Q. (BY MR. ROBBINS) Okay. So when was it**

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1 **you discussed with Mr. Garling the operation of the**
 2 **traffic control plan for the project that you had**
 3 **experienced in the fall of 2017?**
 4 A. I want to say we discussed traffic
 5 control was -- when he was out there with me.
 6 **Q. Okay. So that would have been somewhere**
 7 **around May 31, 2018?**
 8 A. Yes.
 9 **Q. All right. Was May 31, 2018, the first**
 10 **night that you were present on the project?**
 11 A. No. That was the first night, looking
 12 at this, that we set something up. But we had
 13 already -- were out there beforehand staging
 14 projects with --
 15 When talking with Penhall, I asked what
 16 they wanted, and they wanted a double. And I asked
 17 them, "Is it going to be the left side or the right
 18 side?" and I was told by them that they would start
 19 with a double, and that is what we staged for.
 20 **Q. All right. And that was on the**
 21 **westbound lanes?**
 22 A. Yes.
 23 **Q. All right. So you were instructed**
 24 **that -- by Penhall before May 31, 2018, that**
 25 **Penhall would require a double-lane closure?**

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1 **that you became aware that you would be leaving the**
 2 **spring resumption of the project?**
 3 A. I had my schedule given to Dan in
 4 October or November of 2017 of what my schedule
 5 would look like.
 6 **Q. Okay. So when you returned to the**
 7 **project, you had already known from the conclusion**
 8 **of the fall 2017 aspect of the project that when**
 9 **you returned to the project in the spring, that it**
 10 **would only be for a limited period of time?**
 11 A. Yes and no. The --
 12 We didn't know when the project was
 13 going to start, and it was only going to be a
 14 couple weeks, so we didn't know if I would need
 15 replaced or not --
 16 **Q. All right.**
 17 A. -- until we got a definitive day.
 18 **Q. Do you recall when it was that you first**
 19 **found out that you would need a replacement for you**
 20 **at some point during the spring resumption of the**
 21 **project?**
 22 A. I don't know when that -- when I knew
 23 that was going to happen.
 24 **Q. At some point before May 31, 2018, did**
 25 **you have a meeting with Mr. Garling during which**

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1 A. Yes, and we decided for westbound
 2 because it was going to be the easier of the sides
 3 to get back into the groove of things.
 4 **Q. Okay. And if I asked you this before,**
 5 **please excuse me. But when do you recall having**
 6 **the discussion with Mason wherein you and he talked**
 7 **about how the temporary traffic control plan would**
 8 **operate for the project, based upon your past**
 9 **experience?**
 10 A. We talked about traffic control and
 11 what -- and how I had ran it before in the fall
 12 when he was actually on site with me.
 13 **Q. Did you discuss with him at that time**
 14 **the concept of reducing four open lanes of highway**
 15 **down to a single open lane?**
 16 A. After a meeting that we had at our
 17 stockyard when Penhall was mad that we didn't have
 18 a triple set for them.
 19 **Q. Okay. But before that meeting at the**
 20 **stockyard --**
 21 **And I take it that was on May 31, 2018?**
 22 MR. MOORE: Object to the form. That's
 23 confusing, Counsel.
 24 MR. ROBBINS: Yeah.
 25 **Q. (BY MR. ROBBINS) But before --**

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1 **Strike that.**
 2 **Before the meeting that you had at the**
 3 **stockyard --**
 4 **Strike that.**
 5 **The meeting that you had at the**
 6 **stockyard wherein Penhall expressed their**
 7 **displeasure that a three-lane closure, triple, had**
 8 **not been set up, before that, the discussions you**
 9 **had had with Mr. Garling did not describe a triple**
 10 **closure for the work being performed in the spring**
 11 **2018?**
 12 A. No. As far as my --
 13 MR. MOORE: Just object to the form. You
 14 tried.
 15 Go ahead, sir.
 16 THE WITNESS: No. It was --
 17 My understanding was there would be no
 18 more triples. The only reason why we set the
 19 triple was because of the grinder.
 20 **Q. (BY MR. ROBBINS) Okay.**
 21 A. So I didn't even think of a triple was
 22 ever going to even be into play.
 23 **Q. Where did you hear that there would be**
 24 **no more triples or how did you develop that**
 25 **understanding?**

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1 A. I do not remember. I know Bruce was
 2 there, Mason was there, myself, and I don't
 3 remember what ITD inspectors was on that job at
 4 that time. I know it wasn't Steve Erichson. I had
 5 talked with him earlier, and he said he was no
 6 longer on that project.
 7 **Q. Okay. But it's your recollection that**
 8 **there was an ITD inspector present --**
 9 A. Yes.
 10 **Q. -- during that meeting in the stockyard?**
 11 A. Yes, there was.
 12 **Q. And did that ITD inspector, whomever it**
 13 **was, participate in the meeting that was held?**
 14 A. Yes.
 15 **Q. And was that ITD inspector present and a**
 16 **participant in that meeting when the subject of**
 17 **reducing four open lanes of highway down to a**
 18 **single open lane was discussed?**
 19 A. Yes.
 20 **Q. And what, if any, statement was provided**
 21 **by the ITD inspector when he heard that a request**
 22 **was being made for a reduction of three open lanes**
 23 **down to one?**
 24 MR. MOORE: Object to the form.
 25 MR. ROBBINS: Excuse me. A reduction of four

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1 A. When we'd set the triple, the reason why
 2 we set the triple was because of the circumstances
 3 surrounding the -- the grinder.
 4 **Q. All right. And was it your**
 5 **understanding that when the project resumed**
 6 **operation in spring 2018, those circumstances would**
 7 **no longer be in play?**
 8 A. Yes.
 9 **Q. Okay. And where did you develop that**
 10 **understanding from, sir?**
 11 A. Just my general knowledge of the
 12 situation.
 13 **Q. Okay. So when you arrived at the**
 14 **project before May 31, 2018, it was your**
 15 **understanding and expectation that you would not be**
 16 **called upon to reduce four open lanes of highway**
 17 **down to a single open lane?**
 18 A. Yes, that is correct.
 19 **Q. All right. And then you became**
 20 **disabused with that notion on or about May 31,**
 21 **2018, at a meeting that was held in the stockyard?**
 22 A. Yes. I was completely caught off guard.
 23 **Q. Okay. And can you tell me who was**
 24 **present during this meeting at the stockyard on**
 25 **May 31, 2018?**

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1 open lanes down to one.
 2 MR. MOORE: Object to the form.
 3 Go ahead, sir.
 4 THE WITNESS: I don't know what he said or
 5 thought process -- what his thought process was on
 6 it. He wasn't -- he did not object to it.
 7 **Q. (BY MR. ROBBINS) All right. And was**
 8 **there any question in your mind but that that IDT**
 9 **inspector who was present at this meeting heard the**
 10 **plan that had been presented by Penhall that a four**
 11 **open lane of highway would, at some point during**
 12 **the spring project, be reduced down to a single**
 13 **open lane?**
 14 MR. MOORE: Object to the form. Foundation.
 15 MR. BOTTARI: Object to the form.
 16 MR. MOORE: Go ahead.
 17 THE WITNESS: Yes, he understood that's what
 18 they wanted.
 19 **Q. (BY MR. ROBBINS) Okay. What did you say**
 20 **in response to the request made by Penhall to**
 21 **close, at some point during the spring project,**
 22 **four open lanes of highway down to a single open**
 23 **lane?**
 24 A. I asked why they needed a triple done.
 25 **Q. And what did they respond?**

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1 A. Same reasoning as the -- the grinder.
 2 They have to air blast the joint, and they're going
 3 to be -- would be right on the -- the joint line,
 4 and they did not want traffic on both sides of
 5 them.
 6 **Q. Did you believe that their concerns in**
 7 **that regard were warranted given what you**
 8 **understood to be the circumstances of the project**
 9 **during the spring 2018?**
 10 A. The only concern that was warranted is
 11 traffic on both sides.
 12 **Q. Traffic on both sides when they were air**
 13 **blasting the joint?**
 14 A. Just traffic on both sides of them
 15 working in general.
 16 **Q. Did you raise a point of view that their**
 17 **concerns could be accommodated without placing**
 18 **traffic on both sides of where work was being**
 19 **performed?**
 20 A. No, I did not.
 21 **Q. All right. Was it your understanding**
 22 **that this request to reduce four open lanes down to**
 23 **a single open lane was made with regard to the**
 24 **westbound portion of the spring 2018 resumption of**
 25 **the project?**

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1 single open lane that was approved by an engineer
 2 with the Idaho Department of Transportation?
 3 A. Not to my knowledge.
 4 **Q. Okay. Let's take a look at your traffic**
 5 **control maintenance diary for May 31, 2018.**
 6 **Is there anywhere in this diary where**
 7 **the content of that discussion that was held in the**
 8 **stockyard was memorialized?**
 9 A. Not that I can see.
 10 **Q. Okay. Did you have a concern at the**
 11 **time that you heard that Penhall, during the spring**
 12 **resumption of the project, was calling for at least**
 13 **at some point a reduction of four open lanes down**
 14 **to three open lanes --**
 15 **Strike that.**
 16 **Did you develop a concern when you heard**
 17 **that Penhall wanted four open lanes of highway**
 18 **reduced down to a single open lane at some point**
 19 **during the spring resumption of the project that**
 20 **such a reduction would create a hazard associated**
 21 **with the development of a traffic queue through the**
 22 **work zone?**
 23 MR. PERKINS: Object to the form.
 24 MR. MOORE: Foundation.
 25 Go ahead.

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1 A. It wasn't implied for any direction.
 2 **Q. Okay.**
 3 A. It was just a triple in general.
 4 **Q. All right. When you heard this request**
 5 **being made by Penhall during the stockyard meeting,**
 6 **at some point thereafter, did you contact**
 7 **Mr. Kircher and inform him of the request that had**
 8 **been made by Penhall?**
 9 A. Not that I recall.
 10 **Q. Okay. Did Mr. Garling say anything in**
 11 **response to the Penhall request for reduction of**
 12 **lanes from four open down to a single open?**
 13 A. I do not know.
 14 **Q. Okay. Was there any request made during**
 15 **the course of this meeting in the stockyard for a**
 16 **written amendment of the temporary traffic control**
 17 **plan to accommodate the request made by Penhall to**
 18 **reduce four open lanes of highway to a single open**
 19 **lane?**
 20 A. No.
 21 **Q. To your knowledge, at any time during**
 22 **the spring 2018 resumption of the project, was**
 23 **there ever a written modification of the temporary**
 24 **traffic control plan to accommodate a reduction of**
 25 **four open lanes of traffic -- of highway down to a**

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1 THE WITNESS: Not that I know of.
 2 **Q. (BY MR. ROBBINS) Although you may not**
 3 **have expressed that, was that a concern that you**
 4 **had in mind with the request for the change from --**
 5 **for a change of four open lanes down to a single**
 6 **open lane at some point during the spring 2018**
 7 **portion of the project?**
 8 MR. PERKINS: Object to the form.
 9 MR. MOORE: Foundation.
 10 Go ahead.
 11 THE WITNESS: I don't remember what I was
 12 feeling then.
 13 **Q. (BY MR. ROBBINS) Okay. Let's go to**
 14 **June 1, 2018.**
 15 **That, again, is your handwriting, sir?**
 16 A. Yes.
 17 **Q. All right. Present on that date was**
 18 **yourself, Mason -- Mason Garling -- David, and**
 19 **Zach?**
 20 A. Yes.
 21 **Q. Do you recall a meeting having been held**
 22 **before the start of work on that date concerning**
 23 **the reduction of four open lanes of highway down to**
 24 **a single open lane?**
 25 A. I don't know if there was a meeting or

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1 not.

2 **Q. Okay. Other than the one meeting that**

3 **you addressed that occurred in the stockyard on**

4 **May 31, 2018, do you recall any other meetings**

5 **taking place in the period of time when you were**

6 **present at the project during the spring resumption**

7 **of it where the concept of reducing four open lanes**

8 **of highway down to a single open lane was**

9 **discussed?**

10 MR. PERKINS: Object to the form.

11 THE WITNESS: No. The only time was in the

12 stockyard.

13 **Q. (BY MR. ROBBINS) Okay. On the June 1,**

14 **2018, traffic control maintenance diary that's**

15 **page 350, down in the middle, it says, "Staged for**

16 **triple right for the next night."**

17 **So do I read that correctly, that there**

18 **was not a triple closure on June 1, but you staged**

19 **it for a triple closure at some location on the**

20 **next night?**

21 MR. MOORE: Object to the form.

22 THE WITNESS: Yes.

23 **Q. (BY MR. ROBBINS) Okay. And was this on**

24 **the westbound side of I-84?**

25 A. Yes.

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1 So if you had three of them backed up,

2 you know, if you just round up to 1,500, that's --

3 what is that? 4,500 feet.

4 **Q. Right.**

5 A. So if that's -- that's where the arrow

6 board starts.

7 However, in this case, the arrow -- the

8 first arrow board where it started was on the east

9 side of Orchard, and if my diary says it is backed

10 up just a little to the Orchard off-ramp, it didn't

11 even hit to the first arrow board.

12 So you're probably only looking at maybe

13 2,500 feet.

14 **Q. All right. And by "first arrow board,"**

15 **there's a -- a beginning --**

16 **if you're traveling with traffic --**

17 A. Yes.

18 **Q. -- there is a first arrow board, second**

19 **arrow board, and a third arrow board, correct?**

20 A. That is correct.

21 **Q. All right. And so from your**

22 **interpretation here, it wouldn't -- that traffic,**

23 **as a result of the lane closures on this particular**

24 **evening, westbound wouldn't have made it up to the**

25 **first arrow board closure sign?**

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1 **Q. All right. Then next, we'll go to 351,**

2 **June 2, 2018.**

3 **Again, that is your handwriting,**

4 **correct, sir?**

5 A. Yes, it is.

6 **Q. And present that evening was yourself,**

7 **David, Mr. Garling, and Zach, correct?**

8 A. That is correct.

9 **Q. And do I read correctly the first**

10 **portion of the daily notes that, "Set triple right**

11 **starting at east end of project westbound. Traffic**

12 **was heavy but manageable. Had to merge Orchard**

13 **on-ramp with third lane closure. By the time**

14 **traffic was in the single lane, traffic backed up**

15 **just a little to Orchard off-ramp."**

16 **Again, that's on the westbound side, was**

17 **it?**

18 A. Yes.

19 **Q. Okay. And do you have a recollection of**

20 **how far traffic backed up from the point of the**

21 **closure backstream, if you will?**

22 A. I can give you a rough estimate.

23 **Q. If you could.**

24 A. Every distance between those tangents,

25 looking at 13, 1,400 feet.

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1 A. To the third.

2 **Q. To the --**

3 A. Well --

4 **Q. First if you're traffic advancing**

5 **through the project?**

6 A. Yes. If you're traffic advancing

7 through, yes, it would be the first. It was backed

8 up between -- according to this where my arrow

9 boards were set would be between the second and

10 first arrow board.

11 **Q. And the arrow board setting is located**

12 **up where it says, "Arrow board message board"?**

13 A. Those are the arrow boards that are

14 being used.

15 **Q. Does that identify the location where**

16 **the arrow boards were set?**

17 A. No, it does not. It's just the number

18 and the start and stop times.

19 **Q. Okay. All right.**

20 **Let's go to page 352. It is your**

21 **traffic control maintenance diary for June 3, 2018.**

22 **That is your handwriting again, sir?**

23 A. Yes, it is.

24 **Q. Present that evening was yourself,**

25 **again, Mr. Garling, Zach, and David?**

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1 A. Yes.

2 **Q. Okay. And we're still on the westbound**

3 **of I-84.**

4 **Is that correct?**

5 A. That is correct.

6 **Q. And here, it is identified again that a**

7 **triple was implemented; that is, a triple-lane**

8 **closure was implemented on this night?**

9 A. It is, yes.

10 **Q. Next it says, "Penhall needed to get to**

11 **the flyover before we could break down the triple."**

12 **What was that meant to communicate? Are**

13 **you able to --**

14 A. Yes.

15 **Q. -- recall?**

16 A. So they -- from reading the -- the

17 location, it went from Orchard to the end of the

18 project of westbound. So we couldn't go that far

19 until I was able to break the east end of the

20 project down to get them further, so they had to

21 get to a certain point to give them enough buffer

22 zone so I could break things down and then leapfrog

23 everything up.

24 **Q. Okay.**

25 A. So --

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1 A. Yes.

2 **Q. And in looking through this, you're**

3 **still working on the westbound side of I-84?**

4 A. Yes, according to the location.

5 **Q. Okay. And it doesn't look like that**

6 **there was a triple implemented on that day.**

7 **Am I reading your note correctly?**

8 A. And your question was if there was a

9 triple applied?

10 **Q. Yeah. What I'm asking is: In my**

11 **looking through your note, it did not seem to me**

12 **that there was an indication that a triple-lane**

13 **closure in a four-lane stretch was implemented on**

14 **that date, and I just would like your confirmation**

15 **that I'm reading your note correctly.**

16 A. Yes.

17 **Q. Okay.**

18 A. You are correct.

19 **Q. And the next note we have is for June 6**

20 **of 2018, and that's page 354.**

21 **Again, that's your handwriting, sir?**

22 A. Yes, it is.

23 **Q. All right. And, again, present that**

24 **night -- or I should just say present that night**

25 **were yourself, Mr. Garling, tonight Chad --**

Page 115

1 Yeah.

2 **Q. Up at this point in time, there had not**

3 **yet been a triple closure implemented over on the**

4 **eastbound side.**

5 **Am I correct on that?**

6 A. You are correct.

7 MR. MOORE: You mean in --

8 Go ahead. Sorry.

9 MR. ROBBINS: Yeah. That's exactly what I

10 mean.

11 MR. MOORE: Okay. I'll take it that way

12 then.

13 **Q. (BY MR. ROBBINS) During the fall 2017**

14 **phase of the project, do you recall triple-lane**

15 **closures in a four-lane section being implemented**

16 **at any point in the eastbound lanes --**

17 A. No.

18 **Q. -- of I-84?**

19 A. No. There was never a triple eastbound.

20 **Q. Okay. The next date that I see you**

21 **present is June 4, 2018. That's page 353.**

22 **That, again, is your handwriting?**

23 A. Yes, it is.

24 **Q. All right. Present that night was**

25 **yourself, Mr. Garling, Zach, and David?**

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1 A. Yes.

2 **Q. -- David, and Zach.**

3 **Do you know why an additional individual**

4 **was added that particular night? Was there**

5 **something that stands out in your mind that called**

6 **for the addition of another individual?**

7 A. I do not know why unless it would be to

8 train. I think Chad was new at this time.

9 **Q. Okay. So, again, this was work that was**

10 **being done on the westbound side of I-84, I should**

11 **say.**

12 A. Yeah, let me read through this really

13 quick.

14 Yes, it appears to be westbound.

15 **Q. Okay. And on this particular night, it**

16 **said, "Pulled on double left at 9:30. Traffic was**

17 **typical for westbound at this time."**

18 **Reading through there, in this note,**

19 **does that indicate to you that on this night, there**

20 **was a double-lane closure and not a triple-lane**

21 **closure in a four-lane stretch?**

22 A. Yes, a double.

23 **Q. Now, down towards the bottom of this**

24 **note, it reads, "Traffic died down around 11:30,"**

25 **it looks like period there. "Traffic responds**

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1 better to the double than the triples."
 2 Am I reading that correctly?
 3 A. That is correct.
 4 Q. And, sir, do you have a recollection of
 5 what prompted your making that note on that night?
 6 A. Other than I was directed to get what
 7 traffic is doing. That would be the only reason I
 8 would have wrote that.
 9 I tried to say what -- what it was, what
 10 traffic was doing.
 11 Q. And in your impression, when two lanes
 12 are reduced, traffic responds better than when
 13 three lanes are reduced in a four-lane stretch.
 14 Is that what you're communicating?
 15 MR. PERKINS: Object to the form.
 16 THE WITNESS: Yes.
 17 Q. (BY MR. ROBBINS) Okay. Now, I believe
 18 from your testimony earlier that that was your last
 19 night on this project; June 6, 2018.
 20 Does that comport with your
 21 recollection?
 22 A. I don't know the dates, so --
 23 Q. Well, we've got an e-mail from
 24 Mr. Kircher who says that Josh Roper was traffic
 25 control manager. This is ITD 003862. And he gives

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1 THE WITNESS: Yes, we did.
 2 Q. (BY MR. ROBBINS) Okay. And on how many
 3 occasions do you recall having such a discussion
 4 with Mr. Garling regarding that subject matter?
 5 A. Every single night.
 6 Q. Okay. And before you left on June 6 --
 7 Strike that.
 8 Upon your departure from the project at
 9 the end of the shift on June 6, 2018, did you have
 10 any understanding that triple closures would be
 11 expected for this project during the work on the
 12 eastbound side?
 13 A. Yes, I --
 14 MR. MOORE: Object to the form. Foundation.
 15 THE WITNESS: Yes.
 16 Q. (BY MR. ROBBINS) Yes, you did?
 17 A. Yes, I did.
 18 Q. Okay. And how did you acquire that
 19 understanding that triple-lane closures would be
 20 required on the eastbound side as well as the
 21 westbound side?
 22 MR. PERKINS: Object to the form.
 23 THE WITNESS: It was implied in the meetings
 24 that triples were authorized on this project.
 25 Q. (BY MR. ROBBINS) Okay. When you say

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1 dates 5/31, 6/1, 6/2, 6/3, 6/4, and 6/6 for the --
 2 and then left for a National Guard advanced
 3 training.
 4 And that's the only reason --
 5 A. Yes.
 6 Q. And the next traffic control maintenance
 7 diary note that we have is for June 8, 2018, and
 8 that is written by Mr. Garling.
 9 A. That is correct.
 10 Q. Before you left, after you had been on
 11 project from 5/31 through 6/6 -- and by 5/31, I
 12 mean 5/31 or thereabouts -- to 6/6, did you have
 13 any other meetings with Mr. Garling wherein you
 14 discussed with him the handling of the temporary
 15 traffic control plan for this project during your
 16 absence?
 17 MR. PERKINS: Object to the form.
 18 Are you looking for conversations or
 19 meetings?
 20 MR. ROBBINS: Well, wherein you discussed
 21 with him, so whether it was a meeting or telephone
 22 conversation or it could even be e-mail.
 23 MR. PERKINS: That clarifies it.
 24 MR. ROBBINS: Yeah.
 25 MR. PERKINS: Thank you.

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1 that it was implied in the meetings, was there any
 2 express acknowledgment by the ITD inspectors that,
 3 in fact, triples were authorized during this
 4 project?
 5 MR. MOORE: Object to the form.
 6 THE WITNESS: I asked ITD, "Are we allowed to
 7 do triples?" and the answer was yes.
 8 Q. (BY MR. ROBBINS) And when did that
 9 conversation take place?
 10 A. The first night we were out there. Same
 11 with -- with the westbound.
 12 Q. Okay. All right.
 13 So did you have any advice for
 14 Mr. Garling as to how to handle the triple-lane
 15 closures of a four-lane section of highway during
 16 the time of your absence from the project?
 17 A. I don't recall exactly how the
 18 conversation was, but I do remember saying, "It's
 19 your choice to do a triple or the cattle chute,"
 20 which is traffic on both sides of you, "depending
 21 on what is being asked of you."
 22 Q. And it depends upon the location for the
 23 particular project, correct?
 24 In other words, a traffic -- a cattle
 25 chute would only be required if a particular

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1 location of the project would accommodate that type
 2 of manipulation of traffic, agreed?
 3 A. Yes, for the center two lanes.
 4 Q. All right. Did you have any discussions
 5 with Mr. Garling as to how to accommodate a cattle
 6 chute for the work that was anticipated on the
 7 eastbound side if a three-lane closure was called
 8 for?
 9 MR. PERKINS: Object to the form.
 10 THE WITNESS: I'm sorry. That question
 11 contradicts itself.
 12 Q. (BY MR. ROBBINS) Yeah. In other words,
 13 I'm trying to find out whether you had any
 14 discussions with Mr. Garling as to how to set a
 15 cattle chute for the work that would be anticipated
 16 on the eastbound side if a three-lane closure of a
 17 four-lane section of highway was called for.
 18 MR. PERKINS: Object to the form.
 19 THE WITNESS: A cattle chute wouldn't be for
 20 a three-lane closure. A cattle chute is a double
 21 closure with a split.
 22 Q. (BY MR. ROBBINS) Okay.
 23 A. So that's why I'm confused by your
 24 question because it doesn't make sense.
 25 Q. Okay. That's fine. Good. So if we

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1 the concept of reducing four open lanes of highway
 2 to a single open lane on this project?
 3 A. Not that I can recall.
 4 Q. Okay. There were some interrogatories
 5 that were served by one of the plaintiffs in this
 6 case, Plaintiff Daisy Johnson, her first set of
 7 interrogatories.
 8 Interrogatory No. 15 asks that Specialty
 9 identify every communication between Defendant
 10 Penhall Company, including any of its employees,
 11 agents, and/or contractors and yourself, this being
 12 Specialty, regarding the decision to close three
 13 lanes of travel leaving only one travel lane in the
 14 work zone at issue in this lawsuit, and then it
 15 gives some directions as to how to respond to the
 16 interrogatory.
 17 The answer that was provided by
 18 Specialty, and I'll read it to you after an
 19 objection, was that, "Defendant," that was
 20 Specialty, "states that in or around May 31, 2018,
 21 through June 2, 2018, Defendant," that's Specialty,
 22 "had multiple verbal communications with Defendant
 23 Penhall Company regarding the decision to close
 24 three lanes of travel in a four-lane section of
 25 Interstate 84."

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1 have a --
 2 A cattle chute would be in lieu of
 3 closing down three lanes of open highway -- of a
 4 four-lane section of open highway?
 5 A. That is correct.
 6 Q. Okay. All right.
 7 And you basically left it up to
 8 Mr. Garling to make the decision as to whether to
 9 do, as you put it, a cattle chute under those
 10 circumstances or to close down three open lanes of
 11 a four-lane section of highway?
 12 A. Yes, in whatever the contractor
 13 requested, seeing as how they were already approved
 14 to have a triple.
 15 Q. So you were discussing with Mr. Garling
 16 that he would be following the directive of Penhall
 17 since you had already been informed by ITD that ITD
 18 accepted a three-lane closure of highway in a
 19 four-lane section?
 20 MR. MOORE: Object to the form and
 21 foundation.
 22 THE WITNESS: Yes.
 23 Q. (BY MR. ROBBINS) Okay. Did Mr. Garling
 24 at any time before you left the project in spring
 25 of 2018 ever express to you any reservations about

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1 And I'll stop there at that response.
 2 We have discussed a single discussion
 3 that you can recall that occurred on or around
 4 May 31, 2018.
 5 Do you recall there being other similar
 6 discussions with a Penhall representative?
 7 MR. MOORE: Object to the form.
 8 Go ahead, sir.
 9 THE WITNESS: Back in the fall of 2017.
 10 Q. (BY MR. ROBBINS) Okay. Back in the
 11 fall, but not between May 31 and June 2, 2018?
 12 A. Not multiples that I know of.
 13 Q. Okay. The response continues,
 14 "Defendant Penhall stated that it had cleared the
 15 closure with the Idaho Transportation Department
 16 who had an inspector on site during this time."
 17 And that was a position that had been stated by
 18 Penhall, I take it --
 19 MR. MOORE: Object to the form.
 20 Go ahead and answer.
 21 Q. (BY MR. ROBBINS) -- in your presence?
 22 MR. MOORE: Same objection.
 23 THE WITNESS: I don't know. Penhall was
 24 there when we talked, all of us, and ITD about it.
 25 I don't know if there was any other discussions.

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1 A. -- or why they needed one.

2 **Q. On the occasions when you were present**

3 **providing temporary traffic control on this**

4 **project, did you ever see ITD inspectors inspecting**

5 **the implementation of the temporary traffic control**

6 **devices?**

7 A. Yes.

8 **Q. Okay. Did you ever see representatives**

9 **of Penhall inspecting the implementation of**

10 **temporary traffic control devices?**

11 A. I don't know if they were inspecting or

12 if they were just working.

13 **Q. But they were in the area where those**

14 **temporary traffic control devices had been placed**

15 **by you?**

16 A. Yes.

17 **Q. Did you ever have any discussions with**

18 **any ITD inspector about the development of traffic**

19 **through the work zone into the advanced warning**

20 **area after the placement of temporary traffic**

21 **control devices on this project?**

22 A. You're talking the whole project, not

23 just this triple?

24 **Q. Yeah. I'm just kind of including both**

25 **the fall 2017 and the week or so that you were**

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1 understand.

2 So you're asking from where the first

3 arrow board is taking away a lane, all the way back

4 to where the first advanced warning sign is, if we

5 ever discussed traffic queuing up in that area?

6 **Q. (BY MR. ROBBINS) Yes.**

7 A. No.

8 **Q. Okay. During the time that you were**

9 **present on site, did you ever see traffic queue up**

10 **in that area after the closure of three open lanes**

11 **in a four-lane stretch of highway?**

12 A. No. I only --

13 Up to the -- the merging points.

14 **Q. And by "merging points," you mean up to**

15 **the point of the arrow board?**

16 A. Yes.

17 **Q. Okay. All right.**

18 MR. ROBBINS: Well, Mr. Roper, I thank you

19 for your time. I don't think I have any other

20 questions for you.

21 MR. MOORE: Mr. Roper, my name is Mike Moore.

22 I represent the State of Idaho. I just have a few

23 questions.

24 ///

25 ///

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1 **present in June 2018.**

2 A. Yes.

3 **Q. Okay. How many times do you recall**

4 **having those discussions with an IDT inspector?**

5 A. Multiple times.

6 **Q. Okay. Was it ever discussed that in**

7 **light of the development of a traffic jam after the**

8 **placement of temporary traffic control devices,**

9 **that perhaps an additional lane would be open to**

10 **through traffic?**

11 MR. PERKINS: Object to the form.

12 THE WITNESS: I'm trying to understand the

13 question.

14 **Q. (BY MR. ROBBINS) What I'm trying to**

15 **say -- and it's a bad question. Let me specify it**

16 **a little more.**

17 **Did you have any discussions with any**

18 **IDT inspector regarding the development of a**

19 **traffic queue through the advanced warning area**

20 **after the implementation of traffic control devices**

21 **to reduce four open lanes of highway down to a**

22 **single open lane?**

23 MR. PERKINS: Object to the form.

24 MR. MOORE: Object. Okay.

25 THE WITNESS: I just want to make sure I

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1 EXAMINATION

2 BY MR. MOORE:

3 **Q. I want to take you back to your**

4 **conversations about that first meeting in 2018,**

5 **May 31. You've testified today that at the staging**

6 **area, you had some conversations with Penhall.**

7 **Do you remember that general discussion?**

8 A. Yes.

9 **Q. Okay. When you first were there that**

10 **night, how did it come to be that you had these**

11 **conversations with Penhall?**

12 **What took place?**

13 A. We were setting up our signs, and I got

14 a call from Mason saying that Penhall wanted a

15 triple-lane closure set, which was completely

16 against what we had discussed with Penhall prior

17 and was frustrated that I had set something and

18 they changed it on me last second.

19 **Q. I'm trying to understand your answer**

20 **here.**

21 **Was it you that was frustrated or Mason**

22 **that was frustrated or both?**

23 A. We both were frustrated.

24 **Q. Mason has talked about that in his**

25 **deposition, without getting into what Mason said.**

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1 Q. And so do you remember when in 2013 you
 2 started for Specialty, the month?
 3 A. September.
 4 Q. And so what month do you believe that
 5 you went to traffic control?
 6 A. March.
 7 Q. Of 2014?
 8 A. That is correct.
 9 Q. And when you first went to traffic
 10 control at Specialty in March 2014, what was your
 11 title?
 12 A. I don't know the exact title, but it's
 13 just a setup personnel. Just traffic control setup
 14 is what they're called.
 15 Q. And my understanding, based on our other
 16 depositions, that's largely just general labor,
 17 picking up --
 18 A. Pretty much, yes.
 19 Q. -- picking up cones and barrels?
 20 MR. PERKINS: Object to the form.
 21 Q. (BY MR. MORTIMER) I don't mean to
 22 minimize it. I've done it before. I know it's
 23 not -- I've actually done it.
 24 A. Yes, that's the -- they're --
 25 Whatever traffic control needs done,

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1 Q. Traffic control manager.
 2 A. As far as I know, there is no cert for a
 3 traffic control manager. To me, it was the same
 4 job as a traffic control supervisor.
 5 Q. While you were on the project, did you
 6 have the cell phone numbers of the ITD inspector
 7 that was on site at the same time?
 8 A. Yes.
 9 Q. Did you have the cell phone numbers for
 10 the Penhall superintendents that were on site at
 11 the same time?
 12 A. Yes.
 13 Q. And did you call those individuals on a
 14 fairly regular basis while you were on the project?
 15 MR. PERKINS: Object to the form.
 16 MR. MOORE: Objection.
 17 THE WITNESS: Called them every night.
 18 Q. (BY MR. MORTIMER) At least once a
 19 night?
 20 A. Yes.
 21 Q. Were there times it was more than once?
 22 A. Yes.
 23 Q. Okay. Maximum times you called the
 24 Penhall superintendent during the time of the
 25 contract, how often was that?

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1 they're pretty much the grunt force, the helpers.
 2 Q. But no certifications necessary for that
 3 position, right?
 4 A. No, there is no certs required.
 5 Q. And in 2015, you were certified for the
 6 traffic control supervisor, and then I believe
 7 there was mention of traffic control technician,
 8 correct?
 9 A. Yes.
 10 Q. Is that a separate certification?
 11 A. Yes.
 12 Q. And is it a separate certification to
 13 become a traffic control manager?
 14 A. My understanding is a traffic control
 15 technician is below a traffic control supervisor.
 16 They just give you the --
 17 You go through that course while you're
 18 getting to become a traffic control supervisor. So
 19 you're given the cert because you're going through
 20 it anyways.
 21 Q. Right. But with regard to becoming,
 22 quote/unquote, a traffic control manager, is that
 23 an additional certification above a traffic control
 24 supervisor certification?
 25 A. You're talking about the TCT?

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1 MR. PERKINS: Object to the form.
 2 THE WITNESS: I honestly don't know. It's
 3 either phone calls or I was on site with them
 4 talking. There was always constant communication.
 5 Q. (BY MR. MORTIMER) And the same question
 6 with regard to the ITD inspector.
 7 A. Same. Constant communication, whether
 8 it was a phone call or just sitting next to their
 9 truck talking.
 10 MR. MORTIMER: That's all the questions I
 11 have, Mr. Roper. Thank you.
 12 THE WITNESS: Thank you.
 13 MR. ORLER: No questions from me at this
 14 time.
 15 MR. ROBBINS: We're up to the board.
 16 MR. BOTTARI: No questions from me,
 17 Mr. Roper. I appreciate your time.
 18 THE WITNESS: Yes.
 19 MR. MONTGOMERY: Gary Montgomery, no
 20 questions. Thank you.
 21 MR. WETHERELL: Bob Wetherell, no questions.
 22 MR. MONTELEONE: This is Jason Monteleone. I
 23 don't have any questions.
 24 Thank you for your time, Mr. Roper.
 25 THE WITNESS: Thank you.

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1 MR. FISHER: This is Steven Fisher. I have
 2 no questions. Thank you.
 3 MR. GALE: This is Eric Gale. I have no
 4 questions, Mr. Roper. Thank you for your time.
 5 THE WITNESS: Thank you.
 6
 7 FURTHER EXAMINATION
 8 BY MR. ROBBINS:
 9 Q. So, Mr. Roper, just a couple last
 10 questions, and I do only mean a couple last
 11 questions.
 12 On this project during the course of
 13 your involvement with the project, did you
 14 understand that you had the authority to open a
 15 lane of travel if you saw a traffic queue develop
 16 as a result of reducing four open lanes down to a
 17 single open lane of travel?
 18 MR. PERKINS: Object to the form.
 19 Q. (BY MR. ROBBINS) And by "traffic queue,"
 20 I mean to use it in the fashion that you did; that
 21 is where we're seeing stop-and-go traffic that
 22 extends in back of the reduction of lanes area and
 23 into the advanced warning area.
 24 MR. MOORE: Object to the form.
 25 THE WITNESS: Yes, I know that traffic

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1 on the project.
 2 But while you were on the project,
 3 whether it was during the fall 2018 [sic] phase or
 4 the spring 2018 phase, if on this project after
 5 there had been a reduction of four open lanes to a
 6 single open lane of travel, you had seen a traffic
 7 queue, as you used that term, form that extended
 8 more than a mile in back of the lane reduction
 9 zone, would you have closed -- opened an additional
 10 lane of travel under those circumstances?
 11 MR. PERKINS: Object to the form, foundation,
 12 and calls for speculation.
 13 MR. MOORE: Incomplete hypothetical.
 14 MR. PERKINS: You can answer.
 15 THE WITNESS: I've had multiple conversations
 16 on what I would have done, and what I would have
 17 done in that situation was I would have had another
 18 PCM board brought out, put further down to the west
 19 side of the project advising of a triple-lane
 20 closure being conducted.
 21 Q. (BY MR. ROBBINS) Okay.
 22 A. If that didn't help, then other
 23 avenues -- more likely, it would have been a cattle
 24 chute again.
 25 Q. Okay. And would you have addressed your

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1 control supervisors or managers do have that
 2 authority to do that. The issue is is getting
 3 contractors to understand that authority, and
 4 that's where issues happen.
 5 I have threatened to do that before.
 6 Q. (BY MR. ROBBINS) All right.
 7 A. And if they don't want to get off the
 8 road, there's nothing I can do about it. I'm not
 9 just going to have them unprotected.
 10 Q. But you can and have, apparently, taken
 11 the position on other occasions where you say that
 12 in your opinion, a lane -- an additional lane of
 13 travel should be opened in order to accommodate a
 14 traffic backup that has formed.
 15 Do I understand that correctly?
 16 A. Yes, more so after this project incident
 17 has resolidified that in me.
 18 Q. When you say "after this project
 19 incident," you mean after the June 16, 2018,
 20 incident?
 21 A. That is correct.
 22 Q. Well, let me ask you this: Prior to
 23 June 16, 2018 --
 24 And I know that you were off the project
 25 in or around June 6, 2018. That was your last day

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1 concerns to Penhall had you been on the project and
 2 you saw such a traffic queue develop after the
 3 reduction of four open lanes of travel to a single
 4 open lane?
 5 MR. PERKINS: Object to the form. Foundation
 6 and speculation.
 7 THE WITNESS: I don't necessarily know if I
 8 would have gone to Penhall.
 9 How I look at it is the ITD or whoever
 10 inspector carries more weight on that than the
 11 contractor, so I would have gone to the inspector
 12 and we would have talked about game plans.
 13 Q. (BY MR. ROBBINS) Okay. Do you have an
 14 understanding of whether or not a traffic queue, as
 15 you use that term, developed at the project on
 16 eastbound I-84 on the evening of June 16, 2018,
 17 before the accident occurred?
 18 MR. PERKINS: Object to the form.
 19 Foundation. And also calls for information that
 20 may invade the attorney/client privilege.
 21 MR. ROBBINS: Ah. Okay.
 22 Q. (BY MR. ROBBINS) And I do not want
 23 anything that you have been informed by your
 24 attorney. I'm speaking of just discussions
 25 internally within Specialty while you were still

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1 with Specialty.
 2 Did you develop an understanding of the
 3 extent of the queue that developed on June 16,
 4 2018, on eastbound I-84 after the implementation of
 5 traffic control that night?
 6 MR. PERKINS: Object to the form and
 7 foundation.
 8 THE WITNESS: I did not get any information
 9 from Specialty on any traffic queues that were --
 10 that happened that night.
 11 Q. (BY MR. ROBBINS) Okay. Did you get it
 12 from anyone else other than your attorneys?
 13 A. All I saw was the news reports of
 14 people's complaints.
 15 Q. From that, did you develop an
 16 understanding of how far back --
 17 Strike that.
 18 From that, did you develop an
 19 understanding that a traffic queue, in fact, did
 20 develop that night?
 21 MR. PERKINS: Object to the form.
 22 Foundation.
 23 Q. (BY MR. ROBBINS) And as you used the
 24 term "traffic queue."
 25 MR. PERKINS: Same objection.

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1 FURTHER EXAMINATION
 2 BY MR. MOORE:
 3 Q. Mr. Roper, have you ever had the
 4 opportunity to see the dash cam video film from the
 5 semi truck that crashed into the back of the Jeep
 6 that's resulted in this litigation?
 7 A. No, I have not seen any video.
 8 MR. MOORE: Okay. That's all I have, sir.
 9 MR. ROBBINS: Further the deponent sayeth
 10 not. We're done.
 11 THE VIDEOGRAPHER: This concludes the
 12 videotaped deposition of Josh Roper, and the time
 13 is 2:55 p.m. We are off the record.
 14
 15 (The remote videotaped deposition concluded at 2:55 p.m.)
 16 * * *
 17 (Signature was requested.)
 18
 19
 20
 21
 22
 23
 24
 25

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1 THE WITNESS: I did not know that a traffic
 2 queue was what happened where it happened until I
 3 saw photos of the incident that happened and where
 4 the -- where it happened at, and then I was able to
 5 put the pieces together.
 6 Q. (BY MR. ROBBINS) In putting those pieces
 7 together, you came to what conclusion, sir?
 8 A. That it -- that the traffic was backed
 9 up and the semi didn't stop and then --
 10 Q. And traffic was backed up, did you come
 11 to a conclusion to an extent of in excess of a mile
 12 in back of where the lane closure started?
 13 MR. PERKINS: Object to the form.
 14 THE WITNESS: No. From where the picture was
 15 at was at the 55-mile-an-hour sign, which wasn't a
 16 mile back from the first arrow board.
 17 Q. (BY MR. ROBBINS) Okay. Did you ever
 18 review the traffic control maintenance diaries from
 19 the days of June 14, 2018, through June 16, 2018?
 20 A. No, I did not.
 21 MR. ROBBINS: Mr. Roper, thank you for your
 22 time.
 23 ///
 24 ///
 25 ///

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1 VERIFICATION
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)
 6
 7 I, JOSH ROPER, being first duly sworn on my oath,
 8 depose and say:
 9 That I am the witness named in the foregoing
 10 videotaped deposition taken the 26th day of May, 2021,
 11 consisting of pages numbered 1 to 168, inclusive; that
 12 I have read the said deposition and know the contents
 13 thereof; that the questions contained therein were
 14 propounded to me; that the answers to said questions
 15 were given by me, and that the answers as contained
 16 therein (or as corrected by me therein) are true and
 17 correct.
 18
 19 Corrections Made: Yes _____ No _____
 20
 21 _____
 22 JOSH ROPER
 23
 24 Subscribed and sworn to before me this _____
 25 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____.

1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

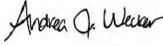
5 I, ANDREA J. WECKER, Certified Shorthand Reporter
6 and Notary Public in and for the State of Idaho, do hereby
7 certify:

8 That prior to being examined, the witness named in
9 the foregoing deposition was by me duly sworn remotely to
10 testify to the truth, the whole truth and nothing but the
11 truth;

12 That said deposition was taken down by me in
13 shorthand at the time and place therein named and
14 thereafter reduced to typewriting under my direction, and
15 that the foregoing transcript contains a full, true
16 and verbatim record of said deposition.

17 I further certify that I have no interest in the
18 event of the action.

19 WITNESS my hand and seal this 8th day of June,
20 2021.

21 



22 ANDREA J. WECKER
23 CSR, RDR, CRR, CRC and Notary
24 Public in and for the
25 State of Idaho.

My Commission Expires: 02-14-23

EXHIBIT 22

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF MASON GARLING
INDIVIDUALLY AND 30(b)(6) SPECIALITY CONSTRUCTION SUPPLY, LLC
April 21, 2021
Boise, Idaho
Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 18

1 Q. Okay. And have you looked at the
 2 subject areas for the deposition set forth in
 3 pages 3 through 5?
 4 A. Yes.
 5 Q. Okay. And it is your understanding that
 6 you are being presented on behalf of Specialty to
 7 address those subject areas?
 8 A. Correct.
 9 Q. And do you feel capable and competent to
 10 address those areas to the extent the questions are
 11 properly presented to you?
 12 A. Yes.
 13 Q. Okay. Mr. Garling, why don't you -- I
 14 can think of a lot of reasons.
 15 But would you please give me a short
 16 description of your educational background from
 17 high school going onward.
 18 A. From high school, I started to go to
 19 Oregon State University and joined the Army
 20 National Guard. Due to life circumstances, I did
 21 not continue going to Oregon State University. I
 22 moved out here to Idaho, and shortly after started
 23 working for Specialty Construction, and I've been
 24 there since.
 25 Q. Okay. During what period of time were

Page 19

1 you a student at OSU?
 2 A. From 2012 to 2013.
 3 Q. Okay. And what course of study were you
 4 following during that approximate one-year period
 5 of time?
 6 A. I was hoping to go for electrical
 7 engineering.
 8 Q. Okay. And what was your duty assignment
 9 with the National Guard?
 10 A. I was an infantryman while I was in
 11 Oregon, and I maintained 11B MOS, but I moved out
 12 here and transferred stations and trained with the
 13 combat engineers --
 14 Q. Okay.
 15 A. -- the 12 -- 12Bs. Excuse me.
 16 Q. In your training with 12B combat
 17 engineers, generally speaking, what subject areas
 18 did that training address?
 19 A. So 12Bs typically do demolitions and
 20 clearing minefields. Basically clearing
 21 battlefield objects, debris; anything that would
 22 block movement.
 23 Q. Okay. Do you remain with 12B?
 24 A. I do not.
 25 Q. Okay.

Page 20

1 A. I ended my contract in 2017.
 2 Q. Okay. When did you begin your
 3 employment with Specialty?
 4 I will refer to "Specialty." You
 5 understand Specialty Construction Supply, LLC?
 6 A. Correct.
 7 Q. We will shortcut it to "Specialty."
 8 A. I started at Specialty in 2014.
 9 Q. All right. And in what position were
 10 you hired in 2014?
 11 A. As a setup maintenance laborer.
 12 Q. And how long did you have that position
 13 of setup maintenance laborer?
 14 A. I was working as that for three years.
 15 Q. All right. So that takes us to about
 16 2017?
 17 A. Correct.
 18 Q. Okay. And during that three-year period
 19 of time, did you undergo any certification in any
 20 subject areas related to traffic control?
 21 A. Yes. I obtained my traffic control
 22 supervisor card.
 23 Q. All right. And that traffic control
 24 supervisor card, that was received by you by -- or
 25 from the American Traffic Safety Services

Page 21

1 Association?
 2 A. Correct.
 3 Q. And when you received the traffic
 4 control supervisor certification, you also
 5 received -- or did you also receive traffic control
 6 technician certification?
 7 A. Correct.
 8 Q. Okay. So that's TC -- we'll call it TCS
 9 and TCT?
 10 A. Correct.
 11 Q. All right. And during that same period
 12 of time, did you receive any other certification?
 13 A. No.
 14 Q. All right.
 15 A. Well, my flagging certification, but
 16 that was as I started at Specialty.
 17 Q. All right. And flagging certification
 18 you also got from ATSSA?
 19 A. Correct.
 20 Q. Okay. Did you ever receive --
 21 Strike that.
 22 At any time prior to June 16, 2018, did
 23 you ever receive a traffic control design
 24 specialist certification?
 25 A. No.

Page 22

1 Q. Did you ever sit for that test?
 2 A. No.
 3 Q. Okay. Prior to June 16 of 2018, did you
 4 have any background or experience in personally
 5 revising, designing, or approving traffic control
 6 plans?
 7 A. No.
 8 Q. Once you received your traffic control
 9 supervisor certification, did your job duties and
 10 responsibilities at Specialty change at all? I
 11 mean, did you remain as setup maintenance and
 12 laborer or did you transition elsewhere?
 13 A. I started running projects soon after
 14 obtaining my certification.
 15 Q. And when you say you "started running
 16 projects," did you act in a position of a traffic
 17 control manager on projects?
 18 A. I had that title on a couple different
 19 projects, yes.
 20 Q. All right. And did you have that title
 21 on a couple of different projects before your
 22 experience in June -- May and June of 2018?
 23 A. Yes.
 24 Q. Okay. Do you recall the names of those
 25 couple of projects that you were --

Page 24

1 Q. (BY MR. ROBBINS) Okay. And with the
 2 prime contractor, was there a particular position
 3 with the prime contractor with whom you typically
 4 had direct contact?
 5 A. That varied depending on the operations.
 6 I would talk to anyone from the foreman
 7 of a crew to the superintendents to sometimes
 8 owners.
 9 Q. Okay. On these prior projects with whom
 10 you worked where IDT was involved, was there a
 11 standard -- well, for want of a better word,
 12 hierarchy of communication that was set up at the
 13 beginning of the project so that you on behalf of
 14 Specialty would know who it was you would be
 15 speaking to if you needed to contact either a
 16 representative of ITD or the prime contractor?
 17 A. Again, typically --
 18 MR. MOORE: Object to the form and
 19 foundation.
 20 THE WITNESS: Typically, we would contact the
 21 people that were on the ground directly, whether it
 22 be the foreman, his crew, or the ITD inspector.
 23 Q. (BY MR. ROBBINS) Okay. Would that chain
 24 of communication be set up at the beginning of at
 25 least your involvement in the project or is that

Page 23

1 A. I worked on the Highway 55 Karcher Road
 2 project where I had that title as well as
 3 Highway 52 overlay between Horseshoe Bend and
 4 Emmett.
 5 Q. Okay. Those were both projects with the
 6 Idaho Department of Transportation?
 7 A. Correct.
 8 Q. Okay. And who was the resident engineer
 9 on those projects, if you recall?
 10 A. I don't recall.
 11 Q. Okay. Did you have any personal contact
 12 with the resident engineer on those projects?
 13 A. Not that I recall.
 14 Q. Did you have contact directly with the
 15 ITD on those projects or was your contact with a
 16 prime contractor?
 17 A. I both had contact with the prime
 18 contractor and ITD on both of those projects prior.
 19 Q. Okay. And was there a particular
 20 position with ITD with whom you had interface on
 21 the Highway 55 and Highway 52 projects?
 22 MR. PERKINS: Object to the form.
 23 You can answer.
 24 THE WITNESS: Typically, the inspector on
 25 site is who we would talk to.

Page 25

1 something that would just kind of develop over the
 2 course of time?
 3 A. Yes, it would be set up at the beginning
 4 of the project.
 5 Q. All right. So you on behalf of
 6 Specialty would be given the name and the phone
 7 number of the individual with whom you would --
 8 could contact if you needed to with respect to ITD
 9 and the prime contractor?
 10 A. Correct.
 11 Q. And is it also similarly true or do you
 12 know whether the ITD would be given your name and
 13 your phone number to contact if you needed to be
 14 contacted?
 15 A. They would have been given my
 16 information, correct. Yes.
 17 Q. Okay. So I'm following up with that
 18 because I didn't want to get a compound question
 19 out to you.
 20 The same would be true with ITD, I take
 21 it, correct?
 22 A. Correct.
 23 Q. Okay. All right.
 24 Other than the Highway 55 and Highway 52
 25 projects, prior to the project that we will

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1 reviewed and familiarized yourself with the terms
 2 of the original plan, was there a reason, if there
 3 was a change, why you would not be informed of the
 4 change of the temporary traffic control plan such
 5 that it deviated in some way from what you
 6 familiarized yourself with?
 7 A. At the time, I was just a laborer. We
 8 would show up and follow the plan that we had at
 9 hand.
 10 Q. Okay.
 11 A. If it was a revised copy, I would not
 12 know.
 13 Q. Okay. Okay.
 14 Do you recall who the traffic control
 15 manager was under whom you worked on the Gowen and
 16 Broadway project and chip seal projects?
 17 A. I -- Gage Dyre, I believe, was the
 18 traffic control manager for the Gowen project, and
 19 Michael McGee was the traffic control manager for
 20 the Broadway project.
 21 Q. Okay. Now, as to the Ada County and
 22 Canyon County projects, as you sit here today, do
 23 you recall whether those projects had an
 24 engineer-reviewed and approved temporary traffic
 25 control plan associated with them?

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1 Q. Okay. Do you know if the temporary
 2 traffic control plan for those two county projects
 3 was revised at all during the course of the project
 4 itself?
 5 A. I would not know.
 6 Q. Okay. All right.
 7 The Highway 55 and the Highway 52
 8 projects, though, had temporary traffic control
 9 plans that were reviewed and approved and stamped
 10 by an engineer, though?
 11 A. Yes.
 12 Q. Okay. Do you know whether the temporary
 13 traffic control plans in those two projects were
 14 amended or revised at all during the course of
 15 those projects?
 16 A. Not in any significant fashion. They
 17 were -- they held close to the traffic control
 18 plans. There were field adjustments that ITD was
 19 aware of.
 20 Q. Okay. Do you know if there were any
 21 adjustments in either of those two projects, the
 22 Highway 52 or Highway 55 project, in which there
 23 was a deviation from the temporary traffic control
 24 plan as originally approved to provide for the
 25 closure of more lanes than was originally called

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1 A. I don't recall them having
 2 engineer-stamped traffic control plans.
 3 Q. Okay.
 4 A. It's not a common practice on County
 5 jobs.
 6 Q. And you may not know, and if you don't,
 7 go ahead and tell me, but: To your knowledge, do
 8 you know why it is that an engineer-stamped
 9 temporary traffic control plan is not standard when
 10 you're dealing with a county project?
 11 A. Not all county jobs have a distributed
 12 set of traffic control plans. Sometimes it falls
 13 on us, the traffic control company, to draw up the
 14 plans, submit them to the County for their
 15 approval, but it's not always an engineer that
 16 would approve the plans.
 17 Q. Okay. For either the Ada County or the
 18 Canyon County projects, were you involved in the
 19 development or the design of the temporary traffic
 20 control plans?
 21 A. I was not, no.
 22 Q. Okay. Do you know if anybody at
 23 Specialty was involved in the design and
 24 development of those plans?
 25 A. I don't know.

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1 for in the temporary traffic control plans?
 2 You get my question?
 3 A. In the previous two projects, we did not
 4 close more lanes than the traffic control plans
 5 called out.
 6 Q. And I probably should have addressed
 7 this earlier.
 8 Did both the Highway 55 and Highway 52
 9 projects call for the closure of lanes within the
 10 context of the temporary traffic control plan?
 11 A. Yes.
 12 Q. Okay. And if I didn't ask you before,
 13 I'll ask you now.
 14 Do you know who the resident engineer
 15 was with Idaho Department of Transportation on the
 16 Highway 55 and Highway 52 plans?
 17 A. I do not.
 18 Q. Okay. Would you agree with me that the
 19 purpose of a temporary traffic control plan --
 20 And here, let's talk about one that
 21 addresses construction of or on an interstate
 22 highway.
 23 Would you agree that one of the purposes
 24 of a temporary traffic control plan is to
 25 facilitate the smooth flow of traffic through a

Page 34

1 work zone area?
 2 A. Yes.
 3 Q. Okay. Would you further agree with me
 4 that one of the purposes of a temporary traffic
 5 control plan in such a project is to avoid, as much
 6 as possible, the development of long traffic queues
 7 through the construction zone?
 8 MR. PERKINS: Object to the form.
 9 Q. (BY MR. ROBBINS) And by "traffic
 10 queues," I'm talking about traffic jams, for want
 11 of a better term.
 12 MR. PERKINS: Same objection.
 13 MR. MOORE: Same objection.
 14 THE WITNESS: In my experience, the traffic
 15 control plans are drawn so that the work can be
 16 done safely and the lanes can be closed correctly
 17 following the regulations.
 18 Q. (BY MR. ROBBINS) Okay.
 19 A. To my knowledge, I don't know that
 20 congestion prevention would be the intended design.
 21 Q. Let me ask you this, though: Would you
 22 agree with me, though, that the existence of a
 23 traffic queue through a construction zone,
 24 particularly late at night, presents a hazard,
 25 potential hazard, to the motoring public?

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1 we're dealing with a highway that accommodates a
 2 large volume of tractor-trailer traffic, agreed?
 3 A. Agreed.
 4 Q. Okay. Do you have an opinion whether --
 5 insofar as the safety of the motoring public and
 6 the construction workers are concerned that the
 7 accurate and precise implementation of the
 8 provisions of the temporary traffic control plan as
 9 approved is important?
 10 MR. PERKINS: Object to the form.
 11 Foundation. Calls for speculation.
 12 THE WITNESS: I would agree that it is
 13 important to follow the traffic control plan.
 14 Q. (BY MR. ROBBINS) All right. And would
 15 you further agree that the monitoring of traffic's
 16 response to the implementation of the traffic
 17 control devices during the course of the project is
 18 also important?
 19 A. I'm sorry. I don't get your meaning.
 20 Q. Sure.
 21 What I'm saying is: Would you further
 22 agree that the monitoring of the response by
 23 traffic -- that is, the motoring public -- to the
 24 implementation of the temporary traffic control
 25 plan -- and by that, I mean the placement of the

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1 MR. MOORE: Object to the form. Foundation.
 2 THE WITNESS: I would almost say that a
 3 traffic queue would be itself a warning sign of the
 4 construction area. The brake lights alone would
 5 tell you that there's something going on ahead of
 6 you.
 7 Q. (BY MR. ROBBINS) All right. I move to
 8 strike as nonresponsive.
 9 Let me ask it again.
 10 I would just inquire as to whether you
 11 would agree that the existence of a traffic queue
 12 within a work zone -- through a work zone extending
 13 into the advanced warning area is itself a
 14 potential hazard to motorists traveling on that
 15 same highway, particularly late at night?
 16 MR. MOORE: Object to the form and
 17 foundation.
 18 Go ahead, sir.
 19 THE WITNESS: I would agree.
 20 Q. (BY MR. ROBBINS) Okay. And the hazard
 21 that it presents is a hazard or a risk of rear-end
 22 collisions.
 23 Would you agree with that as well?
 24 A. I would agree.
 25 Q. And that risk is even more acute when

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1 traffic control devices -- is important; that it's
 2 important for the traffic control manager to
 3 monitor how traffic is responding to the plan?
 4 A. Correct, yes.
 5 MR. PERKINS: Object to the form.
 6 Q. (BY MR. ROBBINS) I get -- I'm able to
 7 get it eventually, but it takes me a --
 8 Your patience is appreciated.
 9 All right. Mr. Garling, in looking
 10 through the documents that have been produced in
 11 this case, it seems that your first involvement
 12 with the I-84 project, what we'll call
 13 "the project," came about in or around -- I think
 14 it was June of 2018.
 15 Is that in conformance with your
 16 recollection?
 17 A. Correct.
 18 Q. Okay. And how is it that you were
 19 assigned to the I-84 project in June of 2018?
 20 A. Based upon my experience on other
 21 projects and the traffic control manager that was
 22 on that project needing to leave for military
 23 orders, I was placed as a replacement for him.
 24 Q. Okay. When was it that you found out
 25 that you were going to be a replacement for --

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1 And that's Mr. Roper, Josh Roper?
 2 A. Correct.
 3 Q. When did you find out that you were
 4 going to be a replacement for Mr. Roper on the I-84
 5 project?
 6 A. It was shortly before the operations in
 7 2018 started when we found out that his military
 8 orders were in conflict with the project.
 9 Q. Okay. Can you recall, was it in May of
 10 2018 or was it earlier than May of 2018 or do you
 11 know one way or the other?
 12 A. I don't recall.
 13 Q. Okay. All right.
 14 Once you found out -- and I don't mean
 15 immediately, but shortly after finding out you were
 16 going to be assigned to the I-84 project, did you
 17 have access to and did you personally review the
 18 temporary traffic control plan for the I-84
 19 project?
 20 A. Yes.
 21 Q. And as part of that review, did it also
 22 include a review of the special provisions
 23 associated with that plan?
 24 A. Yes.
 25 Q. Okay. What purpose, is it your

Page 40

1 engineer --
 2 A. Yes.
 3 Q. -- for this particular project?
 4 A. Yes.
 5 Q. Okay. In the two other projects that
 6 you had worked as traffic control manager on, the
 7 Highway 55 and Highway 52 projects, do you know if
 8 the special provisions of those two projects also
 9 had similar provisions insofar as how to amend the
 10 temporary traffic control plan?
 11 A. I don't recall.
 12 Q. Okay. Before starting your work as the
 13 traffic control manager for the I-84 project, in
 14 addition to reviewing the temporary traffic control
 15 plan and the special provisions, did you also have
 16 a chance to talk with Mr. Roper about his
 17 experience on the project in 2017?
 18 A. Yes.
 19 Q. Okay. And in those discussions, did
 20 Mr. Roper inform you as to who the chain of
 21 communication would be on the project as between
 22 Specialty and the prime contractor and/or ITD?
 23 A. Yes.
 24 Q. Okay. When was it that you had these
 25 conversations?

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1 understanding, is served by the special provisions
 2 associated with the temporary traffic control plan?
 3 A. To ensure that we stay inside our
 4 limits, whether it be time or the amount of lanes
 5 taken or make sure we're kept --
 6 Sorry.
 7 Make sure we have an understanding of
 8 what is expected of us.
 9 Q. All right. How properly to implement
 10 the plan --
 11 A. Exactly.
 12 Q. -- for general -- want of a better term?
 13 Okay. Now, the special provisions, at
 14 least for the I-84 plan, was it your recollection
 15 that they also had a paragraph or paragraphs within
 16 them that addressed the procedure to be followed if
 17 the temporary traffic control plan was to be
 18 amended or modified in any way?
 19 A. Yes.
 20 Q. Okay. And that called for the
 21 presentation of the proposed modification in
 22 writing?
 23 A. Yes.
 24 Q. And that called for that proposed
 25 modification to be reviewed and stamped by an

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1 A. Shortly before we started operations.
 2 Q. Okay. And by "operations," we're
 3 talking about, you know, around the June 2018 time
 4 frame?
 5 A. Correct.
 6 Q. Okay. And what, if you recall, were you
 7 told by Mr. Roper concerning that chain of
 8 communication between Specialty and the contractor
 9 and ITD?
 10 A. He had informed me who the inspectors
 11 were the previous year, who the foreman for Penhall
 12 Company was, and that -- that was it.
 13 Q. Okay. Do you recall as you sit here
 14 today who Mr. Roper informed you the inspectors
 15 were for the previous year on the project?
 16 A. The previous year, he had Mike Shepard
 17 and Steve Erichson as inspectors for the 2017
 18 operations.
 19 Q. Okay. All right.
 20 Had you worked with either Mike Shepard
 21 or Steve Erichson on any other project?
 22 A. I had just come from the Highway 52
 23 project, which Mike Shepard was an inspector on.
 24 Q. Okay. Did you know anything before
 25 starting the I-84 project about the background or

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1 experience of Mr. Shepard?
 2 A. No.
 3 Q. Okay. So you wouldn't know one way or
 4 the other as to whether he held an engineering
 5 degree or license?
 6 A. No.
 7 Q. Okay. Now, do you recall who Mr. Roper
 8 told you was the foreman for Penhall?
 9 A. Bruce Kidd, I believe is his last name.
 10 Q. Okay. Had you ever worked with Penhall
 11 on any of the prior projects that you've
 12 identified, either in your position as a traffic
 13 control manager or as setup and maintenance?
 14 A. I had not.
 15 Q. Okay. Did Mr. Roper tell you anything
 16 about the quality of the lines of communication
 17 between he and the ITD inspectors that previous
 18 year?
 19 A. I --
 20 Q. That is, did he say it was easily --
 21 they were easily contacted or he had a good working
 22 relationship with the inspectors? Anything along
 23 those lines?
 24 A. We didn't talk about it.
 25 Q. Same question insofar as Penhall is

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1 Q. Did you request --
 2 Strike that.
 3 Had you already read the traffic control
 4 plan for the I-84 project before these
 5 conversations took place?
 6 A. Yes.
 7 Q. Okay. When you were told that by
 8 Mr. Roper -- that is, that Penhall had requested
 9 three-lane closure on I-84 -- did you ask to see
 10 written confirmation that an amendment to the
 11 temporary traffic control plan had been presented
 12 to and approved by the State?
 13 A. No.
 14 Q. Okay. Is there a reason why you didn't
 15 ask to see that?
 16 A. I didn't think of it.
 17 Q. Okay. Did Mr. Roper tell you anything
 18 as to whether he agreed with the request by Penhall
 19 for a three-lane closure on I-84 as had been
 20 implemented in 2017?
 21 A. He never conveyed whether he was for or
 22 against it. He had only stated that they had done
 23 it the previous year.
 24 Q. Okay. And I may have asked, and if I
 25 did, please forgive me.

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1 concerned.
 2 Did you talk about the quality of the
 3 line of communication between Specialty and
 4 Penhall?
 5 A. He did not comment on the quality of it
 6 other than saying that he communicated with them
 7 nightly.
 8 Q. Okay. During the course of these
 9 communications, did Mr. Roper inform you that there
 10 had been any changes or amendments to the temporary
 11 traffic control plan as originally approved during
 12 the 2017 time frame?
 13 A. Yes.
 14 Q. Okay. And what did he tell you in that
 15 regard?
 16 A. That Penhall had requested for three
 17 lane closures to be set on I-84.
 18 Q. And did Mr. Roper tell you whether
 19 Penhall's request in that regard had been approved
 20 by the State?
 21 A. No.
 22 Q. Okay. Did you inquire as to whether
 23 Penhall's request in that regard had been approved
 24 by the State?
 25 A. No.

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1 But were you told by Mr. Roper as to
 2 whether Penhall had obtained approval from the
 3 State before the three lane closures were
 4 implemented in 2017?
 5 A. In 2017, no.
 6 Q. Okay. Did Mr. Roper tell you that the
 7 three lane closures that occurred in 2017 were made
 8 by Penhall without the approval of ITD?
 9 A. I don't know.
 10 Q. Did you inquire of Mr. Roper as to
 11 whether ITD had approved the three lane closures in
 12 2017?
 13 A. No.
 14 Q. Did you inquire of Mr. Roper as to
 15 whether ITD knew of the three lane closures in
 16 2017?
 17 A. Yes.
 18 Q. Okay. And what did Mr. Roper tell you
 19 in that regard?
 20 A. That he had spoken with the inspectors
 21 and that there was an agreement between Penhall and
 22 ITD.
 23 Q. Okay. And by that, did he tell you that
 24 the ITD inspectors told him, Mr. Roper, that they
 25 knew of the three lane closures and they personally

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1 approved of the three lane closures?
 2 MR. MOORE: Object to the form.
 3 THE WITNESS: I -- I don't know. I wasn't
 4 there in 2017.
 5 Q. (BY MR. ROBBINS) Okay. No, no. I
 6 understand you weren't there in 2017.
 7 My question is whether Mr. Roper told
 8 you that he was informed by the ITD inspectors that
 9 they were both informed of the changes and approved
 10 of the changes to reduce four open lanes of highway
 11 to a single open lane.
 12 A. I know that they were informed.
 13 Q. How do you know that they were informed?
 14 A. From conversations with Josh Roper.
 15 Q. In other words, Josh Roper told you that
 16 they were -- they told him that they were informed
 17 about the three lane --
 18 A. Correct.
 19 Q. -- closures? Okay.
 20 Did you ever ask either Mike Shepard or
 21 Steve Erichson as to whether they were
 22 knowledgeable or informed of the three lane
 23 closures in 2017?
 24 A. Neither were present on the Penhall
 25 project when we were doing operations.

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1 Is that correct?
 2 A. Correct.
 3 Q. All right. Now, in your position as a
 4 traffic control supervisor, did you have an opinion
 5 as to whether in order to properly manage a
 6 project, you would have to see written confirmation
 7 of any changes to a temporary traffic control plan
 8 before you approved the implementation of those
 9 changes?
 10 MR. PERKINS: Object to the form. Calls for
 11 speculation.
 12 THE WITNESS: I was not concerned about it as
 13 far as the change made to the traffic control plan
 14 because field adjustments and changes happen
 15 regularly on these projects.
 16 Q. (BY MR. ROBBINS) Okay. But prior to the
 17 I-84 project, you had never previously been
 18 involved in a project where there had been an
 19 adjustment that involved the reduction of open
 20 lanes beyond that which had been approved in an
 21 engineer-sealed temporary traffic control plan.
 22 Is that correct?
 23 A. Correct.
 24 Q. Okay. In your position as a traffic
 25 control supervisor/traffic control manager, do you

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1 Q. Okay. Though they may not have been
 2 present on the project, did you reach out to either
 3 over the phone?
 4 Certainly Mr. Shepard based upon the
 5 fact that you knew him before, did you reach out to
 6 Mr. Shepard and inquire of him as to whether --
 7 just to confirm that ITD did, in fact, know of and
 8 approve the three lane closures?
 9 A. I did not.
 10 Q. Okay. Do you know whether --
 11 Well, and I previously asked you, and I
 12 think you confirmed for me that you didn't know
 13 anything about the background or experience of
 14 either Mr. Shepard or Mr. Erichson prior to your
 15 involvement in this I-84 project.
 16 A. Correct.
 17 Q. All right. And because I'm such a
 18 wonderful inquisitor, that would mean to me that
 19 you didn't know one way or the other as to whether
 20 either Mr. Shepard or Mr. Erichson held an engineer
 21 degree or license?
 22 A. Correct.
 23 Q. Okay. Now, in May or June of 2018, you
 24 already had received your traffic control
 25 supervisor certification.

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1 think it is important for an engineer to evaluate
 2 whether the remaining lanes open to traffic would
 3 be adequate to accommodate traffic volume
 4 historically in that area if there is going to be a
 5 reduction of open lanes greater than that which was
 6 originally called for in the temporary traffic
 7 control plan?
 8 MR. PERKINS: Object to the form.
 9 THE WITNESS: That would be a reasonable
 10 thing to look into.
 11 Q. (BY MR. ROBBINS) And it would be
 12 reasonable in your mind so that the individual who
 13 is managing the traffic control plan would know
 14 that the available lanes open to traffic would be
 15 sufficient to accommodate the volume historically
 16 in that area?
 17 MR. PERKINS: Object to the form. Calls for
 18 speculation.
 19 THE WITNESS: Yes.
 20 Q. (BY MR. ROBBINS) All right. And the
 21 interest there is to avoid the development of
 22 lengthy queues through the work zone area and back
 23 into the advanced warning area?
 24 MR. PERKINS: Object to the form. Misstates
 25 his prior testimony.

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1 MR. MOORE: Object to the foundation.
 2 MR. ROBBINS: Well, Jesus. How is that
 3 different than object to the form?
 4 MR. MOORE: Well, there is a significant
 5 difference, but if you want to get into an argument
 6 all the time, go ahead and do it.
 7 MR. ROBBINS: Well --
 8 MR. MOORE: Just --
 9 **Q. (BY MR. ROBBINS) You can respond to the**
 10 **question, sir.**
 11 A. Yeah, I'm sorry. Can you repeat the
 12 question?
 13 **Q. Sure.**
 14 **And the interest there -- that is, the**
 15 **interest in having an engineer review and approve**
 16 **of any changes to a temporary traffic control**
 17 **plan -- is to avoid the development of lengthy**
 18 **queues through the work zone area and back into the**
 19 **advanced warning area.**
 20 **Would you agree with that?**
 21 MR. PERKINS: Same objections.
 22 MR. MOORE: Same objection.
 23 THE WITNESS: Yes.
 24 MR. ROBBINS: Okay. Now, I want to try to
 25 maintain true to form, so it's been about an hour.

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1 **course of the break, is there any aspect of the**
 2 **testimony that you have given thus far that you**
 3 **wish to amend or revise in any way?**
 4 A. No.
 5 **Q. Okay. We were discussing discussions**
 6 **had between you and Mr. Roper leading into your**
 7 **involvement of the I-84 -- in the I-84 project**
 8 **prior to June of 2018.**
 9 **Let me ask you: Did you have any**
 10 **discussions with Daniel Kircher about the I-84**
 11 **project before you started your work in June of**
 12 **2018? At least that you can recall at this point?**
 13 A. Nothing more than being told I was going
 14 out on that project.
 15 **Q. Okay. Upon your involvement in the**
 16 **project after having reviewed the temporary traffic**
 17 **control plan, special provisions, and your**
 18 **discussions with Mr. Roper, did you reach out to**
 19 **the Penhall superintendent for this project,**
 20 **Mr. Bruce Kidd?**
 21 A. No.
 22 **Q. Okay. Did you attempt to identify who**
 23 **the ITD inspectors would be assigned to this**
 24 **project during the course of your involvement in**
 25 **it?**

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1 Why don't we take a break.
 2 MR. MOORE: Thank you.
 3 [Discussion held off the record.]
 4 THE VIDEOGRAPHER: The time is 11:02, and we
 5 are off the record.
 6 [Break taken from 11:02 a.m. to 11:19 a.m.]
 7 THE VIDEOGRAPHER: We are back on the record,
 8 and the time is 11:28 [sic].
 9 MR. ROBBINS: Off the record, additional
 10 documents -- not additional documents. Documents
 11 were kindly provided to me that had previously been
 12 produced in this litigation by Specialty. They had
 13 been produced as Bates numbers 66 through 412.
 14 From that, we have extracted what we believe are
 15 some pertinent items, and they are now attached to
 16 Exhibit 5 as Tab 107.
 17 I don't intend to address those exhibits
 18 with Mr. Garling, although I may, but they will be
 19 addressed in at least one deposition tomorrow.
 20 MR. MORTIMER: And they've been sent to all
 21 counsel through e-mail just prior.
 22 MR. ROBBINS: All right.
 23 **Q. (BY MR. ROBBINS) Okay. We're back on**
 24 **the record now, Mr. Garling.**
 25 **As I had indicated before, during the**

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1 **And, again, that's before your becoming**
 2 **actively involved in the project in June.**
 3 A. No.
 4 **Q. Okay. Let me give you the names of a**
 5 **couple of individuals and ask whether you had had**
 6 **previously a contact with them in either the**
 7 **Highway 55, Highway 52, or the chip seal and Gowen**
 8 **and Broadway projects.**
 9 **With regard to your work on any of those**
 10 **projects, had you had contact with or interaction**
 11 **with Mr. Blaine Schwendiman?**
 12 A. I had not had contact with Blaine
 13 Schwendiman before the Penhall project.
 14 **Q. Okay. How about a gentleman by the name**
 15 **of Jon Mensinger?**
 16 A. Yes.
 17 **Q. Okay.**
 18 A. I had contact with him on the Highway 52
 19 project.
 20 **Q. All right. And you knew Mr. --**
 21 **Your contact with Mr. Mensinger on the**
 22 **Highway 52 project was in your capacity as a**
 23 **traffic control manager and his capacity as an**
 24 **inspector for the State?**
 25 A. Correct.

<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. Did you know anything about the 2 background and experience of Mr. Mensinger during 3 the course of your involvement with him in the 4 Highway 52 project? 5 A. No. 6 Q. Okay. Did you reach out to 7 Mr. Mensinger before your active involvement in 8 June of 2018 concerning the I-84 project? 9 A. No. 10 Q. Okay. Now, we've talked about your 11 having reviewed the temporary traffic control plan 12 and the special provisions concerning the temporary 13 traffic control plan for the I-84 project. 14 Do you recall where it was you looked to 15 inform yourself about those two documents? In 16 other words, where did you go to look at the 17 temporary traffic control plan? What documents did 18 you look at? Similarly, what documents did you 19 look at in order to review the special provisions? 20 A. I had my own copy of the contract and 21 the project plans. 22 Q. Okay. When you say you had your own 23 copy of the contract, was that your own copy of the 24 contract between the State and Penhall with regard 25 to the I-84 project?</p>	<p style="text-align: right;">Page 55</p> <p>1 A. It was -- it was the project contract 2 that gets distributed once you go to the 3 pre-construction meeting and such. 4 Q. Right. But you didn't attend the 5 original pre-construction meeting? 6 A. No. 7 Q. That is correct? 8 Was there a pre-startup meeting that 9 preceded the resumption of activities on the I-84 10 project that took place in May of 2018, to your 11 knowledge? 12 A. I'm not aware. 13 Q. Okay. If there was, you didn't attend 14 any such re-startup meeting? 15 A. Correct. 16 Q. Okay. Just so I can be sure I know, 17 when you have identified that you took a look at 18 the contracts that are distributed during the 19 startup meeting, those contracts call for -- 20 Strike that. 21 One of the contracts is the 22 Penhall/Specialty contract that we have a copy of, 23 and I can show it to you. But that contract calls 24 for the subcontractor, in this case Specialty, to 25 be provided with the contract documents entered</p>
<p style="text-align: right;">Page 56</p> <p>1 into between the State and Penhall. 2 Are those the contract documents you're 3 speaking of? 4 A. I can't say. 5 Q. No worries. 6 Let me do this. We'll not spend a lot 7 of time, but let me ask you, please, to take a look 8 at Binder 1-A, Tab 6, page -- let's just start at 9 the beginning, just page 1. 10 And just taking a look at that, do you 11 recognize at least that face page as being one of 12 the documents that you reviewed to familiarize 13 yourself with the temporary traffic control plan 14 and special provisions? 15 A. Correct. I had a copy. 16 Q. Okay. Let me ask you to take a look at 17 page 2 of Tab 6, and on page 2, the resident 18 engineer for the I-84 project is identified there 19 as being Bryon Breen? 20 A. Correct. 21 Q. Had you had any contact with Bryon Breen 22 in either the Highway 55 or Highway 52 projects? 23 A. No. 24 Q. Okay. Did you have any contact with 25 Mr. Breen during the course of your involvement in</p>	<p style="text-align: right;">Page 57</p> <p>1 the I-84 project? 2 A. No. 3 Q. Okay. Did you hold an understanding as 4 to whether it was Mr. Breen who was the one that 5 would have to review and approve any proposed 6 change to the temporary traffic control plan in the 7 I-84 project, at least as proposed in the contract 8 documents themselves? 9 A. Yes. 10 Q. Let me ask you to take a look at page 27 11 of Tab 6. And up in the section that's entitled 12 "Staging and Temporary Traffic Control Plans" and 13 directly underneath that, "Alternate Staging and 14 Temporary Traffic Control Plans" -- 15 I'll give you a chance to review that. 16 My question, after you get a chance to 17 review, is whether your understanding is that this 18 is the section of the State/Penhall contract that 19 described how a temporary traffic control plan 20 could be amended or revised. 21 A. I'm sorry. What was your question on 22 this? 23 Q. My question is, and I can read it, after 24 you get a chance to review is whether your 25 understanding is that this is the section of the</p>

<p style="text-align: right;">Page 58</p> <p>1 State/Penhall contract that described how a 2 temporary traffic control plan could be amended or 3 revised. 4 A. Yes. 5 Q. Okay. Down the last two sentences of 6 the paragraph that starts, "The ultimate staging 7 and temporary traffic control plans," it starts, 8 "Changes in traffic will not be allowed until 9 alternate plans are approved in writing." 10 My question to you is: Did you ever in 11 your involvement with the I-84 project see changes 12 to the plan that had been approved by the State in 13 writing? 14 A. No. 15 Q. Okay. At any time during your 16 involvement with the project, had you ever been 17 told that the resident engineer had ever approved a 18 revision of the temporary traffic control plan as 19 originally approved to reduce four open lanes of 20 highway to a single open lane? 21 A. Not to my knowledge. 22 Q. Okay. Let me ask you to take a look at 23 page 28 of Tab 6, please. And directing your 24 attention down to the section entitled "Working 25 Hours."</p>	<p style="text-align: right;">Page 59</p> <p>1 Is it your understanding, once you get a 2 chance to take a look at that, that this is the 3 provision of the State/Penhall contract that 4 specifies what the work hours are going to be for 5 the project and also what restrictions in terms of 6 lane usage would be approved in the contract 7 between the State and Penhall? 8 A. Yes. This covers the time and 9 restrictions. 10 Q. Okay. And under "Restrictions," you see 11 the second paragraph in the first box says, "For 12 existing four-lane sections and greater, a minimum 13 of two lanes shall be maintained in each the 14 eastbound and westbound direction or as shown in 15 the temporary traffic control plans." 16 My question to you, sir, is: Do you 17 know whether that particular restriction was ever 18 revised during the course of this project in 19 writing? 20 A. Not to my knowledge. 21 Q. And to your knowledge, had any revision 22 of that particular restriction that a four-lane 23 section and greater could not be reduced to a 24 minimum of -- beyond a minimum of two open lanes 25 was ever approved by the resident engineer on this</p>
<p style="text-align: right;">Page 60</p> <p>1 project? 2 A. Not to my knowledge. 3 Q. Let's take a look at page 34 of Tab 6, 4 please. And there, in particular, that's the 5 section that identifies and describes the traffic 6 control manager. 7 Now, under the "Construction 8 Requirements," there is a provision that the TCM, 9 that is the traffic control manager, will be ATSSA 10 certified. And you have previously testified you 11 had TCS and TCT certification as of June of 2018, 12 correct? 13 A. Correct. 14 Q. All right. "With a minimum of five 15 years of work zone traffic control experience to 16 maintain, monitor, and manage traffic control." 17 As of June of 2018, you did not have 18 five -- a minimum of five years of work zone 19 traffic control experience as designated there. 20 Would that be correct? 21 A. Correct. 22 Q. All right. Do you know whether the 23 State was ever informed that although you did have 24 ATSSA certification, that you did not have a 25 minimum of five years of the identified work</p>	<p style="text-align: right;">Page 61</p> <p>1 experience prior to your involvement in the I-84 2 project? 3 A. Not to my knowledge. 4 Q. Okay. Do you know whether the State was 5 so informed before your involvement in either the 6 Highway 55 or Highway 52 projects? 7 A. Not to my knowledge. 8 Q. Do you know whether there was a similar 9 requirement in either the Highway 55 or Highway 52 10 requirements, that the TCM must have a minimum of 11 five years' work zone traffic control experience? 12 A. Not to my knowledge. 13 Q. It did not have that to your knowledge 14 or -- 15 A. I don't know. 16 Q. -- you don't know one way or the other? 17 Okay. 18 When we identified special provisions 19 that you reviewed for this particular project, as 20 they would address the temporary traffic control 21 plan, would you agree that those special provisions 22 are those that start on page 23 and down at the 23 bottom right-hand portion of that document 24 encompass page 1 through 23? 25 And I'll give you a chance to review</p>

<p style="text-align: right;">Page 62</p> <p>1 quickly 1 through 23, just to confirm that those 2 are the special provisions that you reviewed 3 pertinent to the TTCP on this project. 4 A. That would be correct. 5 Q. Okay. Now, insofar as the actual 6 temporary traffic control plan itself is concerned, 7 let me ask you to turn, please, to Tab 9. And 8 we'll start at page 245. And what you will have to 9 do is open up and you will see it at about the 10 midpoint of the lower portion -- the first page. 11 You can take a look at the first page there. 12 Yeah. Right down in the middle. 13 MR. PERKINS: Right there. 14 THE WITNESS: Oh, gotcha. 15 Q. (BY MR. ROBBINS) Yeah. Page 245, as to 16 be distinguished from Bates stamp ITD 00. 17 So starting at that page, I'd ask you to 18 just look through the successive few pages, and 19 I'll get down to the pages that we'll have some 20 discussion on. But is it your understanding that 21 these are the pages starting at page 245 of Tab 9 22 that comprise the temporary traffic control plan 23 itself? 24 And what you're looking at is page 245. 25 A. Correct. The startup --</p>	<p style="text-align: right;">Page 63</p> <p>1 Q. Is that -- 2 To your way of reviewing those 3 documents, does that begin the temporary traffic 4 control plan? 5 A. Correct. That is what would be 6 concerning Specialty. 7 Q. Okay. Now, you'll see the stamp of 8 Ken Colson. 9 Do you happen to know a gentleman by the 10 name of Ken Colson? 11 A. I do not. 12 Q. Okay. And so when you reviewed the 13 temporary traffic control plan for the I-84 14 project, the documents that you reviewed included 15 the temporary traffic control general notes at 16 page 254? 17 A. Correct. 18 Q. And that reiterates much of what had 19 been set forth in the special provisions that we 20 previously addressed in your testimony. 21 Is that correct? 22 A. Correct. 23 Q. And the provision for changes in the 24 temporary traffic control plan are addressed in 25 Bullet Point 3 under "Temporary Traffic Control</p>
<p style="text-align: right;">Page 64</p> <p>1 General Notes," agreed? 2 A. Agreed. 3 Q. And paragraph number 4 reads, "Where 4 conditions will be monitored by the contractor 5 under varying conditions of traffic volume, light, 6 and weather to ensure traffic control measures are 7 operating effectively and that all devices used are 8 clearly visible at all times and in good repair." 9 When it uses the term -- "it" being the 10 document, uses the term "contractor" there, did you 11 understand that to mean Specialty or Penhall or 12 both Specialty and Penhall? 13 A. Specialty. 14 Q. Okay. Did you have an understanding 15 during the course of this -- your involvement in 16 the I-84 project that Penhall also had 17 responsibilities for the proper implementation of 18 the temporary traffic control plan in addition to 19 those responsibilities delegated to Specialty? 20 A. Yes. 21 Q. Okay. 22 MR. GRAHAM: Object to the form. 23 Q. (BY MR. ROBBINS) And what was your 24 understanding of the extent of those 25 responsibilities that Penhall had on the I-84</p>	<p style="text-align: right;">Page 65</p> <p>1 project insofar as the proper implementation of the 2 temporary traffic control plan is concerned? 3 MR. GRAHAM: Objection. Calls for 4 speculation. 5 THE WITNESS: It would be a safety aspect; 6 making sure that we, as the subcontractor, are 7 adhering to the traffic control plan. 8 Q. (BY MR. ROBBINS) Okay. And during the 9 course of his involvement with the project in 2017, 10 did you -- were you informed by Mr. Roper that 11 there was that type of relationship; that is, where 12 Penhall would also be involved in monitoring the 13 appropriate implementation of the temporary traffic 14 control plan during the course of his involvement 15 in the project in 2017? 16 A. Roger -- or excuse me -- 17 MR. GRAHAM: Object to the form. Foundation. 18 THE WITNESS: Roper and I did not talk about 19 that. 20 Q. (BY MR. ROBBINS) Okay. Did you have any 21 discussions during your involvement in the project 22 in 2018 with any representative of Penhall during 23 which you and the Penhall representative discussed 24 the joint monitoring of the implementation of the 25 temporary traffic control plan?</p>

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1 A. No.

2 Q. Okay. During the course of your

3 involvement in the I-84 project, though, did you

4 develop an understanding that Penhall was in some

5 fashion informed in the monitoring of the

6 implementation of the temporary traffic control

7 plan?

8 A. I'm sorry. Can you rephrase that?

9 Q. Sure.

10 During the course of your involvement in

11 the I-84 project, did you develop an understanding

12 from your own observations or discussions there

13 that Penhall was in some fashion informed --

14 involved in the monitoring of the implementation of

15 the temporary traffic control plan?

16 A. They weren't fairly involved. It was

17 mostly --

18 They relied on us.

19 Q. What do you mean? Oh, they relied

20 upon --

21 A. Specialty.

22 Q. -- you, being Specialty, insofar as the

23 implementation of the plan was concerned?

24 A. Correct.

25 Q. Okay. Did you receive any instructions

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1 directions from the ITD inspectors regarding the

2 implementation of the temporary traffic control

3 plan?

4 A. None.

5 Q. Okay. From your own observations during

6 your involvement in the I-84 project, did you

7 observe ITD inspectors monitor the implementation

8 of the temporary traffic control plan during the

9 course of the project itself?

10 MR. MOORE: Object to the form. Foundation.

11 And I think it's vague.

12 Go ahead, sir.

13 THE WITNESS: Not much.

14 Q. (BY MR. ROBBINS) While you were there at

15 the project after the temporary traffic control

16 devices had been placed, did you see the ITD

17 inspectors move through the project and inspect or

18 otherwise observe how the temporary traffic control

19 devices had been placed by Specialty?

20 MR. MOORE: Object to the form and

21 foundation.

22 Go ahead.

23 THE WITNESS: No.

24 Q. (BY MR. ROBBINS) Okay. Did you ever see

25 the ITD inspectors observe the effect the temporary

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1 or directions from Penhall insofar as the

2 implementation of the temporary traffic control

3 plan is involved?

4 A. At our first meeting before operations

5 in June, they instructed us that we were to close

6 three lanes.

7 Q. And we'll get to that.

8 Other than that particular instruction,

9 during the course of your involvement in the I-84

10 project itself, did you receive any other

11 instructions or directions from Penhall insofar as

12 the implementation of the temporary traffic control

13 plan was concerned?

14 A. Almost nightly.

15 Q. Okay.

16 A. We kept in constant communication of

17 what they would need the next night.

18 Q. All right. From your observations

19 during your involvement in the I-84 project, did

20 you see Penhall review the placement of traffic

21 control devices on a nightly basis as implemented

22 by Specialty?

23 A. No.

24 Q. Okay. From your own observations during

25 the course of the I-84 project, did you receive any

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1 traffic control devices, as placed by Specialty,

2 had on motoring traffic going through the work

3 zone?

4 MR. MOORE: Object to the form. Foundation.

5 Go ahead.

6 THE WITNESS: Not much.

7 Q. (BY MR. ROBBINS) By "not much," you saw

8 it, but it was only occasionally?

9 MR. MOORE: Object to the form.

10 THE WITNESS: Passing comments on -- on site.

11 Q. (BY MR. ROBBINS) And what passing

12 comments can you describe for me that indicated to

13 you that the ITD inspector or inspectors was

14 observing the response of traffic to the placement

15 of the TTCP?

16 A. I would have conversations with the ITD

17 inspectors about their thoughts on the traffic

18 control setup and traffic flow, and they would

19 convey their thoughts.

20 Q. With what frequency would you have these

21 discussions with the ITD inspectors regarding the

22 TTCP setup and its effect on traffic?

23 Was that a nightly occurrence or was it

24 weekly or --

25 A. As often as I could.

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1 Q. And can you give me an estimate -- it's
 2 kind of one of these areas where I'm going to ask
 3 for an estimate -- as to how frequently during the
 4 course of a week, if at all, these types of
 5 discussions were held between you and the ITD
 6 inspector or inspectors?
 7 A. Three, four times.
 8 Q. Okay. And can you describe for me, if
 9 there was, the general content of these
 10 discussions.
 11 What would you ask of them and what
 12 would they respond to you?
 13 A. I would ask if they had observed the
 14 setup, if they had any concerns or comments, and
 15 then we would go from there.
 16 Q. Okay. And were these conversations
 17 taken --
 18 Strike that.
 19 Did these conversations take place at a
 20 point in time after the setup had been accomplished
 21 and during the period of time that traffic was
 22 adjusting to the setup?
 23 MR. PERKINS: Object to the form.
 24 THE WITNESS: Not every time.
 25 Q. (BY MR. ROBBINS) Okay. Would these

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1 Strike that.
 2 Did Mr. Schwendiman provide you with any
 3 substantive response to your inquiries as to
 4 whether he thought that the TTC setup was
 5 appropriate?
 6 A. Nothing that concerned him. He seemed
 7 to be content and confident.
 8 Q. Okay. Did Mr. Schwendiman tell you that
 9 he had ever reviewed the temporary traffic control
 10 plan?
 11 A. No.
 12 Q. Did you believe that Mr. Schwendiman had
 13 reviewed the temporary traffic control plan?
 14 A. Yes.
 15 Q. Had you had similar discussions with the
 16 ITD inspectors during the course of your
 17 involvement in the Highway 55 and Highway 52
 18 projects?
 19 A. Yes.
 20 Q. Did you have a similar understanding
 21 during the course of those projects that the ITD
 22 inspectors with whom you were having those
 23 conversations had informed themselves as to the
 24 content of the temporary traffic control plans?
 25 A. Not that I recall.

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1 conversations come up more frequently when there
 2 was a change in the setup that you on behalf of
 3 Specialty was implementing?
 4 A. No.
 5 Q. Okay. If there was a routine reason for
 6 the occurrence of discussions such as this, what
 7 would prompt these interactions that you have
 8 described between you and the ITD inspectors that
 9 happened maybe three to four times a week?
 10 A. I would ensure that --
 11 MR. MOORE: Object to the form. Foundation.
 12 Misstates his testimony.
 13 Go ahead.
 14 THE WITNESS: I would ensure if they had any
 15 questions. I -- I did it as a part of my job.
 16 Q. (BY MR. ROBBINS) Okay.
 17 A. Make sure ITD was content with what was
 18 going on.
 19 Q. All right. And did you have these
 20 discussions with Mr. Schwendiman?
 21 A. Yes.
 22 Q. And did you have these discussions with
 23 Mr. Mensinger?
 24 A. Not as often as with Mr. Schwendiman.
 25 Q. And did Mr. Schwendiman --

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1 Q. Okay. Did you believe, though, that
 2 those ITD inspectors had been informed of the
 3 provisions of the temporary traffic control plans?
 4 A. Yes.
 5 Q. Okay. Did Mr. Schwendiman ever express
 6 to you any concern about the formation of a traffic
 7 queue through the work zone extending into the
 8 advanced warning area while -- during the course of
 9 your involvement in the I-84 project?
 10 A. No.
 11 Q. Let me ask you, please, to take a look
 12 at page 255, and over on the left-hand side of
 13 page 255, there is a reference to temporary traffic
 14 control sign quantities and types of signs that are
 15 identified there.
 16 Down over in the left-hand margin,
 17 looking down towards the end, there's a reference
 18 to "Two Left Lanes Closed Ahead" and "Two Right
 19 Lanes Closed Ahead," correct?
 20 A. Correct.
 21 Q. I'll give you a chance to look through
 22 that listing of traffic control signs/quantities.
 23 My question will be: Do you see
 24 anywhere on there a reference to "Three Left Lanes
 25 Closed Ahead" or "Three Right Lanes Closed Ahead"?

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1 Q. Did it occur prior to June 16, 2018?
 2 A. Yes.
 3 Q. Okay. And what were the circumstances
 4 under which that inquiry took place? I mean, what
 5 was prompting your discussion?
 6 A. The contractor had finished work in the
 7 middle joint, which allowed us to pull off the
 8 third lane closure and open up to traffic two
 9 lanes.
 10 Q. Okay. And what was the cause for
 11 concern in opening up traffic to two lanes at that
 12 point?
 13 Was it the development of a traffic
 14 queue?
 15 A. No.
 16 MR. PERKINS: Object.
 17 Q. (BY MR. ROBBINS) What was the concern
 18 there, if there was one, that prompted that
 19 inquiry?
 20 A. There was no concern. It was the
 21 contractor had finished the work in the lane, and
 22 we were able to open up another lane.
 23 Q. Okay.
 24 A. So we did so.
 25 Q. So once the work finished, you could

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1 You know that from what Mr. Roper
 2 informed you personally?
 3 A. Yes.
 4 Q. Asked another way, how do you know that?
 5 A. Yes.
 6 Q. Okay.
 7 A. From conversations with Josh Roper.
 8 Q. All right. And did Mr. Roper explain to
 9 you why it was he requested ISP, Idaho State
 10 Police, assistance in traffic control during 2017?
 11 A. To get people to slow down.
 12 Q. Okay. Was that in the course of a
 13 triple-lane closure of an otherwise four-lane
 14 section of highway?
 15 A. I don't know.
 16 Q. Okay. Did he tell you that it had
 17 anything to do with traffic volume in addition to
 18 traffic speed through a work zone area?
 19 A. No.
 20 Q. Okay. It was just traffic speed?
 21 A. Yes.
 22 Q. And did Mr. Roper tell you what
 23 response --
 24 Strike that.
 25 Did Mr. Roper tell you to whom he made

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1 then open up the lane and then allow for freer flow
 2 of traffic through the area?
 3 A. Correct.
 4 Q. Okay. And that was where there had been
 5 a reduction of four lanes down to a single lane?
 6 A. Correct.
 7 Q. Okay. Had you ever been told during
 8 your involvement in the I-84 project prior to
 9 June 16, 2018, that if severe congestion were to
 10 develop as a result of a lane closure, that ITD
 11 would call for the State Highway Patrol to come
 12 into the work area or the advanced warning area to
 13 provide traffic control assistance?
 14 MR. MOORE: Object to the form.
 15 THE WITNESS: I wasn't aware.
 16 Q. (BY MR. ROBBINS) Okay. Did you ever
 17 make a request of ITD to provide additional traffic
 18 control assistance through the State Highway Patrol
 19 at any time before June 16, 2018?
 20 A. Me personally, no.
 21 Q. Do you know if anybody did?
 22 A. I am under the impression that Roper --
 23 excuse me, Josh Roper did that the previous year.
 24 Q. Okay. And what, if you know --
 25 Strike that.

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1 that request for ISP assistance?
 2 A. No.
 3 Q. Did Mr. Roper tell you what the response
 4 was to his request for ISP experience --
 5 assistance?
 6 A. No.
 7 Q. Okay. But you personally never made a
 8 request for ISP assistance in traffic control at
 9 any time before June 16, 2018.
 10 Is that correct?
 11 A. Not that I recall.
 12 Q. How about after June 16, 2018?
 13 Did you ever make a request for ISP
 14 assistance in traffic control?
 15 A. Not that I recall.
 16 Q. Okay. Let's talk about a re-startup.
 17 And that's just my term. It's not the term for the
 18 meeting. But a meeting that was held between
 19 Penhall and ITD before the startup of the I-84 --
 20 re-startup of the I-84 project in May or June of
 21 2018.
 22 Did you attend that meeting that was
 23 held between ITD and Penhall?
 24 A. I attended a meeting at the stockyard.
 25 I don't know if it was the same meeting that you're

Page 90

1 referring to.

2 **Q. Was it a meeting that was attended by**

3 **representatives of Penhall and representatives of**

4 **ITD in or around May of 2018?**

5 A. No. This would have been in June.

6 **Q. Had you heard that there was a meeting**

7 **that was held between Penhall representatives and**

8 **ITD during which Penhall asked ITD for permission**

9 **to close a third lane?**

10 A. I was told about --

11 MR. GRAHAM: Object to the form.

12 THE WITNESS: I was told about --

13 MR. MOORE: Object to the form. Foundation.

14 Go ahead.

15 THE WITNESS: I was told about the said

16 meeting at the meeting I was referring to in the

17 early part of June.

18 **Q. (BY MR. ROBBINS) Okay. And what were**

19 **you told about that meeting before -- between**

20 **Penhall and ITD that preceded your June 2018**

21 **meeting?**

22 A. That --

23 MR. MOORE: Object to the form.

24 Go ahead.

25 THE WITNESS: That Penhall and ITD had had

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1 **your knowledge, by either yourself or Mr. Roper?**

2 A. I don't know.

3 **Q. Well, let me ask you this: Do you know**

4 **whether you ever made any notes of that meeting?**

5 A. I did not make any notes of that

6 meeting.

7 **Q. Okay. And you simply don't know whether**

8 **or not Mr. Roper made any notes?**

9 A. He should have in his diary, but I don't

10 know for sure.

11 **Q. His diary?**

12 A. His maintenance diary. His daily --

13 **Q. Okay. Did you ever review the traffic**

14 **control maintenance diaries for 2017 before you**

15 **started your work on the project in 2018?**

16 A. I did not.

17 MR. ROBBINS: Okay. Why don't we take a

18 break for --

19 MR. MOORE: Yeah, we're at lunch.

20 MR. ROBBINS: Okay. Mr. Moore is hungry.

21 We're taking a break for lunch.

22 THE VIDEOGRAPHER: We are now off the record

23 at 12:16 p.m.

24 [Lunch break taken from 12:16 p.m. to 1:21 p.m.]

25 THE VIDEOGRAPHER: We are back on the record

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1 a -- had had conversations about the operations and

2 how they were going to perform the work and what

3 they would need to perform the work.

4 **Q. (BY MR. ROBBINS) Were you told -- also**

5 **discussed during the course of that conversation**

6 **was the concept of a three-lane closure?**

7 A. From what I was informed, yes.

8 **Q. Okay. And who informed you of that**

9 **during the course of this June 2018 meeting?**

10 A. Bruce at Penhall.

11 **Q. Bruce Kidd?**

12 A. Correct.

13 **Q. Did Mr. Kidd inform you who was present**

14 **during the course of this meeting that had occurred**

15 **before your June 2018 meeting that had been**

16 **attended only by representatives of Penhall and**

17 **ITD?**

18 A. No.

19 **Q. Okay. Who was present during the June**

20 **2018 meeting that you did attend?**

21 A. That would have been Bruce and his

22 supervisor, the ITD inspectors, and briefly myself

23 and Mr. Josh Roper.

24 **Q. Was the substance of that meeting in**

25 **June of 2018 reduced to writing, to the best of**

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1 at 1:21 p.m.

2 **Q. (BY MR. ROBBINS) Mr. Garling, we are**

3 **back from our break. And in the interim, are there**

4 **any changes that you'd like to make to the**

5 **deposition testimony that you have given thus far?**

6 A. No, sir.

7 **Q. Okay. We were addressing a meeting that**

8 **you attended in June of 2018.**

9 **Was that a meeting that was between**

10 **Specialty and Penhall?**

11 A. Specialty, Penhall, and ITD were

12 present.

13 **Q. Okay. During the course of that**

14 **meeting, do you have a recollection of the subject**

15 **of allowing a reduction of lanes from a**

16 **four-lane -- four-open-lanes section down to a**

17 **single open lane?**

18 A. The premise of the meeting was Penhall

19 instructing us to set three lane closures that

20 night that we had not prepped, and there was a

21 discussion between ITD, Penhall, and Josh Roper.

22 Because I left after the statement was

23 made that they wanted to close down three lanes,

24 and I had called Josh Roper in because he wasn't --

25 he wasn't present at the time.

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1 **Q. All right. Why is it that you called**
 2 **Josh Roper in at that point, if you remember?**
 3 A. He was still acting as the traffic
 4 control manager and was still on site and running
 5 the project, and I left to go take care of things
 6 that needed to be set up for the night.
 7 **Q. Do you recall what was said by Penhall**
 8 **concerning their request or, as you put it, their**
 9 **instruction to set a three-lane closure on a**
 10 **four-lane stretch?**
 11 A. When they approached me, they had asked
 12 if we were prepped and ready to go for a
 13 triple-lane closure. I said that we weren't, and
 14 then it started down the, "You know about it, don't
 15 you?" I said I was not aware because I'm just
 16 coming into the project. I handed off the reins to
 17 Josh Roper who was in control at the time.
 18 **Q. Okay. Who was it that was making the**
 19 **inquiry of you, quote/unquote, "You know about it,**
 20 **don't you?"**
 21 A. Bruce Kidd.
 22 **Q. Okay. Who in addition to Bruce Kidd was**
 23 **present at that meeting during your attendance?**
 24 A. Everyone trickled in. It was Bruce
 25 Kidd, his supervisor, Jon Mensinger showed up, and

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1 it.
 2 **There was a conversation that was taking**
 3 **place between Mr. Mensinger and Mr. Schwendiman on**
 4 **one hand and Mr. Kidd and his supervisor on the**
 5 **other?**
 6 A. As well as Josh Roper, yes.
 7 **Q. As well as Josh Roper. Okay.**
 8 **And was it Mr. Kidd and the supervisor**
 9 **who were making the point that, in your terms, that**
 10 **is the way they did it in 2017?**
 11 A. Correct.
 12 **Q. Okay. And do you recall what response**
 13 **was given by Mr. Mensinger and Mr. Schwendiman to**
 14 **that statement?**
 15 A. I don't recall.
 16 **Q. Okay. Do you recall --**
 17 **Were you present during the time that**
 18 **Mr. Roper gave any response to that?**
 19 A. By the time he showed up, I left. No, I
 20 wasn't -- by the time he started talking.
 21 **Q. Okay. Did you raise any objection --**
 22 **Strike that.**
 23 **At the time that this conversation took**
 24 **place, had the June 2018 restart of the project**
 25 **already begun?**

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1 Blaine Schwendiman --
 2 I'm horrible with that last name.
 3 **Q. No, that was right, Schwendiman.**
 4 A. They were all present.
 5 **Q. Who is Bruce Kidd's supervisor, as you**
 6 **understood it?**
 7 A. I can't recall his name.
 8 **Q. Was it a gentleman by the name of Reed?**
 9 A. I can't say with certainty.
 10 **Q. Okay. Was it Bruce Kidd who was making**
 11 **the inquiry, as you termed it, "You know about**
 12 **this, don't you?"**
 13 A. Correct.
 14 **Q. Okay. And your response was, no, you**
 15 **didn't know about it?**
 16 A. Right. Correct. Yeah.
 17 **Q. Now, did either Mr. Mensinger and/or**
 18 **Mr. Schwendiman say anything when Mr. Kidd made the**
 19 **inquiry of you, "You know about it, don't you?"**
 20 A. They had a discussion. Before I had
 21 left, it was. "Well, this is what we did last year.
 22 This is how we had, you know, done the operation,"
 23 and then I had -- I had left. So I don't know
 24 where that conversation went from there.
 25 **Q. Okay. Let me see if I can understand**

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1 A. No. This was prior to the first night
 2 of operation.
 3 **Q. Do you recall what date it was?**
 4 A. I don't.
 5 **Q. Do you recall whether it was -- when**
 6 **the -- prior to the first night of operation on the**
 7 **eastbound side?**
 8 MR. MOORE: Object to the form.
 9 **Q. (BY MR. ROBBINS) Of I-84.**
 10 MR. MOORE: It's vague because it's not
 11 identified here where that -- what that date would
 12 be.
 13 MR. ROBBINS: Well, no --
 14 MR. MOORE: Object to the form.
 15 MR. ROBBINS: -- I'm asking -- that's what
 16 I'm asking. He put it as prior to the first date
 17 of operation.
 18 My question to him is: By that, do you
 19 mean the first date of operation of construction
 20 activities on eastbound I-84?
 21 MR. MOORE: Object to the form and
 22 foundation.
 23 Go ahead.
 24 THE WITNESS: We started on the westbound
 25 side. This would have been before that.

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1 Q. (BY MR. ROBBINS) It would be before the
 2 westbound operations commenced?
 3 A. Correct.
 4 Q. All right.
 5 MR. MOORE: Say that again.
 6 THE WITNESS: It would have -- this meeting
 7 would have taken place before we started operations
 8 on the westbound side. That is where we picked up
 9 with Penhall and then they worked west on the
 10 westbound side and then they did the eastbound
 11 direction.
 12 MR. MOORE: Later?
 13 THE WITNESS: Later, correct.
 14 MR. ROBBINS: Okay.
 15 Q. (BY MR. ROBBINS) So it was not at a
 16 point in time after operations had been ongoing on
 17 the westbound side and just before they were going
 18 to start on the eastbound side.
 19 Is that my interpretation of your
 20 statement?
 21 A. This is before all of it, correct.
 22 Q. Okay. Very good. Very good.
 23 And when this conversation took place
 24 that you attended for a short period of time, while
 25 you were present during this meeting, did you raise

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1 it previously, but that they would want to try and
 2 do it again.
 3 Q. All right. Did you express to Mr. Kidd
 4 that that would be only appropriate if it had been
 5 presented to ITD in writing and with ITD's approval
 6 in writing?
 7 A. I did not explain it that way, no.
 8 Q. Okay. Did you express to Mr. Kidd that
 9 your reservations were premised in part upon the
 10 potential safety concerns that would result in the
 11 closure of a four-lane section of highway,
 12 particularly I-84, down to a single open lane?
 13 A. We were more concerned about going
 14 against the plans.
 15 Q. Okay. But when you say you were
 16 "more concerned," was at least part of your concern
 17 the creation of a safety hazard by the reduction of
 18 four open lanes of highway on I-84 down to a single
 19 open lane?
 20 MR. MOORE: Object to the form.
 21 THE WITNESS: We had --
 22 We were fully capable of safely doing
 23 the operation that they wanted. That was not our
 24 concern.
 25 Q. (BY MR. ROBBINS) All right. Well, when

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1 any objection to the concept of reducing four open
 2 lanes to three open lanes?
 3 A. I had a couple different reasons that I
 4 expressed that we didn't want to do it.
 5 Like I said, I had left the
 6 conversation, but before I left, I had briefly
 7 spoke to Bruce and informed him that I was not in
 8 charge that night, but we had only staged for a
 9 double-lane closure per the plan and that that's
 10 the material we had on hand and we're ready for.
 11 Q. Okay. Now, you, I think, expressed
 12 that -- you stated that there were more than one
 13 reasons why you expressed reservations about the
 14 reduction of four open lanes to a single open lane.
 15 Do I --
 16 A. Correct. I knew that the contract
 17 stated that we were only to close two.
 18 Q. Okay.
 19 A. And Josh Roper had voiced concern coming
 20 into these operations that they might want to do
 21 three lane closures again. It was a side passing
 22 comment as we were staging material before Penhall
 23 had actually shown up.
 24 And we staged per plan, and that would
 25 have been the other concern is that we had known of

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1 you say that you were fully capable of safely doing
 2 the operation that they requested, you mean the
 3 reduction of four open lanes of highway down to a
 4 single open lane?
 5 A. We knew that we could set it properly to
 6 the point where it would be safe.
 7 Q. But you wouldn't be able to set it
 8 properly in strict compliance with the terms of the
 9 temporary traffic control plan.
 10 Would you agree?
 11 A. It would have gone against the -- the
 12 contract.
 13 Q. It would have also called for sign
 14 placement at different locations along the project.
 15 Would you also agree with that?
 16 A. Yes.
 17 Q. Okay. And by "sign location," I'm
 18 talking about the positioning of signs to advise
 19 the motoring public that there was going to be
 20 restriction of lanes in the area?
 21 A. Correct. It would have changed the
 22 advanced warning.
 23 Q. Okay. It would have changed in that --
 24 Would you have posted warning signs to
 25 inform traffic that there was going to be a

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1 potential congestion further east on I-84 so that
 2 traffic would be informed that this congestion was
 3 going to be coming ahead?
 4 MR. PERKINS: Object to the form. Calls for
 5 speculation.
 6 THE WITNESS: The reason in which that we had
 7 concern for just out of the --
 8 When we stage a project, we base our
 9 signage off of the lane closures, where they are,
 10 and how long they are. We had only staged for a
 11 double lane closure, which meant that the signs
 12 were not in the proper place.
 13 Switching that to a triple would have
 14 moved those signs.
 15 Q. (BY MR. ROBBINS) Further eastbound on
 16 I-84?
 17 A. They would have moved --
 18 Yes. They would have moved further east
 19 on westbound 84.
 20 Q. Providing the motoring public with
 21 earlier information about the approach of a lane
 22 reduction and potential congestion?
 23 MR. PERKINS: Object to the form.
 24 THE WITNESS: Yes.
 25 Q. (BY MR. ROBBINS) All right. You took

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1 an evaluation made concerning the capacity of a
 2 single lane to accommodate the volume of traffic
 3 through I-84 in the construction area as a result
 4 of this change in the traffic control plan?
 5 MR. PERKINS: Object to the form.
 6 THE WITNESS: Not during this project, no.
 7 Q. (BY MR. ROBBINS) Okay. Was it done
 8 after the project?
 9 A. I -- I don't know.
 10 Q. Okay. Did Mr. Roper say anything more
 11 to you during the course of this conversation he
 12 had with you over the phone after the meeting with
 13 Penhall and ITD?
 14 A. No. We were -- we were busy, and that
 15 was the gist of that conversation.
 16 Q. Had you gone back to the site or were
 17 you still offsite at the time this telephone
 18 conference was --
 19 A. I --
 20 Sorry.
 21 Q. Yep.
 22 A. Just to clarify, I was still on site
 23 inside the project limits. I just wasn't at the
 24 stockyard.
 25 Q. Okay.

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1 leave from this meeting before it had concluded.
 2 Is that correct?
 3 A. Correct.
 4 Q. And by "this meeting," I'm talking about
 5 the meeting that occurred before the commencement
 6 of operations in the spring of 2018.
 7 A. Correct.
 8 Q. Okay. Did you have any communications
 9 with Mr. Roper later on that evening concerning how
 10 the meeting ended up?
 11 A. Immediately after his meeting, he called
 12 me.
 13 Q. Okay. And what do you recall was spoken
 14 in that telephone conversation between you and
 15 Mr. Roper?
 16 A. The decision of the meeting was that we
 17 will be setting the three lane closures but not
 18 until Penhall was done with the left lanes. That
 19 way, we could reset the signs properly for the
 20 three lane closures and we wouldn't have to
 21 reorganize what we had already had on the ground.
 22 Q. All right. And was that ultimately
 23 done?
 24 A. Yes.
 25 Q. Okay. To your knowledge, was there ever

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1 A. We were still all on the same project
 2 working.
 3 Q. All right. Did Mr. Roper explain to you
 4 how he believed Specialty could accommodate the
 5 request for a three-lane closure in an otherwise
 6 four-open-lane stretch of highway by not making a
 7 change in the placement of the traffic control
 8 devices?
 9 A. I'm sorry. I don't understand.
 10 Q. Well, I thought what I heard you say is
 11 that Mr. Roper said that he had agreed that they
 12 will go ahead and set a three-lane closure but that
 13 it would not be done until Penhall had completed
 14 its work in the left-hand lane. And by that, then
 15 I believe he said that there would not be -- there
 16 would not be the need to change the location of the
 17 placement of traffic control devices.
 18 A. For the left lane closures. We would
 19 have to change that when they accessed the right
 20 lanes and set those per the three lane closures.
 21 But to -- in order to not change where
 22 the signs and the barrels for the tapers were, we
 23 were going to continue with the two left lane
 24 closures until they finished in the two left lanes,
 25 and then when they switched sides, then we would do

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1 the three lane closures.

2 **Q. When you say "when they switched sides,"**

3 **maybe I'm not understanding you.**

4 **Are we talking about the work that was**

5 **planned to be done on the eastbound lanes of I-84?**

6 A. No, sir.

7 **Q. Okay.**

8 A. So the way that Penhall went through the

9 project is they went down one side of the freeway

10 shoulder to center line --

11 **Q. Right.**

12 A. -- in the left lanes, and then they

13 would back up and then do the same on the right

14 shoulder to center line and then finish one

15 complete side of the freeway.

16 **Q. Okay.**

17 A. And so when we went to reset on the

18 right-hand side of the freeway was when we would

19 start doing the triple lane closures.

20 **Q. Okay. But that would still only allow**

21 **for a single open lane?**

22 A. Correct.

23 **Q. Okay. Was there any discussion between**

24 **you and Mr. Roper as to how a potential traffic**

25 **queue as a result of the closure of three lanes in**

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1 was flowing through our jobsite.

2 **Q. Was there a discussion between you and**

3 **Mr. Roper in which it was discussed that one**

4 **consequence of reducing four open lanes to a single**

5 **open lane on the highway here at I-84 would be the**

6 **development of a lengthy traffic queue through the**

7 **work zone and into the advanced warning area?**

8 MR. PERKINS: Object to the form.

9 THE WITNESS: We had discussed that it would

10 slow down traffic more, but we never discussed

11 where it would end up.

12 **Q. (BY MR. ROBBINS) Was there a discussion**

13 **of -- under those circumstances where there was a**

14 **traffic queue in response to the reduction of four**

15 **open lanes to a single open lane of placing a**

16 **movable sign further east on I-84 -- excuse me,**

17 **further west on I-84 in order to provide motorists**

18 **with earlier information or warning about the**

19 **occurrence of congestion, "Traffic Congestion**

20 **Ahead"?**

21 MR. PERKINS: Object to the form. Calls for

22 speculation.

23 THE WITNESS: We never discussed moving the

24 portable changing message board due to the fact

25 that it was based off of distance to the

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1 **a four-lane stretch of highway would be addressed?**

2 A. There was no conversation that happened

3 about that.

4 **Q. Was there any conversation between you**

5 **and Mr. Roper wherein it was discussed that the**

6 **traffic control manager would have to increase his**

7 **oversight of the response of traffic to the**

8 **reduction of four lanes down to one open lane?**

9 A. What do you mean by "oversight"?

10 **Q. Well, that is -- what I mean is the**

11 **general oversight -- I'm using the term again, but**

12 **the monitoring, as I have used that term before,**

13 **the monitoring of traffic's response to a reduction**

14 **of traffic lanes.**

15 **That's what I'm meaning is: Was there a**

16 **discussion between you and Mr. Roper wherein it was**

17 **discussed that there would have to be increased**

18 **monitoring of the response of traffic where there**

19 **was going to be a reduction of four open lanes down**

20 **to a single open lane?**

21 A. There was no conversation that was held.

22 It --

23 We didn't change our expectations of our

24 job based upon how many lanes we had closed. We

25 still were expected to monitor traffic and how it

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1 "Roadwork Ahead" sign.

2 It was a stationary object that was on

3 the plan, supposed to be there.

4 **Q. (BY MR. ROBBINS) Okay. But the**

5 **"Road Work Ahead" sign doesn't advise motorists**

6 **that there is congestion that they're going to need**

7 **to address in the upcoming area, is there?**

8 MR. PERKINS: Object to the form.

9 THE WITNESS: Not going off of opinion, no,

10 it doesn't outright say that.

11 **Q. (BY MR. ROBBINS) Well, let me ask you**

12 **this: In your prior experience both as a manager**

13 **and as a setup and maintenance individual, have you**

14 **been involved in highway projects in which there is**

15 **a sign that is placed that tells motorists that**

16 **there is traffic congestion ahead?**

17 A. Nothing more than a portable changing

18 message board saying, "Expect Delays," on certain

19 nights that we would expect traffic to back up.

20 But nothing that was designated for that purpose.

21 **Q. Okay. Nothing that's designated,**

22 **"Congestion Ahead"?**

23 A. Correct.

24 **Q. Have you ever seen that used in your**

25 **experience in traffic control where a sign is**

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1 placed to inform motorists of traffic congestion
 2 ahead in that language?
 3 A. Not in temporary traffic control, no.
 4 Q. Okay. When you were told by Mr. Roper
 5 about the decision that had been made to set the
 6 three-lane closure in accordance with the request
 7 of Penhall, did you make any inquiry of him as to
 8 whether that proposed change had been presented to
 9 ITD in writing?
 10 A. No.
 11 Q. Okay. Did you make inquiry of him as to
 12 whether that proposed change had been reviewed and
 13 approved by a traffic engineer?
 14 A. I did not.
 15 Q. You were at the project at the time you
 16 had this telephone conversation with Mr. Roper,
 17 correct?
 18 A. Correct.
 19 Q. Later on that evening or if it was the
 20 early morning, did you have any discussions with
 21 either ITD and/or Penhall in which you discussed
 22 the decision and agreement to set three lane
 23 closures at the request of Penhall?
 24 A. I myself --
 25 MR. MOORE: Object to the form.

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1 with Mr. Kircher?
 2 A. I don't remember it, but I --
 3 In my experience, that's what I would
 4 have done.
 5 Q. Your past custom and practice would have
 6 been to inform Mr. Kircher as your supervisor that
 7 that decision had been made and agreed to, correct?
 8 A. Correct.
 9 Q. Okay. Because you understood that that
 10 was in violation of the express terms of the
 11 contract itself, correct?
 12 A. Correct.
 13 MR. PERKINS: Object.
 14 Q. (BY MR. ROBBINS) Do you know --
 15 What you've told me is what your custom
 16 and practice was, and I understand it's your
 17 testimony that you don't have a recollection of
 18 that specific conversation taking place between you
 19 and Mr. Kircher.
 20 But let me ask you: Do you know from
 21 what Mr. Roper told you, that Mr. Roper claims to
 22 have had that conversation with Mr. Kircher?
 23 A. I don't know for sure if he had that
 24 conversation with him, with Dan.
 25 Q. Okay. Now, in answers to

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1 Go ahead.
 2 THE WITNESS: I myself, no.
 3 Q. (BY MR. ROBBINS) Do you know whether
 4 anybody else did with Specialty?
 5 A. I don't know.
 6 Q. Did you ever hear that any such
 7 conversation took place that evening?
 8 A. That evening, no.
 9 Q. Okay. During the conversation between
 10 you and Mr. Roper, was it addressed that that
 11 decision would be communicated to Mr. Kircher?
 12 And by "that decision," I meant the
 13 decision to go along with Penhall's request to set
 14 a three-lane closure on a four-lane stretch of
 15 highway.
 16 A. I'm sorry. Are you asking if Mr. Roper
 17 would convey that to Dan Kircher?
 18 Q. Yeah. Did either you or Mr. Roper
 19 convey that information to Mr. Kircher?
 20 A. I -- I believe we both spoke to Dan
 21 Kircher.
 22 Q. When did that conversation take place?
 23 A. I -- I don't know off the top of my head
 24 when.
 25 Q. But you personally had that conversation

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1 interrogatories that have been served by Specialty
 2 in response to interrogatories served upon them by
 3 Daisy Johnson's estate, the interrogatory is asked,
 4 "Please identify every communication between
 5 Defendant Penhall Company, including any of its
 6 employees, agents, and/or contractors and yourself
 7 regarding the decision to close three lanes of
 8 travel leaving only one travel lane in the work
 9 zone at issue in this lawsuit." And it defines
 10 certain terms as well.
 11 The response that is given after an
 12 objection is that, "Defendant states that in or
 13 around May 31, 2018, through June 2, 2018,
 14 Defendant had multiple verbal communications with
 15 Defendant Penhall Company regarding the decision to
 16 close three lanes of travel in a four-lane section
 17 of Interstate 84," and I'll stop there.
 18 Mr. Garling, you're here as the
 19 representative of Specialty pertaining to this
 20 subject area, and so my question to you is: Do you
 21 have any knowledge or information regarding
 22 multiple verbal communications with Penhall
 23 regarding the decision to close three lanes of
 24 travel in a four-lane section of I-84 between
 25 May 31, 2018, and June 2, 2018?

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1 MR. MOORE: Object to the form.
 2 Go ahead.
 3 THE WITNESS: I don't recall these verbal
 4 conversations prior to the one that we had on site.
 5 **Q. (BY MR. ROBBINS) The one that you had on**
 6 **site, was it before May 31, 2018, to June 2, 2018?**
 7 A. I don't remember the exact date of that
 8 meeting. I know it was at the beginning of June.
 9 **Q. Okay. Do you personally know of**
 10 **conversations you personally had with Penhall on**
 11 **multiple occasions wherein the decision to close**
 12 **three lanes of travel in a four-lane section of**
 13 **Interstate 84 was discussed?**
 14 MR. PERKINS: Object to the form.
 15 THE WITNESS: Prior to starting the project
 16 in that first meeting, I had no communication with
 17 Penhall.
 18 **Q. (BY MR. ROBBINS) All right.**
 19 A. So I -- like I said, I don't remember
 20 the date of that meeting, and very well could fall
 21 in that date range. I'm not 100 percent sure.
 22 **Q. Sure. That's the single -- that's a**
 23 **single meeting. That's a single conversation, or I**
 24 **will interpret it as such.**
 25 **Other than that meeting, do you recall**

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1 MR. ROBBINS: Well, during the time period
 2 from the point of startup of -- restart of the work
 3 in 2018 through and including June 16, 2018.
 4 Thank you.
 5 Did I sufficiently screw that question
 6 up for you?
 7 MR. MOORE: Can you rephrase --
 8 THE WITNESS: I think I have a fair
 9 understanding of did Penhall ever bring up the fact
 10 of whether or not they had approval to do the three
 11 lane closures by ITD between that time you've got?
 12 **Q. (BY MR. ROBBINS) Other than at that one**
 13 **conversation, during the period of time of May 2018**
 14 **through June 16, 2018 -- which I will tell you,**
 15 **which you probably already know, is the date of the**
 16 **accident.**
 17 MR. MOORE: Object to the form. Vague and
 18 confusing.
 19 Go ahead, sir.
 20 MR. ROBBINS: Well, I object. It's
 21 ambiguous, but not confusing.
 22 MR. MOORE: Well, it is, and I'm just trying
 23 to follow you as it's being typed up.
 24 But go ahead and answer, sir, if you
 25 can.

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1 **any other, we will call it, meetings or discussions**
 2 **with Penhall in which that issue was addressed by**
 3 **you and Penhall?**
 4 A. Not that I was in attendance.
 5 **Q. Okay. The next portion of this response**
 6 **says, "Defendant Penhall stated that it had cleared**
 7 **the closure with Idaho Transportation Department,**
 8 **who had an inspector on site during this time."**
 9 **I think you testified that that --**
 10 **Well, strike that.**
 11 **Is that your recollection of what**
 12 **Penhall had stated to you during your attendance on**
 13 **that meeting that you were present at before the**
 14 **re-startup of work?**
 15 MR. MOORE: Object to the form.
 16 Go ahead, sir.
 17 THE WITNESS: They had claimed that they had
 18 already obtained approval from ITD.
 19 **Q. (BY MR. ROBBINS) Okay. And do you**
 20 **recall hearing that statement from a Penhall**
 21 **representative on any occasion other than that**
 22 **meeting that you had discussed that you attended**
 23 **before the re-startup of this project?**
 24 MR. PERKINS: Ever or during the time period
 25 in your previous questions?

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1 THE WITNESS: Once the decision was made in
 2 that stockyard meeting, it wasn't brought up much
 3 ever again until either we had an operation
 4 finishing that we could reduce the lanes that we
 5 were taking or something that we could maybe not
 6 set a triple, and then only was that issue ever
 7 brought back up.
 8 **Q. (BY MR. ROBBINS) Well, I guess that's**
 9 **what I'm getting as is: Was that issue, to your**
 10 **recollection, ever brought back up again?**
 11 **Prior to June 16, 2018, just so I'm**
 12 **clear on that.**
 13 A. Not that I can pinpoint. Not that I
 14 could put a time or a date on it.
 15 **Q. All right. The next part of this**
 16 **response says that, "Defendant," and there it means**
 17 **Specialty, "expressed concern with exceeding the**
 18 **contract specifications to close a third lane**
 19 **during an on-site meeting."**
 20 **From your testimony, you raised that**
 21 **issue, correct?**
 22 A. Correct.
 23 **Q. Okay. Do you know whether Mr. Roper**
 24 **raised that issue after you had left that meeting?**
 25 A. I can't say for sure. I can only assume

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1 so.

2 **Q.** Oh. Well, and I don't want you to

3 assume, but let me ask you this: During the

4 conversation -- telephone conversation you had with

5 Mr. Roper, did you broach that issue with him, that

6 what was being requested was in violation of the

7 contract provisions?

8 A. I had stated that over our phone

9 conversation, and he had agreed, then also brought

10 up that they had given the same -- they were given

11 the same instruction the previous year.

12 **Q.** Okay.

13 A. So --

14 **Q.** Mr. Roper had told you that, that he had

15 been given the same instruction the previous year?

16 A. Correct.

17 **Q.** Okay. Did you raise with him, that

18 notwithstanding, that it's still in violation of

19 the contract?

20 A. At that point, it was -- we needed to

21 move forward.

22 **Q.** Okay. Next, it says, "Penhall and Jon

23 Mensinger, an inspector with the Idaho

24 Transportation Department, directed Defendant to do

25 such," and I take it that is to reduce four lanes

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1 So that comports with your

2 understanding, that that was the meeting that you

3 were at during which the subject was broached with

4 you and you brought Josh Roper over, you took your

5 leave, and the conversation continued?

6 A. Correct.

7 **Q.** And then you were told about

8 the ultimate upshot of that conversation in the

9 telephone conversation between you and Mr. Roper,

10 right?

11 A. Correct.

12 **Q.** Okay. How long was it --

13 Strike that.

14 At some point in time after this

15 conversation that took place at, I think you termed

16 it, the stockyard, that Specialty implemented a

17 three-lane closure to a four-lane section of

18 highway?

19 A. I don't know the date off the top of my

20 head, but, like I said, they would have had to have

21 finished their operations in the left lanes and

22 then set back.

23 **Q.** Well, do you know whether it was a

24 matter of days or weeks after this stockyard

25 meeting that Specialty first implemented a

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1 of traffic to a single open lane at certain times

2 during the project.

3 Do you recall that Mr. Mensinger

4 directed Specialty to reduce those lanes during the

5 period of time -- reduce lanes of four open lanes

6 to a single open lane during the period of time

7 that you were present during that meeting?

8 MR. MOORE: Object to the form.

9 THE WITNESS: That was never said while I was

10 present.

11 **Q.** (BY MR. ROBBINS) Okay. And it ends up

12 with a statement that, "These communications," that

13 had previously been addressed in what I read to

14 you, "were between Bruce Kidd and Scott Reed of

15 Penhall Company," and I'll stop there.

16 Does that refresh your recollection that

17 the gentleman -- that the gentleman with Bruce Kidd

18 at this conversation that you were having is Scott

19 Reed?

20 A. It sounds familiar --

21 **Q.** Okay.

22 A. -- but --

23 **Q.** And, "of Penhall Company and Mason

24 Garling and Josh Roper of Specialty Construction

25 Supply."

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1 reduction of four open lanes to a single open lane

2 on I-84 east?

3 A. It could only have been days.

4 **Q.** Okay. Do you know whether Mr. Roper was

5 still at the project at the time that Specialty was

6 directed to implement the three-lane closure in a

7 four-lane stretch of highway?

8 A. On the westbound side?

9 **Q.** On the westbound side.

10 A. Correct. Yes.

11 **Q.** Okay. When matters proceeded over on

12 the eastbound side, Mr. Roper was no longer in

13 attendance at the project?

14 A. Josh Roper left just before we initially

15 set the triple-lane closure on eastbound. We

16 staged it together and laid it out.

17 **Q.** All right. And did you have any

18 discussions with -- did you and Mr. Roper -- you

19 and/or Mr. Roper have any discussions with Penhall

20 regarding the direction to reduce the four-lane

21 section of eastbound I-84 down to a single open

22 lane?

23 A. Yes.

24 **Q.** Okay. With whom did you and/or

25 Mr. Roper have those conversations?

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1 A. It would have been with Bruce Kidd
 2 again.
 3 **Q. Was there anyone else present with you
 4 and Mr. Kidd and perhaps Mr. Roper?**
 5 A. I don't recall.
 6 **Q. Do you recall when it was that Mr. Kidd
 7 gave you that direction to reduce a four-lane
 8 stretch of highway on eastbound I-84 to a single
 9 open lane in that June 2018 time frame?**
 10 A. It would have been before we started
 11 operations on the eastbound side.
 12 **Q. Okay. And you simply don't recall when
 13 that was?**
 14 A. I don't recall the date.
 15 **Q. There has been some suggestion that that
 16 started on June 14, 2018.**
 17 **Does that ring a bell with you?**
 18 MR. MOORE: Counsel, that's vague. Can
 19 you --
 20 I think I know what you mean, but you
 21 mean when they started the lane closures from four
 22 down to one on the eastbound side?
 23 MR. ROBBINS: What I mean is -- and I will
 24 tell you explicitly because God knows I don't want
 25 to be vague -- there has been a statement

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1 **Q. Was there anyone present from ITD at
 2 that discussion?**
 3 A. I don't recall.
 4 **Q. Did you raise any issue with Mr. Kidd at
 5 that time about his proposal to reduce four open
 6 lanes to a single open lane commencing on or around
 7 June 14, 2018?**
 8 A. We had concerns with closing lanes and
 9 maintaining access to the Connector gore point, and
 10 that was where the conversation started from.
 11 **Q. Express for me what the content of those
 12 conversations were when you expressed concerns
 13 about closing lanes and maintaining access -- is it
 14 at or before the gore point?**
 15 A. At.
 16 **Q. Okay.**
 17 A. The project plans depict what is called
 18 a cattle chute, which would mean that you start the
 19 exit sooner than it normally exists on the freeway
 20 with open lanes, and in doing so, would put traffic
 21 on both sides of Penhall, which they were against.
 22 And so in the conversation of trying to
 23 figure out how to prevent that, we were discussing
 24 whether or not to do the triple-lane closure on
 25 eastbound.

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1 attributed to you in the NTSB report of their
 2 investigation of the incident wherein it says,
 3 "Mason Garling, the traffic control supervisor for
 4 Specialty Construction Supply, stated that when
 5 they began the final stage of the construction to
 6 replace the pavement seals in the I-84 eastbound
 7 lanes on Thursday, June 14, 2018, that he was told
 8 by Penhall to use the same three-lane closure that
 9 he had previously used in the westbound lanes in
 10 September and October of 2017."
 11 **Q. (BY MR. ROBBINS) Now, to be honest, you
 12 weren't there in October or September of 2017,
 13 correct?**
 14 A. Correct.
 15 **Q. All right. But in all other respects,
 16 did that conversation then take place in or around
 17 June 14 of 2018?**
 18 A. Yes.
 19 **Q. Okay. And that was the conversation
 20 that you previously addressed between you and
 21 Mr. Kidd?**
 22 A. Correct.
 23 **Q. Was there anyone else present for
 24 Specialty at that discussion?**
 25 A. I don't recall.

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1 **Q. All right. Did you also discuss a
 2 concern with the fact that that suggestion for
 3 reducing four open lanes to a single open lane on
 4 eastbound I-84 would be in violation of the
 5 contract between the State and Penhall?**
 6 A. No.
 7 **Q. Okay. Did you have any discussions with
 8 Mr. Kircher about these discussions that you had
 9 with Bruce Kidd regarding his request for a
 10 reduction of lanes from four open lanes to a single
 11 open lane in or around June 14 of 2018?**
 12 A. I don't recall, but common practice
 13 would be yes, I would have done that.
 14 **Q. Okay. And since you don't recall any
 15 such conversation having taken place, I take it you
 16 don't recall any response Mr. Kircher may or may
 17 not have had?**
 18 A. No, sir.
 19 **Q. Okay. See, that's why you go to law
 20 school for three years; to ask these insightful
 21 questions.**
 22 **Do you recall who was present for ITD on
 23 the first night of the closure of four open lanes
 24 to a single open lane on eastbound I-84 on or about
 25 June 14, 2018?**

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1 A. On the first night, I do not recall who
 2 was there.
 3 **Q. Okay. Do you recall who was there on**
 4 **behalf of ITD on any night after the closure of**
 5 **three open lanes in a four-lane stretch prior to**
 6 **June 16, 2018?**
 7 A. I know the night before I talked to
 8 Blaine Schwendiman and asked him if he had any
 9 concerns with the same exact setup that was the
 10 Friday before.
 11 **Q. Okay. And what was Mr. Schwendiman's**
 12 **response to you?**
 13 A. He said he had no concerns and he was
 14 confident in our ability to set the traffic
 15 control.
 16 **Q. Why did you raise that issue with**
 17 **Mr. Schwendiman at that point?**
 18 A. That night had a significant traffic
 19 queue, and while the traffic queue was present, I
 20 talked to Mr. Schwendiman, and then we watched and
 21 observed while it started to filter out and clear
 22 up.
 23 **Q. When did you observe that it filtered**
 24 **and cleared out?**
 25 A. I don't remember the time off the top of

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1 my head, but typically they -- when we set those
 2 operations, it would clear out anywhere from 11:30
 3 to midnight.
 4 **Q. And when you say "clear out," what do**
 5 **you mean by "clear out"?**
 6 A. Meaning traffic is flowing without
 7 stopping at all.
 8 **Q. Okay. In other words, that there is no**
 9 **backup and traffic is able to flow through the work**
 10 **zone?**
 11 A. Correct.
 12 **Q. All right. Do you have a recollection**
 13 **as you sit here today as to when that occurred at**
 14 **the time on the night that you had this discussion**
 15 **with Mr. Schwendiman? That is, after you expressed**
 16 **whether he had any concern, he told you he did not,**
 17 **did traffic back up on that night as well?**
 18 A. That was --
 19 Yes. That was why we were having the
 20 conversation, yes.
 21 **Q. And do you recall as you sit here today**
 22 **how far that backup occurred?**
 23 A. Not off the top of my head, no.
 24 **Q. And as you sit here today, do you recall**
 25 **when that backup cleared such that traffic was**

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1 **moving smoothly through the work zone?**
 2 A. Not the exact time, no.
 3 **Q. And when you say traffic "moving**
 4 **smoothly through the work zone," do I understand**
 5 **you to mean that traffic was traveling at**
 6 **approximately 55 miles an hour?**
 7 MR. MOORE: Object to the form.
 8 THE WITNESS: Approximately, correct. Yes.
 9 **Q. (BY MR. ROBBINS) The next night, after**
 10 **that conversation, and I guess it was a Friday**
 11 **night conversation, that would have been June 15,**
 12 **2016 [sic]?**
 13 A. Correct.
 14 **Q. Okay.**
 15 A. The incident happened on the Saturday,
 16 so yes.
 17 **Q. Okay. Did you have another such**
 18 **conversation with Mr. Schwendiman on June 16, 2018?**
 19 A. No, sir.
 20 **Q. And, yes, it is "sic." When I said**
 21 **June 15, 2016, that should have been June 15, 2018.**
 22 **You understand that's what I was talking**
 23 **about?**
 24 A. 2018, yes.
 25 **Q. 2018.**

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1 A. 2018, correct.
 2 MR. MOORE: I --
 3 We understood. She's been correcting
 4 those for you.
 5 MR. ROBBINS: No, she hasn't. She's been
 6 doing "sic" because -- I'll catch it because you're
 7 not doing your job and you're not correcting me,
 8 Mike.
 9 MR. MOORE: Well, as a matter of fact, I'm
 10 watching her do it, and she does a good job and
 11 she's fair.
 12 MR. ROBBINS: God love you. Thank you.
 13 **Q. (BY MR. ROBBINS) All right. As I**
 14 **regather myself, you don't recall having a**
 15 **discussion with Mr. Schwendiman on June 16, 2018,**
 16 **before the accident about traffic conditions that**
 17 **night?**
 18 A. I don't remember.
 19 **Q. Do you remember on June 16, 2018, there**
 20 **was a backup of traffic similar to that which had**
 21 **occurred on June 15, 2018?**
 22 MR. MOORE: Object to the form.
 23 THE WITNESS: I was aware of traffic backing
 24 up. I have -- I don't know how far.
 25 **Q. (BY MR. ROBBINS) Okay. Do you know**

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1 during what period of time traffic had backed up in
 2 the lanes of eastbound I-84 in front of where lanes
 3 had been reduced from three down to one?
 4 A. I don't know the times off the top of my
 5 head.
 6 Q. Okay. On June 15, taking you to the day
 7 before, on June 15th, 2016 [sic], do you happen to
 8 know where Penhall was working that night?
 9 A. So Penhall themselves were working on
 10 the westbound ramps. Diamond --
 11 I don't remember the full name of that
 12 company.
 13 Q. Close enough. Diamond --
 14 A. Their subcontractor, Diamond, had just
 15 started in the left-hand lanes on the eastbound
 16 side.
 17 Q. Okay. To your knowledge, on June 15,
 18 2018, did either Mr. Kidd or Mr. Reed or any other
 19 representative of Penhall travel over to the
 20 eastbound lanes of I-84 to observe how traffic was
 21 responding to the reduction of lanes of four open
 22 lanes down to a single open lane?
 23 A. Not to my knowledge.
 24 Q. Did you ever see them on the eastbound
 25 lanes on June 15, 2018?

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1 During the discussion that you had with
 2 Mr. Schwendiman on June 15, 2018, was the subject
 3 of requesting ISP traffic control assistance
 4 broached?
 5 A. Not that I recall.
 6 Q. Okay. On June 16, 2018, did you broach
 7 with anyone present at the worksite the question of
 8 calling ISP to provide additional traffic control
 9 assistance?
 10 A. Not that I recall.
 11 Q. Okay. At any time before June 16, 2018,
 12 during the period of time that you were present at
 13 the worksite performing traffic control management
 14 duties, did you ever raise with anyone the issue of
 15 obtaining ISP support for traffic control?
 16 A. Not that I recall.
 17 Q. Okay. Do you recall Mr. Roper raising
 18 with you the possibility of obtaining ISP's support
 19 for traffic control during the course of operations
 20 on eastbound I-84 from June 14, 2018, onward?
 21 A. No, because he wasn't there for the --
 22 the eastbound operations.
 23 Q. Okay. But before he left, did he
 24 discuss with you the possibility, "Hey, if you get
 25 into some issues with traffic, consider calling an

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1 A. Not that I recall.
 2 Q. Did you ever see any representative of
 3 Penhall in the eastbound lanes of I-84 prior to the
 4 time that the accident occurred?
 5 A. Nothing that stands out.
 6 Q. Okay. There were representatives from
 7 ITD that were present on the night of the accident
 8 prior to the accident occurring?
 9 A. Correct.
 10 Q. And as you sit here today, you don't
 11 recall any specific conversation you had with that
 12 representative?
 13 A. No.
 14 Q. Was it Mr. Schwendiman, if you know?
 15 A. I don't know who was on which side. One
 16 inspector would follow the Penhall crew, and then
 17 the other would follow the Diamond crew.
 18 I don't know who was where that night.
 19 Q. Okay. Would they switch off? One
 20 person would take one side and the other person
 21 would take the other side, if you know?
 22 A. It seemed to vary.
 23 Q. Okay. All right.
 24 Were you present --
 25 Strike that.

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1 ISP to provide additional traffic control
 2 guidance"?
 3 A. We never talked about it, no.
 4 Q. Okay. Were you present on site when the
 5 accident happened?
 6 A. I was.
 7 Q. Where were you when that accident
 8 happened, if you can recall?
 9 A. I was on the westbound side trying to
 10 take care of Penhall's ramp closures.
 11 Q. Okay. Who with Specialty was present on
 12 the eastbound side, if you know, at the time the
 13 accident occurred?
 14 A. I -- I can't say off the top of my head.
 15 Q. Okay.
 16 A. It would have been after pull-on. I
 17 don't think any of my crew would have been over
 18 there at that time.
 19 Q. How did you first find out about the
 20 accident that occurred on June 16, 2018?
 21 A. Bruce Kidd called me.
 22 Q. Okay. Where was Bruce Kidd at the time
 23 that he called you?
 24 A. He would have been on the westbound
 25 ramps.

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1 Q. Okay. The same location of I-84 that
 2 you were on at that time?
 3 A. Correct.
 4 Q. Okay. Just at a different location on
 5 westbound I-84?
 6 A. Correct.
 7 Q. Okay. And what do you recall Mr. Kidd
 8 telling you about that accident?
 9 A. That there was an incident on eastbound
 10 and that I should go check it out.
 11 Q. Okay. Now, do you recall having any
 12 conversations with Mr. Kidd on June 15, 2018,
 13 wherein Mr. Kidd informed you that he received a
 14 phone call from the Idaho police authority advising
 15 that there were some traffic issues that the
 16 authority had been informed about that had been
 17 occurring that evening?
 18 A. No --
 19 MR. MOORE: Object to the form and
 20 foundation.
 21 Q. (BY MR. ROBBINS) Did he?
 22 A. No, he did not call me and --
 23 Q. Okay.
 24 A. He did not inform me about that.
 25 Q. Now, when you started the project in

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1 Q. Knapp. Okay.
 2 And what was Mr. Knapp's involvement, if
 3 you know, in the I-84 project in June of 2018?
 4 A. He was a laborer.
 5 Q. Do you recognize the handwriting on this
 6 traffic control maintenance diary?
 7 A. This would be Roper's.
 8 Q. Okay. Do you recall having reviewed
 9 this traffic control maintenance diary before it
 10 was submitted to --
 11 Strike that.
 12 Traffic control maintenance diaries were
 13 prepared by the traffic control manager and
 14 submitted to what agency or authority?
 15 A. We would turn in our diaries daily to
 16 Dan Kircher, and he would submit them to ITD.
 17 Q. Okay. And did you have an understanding
 18 that Mr. Kircher reviewed the traffic control
 19 maintenance diaries that were prepared and
 20 submitted to him by his traffic control managers?
 21 A. That was the understanding.
 22 Q. Okay. Did you personally have any
 23 discussions with Mr. Kircher regarding the content
 24 of any of your traffic control maintenance diaries?
 25 A. Not prior to --

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1 June of 2018, did you provide to ITD your contact
 2 information --
 3 A. Yes.
 4 Q. -- that is, your name and your phone
 5 number?
 6 A. Yes.
 7 Q. Okay. Do you know whether ITD
 8 communicated that to Idaho State Police in the
 9 event that they needed to get ahold of a
 10 representative of Specialty?
 11 A. I don't know.
 12 Q. Okay. Did you ever review the standard
 13 construction diaries that were prepared by the ITD
 14 inspectors in this project during June of 2018?
 15 A. No.
 16 Q. Okay. Let me ask you to take a look at
 17 Binder 1-B, Tab 12. And let me get you a
 18 page number here.
 19 Let me ask you to take a look at --
 20 starting at page 349. That is a traffic control
 21 maintenance diary dated May 31, 2018, in which
 22 Mr. Roper is identified, your name -- or at least
 23 first name is there, and the name David is there.
 24 What is David's last name?
 25 A. Knapp.

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1 Q. Not prior to?
 2 A. Not prior to June 16th.
 3 MR. MOORE: Pardon me, Clay.
 4 MR. ROBBINS: That's okay.
 5 MR. MOORE: Excuse me. Pardon me. I didn't
 6 mean to do that.
 7 [Discussion held off the record.]
 8 Q. (BY MR. ROBBINS) We'll get to the
 9 discussion then that you had.
 10 Did you have that discussion regarding
 11 the traffic control maintenance diary that was
 12 filled out for the night of the accident that
 13 evening or was it the next day with Mr. Kircher?
 14 A. I talked to Dan Kircher the following
 15 Monday, which would have been --
 16 Q. Two days after?
 17 A. -- the 18th.
 18 Q. Yeah. Okay. And we'll get to that in a
 19 moment.
 20 Insofar as the traffic control
 21 maintenance diaries that were filled out by
 22 Mr. Roper when you were present on the project, did
 23 you review those maintenance diaries that were
 24 filled out by Mr. Roper before he submitted them to
 25 Mr. Kircher?

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1 A. No, sir.

2 **Q. Okay. Now, let me just go through this,**

3 **if I can.**

4 **On page 349, the first paragraph,**

5 **handwritten paragraph, if you will, it says, "Put**

6 **up signs at 9:00 p.m. Talked with Penhall, and**

7 **they wanted a triple, and we told them that they**

8 **are set up for a double and we could give them a**

9 **triple when we set the RLC."**

10 **What's the RLC?**

11 A. Right-lane closure.

12 **Q. Okay. To your way of thinking, is that**

13 **a memorialization of the discussion that was held**

14 **between Specialty and Penhall about right-lane**

15 **closures or did that initial discussion that you**

16 **described for me take place sometime before May 31,**

17 **2018?**

18 A. No. This sounds like the discussion

19 that happened at the stockyard between Penhall,

20 ITD, and Specialty.

21 **Q. Okay. And when it says, "We could give**

22 **them a triple when we set the RLC," what is that**

23 **meant to communicate?**

24 A. That means that we -- when we --

25 When Penhall sets back, we could

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1 **page 350, June 2, 2018, it's a westbound?**

2 MR. MOORE: Counsel, you misspoke. It's

3 June 1.

4 MR. ROBBINS: I didn't "misspoke." Our court

5 reporter mistranscribed.

6 THE REPORTER: Hey.

7 **Q. (BY MR. ROBBINS) Yes, June 1, 2018,**

8 **page 350. Again, this is --**

9 **Do you recognize this handwriting as**

10 **being Mr. Roper's?**

11 A. Correct.

12 **Q. And there about the midpage -- midpart**

13 **of that page, there's a reference for, "Staged for**

14 **a triple right for the next night."**

15 **Does that mean that there wasn't a**

16 **triple that was implemented that night, but you set**

17 **up the equipment to implement a triple-lane closure**

18 **the following night?**

19 A. Correct.

20 **Q. All right. Next is June 2, 2018.**

21 **Similarly, do you recognize this as**

22 **being Mr. Roper's handwriting?**

23 A. Yes, sir.

24 **Q. There it says, "Set a triple right**

25 **starting at east end of project westbound."**

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1 reorganize the right lane -- the jobsite so that we

2 could give them three right lanes.

3 **Q. Okay. So you can give them three right**

4 **lanes --**

5 A. Meaning --

6 **Q. -- to work in?**

7 A. -- we would close them, correct.

8 **Q. Okay.**

9 A. We would go from four to one.

10 **Q. And the left lane would then be open?**

11 A. Correct.

12 **Q. All right. So this didn't discuss the**

13 **situation where there would be the right lane open**

14 **and three left lanes open.**

15 **Is that correct?**

16 A. Correct. We didn't do that.

17 **Q. And are you able to tell by looking at**

18 **this, are we talking about the westbound lanes?**

19 **We're talking about the westbound lanes here on**

20 **May 31, 2018, correct?**

21 A. Correct. Up top it says, "Westbound

22 Orchard" --

23 **Q. Right.**

24 A. -- "to Exit 50A."

25 **Q. Okay. Similarly on the next page,**

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1 **So that's westbound I-84?**

2 A. Correct.

3 **Q. All right. "Traffic was heavy but**

4 **manageable. Had to merge Orchard on-ramp with**

5 **third lane closure. By the time traffic was in the**

6 **single lane, traffic backed up just a little to**

7 **Orchard ramp."**

8 **Do you have a recollection of how far**

9 **traffic backed up on that particular night other**

10 **than as expressed there? Wherever they were**

11 **measuring it from it backed up a little to Orchard?**

12 A. We would have already had --

13 The project limits started at the sign

14 bridge just west of Orchard, which is not far from

15 the Orchard overpass. I -- I couldn't put a

16 distance on it, but not far.

17 **Q. All right. Is it more or less than a**

18 **mile?**

19 A. Less.

20 **Q. Is it more or less than a half a mile?**

21 A. I'd say that's a safe estimate.

22 **Q. Approximately a half a mile?**

23 A. Yes.

24 **Q. Indicating "yes"? Okay.**

25 **If you would, please, answer me this:**

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1 When you are shown on the traffic control
 2 maintenance diaries along with Mr. Roper, Mr. Roper
 3 was the traffic control manager.
 4 What position were you holding at that
 5 time?
 6 A. I was a laborer, essentially. I was
 7 shadowing.
 8 Q. Okay. All right. Next is June 3, 2018.
 9 Again, there's a pull of a triple, and,
 10 again, that's on the westbound side of I-84,
 11 correct?
 12 A. Correct.
 13 Q. On June 6 of 2018, that's page number
 14 354. Down towards the bottom, there's a note that,
 15 "Traffic died down around 11" -- I read that as
 16 11:30. I don't know whether it is 11:30 or not.
 17 But let's say 11:30. "Traffic" -- and then on
 18 another document that was produced in the NTSB
 19 docket, I see, "Traffic responds better to the
 20 double than the triples."
 21 Do you recall having any discussion with
 22 Mr. Roper prior to June 16, 2018, wherein it was
 23 noted that traffic responded better to double
 24 closures rather than triple closures?
 25 A. Not -- not to my recollection.

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1 A. It doesn't say where. It just means
 2 that we set three lane closures.
 3 Q. Sure. But that's true with a double
 4 too?
 5 And I think you testified that you
 6 understood a double to mean two lane closures in a
 7 four-lane stretch of highway, correct?
 8 A. I guess I didn't -- I didn't listen
 9 properly.
 10 Q. Well --
 11 A. I -- we never --
 12 And it's not typical in his diaries to
 13 put where, but when we say "double," we just mean
 14 we set two arrow boards. We set two tapers.
 15 Q. Okay.
 16 A. When we say "triple," we're setting
 17 three arrow boards, three tapers.
 18 Q. Is there anywhere that it is expressed
 19 how many lanes are open to traffic by the closure
 20 of however many lanes you're providing?
 21 A. I don't think so.
 22 Q. Next we have June 8 of 2018, and I think
 23 if we look at -- from that point on, it seems to be
 24 that the reports are typewritten.
 25 Is that your custom and practice, to

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1 Q. It's not surprising to you, though, that
 2 traffic would respond better to having more lanes
 3 to travel through rather than less?
 4 A. No, sir, that would not surprise me.
 5 Q. Okay. And when it says, "Double and
 6 triples," here, that's a double-lane closure in a
 7 four-lane section and a triple-lane closure in a
 8 four-lane section?
 9 MR. MOORE: Object to the form.
 10 Q. (BY MR. ROBBINS) Would you agree?
 11 A. Correct.
 12 Q. When we see in these traffic control
 13 maintenance diaries, the referral to a "triple" or
 14 a "double," are we correct to understand that as
 15 being a closure of two lanes in a four-lane stretch
 16 when we're talking about a double?
 17 A. Yes.
 18 Q. Okay. And are we correct in
 19 understanding that when a "triple" is referenced,
 20 that's a closure of three lanes in a four-lane
 21 stretch?
 22 MR. MOORE: Object to the form --
 23 MR. PERKINS: Object to the form.
 24 MR. MOORE: -- and foundation.
 25 Q. (BY MR. ROBBINS) If you know.

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1 typewrite your traffic control maintenance diaries?
 2 A. That's mine, yes.
 3 Q. Is that because you, similar to I, don't
 4 have good handwriting?
 5 A. No. For me, it's -- I'm quicker.
 6 Q. Okay. Now, I don't see in the section
 7 entitled "Location" --
 8 And I think it may be because there is a
 9 hole punch that might obliterate it but might not.
 10 I don't see in the locations, quote, the specific,
 11 end quote, as to whether we're dealing with
 12 westbound or eastbound I-84 on page 355.
 13 Would we look somewhere else to be
 14 informed of that on this page? If you know.
 15 A. This would have been on the westbound
 16 side.
 17 Q. Okay. Let me --
 18 Do you identify page 355 as being a true
 19 and correct copy of your traffic control
 20 maintenance diary for that night?
 21 A. Yes, sir.
 22 Q. Okay. Let me direct your attention to
 23 page 356, the traffic control maintenance diary for
 24 June 10, 2018.
 25 Again, can you identify that as being a

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1 copy of your traffic control maintenance diary for
 2 that night?
 3 A. Yes, sir.
 4 Q. On the first page, it states that, "We
 5 all showed up at 8:30," and then it proceeds on
 6 that, "Signs for speed reduction and triple-lane
 7 closure were put out."
 8 Is that a triple-lane closure in a
 9 four-lane stretch of highway?
 10 A. Yes.
 11 Q. Okay. On page 357, again, that is a
 12 copy of your traffic control maintenance diary for
 13 that night?
 14 A. Yes, sir.
 15 Q. First line, again, there's a reference
 16 to a "triple right lane closures."
 17 Is that, again, a triple right lane
 18 closure of an otherwise four-lane stretch of
 19 highway?
 20 A. Yes, sir.
 21 Q. Okay. Now, here -- and I'm --
 22 Take a look at a couple of these.
 23 It appears that you relate in your
 24 traffic control maintenance diaries when the
 25 crew for Specialty shows up on site as being 8:30.

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1 A. Because we can't take a lane until 10:00
 2 as per the plans --
 3 Q. Okay.
 4 A. -- and the contract, but we are still
 5 able to put out shoulder closures, put up signs,
 6 drop the speed limit because we had to raise and
 7 lower the speed limit every day. But we can do all
 8 that as prep work until then.
 9 Q. Okay. And on page 357, from your review
 10 of that traffic control maintenance diary for that
 11 day, are you able to tell me whether we're still
 12 talking about work on the westbound lanes?
 13 A. Yes. It's westbound.
 14 Q. Okay. And June 12 of 2018, that is your
 15 traffic control maintenance diary for that date?
 16 A. It's incomplete, but yes.
 17 Q. What is incomplete about it?
 18 A. There should be another page to it.
 19 Q. There should, and I don't know whether
 20 we missed it or exactly what because I can't read
 21 the next page.
 22 But at least on that section of the
 23 page that you can see, that's your -- you can see
 24 that you're still working on the westbound side?
 25 A. Yes.

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1 Is that about the time that the
 2 Specialty crew started putting out their traffic
 3 control maintenance devices?
 4 A. That would be the time that we would
 5 start putting up the speed reduction, cleaning up
 6 anything that needed to clean up from the daytime
 7 traffic, if anything blew over.
 8 Q. Okay.
 9 A. Started putting up signs if we had the
 10 time or start moving signs if we need to start
 11 moving tapers. And also show up for a pre-shift
 12 meeting.
 13 Q. All right. And was there a standard
 14 time when the tapers would be started -- would
 15 start to be placed by Specialty? And here we're
 16 talking about work on I-84, whether it's westbound
 17 or eastbound. Here I think we're still talking
 18 westbound.
 19 When would the tapers start to be
 20 placed?
 21 A. 10:00.
 22 Q. Okay. And why is it that the tapers
 23 would start to be placed at 10:00 as opposed to the
 24 earlier time when you're placing the signs out
 25 there?

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1 Q. Okay. And here, we're speaking about a
 2 triple right-lane closure that was staged the
 3 previous night?
 4 A. Yes.
 5 Q. Okay. And down towards the bottom,
 6 there's a sentence that begins, "Then I sent David
 7 and Chad back to the stockyard to grab TC 120."
 8 What does that indicate? Is that a
 9 particular sign?
 10 A. That's our trucks.
 11 Q. Okay.
 12 A. Our trucks are all labeled "TC" and then
 13 numbers.
 14 Q. Is that a truck with a movable sign?
 15 Changeable sign?
 16 A. No, sir. It's a one-ton flatbed truck.
 17 Q. "And had them pick up the barrels from
 18 the three tapers from the previous night."
 19 Is that making reference to a triple
 20 closure that had been undertaken the previous
 21 night?
 22 A. Correct.
 23 Q. And then it addresses "the triple lane
 24 closures that we would be doing on 6/14 for
 25 Diamond."

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1 Do you know whether that addresses the

2 closures that would be done on the eastbound lanes

3 of --

4 A. Correct.

5 Q. -- I-84?

6 A. Yes, sir. Yes.

7 Q. All right. June 15 -- excuse me,

8 June 13. That's page 359.

9 Are we talking there about westbound,

10 eastbound, or both, if you know?

11 A. This would have been on the westbound.

12 Q. Okay. And here, we're talking about

13 another triple-lane closure, correct?

14 A. This one sounds like a double-lane

15 closure.

16 Q. The only question I --

17 A. This is for a double --

18 Q. -- I had is about four sentences down,

19 it says, "I grabbed the third arrow board from the

20 night before."

21 A. Right. And then it says, "We pulled on

22 a lane closure on the Connector, I-184."

23 Q. All right. So your reading of this is

24 this reflects on westbound I-84 a double-lane

25 closure?

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1 Zach, and I met with Bruce with Penhall and Caleb

2 with Diamond and went over the plan for the pull on

3 the next couple of nights."

4 Do you recall that conversation that was

5 held apparently on June 13th, 2018?

6 A. I don't recall this conversation.

7 Q. But on that evening, there was a

8 reduction of three left lanes down to a single open

9 right lane?

10 A. Correct.

11 Q. Okay. About a little more than a third

12 of the way down, there is related, "Traffic EB,"

13 which I interpret to be eastbound --

14 Am I correct in that?

15 A. Correct.

16 Q. -- "was backed up past the Locust Grove

17 overpass due to the lane closures." And by that,

18 you're meaning to communicate due to the closure of

19 three open lanes down to a single open lane on that

20 four-lane stretch of eastbound I-84?

21 A. Correct.

22 Q. Okay. And approximately how far of a

23 traffic backup would there be as indicated there if

24 the traffic was backed up to Locust Grove?

25 A. Over a mile.

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1 A. A double-lane closure with a lane

2 closure on the Connector, correct.

3 Q. Okay. All right.

4 Let me ask you to take a look at

5 page 361. That's for June 14, 2018. It

6 indicates --

7 Is this a copy of your traffic control

8 maintenance diary for that night?

9 A. Yes, sir.

10 Q. And present on that night was yourself,

11 Zach --

12 Is that Zach Lofgren?

13 A. Rankin.

14 Q. Rankin.

15 Chad, David, and Jake, correct?

16 A. Correct.

17 Q. First lane -- first line, rather, it

18 relates that, "I," meaning you, I presume, "dropped

19 of," I presume that's, "dropped off the three

20 'Left Lane Closed' signs for eastbound."

21 Does that indicate that there was

22 anticipated to begin that night a three-lane

23 closure on eastbound?

24 A. Yes, sir.

25 Q. Okay. It then relates that, "Jack,

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1 Q. Over a mile? Closer to two miles?

2 A. Estimating, it would be closer to the

3 two-mile mark.

4 Q. Okay. Are you able to tell us when it

5 was that traffic was backed up to that extent on

6 that night of June 14, 2018?

7 A. It would have been between 10:00 and

8 11:30.

9 Q. And how can we know that?

10 A. My note in here saying that at 11:30,

11 Jake left the jobsite and traffic started to thin

12 out.

13 So that would mean that the queue was

14 reducing and traffic was picking up in speed.

15 Q. And where does that say Jack -- Jake

16 left at 11:30?

17 A. "Left the jobsite. Traffic had started

18 to thin out and was merging nicely at the second

19 lane closure."

20 Q. Okay. And by the "second lane closure,"

21 that's as you're approaching the work zone where

22 you have traffic being redirected into the next

23 lane over, I take it?

24 A. Yes.

25 Q. Okay. Do you have a recollection of

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1 having a discussion with Mr. Schwendiman on this
 2 night regarding the response to traffic on
 3 eastbound I-84 to the reduction of lanes of four
 4 open lanes down to a single open lane?
 5 A. I don't recall having a meeting with
 6 Blaine Schwendiman on this night, and I don't
 7 notate it in my diary.
 8 Q. If you had had such a meeting, you would
 9 have noted it in your diary?
 10 A. Correct.
 11 Q. That's your custom and practice at the
 12 time?
 13 A. Correct.
 14 Q. Okay. All right.
 15 Now, given a traffic backup as a result
 16 of the lane closures addressed in this diary that
 17 extended almost as much as two miles, did you give
 18 any consideration that night to placing a
 19 changeable message board further westbound on
 20 eastbound I-84 to advise approaching traffic that
 21 there was a traffic congestion further eastbound on
 22 I-84?
 23 A. No.
 24 Q. Is there a reason why you didn't?
 25 A. We don't typically do that. We don't

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1 3:07 p.m., and we are back on the record.
 2 Q. (BY MR. ROBBINS) Okay. Back from our
 3 break, sir, looking back at your testimony during
 4 the course of today, are there any changes you'd
 5 like to make to your testimony thus far?
 6 A. No.
 7 Q. Okay. Let me direct your attention then
 8 back to Tab 12, page 363, your traffic control
 9 maintenance diary dated June 15, 2018.
 10 And that is your diary for that night,
 11 correct?
 12 A. Yes.
 13 Q. And there, we have indicated you were
 14 present, Zach, Anthony.
 15 Who is Anthony, by the way?
 16 A. Anthony Happ --
 17 Q. Okay.
 18 A. -- is another laborer that I had.
 19 Q. All right. And Chad and David.
 20 Now, I -- and I meant to ask David off
 21 the record, but I would like to ask this gentleman,
 22 insofar as Zachary Rankin is concerned, on the
 23 nights from June 14 through June 16, what position
 24 was Mr. Rankin working for Specialty on?
 25 A. As a laborer.

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1 typically move our devices per congestion. We keep
 2 them at their certain distances that they're called
 3 out on the plans.
 4 Q. Okay. How would it be then that traffic
 5 would be informed of a congestion of this magnitude
 6 occurring if there wasn't a movement of signs to
 7 advise traffic that the congestion had, in fact,
 8 existed?
 9 MR. PERKINS: Object to the form.
 10 Q. (BY MR. ROBBINS) If you know.
 11 MR. PERKINS: Calls for speculation.
 12 MR. ROBBINS: Yeah.
 13 THE WITNESS: At this point, like I said, we
 14 don't move our signs and material based off of
 15 congestion. The only way they would have been
 16 notified, to answer your question, would be the
 17 brake lights, and the congestion itself would be
 18 its own warning.
 19 MR. ROBBINS: Okay.
 20 MR. PERKINS: Are we about ready for a break?
 21 MR. ROBBINS: We are ready for a break now.
 22 THE VIDEOGRAPHER: We are off the record at
 23 2:45 p.m.
 24 [Break taken from 2:45 p.m. to 3:07 p.m.]
 25 THE VIDEOGRAPHER: All right. It is

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1 Q. Okay. All right.
 2 Now, taking a look at the traffic
 3 control maintenance diary that night, again, there
 4 was a -- it was contemplated there would be a
 5 triple left lane closure on eastbound I-84?
 6 A. Yes, sir.
 7 Q. Okay. And that would be three lanes of
 8 a four-lane stretch of highway were closed down?
 9 A. In that section, yes, sir.
 10 Q. In that section, yes, sir.
 11 Are you able to see.
 12 -- because I see different times there.
 13 From what you can see in the maintenance diary for
 14 that date, did the tapers --
 15 Did you position the tapers in or around
 16 10:00 that evening at that location or was it
 17 sometime before?
 18 A. In this diary, I am on westbound pulling
 19 on tapers, and I started at 10:00.
 20 Q. Ah.
 21 A. But that would have been the same for
 22 eastbound. I just neglected to notate that.
 23 Q. If you know, who did you direct to set
 24 the eastbound tapers that night?
 25 A. I don't remember who was with me and who

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1 was on eastbound.
 2 I know Anthony would have been on
 3 eastbound, and one of the three -- Zach, Chad, and
 4 David -- two of the three would have been over
 5 there, and one person would have been assisting me
 6 on the westbound side.
 7 **Q. Did you ultimately move from the**
 8 **westbound side of I-84 over to the eastbound side**
 9 **that night?**
 10 A. Me personally?
 11 **Q. You personally, sir.**
 12 A. Yes, I -- I was mobile all the time.
 13 **Q. When do you recall being --**
 14 **Well, you were -- that night you were on**
 15 **both sides -- westbound, eastbound -- different**
 16 **times of the --**
 17 A. Yeah. I -- every night, I was always
 18 checking both sides.
 19 **Q. Okay. All right.**
 20 **Now, down about halfway down, it says,**
 21 **"Anthony left the jobsite at 11:00. Traffic EB,"**
 22 **which I take to be eastbound, "was backed up past**
 23 **Locust Grove and was at a standstill."**
 24 **Can you tell by looking at that diary**
 25 **how long the traffic backup extended at the point**

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1 **this note or --**
 2 A. I don't seem to have notated it.
 3 **Q. But this is something that you are**
 4 **remembering from your own personal knowledge?**
 5 A. Yes.
 6 **Q. And is there a reason why you have a**
 7 **recollection of that discussion that took place on**
 8 **June 15, 2018? Is there a reason that you can**
 9 **think of why that stands out in your mind?**
 10 A. I remember being concerned about the
 11 fact that traffic wasn't moving at all --
 12 **Q. Okay.**
 13 A. -- and going and wanting to talk to ITD.
 14 **Q. Okay. Do you also have a**
 15 **recollection -- and I may have asked you this, and**
 16 **if I did, I apologize -- of expressing those same**
 17 **concerns to a Penhall representative that night?**
 18 A. I don't -- I don't recall talking to
 19 Penhall about that that night.
 20 **Q. Do you recall seeing any representative**
 21 **from Penhall over on the eastbound lanes of I-84 at**
 22 **or around the time that this traffic backup that is**
 23 **described in this diary was taking place?**
 24 A. No, I don't recall. We would have been
 25 setting up ramp closures for them on the westbound

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1 **in time that is reflected in that diary note?**
 2 A. Meaning a measurable distance?
 3 **Q. Yes, sir.**
 4 A. That would have been the same as before,
 5 about two miles.
 6 **Q. About two miles? Okay.**
 7 **And do you know how long it was that**
 8 **traffic was backed up approximately two miles on**
 9 **that evening on eastbound I-84?**
 10 A. I don't recall, and it doesn't look like
 11 I notated it.
 12 **Q. Do you know from looking at your note or**
 13 **from your own personal memory of that evening**
 14 **whether you that evening had a discussion with**
 15 **Mr. Schwendiman from ITD concerning the traffic**
 16 **conditions after the reduction of lanes from four**
 17 **down to a single open lane eastbound I-84?**
 18 A. Yes, sir. I remember having a
 19 discussion with Mr. Schwendiman about what his
 20 thoughts were on our setup and the traffic queue.
 21 **Q. Okay. And you've previously addressed**
 22 **that discussion in the inquiry that I've made of**
 23 **you or --**
 24 A. Correct.
 25 **Q. Okay. Now, does that appear anywhere in**

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1 side. They would have probably been preoccupied.
 2 **Q. Okay. Do you recall ever seeing a**
 3 **representative from Penhall over on the eastbound**
 4 **lanes of I-84 that evening anytime between 10:00**
 5 **and 12:00 midnight?**
 6 A. No, I don't recall.
 7 **Q. Okay. Next is page 365.**
 8 **Is that a copy of your traffic control**
 9 **maintenance diary note of June 16, 2018?**
 10 A. Yes, sir.
 11 **Q. All right. And there in addition to**
 12 **yourself are identified a Zach, Anthony, Chad, and**
 13 **David, correct?**
 14 A. Yes, sir.
 15 **Q. And, again, was Zachary working as a**
 16 **laborer that night, that night of the accident?**
 17 A. Yes, sir.
 18 **Q. Okay. And the first line, there was**
 19 **contemplated and, in fact, ultimately implemented a**
 20 **triple left lane closure on a four-lane stretch of**
 21 **highway on eastbound I-84?**
 22 A. In that stretch, yes, sir.
 23 **Q. Okay. And down about a third of the way**
 24 **down, "Traffic EB" --**
 25 **There, again, I note that to be**

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1 eastbound, correct?
 2 A. Yes, sir.
 3 Q. -- "was backed up past Locust Grove."
 4 So the response to traffic to the
 5 reduction of three lanes in a four-lane section of
 6 highway was the same on June 16 as it had been on
 7 June 15 and 14.
 8 Would that be accurate?
 9 A. Yes.
 10 Q. Okay. And do you recall how long it was
 11 that traffic eastbound was backed up past Locust
 12 Grove?
 13 A. I -- I don't remember it being that
 14 backed up that late, but I also went over to the
 15 westbound side shortly after that.
 16 Q. Okay.
 17 A. It had started to move, and I had to go
 18 take care of Penhall on the westbound side.
 19 Q. All right. Do you recall having any
 20 discussions with Mr. Schwendiman that evening --
 21 that is, on June 16, 2018 -- regarding traffic
 22 conditions?
 23 A. No, sir.
 24 Q. Do you recall having any discussions
 25 prior to the accident with any representative of

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1 A. Bruce Kidd.
 2 Q. Okay. And do you recall whether it was
 3 still on June 16 or was it the early morning hours
 4 of June 17 that you had this discussion?
 5 A. It would have --
 6 Sorry. Not to cut you off.
 7 Q. That's okay.
 8 A. It would have been immediately following
 9 him calling me about the accident.
 10 Q. Did he advise you as to why he was
 11 asking you about the setup that had been called for
 12 on I-84?
 13 A. No. He was just asking if we were set
 14 up the same.
 15 Q. Okay. Because he was the one that asked
 16 for that setup that night, correct?
 17 A. Correct.
 18 Q. All right. And you informed him that it
 19 was set up the same way it had been on the two
 20 previous evenings?
 21 A. Correct.
 22 Q. You also advised him that on the two
 23 previous evenings, there had been a traffic backup
 24 as a result of that -- those lane closures that he
 25 had ordered?

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1 Penhall regarding traffic conditions in the
 2 eastbound I-84 lanes?
 3 A. Prior to the accident, no.
 4 Q. Prior to the accident. Okay.
 5 After the accident, do you recall having
 6 any discussions with any representative of Penhall
 7 regarding the traffic conditions in the eastbound
 8 lanes of I-84 before the accident happened?
 9 A. Before, no.
 10 Q. Okay. But after the accident happened,
 11 you had a discussion with representatives of
 12 Penhall regarding traffic conditions --
 13 A. Yes.
 14 Q. -- eastbound I-84?
 15 What were those discussions about?
 16 A. About how was the setup. They asked if
 17 we were set up the same as before, what the traffic
 18 was like. I answered that it was backed up just
 19 like the previous three nights -- or two or three
 20 nights, and that it had started to move. And then
 21 I --
 22 That's as much as I remember of the
 23 conversation.
 24 Q. Who was it that you had this
 25 conversation with?

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1 A. Correct.
 2 Q. And did he have any response to what you
 3 had told him about the traffic response to the lane
 4 closures on the two prior evenings?
 5 A. Not really. He just wanted to reassure
 6 that it was the same as before.
 7 Q. Okay.
 8 A. That we didn't do anything different
 9 that night.
 10 Q. Okay. Did you have any conversations
 11 with any representatives of ITD regarding traffic
 12 conditions on eastbound I-84 that night?
 13 A. Not that I recall. Once I was informed
 14 about the accident, things kind of got unhinged,
 15 and we were trying to assist Boise PD as much as we
 16 could.
 17 Q. Okay. Did you have any discussions with
 18 Mr. Kircher about the accident that night?
 19 A. That night, no.
 20 Q. Okay. The next morning?
 21 A. Not until Monday.
 22 Q. Ah. Yes. Okay. And what --
 23 Is that a phone call that you made to
 24 him or did he reach out to you?
 25 A. No. That was -- I went to the office

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1 and spoke in person.

2 **Q. Okay. Did he tell you that he had**

3 **already been informed about the occurrence of the**

4 **accident?**

5 A. I had attempted to call him, but he was

6 out of town, and I left him a voicemail.

7 **Q. Okay.**

8 A. So he would have been informed by me and

9 probably other entities as well.

10 **Q. Okay. Can you tell me, to the best of**

11 **your recollection, what was exchanged between you**

12 **and Mr. Kircher in the course of that conversation?**

13 A. On that Monday?

14 **Q. Yeah, on that Monday. Yes.**

15 A. I explained what we set, what was going

16 on, the traffic conditions, and then what happened

17 at the accident, who I talked to, who I tried to

18 call at Specialty, and the rest of the actions

19 throughout the night of how we reacted and how we

20 helped --

21 **Q. Okay.**

22 A. -- and other events that happened that

23 night.

24 **Q. Who did you try to reach out to at**

25 **Specialty?**

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1 **inquiry of you as to why three open lanes had been**

2 **closed in a four-lane stretch of highway?**

3 A. No.

4 **Q. Okay. At some time after the accident,**

5 **was there a meeting held between and among**

6 **Specialty, ITD, and Penhall to discuss the cause of**

7 **the accident, to the best of your knowledge?**

8 A. We --

9 I don't remember a meeting. Like I

10 said, that night kind of got unhinged. We had

11 another accident that happened on the westbound

12 side where a driver had fallen asleep and hit one

13 of our work trucks in a lane closure.

14 So we had a lot to think about.

15 I don't remember a specific meeting, but

16 we had a phone conversation, and I do believe that

17 Dan Kircher had contacted Penhall asking questions.

18 **Q. Do you know what questions he asked of**

19 **Penhall from what he told you?**

20 A. We were trying to get them to agree to

21 not setting another triple.

22 **Q. Why was that request made, if you know?**

23 A. Because we didn't want to risk it. We

24 didn't want to -- we didn't want to do it anymore.

25 **Q. Because of what you saw in terms of the**

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1 A. I tried to reach out to Dan Kircher

2 because I had forgotten that he was out of town.

3 **Q. Uh-huh.**

4 A. And then the next person that we were

5 supposed to contact was Jeremy Hopkins, and he --

6 he had answered and, you know, basically --

7 **Q. Jeremy Hopkins or Tracy Hopkins?**

8 A. Jeremy Hopkins is Tracy Hopkins' son.

9 **Q. Okay.**

10 A. He would -- he's my next supervisor in

11 line --

12 **Q. Okay.**

13 A. -- just underneath Dan.

14 And I asked him basically for advice of,

15 "What do you want me to do," you know, in regards

16 to the accident, and it was, "Help BPD and stay."

17 **Q. So you spoke to Jeremy before you spoke**

18 **to Mr. Kircher?**

19 A. Yes.

20 **Q. Did Jeremy make any inquiry as to why**

21 **four open lanes had been reduced to a single open**

22 **lane in violation of the contract provisions?**

23 A. No. I don't think he was -- I don't

24 think he was aware of the contract provisions.

25 **Q. How about Mr. Kircher? Did he make**

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1 **response of traffic to the reduction of three**

2 **open -- three lanes of a four-lane stretch of**

3 **highway?**

4 MR. PERKINS: Object to the form.

5 THE WITNESS: We didn't --

6 We were instructed to set the triples in

7 the first place, and after an incident like this,

8 we did not want to continue to go against the

9 plans.

10 **Q. (BY MR. ROBBINS) Okay. And were you**

11 **present when Mr. Kircher made that statement to**

12 **Penhall?**

13 A. No. He informed me that he had done it.

14 **Q. Did Mr. Kircher ever tell you that he**

15 **had communicated that sentiment to representatives**

16 **of ITD?**

17 A. I'm not aware of it.

18 **Q. Okay. All you know of is a conversation**

19 **that took place between Kircher and Penhall wherein**

20 **Mr. Kircher told the Penhall representative that**

21 **Specialty would not be on board with any more**

22 **three-lane closures of a four-lane stretch of**

23 **highway?**

24 A. Correct.

25 **Q. Okay. Do you know who Mr. Kircher had**

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1 that conversation with?
 2 A. I don't.
 3 **Q. Do you know what the result of that**
 4 **conversation was?**
 5 A. We did not set another three-lane
 6 closure unless it was absolutely needed to set that
 7 center joint.
 8 I believe after this fact, we set one
 9 temporarily in the middle of the night after
 10 traffic had cleared out further down along the
 11 project. I don't remember the exact date.
 12 **Q. Were you also informed by Mr. Kircher**
 13 **going -- that going forward, Specialty would not**
 14 **agree to any deviation from the express terms of**
 15 **the temporary traffic control plan as approved**
 16 **unless it were reduced to writing?**
 17 A. That was essentially --
 18 Yes. Yes.
 19 **Q. And has that been the standard practice**
 20 **and procedure now implemented by Specialty in all**
 21 **of its future contracts with ITD, if you know?**
 22 MR. MOORE: Object to the form. Foundation.
 23 THE WITNESS: It's definitely my common
 24 practice.
 25 **Q. (BY MR. ROBBINS) Okay.**

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1 **Q. Okay. Have there been any other changes**
 2 **in the practices and procedures of Specialty**
 3 **regarding the manner in which it manages temporary**
 4 **traffic control plans that have been implemented**
 5 **since the June 16, 2018, accident because of that**
 6 **occurrence?**
 7 MR. PERKINS: Object to the form.
 8 THE WITNESS: No. Other -- other than our
 9 stance of getting things in writing, no.
 10 **Q. (BY MR. ROBBINS) Okay. Let me ask you,**
 11 **if I may, to take a look in Tab 97 of Exhibit 5,**
 12 **which is the small one.**
 13 A. 97?
 14 **Q. Yes, sir. Page 3547 through 3548.**
 15 **Now, this is an e-mail that was written**
 16 **by Mr. Kircher, and we discussed this e-mail with**
 17 **him, but it includes an e-mail from you and also**
 18 **purports to include the diary of -- a diary from**
 19 **you. And here, this is an e-mail from June 22,**
 20 **2018.**
 21 I'll give you a chance to look at that.
 22 My question to you is: Do you recall
 23 the concerns that were being addressed by
 24 Mr. Kircher in that e-mail?
 25 A. Okay. I'm sorry. What was the question

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1 A. I don't know that it --
 2 Me teaching new traffic control
 3 supervisors, yes, it is common practice.
 4 **Q. Okay. Let me ask you this: Have you**
 5 **acted as traffic control manager in any highway**
 6 **construction projects in which ITD was involved**
 7 **since the I-84 project?**
 8 A. Yes.
 9 **Q. In any of those projects, has ITD asked**
 10 **you or approved the reduction of four open lanes of**
 11 **highway to a single open lane?**
 12 A. I haven't --
 13 MR. MOORE: Object to the form. Foundation.
 14 THE WITNESS: I haven't worked in an area
 15 that has four open lanes, so --
 16 **Q. (BY MR. ROBBINS) Has there been a**
 17 **request by either ITD or the contractor involved in**
 18 **any of those highway construction projects in which**
 19 **you have been involved since the I-84 project where**
 20 **the temporary traffic control plans had been**
 21 **revised or amended?**
 22 A. Yes. Yes.
 23 **Q. And have those amendments, to your**
 24 **knowledge, always been in writing?**
 25 A. Yes.

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1 on this?
 2 **Q. There wasn't a question yet.**
 3 **My question to you is: Do you recall**
 4 **the concerns being addressed in that e-mail from**
 5 **Mr. Kircher to the listed recipients?**
 6 A. I do. This was a concern of working
 7 Friday and Saturday nights during the time of the
 8 year that this project was happening in 2018.
 9 And the difference being in 2017, the
 10 project was happening in the fall and there wasn't
 11 as much traveling public, and in 2018, this was
 12 happening in the summer months and we had camping
 13 traveling public and, you know -- you know,
 14 through -- people going from state to state and
 15 just increased traffic volumes.
 16 And so we had issues setting the same
 17 traffic control that they had the previous year to
 18 access the same work zones.
 19 **Q. So was this a concern that was expressed**
 20 **by you originally to Mr. Kircher about the working**
 21 **on Friday and Saturday nights during the spring of**
 22 **2018?**
 23 A. I had -- following the incident --
 24 And I had mentioned a couple times
 25 before that Fridays and Saturdays were the worst

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1 nights. They were always the heaviest, the most
 2 congested, the most speeders coming through. You
 3 know, you have bars let out at 2:00 a.m. and just
 4 material gets messed up and it's just a risk.
 5 **Q. In addition to passenger traffic,**
 6 **there's also a large concentration of commercial**
 7 **traffic, tractor-trailers at that time as well?**
 8 MR. PERKINS: Object to the form.
 9 MR. MOORE: And foundation.
 10 Go ahead, sir.
 11 THE WITNESS: I can't say personally that
 12 I've noticed a difference between summer months and
 13 fall or winter months having a difference on truck
 14 traffic.
 15 **Q. (BY MR. ROBBINS) Okay. Would you term**
 16 **the concentration of truck traffic on I-84**
 17 **eastbound and westbound to be prevalent during both**
 18 **times of year?**
 19 MR. MOORE: Object to the form. Foundation.
 20 THE WITNESS: As in the 2017 --
 21 **Q. (BY MR. ROBBINS) And 2018.**
 22 A. -- and having it happening in the
 23 fall --
 24 **Q. Yeah.**
 25 A. -- I -- I would say the truck traffic

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1 **Q. And was that concern heightened by the**
 2 **direction that you had received to reduce four open**
 3 **lanes of highway to a single open lane?**
 4 A. Heightened? I -- I'd say it's a concern
 5 working on the freeway at all at those times. You
 6 have people going 70 miles an hour next to you when
 7 you're trying to work.
 8 I can't say for sure that it would be --
 9 it would be heightened by the additional lane being
 10 closed.
 11 **Q. Would it be heightened because of the**
 12 **fact that you're squeezing the traffic that is**
 13 **there that you've expressed as being greater during**
 14 **the spring or summer months into fewer lanes to**
 15 **travel through the work zone?**
 16 MR. PERKINS: Object to the form.
 17 THE WITNESS: With traffic having fewer
 18 lanes, that gives a bigger buffer space for the
 19 workers and for us to work as well, and that --
 20 that would be the trade-off. That wouldn't --
 21 It wouldn't make anything worse as far
 22 as the concern of traffic going next to you.
 23 **Q. (BY MR. ROBBINS) Well, what about the**
 24 **concern for the safety of the motoring public when**
 25 **you are reducing the available lanes for the volume**

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1 would be similar.
 2 **Q. Okay. All right.**
 3 **Okay. So now, when you said that you**
 4 **mentioned that a couple of times before, this**
 5 **concern about working Friday and Saturday nights,**
 6 **who did you mention that to before and when did you**
 7 **first mention it?**
 8 A. That would be to -- to Dan. I can't --
 9 I can't say off the top of my head when I mentioned
 10 it before this e-mail, but it was -- it was a
 11 concern just from observation of -- of working.
 12 **Q. And was it expressed before the June 16,**
 13 **2018, accident?**
 14 A. Yes.
 15 **Q. Okay. And what was Mr. Kircher's**
 16 **response to the concern you raised?**
 17 A. It was understanding. It was, "We can
 18 only do so much," as we're told by the contractor.
 19 If they're pulling -- if they're bringing in their
 20 workers, they're bringing in their people, we have
 21 to show up and cover them.
 22 **Q. But you did have a concern based upon**
 23 **volumes and speed of traffic on Friday and Saturday**
 24 **nights in the spring of 2018?**
 25 A. Yes.

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1 **that you had seen out there on I-84 in the**
 2 **springtime?**
 3 A. It's --
 4 MR. PERKINS: Object to the form.
 5 THE WITNESS: It's always a concern about
 6 congesting traffic, but in that area, in the
 7 mindset of working this project, that area
 8 congested every day. Anyone that drives through
 9 Idaho is sitting in traffic in that same area.
 10 So it was never an outright concern of,
 11 "Oh, we're backing up traffic." I did note on the
 12 nights that it backed up to Locust Grove because
 13 that is excessive.
 14 **Q. (BY MR. ROBBINS) Right.**
 15 A. But creating a queue on freeway lane
 16 closures tends to happen.
 17 **Q. But creating a queue that extends two**
 18 **miles --**
 19 A. Is excessive.
 20 **Q. -- would be considered extreme in your**
 21 **mind?**
 22 A. Yes.
 23 **Q. Now, do you recall attending a meeting**
 24 **with the NTSB in August of 2018 in which the cause**
 25 **of the accident was discussed?**

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1 **this request, closing down three lanes in a**
 2 **four-lane area.**
 3 A. Yes, sir. And then Jon Mensinger showed
 4 up.
 5 **Q. Okay.**
 6 A. And Blaine Schwendiman showed up after
 7 that.
 8 **Q. And I want to go through that with you.**
 9 **Who all was present there from Penhall?**
 10 A. It would have been Bruce Kidd and his
 11 supervisor, which is Scott Reed.
 12 **Q. Well, that certainly is one of the**
 13 **people that was a supervisor for him, from what we**
 14 **understand in another deposition.**
 15 **But was there anyone else from Penhall**
 16 **at that meeting?**
 17 A. Not to my knowledge.
 18 **Q. Where exactly was the meeting that took**
 19 **place?**
 20 A. It was in the staging area against the
 21 north wall of the pit where we had all our traffic
 22 control lined up. They came over to our trucks and
 23 started discussing this stuff with us.
 24 **Q. Who is "they"?**
 25 A. Bruce Kidd and Jon Mensinger were the

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1 **Q. Okay.**
 2 A. -- for a short duration.
 3 **Q. And, again, please help me, Mr. Garling.**
 4 **I wasn't there, and so we're trying to find out**
 5 **what you recall.**
 6 **How long did the initial conversation**
 7 **take place between you and Bruce?**
 8 A. Minutes --
 9 **Q. Okay.**
 10 A. -- before Jon Mensinger showed up.
 11 **Q. Okay. And then share with me what you**
 12 **recall in that initial couple minutes between you**
 13 **and Mr. Kidd.**
 14 A. He approached us, asking what -- if we
 15 had staged -- if we were ready to pull on the
 16 triple-lane closure. That caught me off guard. I
 17 informed him that we had staged a double-lane
 18 closure per the plan. I was unaware that we were
 19 going to set a triple-lane closure, that he would
 20 need to talk to Roper, who was in charge.
 21 And at that point, Jon Mensinger had
 22 shown up.
 23 **Q. Okay. Do you recall any further**
 24 **conversations then taking place between you and**
 25 **Bruce, and now Mr. Mensinger is standing nearby?**

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1 first to come over, and then Scott Reed came over
 2 and Blaine Schwendiman showed up later. One --
 3 **Q. Did Jon Mensinger come over with Bruce**
 4 **Kidd?**
 5 A. No. They showed up separately.
 6 **Q. Okay. Did Bruce Kidd initially approach**
 7 **you about this subject?**
 8 A. Yes.
 9 **Q. And Jon Mensinger was not in that area**
 10 **when he initially brought up the subject?**
 11 A. No. And then he showed up later --
 12 **Q. Okay.**
 13 A. -- and reaffirmed.
 14 **Q. Okay. Let me keep --**
 15 **MR. ROBBINS: Hang on.**
 16 **Q. (BY MR. MOORE) Let me keep going.**
 17 **Now, with Bruce Kidd being present and**
 18 **you being present, were your employees present?**
 19 A. I -- I can't recall if I had anyone
 20 there --
 21 **Q. Okay.**
 22 A. -- that was sitting.
 23 **Q. So initially, it's your belief that it**
 24 **was just you and Bruce?**
 25 A. Right off the bat --

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1 A. I had asked if we were allowed to, and
 2 Bruce had --
 3 **Q. You were allowed to what?**
 4 A. If we were allowed to set the
 5 triple-lane closure.
 6 **Q. Why did you ask that?**
 7 A. Because I knew it wasn't in the plans.
 8 I -- I read --
 9 Excuse me.
 10 I had read the special provisions, and I
 11 had read the contract plans.
 12 **Q. Okay.**
 13 A. And I had asked for my own information
 14 because I was going to be taking over this project
 15 that -- if that was approved.
 16 **Q. What did Bruce tell you?**
 17 A. Bruce told me yes.
 18 **Q. What did he tell you? Just "yes" and --**
 19 A. He --
 20 **Q. Did he provide you any detail?**
 21 A. He told me yes and he looked at Jon, Jon
 22 Mensinger, and then they started talking and then
 23 I --
 24 **Q. Who started talking?**
 25 A. Sorry. Excuse me. Bruce and Jon

<p style="text-align: right;">Page 194</p> <p>1 Mensinger.</p> <p>2 Q. What do you recall them saying?</p> <p>3 A. I -- I left the conversation so that I</p> <p>4 could call Roper and get them over into the area.</p> <p>5 Q. So you have no idea what John and Bruce</p> <p>6 spoke about at that point?</p> <p>7 A. No. I went into my truck to make a</p> <p>8 phone call.</p> <p>9 Q. And help me understand a little bit</p> <p>10 here.</p> <p>11 What is the staging area so that</p> <p>12 somebody who reads this deposition knows what we're</p> <p>13 talking about.</p> <p>14 A. Okay. The staging area was an area of</p> <p>15 a -- I believe it to be an old gravel pit that ITD</p> <p>16 owned that we were allowed to use as storage. We</p> <p>17 had our signs, barrels, candles, trucks. Penhall</p> <p>18 used it to store their crash attenuator trucks,</p> <p>19 their trailers, and their machinery.</p> <p>20 Q. Okay. Now, you've had this conversation</p> <p>21 with Bruce Kidd next to the north wall, and it</p> <p>22 comes to an end with him with you asking him, "Have</p> <p>23 you gotten permission?" and he says yes and then</p> <p>24 you walk away to go make a phone call.</p> <p>25 How far away did you walk to go make the</p>	<p style="text-align: right;">Page 195</p> <p>1 phone call?</p> <p>2 MR. ROBBINS: Misstates his testimony.</p> <p>3 Q. (BY MR. MOORE) Go ahead, sir.</p> <p>4 MR. MORTIMER: Same objection.</p> <p>5 THE WITNESS: Short distance. Like I said,</p> <p>6 they -- they had approached my truck, so I was</p> <p>7 already standing outside my truck.</p> <p>8 Q. (BY MR. MOORE) Okay. Short distance.</p> <p>9 To your knowledge, were Bruce Kidd</p> <p>10 and/or Mr. Mensinger in a distance where they were</p> <p>11 listening to your phone call --</p> <p>12 MR. ROBBINS: Object as to --</p> <p>13 Q. (BY MR. MOORE) -- or was it farther away</p> <p>14 such that your phone call wouldn't have been heard</p> <p>15 by them, to the best of your knowledge?</p> <p>16 MR. ROBBINS: Object as to form.</p> <p>17 MR. PERKINS: Object to the form.</p> <p>18 THE WITNESS: I didn't use the truck stereo</p> <p>19 system, so they wouldn't have been able to hear my</p> <p>20 phone call. I had my windows up.</p> <p>21 Q. (BY MR. MOORE) Okay. So what do you</p> <p>22 recall telling Mr. Roper at that point?</p> <p>23 A. That they were talking about wanting to</p> <p>24 set a triple-lane closure that night and that we</p> <p>25 weren't staged for it and he needed to come talk to</p>
<p style="text-align: right;">Page 196</p> <p>1 them.</p> <p>2 Q. And what does it mean to be "staged"? I</p> <p>3 think I know, but just for the record, what are we</p> <p>4 talking about when you have staged something?</p> <p>5 A. Being staged means that we had gone</p> <p>6 previously before that night and set the barrels</p> <p>7 for the tapers on the side of the road. We had</p> <p>8 placed the signs where they needed to be ready to</p> <p>9 go up so that all we have to do is show up with</p> <p>10 our -- our tubular markers and start pulling on</p> <p>11 lane closures, set the arrow board, pull out the</p> <p>12 taper, make sure it's straight, and then carry on</p> <p>13 with the lane closure.</p> <p>14 Q. You already have the bigger signs</p> <p>15 already out there in the approximate location where</p> <p>16 they're going to be placed up on the shoulders of</p> <p>17 the road.</p> <p>18 Is that --</p> <p>19 A. Correct.</p> <p>20 Q. -- fair?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. After you said you're set for a</p> <p>23 double closure staged --</p> <p>24 A. Correct.</p> <p>25 Q. -- what did Josh and you then talk</p>	<p style="text-align: right;">Page 197</p> <p>1 about? What did you guys say?</p> <p>2 A. He said he would be right there, and I</p> <p>3 traded places with him because he was putting up</p> <p>4 lane closure signs, those signs that we had</p> <p>5 previously staged. And I traded places with him to</p> <p>6 finish the work, and he was going to discuss with</p> <p>7 Penhall and ITD what we needed to do.</p> <p>8 Q. Okay. How long was it before he came</p> <p>9 back to this site?</p> <p>10 A. He called me after their meeting had</p> <p>11 presumably concluded.</p> <p>12 Q. I misspoke. Now, let me stop you there</p> <p>13 because you may have misunderstood.</p> <p>14 After you got off the phone with Josh</p> <p>15 while you're in your truck with the windows up, how</p> <p>16 long at that point when that phone call ended was</p> <p>17 it that he finally got back to the staging area?</p> <p>18 A. I don't know. I left.</p> <p>19 Q. So make sure I understand this.</p> <p>20 After you finished your call with Josh</p> <p>21 and you now know he's coming back to the staging</p> <p>22 area, you left?</p> <p>23 A. Yep. I told Penhall -- I told Bruce</p> <p>24 Kidd with Penhall and Jon Mensinger that I was</p> <p>25 going to leave and Josh was on his way to discuss</p>

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1 make sure we have that on the record.
 2 MR. MOORE: I don't know what that objection
 3 is, but go ahead. You've got it on the record.
 4 **Q. (BY MR. MOORE) Where I'm focused now**
 5 **right -- is what conversations you personally had,**
 6 **okay?**
 7 MR. MOORE: And that will solve your
 8 objection.
 9 MR. ROBBINS: I bet you feel better, don't
 10 you?
 11 MR. MOORE: Gosh.
 12 MR. ROBBINS: Break your train of thought,
 13 did I?
 14 MR. MOORE: Just wanted to see if it's on the
 15 record.
 16 MR. ROBBINS: I don't care.
 17 MR. MOORE: I know you don't care.
 18 **Q. (BY MR. MOORE) How long was it**
 19 **afterwards, after you left, that Josh Roper then**
 20 **called you on the cell phone?**
 21 A. Best estimate, 15, 20 minutes.
 22 **Q. Okay. And how long were you on the**
 23 **phone with him?**
 24 A. Until we met back up to hook up to arrow
 25 boards and get going, which would have been enough

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1 **the staging --**
 2 A. Yeah.
 3 **Q. -- and that they were -- and he was told**
 4 **to go forward with this by those four?**
 5 A. He was told by all four parties that,
 6 "We are going to be doing that."
 7 **Q. Okay. Was any other information**
 8 **imparted in this phone call from Josh Roper?**
 9 A. Other than work information of, "Have
 10 this person grab an arrow board and this person
 11 grab candles."
 12 **Q. Okay. Now, when you guys met, you and**
 13 **Mr. Roper met and you were with the crew, did you**
 14 **talk further about what had taken place at the**
 15 **staging area in the meetings with Penhall?**
 16 A. Nothing more than he was frustrated with
 17 it, that -- but it wasn't -- it wasn't unexpected
 18 because it had happened the previous year, and that
 19 was the end of that conversation.
 20 **Q. Okay. Did he tell you anything further**
 21 **about the previous year?**
 22 A. Not more than we had already gone in
 23 depth when we were planning out the job.
 24 **Q. Okay. Based upon the conversation that**
 25 **you had with Mr. Roper in the phone call and/or**

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1 time for me to drive from Vista to Orchard. The
 2 stockyard was off of Orchard and north of
 3 Victory -- excuse me, south of Victory.
 4 **Q. Maybe I got confused.**
 5 **Was the call that you had at that point,**
 6 **was it a call with Mr. Roper or did you guys**
 7 **actually meet in person?**
 8 A. We had a phone call, but he told me that
 9 we were moving forward with the three lane closures
 10 but not until we were done with the left lanes, and
 11 then we briefly spoke about it more in person when
 12 we -- when we all -- our crew and Roper and I
 13 linked up to go pull on the left lane closures.
 14 **Q. First, let's go through the actual phone**
 15 **call.**
 16 **What do you recall Mr. Roper telling you**
 17 **in that phone call?**
 18 A. Saying, "Well, it ends up that we're
 19 going to be doing these three lane closures."
 20 **Q. What else did he tell you that you**
 21 **recall?**
 22 A. That there was an agreement between Jon
 23 Mensinger, Blaine Schwendiman, Scott Reed, and
 24 Bruce Kidd at Penhall.
 25 **Q. And he said that those four had met in**

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1 **this conversation that you had at the yard, is it**
 2 **your understanding that the approval came from a**
 3 **conversation with Bruce Kidd, a conversation -- the**
 4 **conversation with Scott Reed, Blaine Schwendiman,**
 5 **and Mr. Mensinger?**
 6 MR. ROBBINS: Object as to form.
 7 **Q. (BY MR. MOORE) Go ahead, sir.**
 8 A. Yes. It is my understanding that all
 9 four parties were in agreement and that -- that is
 10 where we were told to do the three lane closures
 11 from.
 12 **Q. It's your understanding, from that**
 13 **meeting was the approval?**
 14 A. That was our verbal agreement. That was
 15 the --
 16 For this chunk of operations in 2018,
 17 that was our verbal approval to do this.
 18 **Q. Okay. Would you turn to Tab 12, and if**
 19 **you would, sir --**
 20 MR. PERKINS: Have you got it? Okay.
 21 **Q. (BY MR. MOORE) I need you to go to**
 22 **page 356, if you could.**
 23 **Okay. Sorry for the delay.**
 24 **In your earlier testimony, you looked at**
 25 **this particular page. This is your diary entry for**

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1 period, you know, we're talking June 13, 14, 15,
 2 that -- those few days before the accident took
 3 place.
 4 MR. PERKINS: Thank you.
 5 THE WITNESS: So if I remember correctly, and
 6 if -- reading the previous pages, this was the
 7 first night that we set the triple-lane closure for
 8 Diamond on the eastbound side. I would have talked
 9 to both Bruce and Caleb about the same thing in
 10 reference to keeping moving and reducing what we
 11 can when we can.
 12 **Q. (BY MR. GRAHAM) To your knowledge, did**
 13 **Diamond Drilling have any input or direction into**
 14 **the decision that was made to reduce the lanes down**
 15 **to one lane on the eastbound side?**
 16 A. When we -- when I spoke with Caleb, he
 17 was already under the assumption that he was able
 18 to take those lanes, that he -- I don't know if he
 19 spoke with Bruce or who -- whomever he spoke with,
 20 but coming into the project, he was under the
 21 presumption that he would be able to get those lane
 22 closures, and he wanted them.
 23 **Q. And your understanding was based on a**
 24 **conversation that you had with him?**
 25 A. Correct.

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1 be able to know to whom I should be addressing
 2 these questions.
 3 So in order to enlighten me on that,
 4 prior to June 16 of 2018, were you ever present
 5 during a conversation that Mr. Mensinger was also
 6 present during which he addressed the issue of a
 7 State -- the State approving the reduction of four
 8 open lanes of highway down to a single open lane?
 9 A. Other than the meeting at May 31st, he
 10 was present but probably not within earshot due to
 11 the fact that he was walking up.
 12 But other than that date, there was no
 13 other time that Jon Mensinger and Bruce Kidd were
 14 in the same spot where Bruce claimed that he had
 15 approval.
 16 **Q. Okay. Did you ever hear Mr. Schwendiman**
 17 **address the subject of the State's approval of**
 18 **reducing a four-lane stretch of highway down to a**
 19 **single open lane?**
 20 A. No.
 21 **Q. Did you have personal knowledge of**
 22 **Mr. Mensinger being present on site when four open**
 23 **lanes of highway were reduced to a single open**
 24 **lane?**
 25 A. I can't -- I can't point out the nights,

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1 **Q. Do you have any recollection as to when**
 2 **that conversation took place?**
 3 A. It would have been either the night of
 4 the 14th or maybe the night before if he had come
 5 out to scout the jobsite.
 6 But this -- the night of the 14th was
 7 their first night of operations.
 8 MR. GRAHAM: Okay. I don't have any more
 9 questions. Thanks.
 10 MR. ROBBINS: Anybody else up there?
 11 MR. GALE: No questions from me, Eric Gale.
 12 MR. MONTGOMERY: Gary Montgomery, no
 13 questions.
 14 MS. JANKLOW: Lindsey Janklow, no questions.
 15 MR. WETHERELL: Bob Wetherell, no questions.
 16 MR. FISHER: Steven Fisher, no questions.
 17 MR. ORLER: Mark Orlor, no questions.
 18 MR. ROBBINS: Let me ask a couple questions.
 19 I'm going to get you out of here in five minutes.
 20 Trust me.
 21
 22 FURTHER EXAMINATION
 23 BY MR. ROBBINS:
 24 **Q. Directing your attention to the line of**
 25 **inquiry that Mr. Moore made of you, I just want to**

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1 but I know he was present when that happened.
 2 **Q. Okay. If we wanted to compare it, we**
 3 **would take a look at your traffic control**
 4 **maintenance diaries and also the standard**
 5 **construction diaries from the State, agreed?**
 6 A. Yes.
 7 **Q. Same question insofar as**
 8 **Mr. Schwendiman.**
 9 **Do you know from your personal knowledge**
 10 **from having been present that Mr. Schwendiman was**
 11 **present at a point in time when four open lanes of**
 12 **highway were reduced down to a single open lane?**
 13 A. Yes.
 14 **Q. Okay. And on how many occasions do you**
 15 **know for certain that he was present during the**
 16 **course of that type of lane adjustment?**
 17 A. Many.
 18 **Q. Okay.**
 19 A. He was -- he was our essential point of
 20 contact with ITD.
 21 **Q. Okay. And did he ever tell you that you**
 22 **did not -- "you" being Specialty, did not have the**
 23 **approval of the State of Idaho to reduce four open**
 24 **lanes of highway down to a single open lane?**
 25 A. No.

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1 record.
 2
 3 (The videotaped deposition concluded at 4:49 p.m.)
 4 * * *
 5 (Signature was requested.)
 6
 7
 8
 9
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1 VERIFICATION
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)
 6
 7 I, MASON GARLING, being first duly sworn on my
 8 oath, depose and say:
 9 That I am the witness named in the foregoing
 10 videotaped deposition taken the 21st day of April, 2021,
 11 consisting of pages numbered 1 to 234, inclusive; that
 12 I have read the said deposition and know the contents
 13 thereof; that the questions contained therein were
 14 propounded to me; that the answers to said questions
 15 were given by me, and that the answers as contained
 16 therein (or as corrected by me therein) are true and
 17 correct.
 18
 19 Corrections Made: Yes _____ No _____
 20
 21 _____
 22 MASON GARLING
 23
 24 Subscribed and sworn to before me this _____
 25 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____

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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF IDAHO)
 4) ss.
 5 COUNTY OF ADA)
 6
 7 I, ANDREA J. WECKER, Certified Shorthand Reporter
 8 and Notary Public in and for the State of Idaho, do hereby
 9 certify:
 10 That prior to being examined, the witness named in
 11 the foregoing deposition was by me duly sworn to testify
 12 to the truth, the whole truth and nothing but the truth;
 13 That said deposition was taken down by me in
 14 shorthand at the time and place therein named and
 15 thereafter reduced to typewriting under my direction,
 16 and that the foregoing transcript contains a full, true
 17 and verbatim record of said deposition.
 18 I further certify that I have no interest in the
 19 event of the action.
 20 WITNESS my hand and seal this 30th day of April,
 21 2021.
 22
 23
 24
 25 My Commission Expires: 02-14-23

ANDREA J. WECKER

ANDREA J. WECKER
 CSR, RDR, CRR, CRC and Notary
 Public in and for the
 State of Idaho.



EXHIBIT 23

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF JAKE LOUX

April 20, 2021

Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

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1 A. Yes. All of the above.
 2 Q. Okay. Were the multiple setups then
 3 associated with the work being performed on the
 4 eastbound lane only or were there also multiple
 5 setups on the westbound lane when you returned in
 6 or around June 14 of 2018?
 7 A. They were both directions.
 8 Q. Okay. Now, when you returned, the
 9 traffic control manager was no longer Mr. Roper.
 10 Is that correct?
 11 A. He was still in charge of that project.
 12 He was not there that, though -- that particular
 13 incident. I was there.
 14 Q. By the "particular incident," you mean
 15 the date of the occurrence, of the accident itself?
 16 A. Yes.
 17 Q. All right. No, I'm talking more about
 18 when you returned in or around June 14.
 19 Was Mr. Roper still involved with the
 20 project at that time?
 21 A. Yes.
 22 Q. All right. Well, I see, for example, on
 23 the June 14 traffic control maintenance diaries the
 24 name of Mason, who I know or am told to be Mason
 25 Garling.

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1 you had not had occasion to review the traffic
 2 control plan and special provisions for the I-84
 3 project?
 4 A. No.
 5 Q. No, you didn't review them?
 6 A. No.
 7 Q. Is that correct?
 8 It's a double negative.
 9 A. No.
 10 Q. That's my fault.
 11 A. Okay.
 12 Q. Is it correct to say that you hadn't
 13 reviewed the traffic control plan and special
 14 provisions during your -- for the I-84 project when
 15 you were working in 2017?
 16 A. No.
 17 Q. Tell me, did you review the special
 18 provisions and traffic control plan for the I-84
 19 project in 2017?
 20 I'm getting clarification because we've
 21 got double negatives coming, and that's my fault as
 22 much as anybody else's.
 23 So if you can answer that, whether you
 24 reviewed in 2017, at any point during your
 25 involvement, the temporary traffic control plan and

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1 Previously, Mr. Roper appears on the
 2 traffic control maintenance diaries, I think, in
 3 2018. His last appearance is on June 6.
 4 But your recollection is that Mr. Roper
 5 was still involved with the project on June 14?
 6 A. Yes.
 7 Q. Okay. Was he involved with the project
 8 there on site -- that is, on I-84 -- on June 14?
 9 A. I believe he was on active duty. He was
 10 doing his Guard training that particular week.
 11 Q. Right.
 12 A. That's --
 13 Q. Well, okay. But when you say he was on
 14 Guard duty that particular week, you mean the week
 15 of June 14?
 16 A. Yes.
 17 Q. Okay. All right.
 18 But he was still involved with the
 19 project, but he was just taking a short hiatus from
 20 his involvement to serve with the National Guard?
 21 A. Yes.
 22 Q. Okay. Now, when you were involved with
 23 the I-84 project in 2017, I touched upon this a
 24 little bit before, but let me be more specific.
 25 Is it correct that at that time in 2017,

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1 special provisions for this project.
 2 A. Not that I can recall.
 3 Q. Okay. Did you review the temporary
 4 traffic control plan and special provisions for the
 5 I-84 project during your involvement in 2018?
 6 A. Not that I can recall.
 7 Q. Is that not something that you would
 8 have done on projects where you were working, in
 9 use of your terms, as a grunt?
 10 A. No.
 11 Q. That's not something you would do?
 12 A. No.
 13 Q. You wouldn't review it, correct?
 14 My statement is correct?
 15 Okay. Let me do it this way, and it's
 16 my fault, and I apologize.
 17 When you are working on a project as a
 18 laborer, was it your custom and practice to review
 19 the temporary traffic control plan and special
 20 provisions for that project?
 21 A. Not as a laborer. As a supervisor, yes.
 22 Q. All right. Did you ever work on the
 23 I-84 project as a supervisor?
 24 A. No.
 25 Q. All right. In the course of your work

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1 on the project in 2017, to your knowledge, were you
 2 involved in placing traffic control devices that
 3 reduced a four-lane stretch of highway down to a
 4 single lane -- open lane stretch of highway?
 5 A. Yes.
 6 Q. Okay. Do you recall how many occasions
 7 you were called upon to make that placement?
 8 A. Not that I can recall.
 9 Q. Okay. Was it on more than one evening?
 10 A. Yes.
 11 Q. Okay. Was it on more than five
 12 evenings?
 13 A. Not that I can recall.
 14 Q. Okay. More than one, less than five,
 15 correct?
 16 A. Yes.
 17 Q. Okay. How is it that you were advised
 18 that four lanes of open highway would be reduced
 19 down to a single open lane on those occasions when
 20 you were called upon to make that placement?
 21 MR. PERKINS: By way of clarification, are we
 22 referring to 2017 now or 2018?
 23 MR. ROBBINS: No, 2017.
 24 Q. (BY MR. ROBBINS) Let's restrict
 25 ourselves for the present time to 2017 when we're

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1 talking about the reduction of lanes from four open
 2 lanes down to a single open lane.
 3 How was it that you were informed that
 4 the traffic control placement would be as such in
 5 2017?
 6 MR. MOORE: Object to the form.
 7 Go ahead.
 8 THE WITNESS: I believe it came from Josh
 9 Roper, who it was passed down from, I would assume,
 10 Penhall or the State.
 11 Q. (BY MR. ROBBINS) Okay. Well, let's not
 12 assume.
 13 Did Mr. Roper tell you where he got
 14 those instructions from on those occasions when you
 15 were directed to reduce four open lanes to a single
 16 open lane?
 17 A. No.
 18 Q. Okay. Did Mr. Roper express to you any
 19 reservations in the direction he apparently had
 20 been given to reduce four open lanes to a single
 21 open lane in the 2017 time frame?
 22 A. Can you clarify that?
 23 Q. Yeah. Did he say, "Well, we've been
 24 directed to do this, but I don't think it's a great
 25 idea," or, "It's in violation of the plans"?

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1 That's what I mean by "reservations."
 2 Any criticism, critique?
 3 A. Not that I can recall.
 4 Q. Okay. Do you recall observing what
 5 impact on traffic the decision to reduce four open
 6 lanes of highway to a single open lane on the
 7 highway had in the 2017 time frame?
 8 MR. MOORE: Object to the form.
 9 Go ahead.
 10 THE WITNESS: Yes.
 11 Q. (BY MR. ROBBINS) And what was that
 12 impact that you personally observed in 2017?
 13 A. It queued up, but it wasn't substantial.
 14 Q. When you say it "queued up," how far
 15 back did it queue up?
 16 A. From what I can recall of that
 17 particular -- of 2017, it was within --
 18 I almost want to say it didn't even
 19 reach our first set of signs.
 20 Q. And when you say "first set of signs,"
 21 is that the first set of signs in the advanced
 22 warning area?
 23 A. Yes.
 24 Q. Okay. And when you say the "first set
 25 of signs," is that the first signage that appears

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1 in the advanced warning area or the last set of
 2 signs in the advanced warning area before entering
 3 the construction zone?
 4 A. It would be the first set --
 5 Q. Okay.
 6 A. -- as you're entering the construction
 7 zone.
 8 Q. All right. So the traffic backup hadn't
 9 reached all the way back to the location where the
 10 first set of signs were located on the occasions
 11 that you were aware of --
 12 A. Yes.
 13 Q. -- of a traffic backup?
 14 MR. PERKINS: Object to the form.
 15 Q. (BY MR. ROBBINS) All right. So the
 16 first set of signs, do you know how far in advance
 17 of the construction project those first set of
 18 signs were placed when you saw that traffic backup
 19 in 2017?
 20 A. How far from the sign to the traffic?
 21 Q. How far from the sign -- from the first
 22 set of signs that you just discussed with me to the
 23 location of the work zone.
 24 A. That the traffic was in?
 25 Q. I'm just talking right now about how far

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1 the sign -- the first set of signs that you've
 2 addressed was from the work zone itself.
 3 A. Over a mile from the work zone itself.
 4 Q. Okay. So the traffic you saw had queued
 5 up to almost over a mile?
 6 A. No.
 7 MR. PERKINS: Object to the form.
 8 Q. (BY MR. ROBBINS) How far would you
 9 estimate that the traffic had queued up? I think
 10 you said that it had not yet reached the first set
 11 of signs, correct?
 12 A. Yes.
 13 Q. Okay. So are you able to estimate for
 14 me on the occasion that you saw the traffic queue
 15 after the reduction of four lanes to a single open
 16 lane, had backed up to in relation to the work
 17 zone?
 18 A. A quarter to a half.
 19 Q. And was that stop-and-go traffic?
 20 A. It was slow. It was never stopped.
 21 Q. Okay. If you saw the traffic was, in
 22 fact, stop-and-go in the traffic queue after a
 23 reduction of lanes, would you recognize that as
 24 presenting a potential hazard to motorists on the
 25 roadway --

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1 A. Not that I can recall.
 2 Q. Okay. During the 2017 time frame, did
 3 you make any requests of Mr. Roper that Idaho State
 4 Police provide assistance to the work crews out on
 5 site?
 6 A. At one time, I did ask if ISP has been
 7 aware of the high volume of speeding traffic
 8 because the speed reduction was not getting through
 9 to general public, and they were still going full
 10 speed.
 11 Q. A combination of speed and volume of
 12 traffic?
 13 MR. MOORE: Object to the form.
 14 MR. PERKINS: Object to the form.
 15 Q. (BY MR. ROBBINS) Well, you said both
 16 speed and volume. I'm just trying to get
 17 clarification from you, sir.
 18 A. Speed.
 19 Q. Okay. Only speed? Volume didn't cause
 20 a concern for you?
 21 A. Not at that particular time, no.
 22 Q. Did it later?
 23 A. No.
 24 Q. Okay. Never during the course of your
 25 project did volume of traffic leading up to the

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1 A. Yes.
 2 Q. -- approaching that?
 3 And that hazard is the hazard, the
 4 danger of rear-end accidents.
 5 Would you agree?
 6 A. Yes.
 7 Q. Okay. I should ask you: Before coming
 8 here today to sit for your deposition, did you
 9 review any documents to prepare yourself for this
 10 deposition today?
 11 A. No.
 12 Q. Okay. Did you have any documents read
 13 to you to prepare for the deposition?
 14 A. Other than the document that -- saying I
 15 was requested to do a deposition.
 16 Q. Right. The notice for your deposition?
 17 A. Yes.
 18 Q. That was the only thing you looked at?
 19 A. Yes.
 20 Q. Okay. On those occasions where you were
 21 directed to reduce four open lanes of highway to a
 22 single open lane, at any time during those
 23 evenings, did you hear Mr. Roper complain about the
 24 direction to reduce four open lanes to a single
 25 open lane?

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1 work zone cause you any cause for concern?
 2 MR. PERKINS: Object to the form.
 3 THE WITNESS: Not that I can recall.
 4 Q. (BY MR. ROBBINS) Okay. All right.
 5 So on this occasion that you're speaking
 6 of where you asked for ISP assistance, do you
 7 recall when that was that that request for ISP
 8 assistance was made by you?
 9 A. No.
 10 Q. Was it in 2017?
 11 A. Yes.
 12 Q. All right. Was it sometime in October
 13 of 2017?
 14 A. I believe so.
 15 Q. And to whom did you make that request?
 16 A. It wasn't more of a --
 17 It wasn't really a request. It was just
 18 a suggestion.
 19 Q. Okay. To whom did you express that
 20 suggestion?
 21 A. I believe I mentioned it to Josh Roper.
 22 Q. All right. And what, if anything, did
 23 Mr. Roper say in response?
 24 A. Honestly, I don't recall.
 25 Q. Did he have any response for you?

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1 Q. So weekends, the speed and the volume
 2 were problematic for workers at the site?
 3 A. Yeah. I --
 4 "Problematic," what do you --
 5 Q. Was that a cause for concern for the
 6 workers on the site, yourself included?
 7 A. There was only one instance that I was
 8 concerned of, and it seemed that it cured itself in
 9 2017.
 10 Q. Okay. Describe that for me, would you
 11 please.
 12 A. We were doing lane restrictions in front
 13 of the Walmart next to the Flying Wye, and between
 14 the traffic coming out of downtown Boise and the
 15 eastbound traffic, it seemed like they weren't
 16 obeying by the temporary speed reduction that we
 17 had in place.
 18 Q. Okay.
 19 A. And that's why I asked if ISP could be
 20 present, just to see if it could slow any traffic
 21 down.
 22 Q. All right. And that's the one that you
 23 expressed the concern to --
 24 A. Yes.
 25 Q. -- Mr. Roper? Okay.

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1 monitoring the response of traffic to the placement
 2 of temporary traffic control devices?
 3 A. Yes.
 4 Q. Okay. And what were your
 5 responsibilities in that regard?
 6 A. Making sure that the devices were
 7 placed, and if they got hit, to be replaced or
 8 stood back up.
 9 Q. Okay. Was there a frequency with which
 10 you traveled through the advanced warning area to
 11 check on the placement of signs --
 12 A. Yes.
 13 Q. -- during the course of the project?
 14 And with what frequency was that in
 15 2017?
 16 A. How often?
 17 Q. Yeah.
 18 A. Three, four times a night.
 19 Q. And is that something that you would
 20 undertake on your own or were you doing it with
 21 other workers assigned to Specialty?
 22 A. Both.
 23 Q. Okay. So it would be -- sometimes it
 24 would be just you, and other times it would be you
 25 and somebody else?

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1 Were these concerns at all in any way
 2 related to times when the four open lanes of
 3 highway had been reduced down to a single open
 4 lane?
 5 MR. PERKINS: Object to the form. Calls for
 6 speculation.
 7 THE WITNESS: No.
 8 Q. (BY MR. ROBBINS) Okay. During the
 9 period of time that you were working on this
 10 project in 2017, did you ever see having been
 11 placed a sign that advised that three either left
 12 or right lanes were closed ahead?
 13 A. Yes.
 14 Q. Okay. On how many occasions do you
 15 recall seeing that sign having been placed in 2017?
 16 A. Two to three times.
 17 Q. Okay. Do you recall that particular
 18 sign having to have been specially purchased for a
 19 particular time period on this project or was it
 20 originally purchased and available throughout the
 21 period of time of the project that you were
 22 involved in?
 23 A. Not that I can recall.
 24 Q. Okay. During the period of time in
 25 2017, did you have any responsibilities for

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1 A. Yes.
 2 Q. Okay. Was there something that would
 3 determine whether you would be doing the job alone
 4 as opposed to doing the job with somebody else in
 5 2017?
 6 A. Shuttling trucks to particular places to
 7 get ready to pull off, get ready to set up.
 8 Q. Okay. Well, how about the observing of
 9 the response of traffic to the control devices that
 10 had been placed?
 11 Was that something that you would also
 12 do?
 13 A. Yes.
 14 Q. Okay. And would you --
 15 Was it your custom and practice then to
 16 report back to Mr. Roper what you saw in terms of
 17 the response of traffic to the traffic control
 18 devices?
 19 A. Yes.
 20 Q. Okay. And would you report back to
 21 Mr. Roper if you saw the traffic in response to
 22 those traffic control devices backed up perhaps a
 23 mile or more?
 24 MR. PERKINS: Object to the form.
 25 Q. (BY MR. ROBBINS) In other words, would

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1 you report back the length of a traffic queue to
 2 your traffic control manager?
 3 A. Yes.
 4 Q. Okay. Would you also report the length
 5 of a traffic queue to any representative from
 6 Penhall?
 7 A. No.
 8 Q. Okay. Do you know whether Penhall
 9 representatives also undertook to monitor response
 10 of traffic to temporary traffic control devices?
 11 A. Not that I can recall.
 12 Q. Okay. Do you know if a representative
 13 from the Idaho Department of Transportation
 14 monitored traffic response to the temporary traffic
 15 control devices that had been placed by Specialty?
 16 A. Yes.
 17 Q. Okay. And do you know what job title
 18 with IDT it was that would monitor the response of
 19 traffic to the temporary traffic control devices
 20 that had been placed?
 21 A. I do not.
 22 Q. Okay. In other words, was it the
 23 inspector for ITD?
 24 A. Yes.
 25 Q. Okay. Do you know the names of -- the

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1 inspectors involved in the monitoring of the
 2 placement of the temporary traffic control devices?
 3 That is, to check to make sure that the devices had
 4 been properly placed?
 5 A. Yes.
 6 Q. And under those circumstances, did you
 7 have any interaction with the ITD supervisors who
 8 were performing that monitoring function?
 9 A. Yes.
 10 Q. Okay. And do you recall the name of
 11 either or any of the IDT supervisors within which
 12 you had that connection in 2017?
 13 A. I believe his name was Steve.
 14 Q. Okay. And from your interaction with
 15 the IDT inspectors, did you form an understanding
 16 that those inspectors were familiar with the terms
 17 and conditions of the temporary traffic control
 18 plan and special provisions?
 19 A. Yes.
 20 MR. MOORE: Object to the form. Foundation.
 21 Q. (BY MR. ROBBINS) You can respond.
 22 A. I did.
 23 Q. Okay. And that was your impression,
 24 that they were informed about the traffic control
 25 plan and its special provisions?

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1 name of the inspector for ITD who performed that
 2 monitoring of traffic during the 2017 time frame?
 3 A. There was a couple of them out there at
 4 that particular time.
 5 Q. In 2017?
 6 A. Yes.
 7 Q. Do you know the names of either of them?
 8 A. Not that I can recall. They were
 9 younger.
 10 Q. Did you have any interaction with the
 11 IDT inspectors in 2017?
 12 A. Other than riding with Roper, Josh
 13 Roper, on pass-bys is all.
 14 Q. Okay. When you say "other than riding
 15 with Josh Roper on pass-bys," I'm not sure I
 16 understand that.
 17 Do I understand that to mean that there
 18 would be occasions when you would ride with Josh
 19 Roper through the area of the advanced warning area
 20 and then on those occasions, you may or may not see
 21 an IDT inspector and then there would be some
 22 interaction?
 23 A. Yes.
 24 Q. Okay. All right.
 25 To your knowledge, in 2017, were the ITD

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1 A. Yes.
 2 Q. In other words, they knew what it would
 3 take to properly set up the temporary traffic
 4 control devices through the work zone?
 5 MR. MOORE: Object to the form. Foundation.
 6 Q. (BY MR. ROBBINS) Correct?
 7 MR. MOORE: Object. Same objection.
 8 Q. (BY MR. ROBBINS) You can respond.
 9 A. Yes.
 10 Q. Okay. Do you recall in 2017 having any
 11 discussions with the ITD inspectors regarding
 12 traffic conditions?
 13 A. No.
 14 Q. Do you recall having any discussions
 15 with the ITD inspectors in 2017 with regard to the
 16 closure of four open lanes to a single open lane?
 17 A. No.
 18 Q. During 2017, do you recall having any
 19 discussions with the Penhall superintendent, I
 20 believe it was Bruce Kidd, regarding the placement
 21 of temporary traffic control devices?
 22 A. There was a discussion, but I wasn't
 23 present. I knew Bruce of -- just from him being
 24 onsite.
 25 Q. Okay. When you said that there was a

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1 discussion, do you know what the content of that
 2 discussion was, albeit you were not present for it?
 3 A. No.
 4 Q. Okay. Who in addition to Mr. Kidd was
 5 present during this discussion that you think
 6 you're aware of?
 7 A. Josh Roper.
 8 Q. Okay. And did Josh Roper tell you just
 9 generally what the substance was of that
 10 conversation he had with Mr. Kidd?
 11 A. Yes.
 12 Q. Okay. And what generally did he tell
 13 you that the substance of that conversation was?
 14 A. The setups of what they were requesting
 15 for that particular shift.
 16 Q. Do you recall when in 2017 that was?
 17 A. No.
 18 Q. Did that have to do with one of the
 19 occasions where there was a reduction of lanes from
 20 four open lanes to a single open lane?
 21 A. Could have been.
 22 Q. Okay. I don't want you to speculate,
 23 but do you happen to know based upon a recollection
 24 of what you were told by Mr. Roper of that
 25 conversation as to whether it had to do with the

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1 A. That came from Mason Garling.
 2 Q. Do you recall having any discussions
 3 with Josh Roper before this discussion he had with
 4 Mason Garling about the concept of reducing four
 5 open lanes to a single open lane in the June 2018
 6 time frame?
 7 A. No.
 8 Q. When you were told by Mason Garling that
 9 you would -- were to set up to close four open
 10 lanes down to a single open lane, did he express
 11 any concerns about that setup?
 12 A. Not that I can recall.
 13 Q. Okay. Did he tell you who had directed
 14 him to reduce four open lanes to a single open
 15 lane?
 16 A. Somebody from Penhall.
 17 Q. Did he tell you who that somebody was?
 18 A. Not that I can recall.
 19 Q. All right. On how many nights do you
 20 recall in June of 2018 was it where there was a
 21 reduction of four open lanes to a single open lane
 22 in the eastbound lanes of I-84?
 23 MR. MOORE: Object to the form. Foundation.
 24 I'll just leave it at that, Clay, but --
 25 MR. ROBBINS: That's fine, Mike. Just leave

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1 setup for a reduction of lanes from four open to a
 2 single?
 3 A. No.
 4 Q. Okay.
 5 All right. Let's take a look at the
 6 traffic control maintenance diaries for the --
 7 created June 18 --
 8 Strike that.
 9 You returned to the project in or around
 10 June 14 of 2018?
 11 A. Yes.
 12 Q. Okay. When you returned to the project,
 13 were you assigned over to the eastbound lanes of
 14 that project?
 15 A. Yes.
 16 Q. Okay. During the period of time that
 17 you returned to the project, were there occasions
 18 during which you were involved in the setting up of
 19 traffic control devices that closed four open lanes
 20 of highway down to a single open lane?
 21 A. Yes.
 22 Q. Okay. Do you recall how it was that you
 23 were informed that on the eastbound section of the
 24 project in June of 2018, four open lanes of highway
 25 would be reduced to a single open lane?

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1 it at that then.
 2 Q. (BY MR. ROBBINS) You can respond.
 3 A. I was only there for one shift, so I
 4 can't speculate of what continued on.
 5 Q. What do you mean you were only there for
 6 one shift?
 7 A. I was only there for the shift that I
 8 was there for, I believe, on the 14th. Is that
 9 what you said?
 10 Q. Okay. Where did you go after that
 11 shift?
 12 A. I got ready for -- I believe it was
 13 Father's Day weekend, so --
 14 Q. Okay.
 15 A. -- celebrate Father's Day with my kids
 16 and my dad.
 17 Q. All right. So you did the shift on
 18 June 14, and then you didn't return again until
 19 sometime after the accident?
 20 A. Yes.
 21 Q. Okay. When you returned to the
 22 project --
 23 Strike that.
 24 When did you first hear about the
 25 June 16, 2018, accident?

<p style="text-align: right;">Page 66</p> <p>1 A. I believe it was the following Monday 2 when I returned back to shift. 3 Q. Who was it that informed you about the 4 accident? 5 A. It was pretty much everywhere. News, 6 coworkers. 7 Q. All right. When you went back to the 8 project, did you have any discussions with Mason 9 Garling about the accident? 10 A. Yes. 11 Q. Okay. And what, if anything, did 12 Mr. Garling tell you about the accident itself? 13 A. He really didn't see until the 14 aftermath, and it just -- it was kind of a shock 15 and awe that it happened. 16 Q. As a result of that accident, were there 17 any changes that were implemented in how traffic 18 control would be undertaken during the project for 19 the remainder of its duration? 20 A. If there was any extra requests, we made 21 sure to document it as well as get it in written 22 writing. 23 Q. All right. When you say if there were 24 any requests for changes, was it your understanding 25 that the prior requests in 2017 for reduction of</p>	<p style="text-align: right;">Page 67</p> <p>1 lanes from four to one had been not in writing? 2 A. I couldn't tell you. 3 Q. Okay. But when you returned, that was a 4 change that you understood was being implemented; 5 that from that point on, that any change in the 6 traffic control plan was to be memorialized in 7 writing? 8 A. Yes. 9 Q. And was that a change that lasted 10 throughout the duration of that project? 11 A. I believe so. 12 Q. In Specialty's projects since the 13 June 16, 2018, time frame, is that a change in 14 policy, practice, or procedure that Specialty has 15 implemented to -- under circumstances of their 16 having been asked to change a temporary traffic 17 control plan? 18 A. Yes. 19 Q. Okay. What is it that Mr. Garling told 20 you -- 21 Strike that. 22 Were you told by Mr. Garling that that 23 would be a change that would be implemented going 24 forward on the project? 25 A. I believe it came from my boss, Dan.</p>
<p style="text-align: right;">Page 68</p> <p>1 Daniel. 2 Q. Okay. And your boss communicated to 3 Mr. Garling; Mr. Garling communicated it to you? 4 A. Yes. 5 MR. PERKINS: Object. 6 Q. (BY MR. ROBBINS) If you know. 7 Were you told why that change was 8 implemented? That is, to require written 9 alteration of a temporary traffic control plan 10 going forward? 11 A. To make sure that everybody was covered. 12 Q. Okay. Was there a belief communicated 13 to you that the absence of a written change of the 14 temporary traffic control plan was in some fashion 15 related to the accident that occurred on June 16? 16 MR. PERKINS: Object to the form. 17 THE WITNESS: I don't know. 18 Q. (BY MR. ROBBINS) Okay. But your 19 understanding was that this change in the policy, 20 practice, and procedure at Specialty was prompted 21 by the occurrence of the June 16, 2018, accident? 22 A. Yes. 23 Q. Okay. Did you participate in any 24 meetings upon your return in or around June 18, 25 2018, that were attended by ITD and Penhall during</p>	<p style="text-align: right;">Page 69</p> <p>1 which the accident was discussed? 2 A. No. 3 Q. Were there any meetings held among the 4 Specialty personnel to discuss the occurrence of 5 the June 16, 2018, accident that you attended? 6 A. No. 7 Q. Okay. Let me ask you to please take a 8 look at Exhibit 1-B, Tab 12, page 361. 9 Do you have that in front of you, sir? 10 A. I believe so. 11 Q. Okay. And we see on that page -- 12 MR. ROBBINS: Are you there, Mike? 13 MR. MOORE: Thank you. Got it. Appreciate 14 it. 15 MR. ROBBINS: Yeah, no worries. 16 Q. (BY MR. ROBBINS) Page 361, that's a copy 17 of a traffic control maintenance diary? 18 A. Uh-huh. 19 Q. Is that "yes"? 20 A. Yes. Sorry. 21 Q. No worries. 22 And your name appears under "Crew," 23 correct? 24 A. Yes. 25 Q. All right. Now, down in the second</p>

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1 name of Jon Mensinger?
 2 A. I know the name, but I don't recall
 3 dealing with him firsthand.
 4 Q. Okay. Do you recall the name of Blaine
 5 Schwendiman?
 6 A. Yes.
 7 Q. Okay. Did you have involvement with
 8 Mr. Schwendiman?
 9 A. Yes.
 10 Q. Had you known Mr. Schwendiman --
 11 Strike that.
 12 Did you have involvement with
 13 Mr. Schwendiman during the 2017 time frame?
 14 A. No.
 15 Q. Okay. Had you ever had any involvement
 16 with Mr. Schwendiman before you returned to the
 17 I-84 project in June of 2018?
 18 A. No.
 19 Q. Okay. What was the nature of your
 20 involvement with Mr. Schwendiman in June of 2018?
 21 A. Discussing setup procedures, one shift
 22 of what Penhall was requesting us to do.
 23 Q. Was there some question in your mind as
 24 to what Penhall had been requesting of you at the
 25 time of those discussions between you and

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1 Mr. Schwendiman?
 2 A. It went against the approved plans.
 3 Q. How do you know it went --
 4 What was being asked of you by Penhall
 5 that went against the approved plans?
 6 A. They were requesting additional lanes.
 7 Q. Is this one of the occasions where they
 8 were requesting that four open lanes of highway be
 9 reduced to a single open lane?
 10 A. No. It was down closer, away from the
 11 particular incident.
 12 Q. Okay. What do you mean by "they" --
 13 A. It was further east of the incident.
 14 Q. Okay. Well, what do you mean by "they
 15 were requesting additional lanes"?
 16 A. Where the Flying Wye comes back into
 17 eastbound I-84, it's multiple lanes through there,
 18 and they were requesting it to be closed off as
 19 much as possible.
 20 Q. Okay. And who was it that raised the
 21 concern of that request having been in violation of
 22 the temporary traffic control plan and special
 23 provisions?
 24 A. I think everybody was kind of on edge
 25 after the incident.

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1 Q. Okay. So this is after the incident
 2 happened?
 3 A. Yes, after.
 4 Q. Okay. All right.
 5 After the incident happened, did you
 6 inform yourself as to what the temporary traffic
 7 control plan provisions were?
 8 In other words, did you look at the
 9 temporary traffic control plan and the special
 10 provisions?
 11 A. Yes.
 12 Q. Why is it that you did that after the
 13 accident happened?
 14 A. I wanted to see what we were setting up
 15 east of the incident --
 16 Q. Okay.
 17 A. -- for the -- that shift that I was on.
 18 Q. Was that borne of a concern on your part
 19 that what you had, "you" being Specialty, had been
 20 asked to do previously was in violation of the
 21 terms of the temporary traffic control plan and
 22 special provisions?
 23 A. Rephrase that.
 24 Q. Yeah.
 25 Was your concern borne --

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1 You said that you wanted to see that --
 2 "we were setting it up east of the incident." You
 3 wanted to make sure that the temporary traffic
 4 control plan was being complied with and what you
 5 had been requested to do?
 6 A. Yes.
 7 Q. All right. And was your concern in that
 8 regard related to a belief that what Specialty had
 9 been asked to do before the accident happened was
 10 in violation of the temporary traffic control plan?
 11 MR. PERKINS: Object to the form.
 12 THE WITNESS: I don't know.
 13 Q. (BY MR. ROBBINS) Okay. But in any
 14 event, after the accident happened, you informed
 15 yourself as to what the TTCP called for?
 16 A. Yes.
 17 Q. Okay. And then this discussion occurred
 18 because after you had informed yourself about the
 19 TTCP, you believed what you were being asked to do
 20 by Penhall was in violation of the TTCP?
 21 A. Yes.
 22 Q. Okay. And you expressed that concern to
 23 Mr. Schwendiman?
 24 A. As well as Mason.
 25 Q. Okay. And what, if any, response did

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1 Mr. Schwendiman have to your expressed concern?
 2 A. I honestly don't recall what he said.
 3 Q. Okay. Do you recall what, if anything,
 4 Mr. Garling said in response to your expressed
 5 concern?
 6 A. I believe it was just what are our
 7 options of doing what is requested from Penhall.
 8 Q. And were you --
 9 Strike that.
 10 Was the ultimate decision made to follow
 11 Penhall's direction in spite of your concern?
 12 A. Sure. Yes.
 13 Q. Okay. Were you uneasy with that
 14 decision?
 15 A. Yes.
 16 Q. Okay. During the period of time that
 17 you were on the I-84 project in June of 2018, did
 18 you see Mr. Schwendiman monitor the placement of
 19 temporary traffic control devices?
 20 MR. MOORE: Object to the form.
 21 Go ahead.
 22 Q. (BY MR. ROBBINS) Do you understand what
 23 I mean by "monitor"?
 24 A. I would assume that he would have drove
 25 through, but --

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1 MR. PERKINS: Why don't we take a break.
 2 MR. ROBBINS: Why don't we take a break.
 3 We will go off the record.
 4 THE VIDEOGRAPHER: All right. We are off the
 5 record at 11:38 a.m.
 6 [Break taken from 11:38 a.m. to 11:54 a.m.]
 7 THE VIDEOGRAPHER: All right. We are back on
 8 the record, and it is 11:54 a.m.
 9 Q. (BY MR. ROBBINS) Mr. Loux, after this
 10 break, is there any aspect of your prior testimony
 11 that you'd like to revise or change in any respect?
 12 I'm not suggesting that there should be.
 13 It's just if you had a thought during the course of
 14 the break.
 15 A. No.
 16 Q. Okay. Now, just one last question, if I
 17 could.
 18 In the latter part --
 19 Upon your return in or around June 18,
 20 2018, to the I-84 project, in looking through the
 21 traffic control maintenance diaries, I show that --
 22 that Mr. Roper is no longer on the project, and I'm
 23 seeing only Mason Garling.
 24 Are you aware of that change having been
 25 taken and, if so, what the reason for that change

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1 Yes, I had seen him drive through the
 2 project.
 3 Q. And did you see him inspect the -- on
 4 his drive through the placement of the temporary
 5 traffic control devices?
 6 MR. MOORE: Object to the form. Foundation.
 7 Q. (BY MR. ROBBINS) If you know.
 8 A. I don't know.
 9 Q. Okay. Did you watch Mr. Schwendiman
 10 monitor the response of traffic to the placement of
 11 temporary traffic control devices during the period
 12 of time that you were on this project in June of
 13 2018?
 14 A. No.
 15 MR. MOORE: Object to the form.
 16 MR. ROBBINS: Okay.
 17 MR. MOORE: Go ahead.
 18 MR. ROBBINS: See, you don't need to object,
 19 Mike. He's --
 20 MR. MOORE: So nice of you.
 21 MR. ROBBINS: He's going to be your star
 22 witness now.
 23 MR. MOORE: You know, these comments are just
 24 so nice of you on the record.
 25 MR. ROBBINS: They are. They are. Okay.

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1 was?
 2 A. I do not recall what the decision -- why
 3 he wasn't out there.
 4 Q. Okay. But there was a decision made
 5 that Mr. Roper would no longer be associated with
 6 the project?
 7 If you know. If you know.
 8 A. I honestly don't know.
 9 Q. Okay. Was that decision made before the
 10 June 16, 2018, accident?
 11 A. I couldn't tell you.
 12 MR. ROBBINS: Okay. All right. Mr. Loux, I
 13 thank you very much for your time. I don't have
 14 any other questions for you.
 15
 16 EXAMINATION
 17 BY MR. MORTIMER:
 18 Q. Mr. Loux, my name is Evan Mortimer. I
 19 represent the Johnson family. I do have just a few
 20 follow-ups. So I'm going to jump around a little
 21 bit, maybe fill in a few gaps in my understanding
 22 of your testimony, okay?
 23 A. Okay.
 24 Q. Okay. Earlier, you testified regarding
 25 there was a discrepancy with certain traffic

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1 Q. Let's go to page 344. That's
 2 October 23, 2017.
 3 Does that indicate to you that evening
 4 there was another triple lane closure?
 5 A. All I see is doubles unless I'm reading
 6 his handwriting wrong.
 7 Q. Well, let's do this: There may be some
 8 additional information I can give you.
 9 Let's look at Tab 18, and let's go to
 10 page 629. It's a standard construction diary.
 11 That's from ITD.
 12 Do you know that to be the case?
 13 I'm sorry. You're still looking. 629.
 14 Tab 18.
 15 A. Okay. Yep.
 16 Q. Yep, you've got the tab.
 17 A. And --
 18 Q. 629.
 19 And, again, this is a standard
 20 construction diary. These are diaries that
 21 testimony has been given were prepared by ITD
 22 personnel.
 23 "First lane," does that indicate for
 24 October 23, there was a three right lane closure?
 25 MR. PERKINS: Object to the form.

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1 A. Yes.
 2 Q. Okay. And what did you see them doing
 3 when you saw them out on the project?
 4 A. Driving our setups, making sure that it
 5 was compliant, making sure Penhall was doing their
 6 scope of work as well.
 7 Q. Okay. That's what it appeared to you
 8 from your having been out there and actually
 9 observing what the ITD inspectors were doing?
 10 A. Yes.
 11 MR. ROBBINS: Okay. All right. Well,
 12 Mr. Loux, again, I thank you for your time. I
 13 don't have any other questions.
 14 MR. MOORE: Just a few more questions, sir.
 15
 16 FURTHER EXAMINATION
 17 BY MR. MOORE:
 18 Q. You were out on this project, and you
 19 had worked the project both in September and
 20 October of 2017, correct?
 21 A. Yes.
 22 Q. And do you use Interstate 84 regularly?
 23 A. I do.
 24 Q. Okay. And you're familiar that between
 25 Orchard and Five Mile, there are different lane

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1 You can answer.
 2 THE WITNESS: Yes.
 3 Q. (BY MR. ROBBINS) Okay. So if that's
 4 accurate, there was a triple closure that night?
 5 A. Yes.
 6 Q. Okay. Let's take a look at October 25,
 7 page -- excuse me, Tab 12, page 345. I'm sorry,
 8 Mr. Loux.
 9 A. Which page?
 10 Q. Page 345.
 11 Does that indicate that there was a
 12 triple closure that evening as well?
 13 A. Yes.
 14 Q. Okay. Now, Mr. Moore asked you some
 15 questions concerning your knowledge of what it is
 16 ITD inspectors do when they were out there on the
 17 job during this project.
 18 But do you recall during 2018 having any
 19 discussions with the ITD inspectors regarding the
 20 placement of the traffic control devices?
 21 A. Not that I can recall.
 22 Q. How about 2017?
 23 A. Not that I can recall.
 24 Q. Okay. But you saw the ITD inspectors
 25 out there on the project?

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1 configurations? They have seven-lane sections,
 2 six-lane sections, five-lane sections, four-lane
 3 sections, and even three-lane sections going each
 4 direction, correct?
 5 A. Yes.
 6 MR. ROBBINS: Object as to form.
 7 Q. (BY MR. MOORE) And when there are lane
 8 closures to be made, does your industry use
 9 terminology to describe the lane closures such as
 10 the word "double" or "triple"?
 11 A. Yes.
 12 Q. And when you use the word "double," does
 13 that mean two lane closures?
 14 A. That means two lanes.
 15 Q. Okay. And when they say "triple," that
 16 means three lanes, correct?
 17 A. Yes.
 18 Q. But you have to figure out how many
 19 lanes there were that they were -- in the area that
 20 they were working to understand how many remaining
 21 lanes were open.
 22 Is that fair?
 23 A. Yes.
 24 MR. MOORE: Okay. Thank you, sir. I have
 25 nothing further.

1 MR. ROBBINS: Well, since we've already had
 2 testimony on that subject from the State, I don't
 3 think I need to burden you any more. Thank you,
 4 sir.
 5 MR. PERKINS: Are we through?
 6 MR. ROBBINS: Oh, God yes.
 7 THE VIDEOGRAPHER: This concludes the
 8 deposition of Jake Loux, and the time is 12:40 p.m.
 9 We are off the record.
 10
 11 (The videotaped deposition concluded at 12:40 p.m.)
 12 ***
 13 (Signature was requested.)
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 VERIFICATION
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)
 6
 7 I, JAKE LOUX, being first duly sworn on my oath,
 8 depose and say:
 9 That I am the witness named in the foregoing
 10 videotaped deposition taken the 20th day of April, 2021,
 11 consisting of pages numbered 1 to 114, inclusive; that
 12 I have read the said deposition and know the contents
 13 thereof; that the questions contained therein were
 14 propounded to me; that the answers to said questions
 15 were given by me, and that the answers as contained
 16 therein (or as corrected by me therein) are true and
 17 correct.
 18
 19 Corrections Made: Yes _____ No _____
 20
 21 _____
 22 JAKE LOUX
 23
 24 Subscribed and sworn to before me this _____
 25 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____

1 REPORTER'S CERTIFICATE
 2
 3 STATE OF IDAHO)
 4) ss.
 5 COUNTY OF ADA)
 6
 7 I, ANDREA J. WECKER, Certified Shorthand Reporter
 8 and Notary Public in and for the State of Idaho, do hereby
 9 certify:
 10 That prior to being examined, the witness named in
 11 the foregoing deposition was by me duly sworn to testify
 12 to the truth, the whole truth and nothing but the truth;
 13 That said deposition was taken down by me in
 14 shorthand at the time and place therein named and
 15 thereafter reduced to typewriting under my direction,
 16 and that the foregoing transcript contains a full, true
 17 and verbatim record of said deposition.
 18 I further certify that I have no interest in the
 19 event of the action.
 20 WITNESS my hand and seal this 30th day of April,
 21 2021.
 22
 23
 24
 25 My Commission Expires: 02-14-23



Andrea J. Wecker

ANDREA J. WECKER
 CSR, RDR, CRR, CRC and Notary
 Public in and for the
 State of Idaho.

EXHIBIT 24

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Attorneys for Defendant Parametrix, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR., individually
as father of LAWRENCE P. MANLAPIT, III,
deceased,

Plaintiff,

vs.

**KRUJEX FREIGHT TRANSPORT CORP.;
KRUJEX TRANSPORTATION CORP.;
KRUJEX TRANSPORTATION SYSTEMS,
LLC; KRUJEX LOGISTICS, INC.;
ALBERTSON'S COMPANIES;
CORNELIEU VISAN; DANIEL VISAN;
LIGRA VISAN; STATE OF IDAHO;
STATE OF IDAHO DEPARTMENT OF
TRANSPORTATION; IDAHO STATE
POLICE; COUNTR OF ADA; ADA
COUNTY SHERIFF'S DEPARTMENT;
ADA COUNTY HIGHWAY DISTRICT;
CITY OF BOISE; PENHALL COMPANY;
PENHALL INTERNATIONAL CORP.;
PARAMETRIX, INC., and DOES 1 through
150, inclusive,**

Defendants.

Case No. CV01-19-06625

**DECLARATION OF KEN COLSON,
P.E.**

KEN COLSON, P.E., being first duly sworn, deposes and states under penalty of perjury:

1. That, at all times relevant, your Affiant is a professional licensed engineer employed by Parametrix, Inc., a civil engineering firm that performs traffic engineering services. I worked for Parametrix on the I-84 Five Mile to Orchard and Ramps project, ITD Project No. A019(289), Key No. 19289. The information contained herein is based on my personal knowledge.

2. In December 2016, Parametrix entered into a contract with the Idaho Transportation Department ("ITD") whereby Parametrix was tasked with the preparation of a construction staging and temporary traffic control plan, including special provisions (specifications) for implementation of the traffic control plan for the project.

3. On or about January 18, 2017, I attended a project kickoff meeting on behalf of Parametrix at ITD's District 3 offices in Boise. The purpose of the meeting was to introduce team members between ITD and Parametrix and provide an overview of the project and Parametrix's scope of work with regard to preparing a temporary traffic control plan. A true and correct copy of the Meeting Notes for the January 18, 2017, meeting is attached hereto as "Exhibit A."

4. Parametrix began work on the preliminary traffic control plan for the project, whereby Parametrix utilized its standard drafting and design review process, which also included reviewing written comments and design review notes from ITD personnel. Parametrix also prepared special provisions to be followed by the contractor in implementing the temporary traffic control plan associated with the project.

5. On or about March 2, 2017, I attended a preliminary design review meeting with ITD personnel in Boise. The purpose of this meeting was to review elements of Parametrix's

preliminary traffic control plan and discuss modifications as appropriate. This is a standard part of the design review process when working with ITD on design elements for a roadway project. A true and correct copy of the Meeting Notes for the March 2, 2017 meeting is attached hereto as "Exhibit B."

6. Parametrix made additional edits to the preliminary traffic control plans after the March 2, 2017, meeting. On or about March 22, 2017, I attended a final design review meeting with ITD personnel in Boise. The purpose of the meeting was to discuss final edits to the traffic control plan, as well as review and approve content to be placed in the special provisions associated with implementation of the traffic control plan. A true and correct copy of the Meeting Notes associated with the March 22, 2017 meeting is attached hereto as "Exhibit C."

7. I stamped the temporary traffic control plans for the project, which signified their final completion. A true and correct copy of the final temporary traffic control plans for the project at issue is attached hereto as "Exhibit D." The final special provisions for the implementation of the temporary traffic control plan are also attached hereto as "Exhibit E." Parametrix's final construction staging and traffic control plan which were stamped and then submitted to ITD, fully complied with MUTCD and relevant federal and state standards, along with the standard of care recognized in the traffic engineering industry.

8. Parametrix's temporary traffic control plan and special provisions required that at least two lanes remain open to traffic in either direction on four-lane sections of the highway during all phases of the work, including in the work zone. The special provisions also detailed the process by which contractors could request changes to the construction staging and/or traffic control plan. Proposed changes required a written amended plan to be completed by an engineer licensed in Idaho. The amended plan had to be submitted for approval to ITD at least 14 days in

advance of any intended changes. Moreover, the special provisions provided that the existing traffic control plan must remain in place until ITD approved any proposed changes to the plan.

9. Parametrix's final work on the project occurred at the very end of March 2017, when it finished assisting ITD with the preparation of the bid package including the traffic control plans prepared by Parametrix together with remaining plans prepared by ITD so that the complete roadway project documents could be compiled by ITD and bid for construction. A true and correct copy of my March 30, 2017 email to ITD regarding this subject is attached hereto as "Exhibit F."

10. After March 2017, Parametrix attended only one further meeting. As a non-required invitee, Parametrix attended the first pre-construction meeting on July 26, 2017. After this date, Parametrix had no further involvement in the project. Parametrix did not have a contract with ITD for any further work, construction administration, or oversight duties during construction of the project and attended no further meetings in connection with the project.

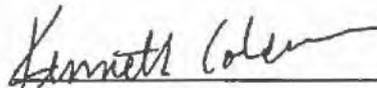
11. I have reviewed the June 11, 2020 Highway Accident Brief prepared by the National Transportation Safety Board in connection with the multivehicle work zone crash that occurred on June 16, 2018. That report references a meeting that allegedly occurred on or about May 31, 2018 between Penhall Company and ITD's project engineer, whereby a request was allegedly made to close three (rather than two) lanes for the work zone.

12. Parametrix had no involvement in this May 31, 2018 meeting and was not consulted at any time regarding an alleged request for additional lane closures. In fact, prior to the June 16, 2018, accident, Parametrix had no knowledge that Penhall Company or any other contractor had requested or implemented any changes to the traffic control plan or special provisions.

13. In fact, Parametrix would not have been notified of any requests or changes to the traffic control plan or special provisions for the project since it did not maintain any involvement in the project after July 2017.

14. Therefore, none of Parametrix's actions in connection with the roadway project at issue were a cause of damage to any party associated with the June 16, 2018 accident in the work zone.

DATED this 21st day of September, 2020.



Ken Colson, P.E.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December, 2020, I served a true and correct copy of the foregoing **DECLARATION OF KEN COLSON, P.E.** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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/s/ Robby J. Perucca
Robby J. Perucca

MEETING NOTES

PROJECT NAME: I-84, Five Mile Rd to Orchard Rd & Ramps, Boise **PROJECT NO.:** A019(289); Key 19289

LOCATION: District 3 Offices, Boise, ID **MEETING DATE:** Jan 18, 2017 **TIME:** 2:00 P.M.

NOTES BY: Ken Colson

ATTENDEES: **COMPANY:**

Dave Statkus	ITD District 3
Byron Breen	ITD District 3
Jim Hoffecker	ITD District 3
Mona Hunt	ITD District 3
Ken Colson	Parametrix

SUBJECT: KICKOFF MEETING

The purpose of the meeting was to introduce the team members and give an overview of the project.

Followed by team introductions, Ken Colson provided an aerial image covering the project limits and provided a handout of preliminary sketches, options, and strategies for traffic control for the project. In addition Ken provided a copy of the Project Management Plan. Ken also provided a summary of lessons learned generated by Amanda LaMott regarding the very similar project on I-184 that was completed in 2012.

Ken provided exhibits to confirm the limits of the proposed grinding work in the areas adjacent to I-184 and at the limits of the previous project on I-184. ITD agreed with the limits as highlighted in the exhibits. Dave also confirmed milepost limits of the I-84 work as spanning between milepost 48.32 east of Five Mile Road to milepost 51.31 west of the Orchard Street Interchange.

Ken provided a recommended typical lane closure/construction methodology exhibit for the 4-lane and 3-lane areas generated in part on discussions with Contractors experienced in grinding and joint sealing work. Typically the Contractors use three four foot wide grinders to cover the width of a typical 12 foot lane. The grinders will be staggered so that each grinder is offset from the other. Typical practice is to line up the grinders with the longitudinal joints which are typically at the lane lines. Common practice is to place drums at the lane line but then to shift the drums slightly to provide approximately 3 foot clear between the edge of the grinder and the drum for the immediate work area as the grinder passes through making the pass at the joint closest to the drums. Jim and ITD confirmed this general methodology. Jim suggested and it was agreed to use tubular markers in the straight tangent sections and to use drums in the taper and transition sections. Jim stated that in other projects using drums in the tangent sections was a big problem and they were constantly getting hit and having to be replaced.



MEETING NOTES (continued)

Tubular markers with weighted bases just work better in the tangent sections. It was also agreed to use 55 foot spacing in the straight tangent sections even though 110 feet would be allowed for the planned 55 mph construction speed.

In the 4-lane sections it was agreed to show a 2-lane work zone with 2 lanes open to traffic, but ITD was open to the idea of possibly going down to one lane when the grinding/joint work passes closest to the drums if the work coincides with a low enough traffic volume time of the night. Bryon said to review hourly traffic volumes. ITD can provide an hourly volume report.

Everyone agreed that for the 3-lane sections, that a 2-lane work zone with only 1 lane open to traffic was the only safe way to do the work.

It was decided to show stage 1 as the eastbound direction and stage 2 as the westbound direction. Stage 3 will include all the various ramp work and closures at the wye. It was decided that all grinding work will be completed in the eastbound direction before joint sawing and resealing work begins. ITD agreed that joint sealing and sawing in the eastbound direction can be conducted concurrent with grinding in the westbound direction. Work will be limited to 1 mile sections for either the eastbound or westbound direction.

Ken presented an exhibit showing traffic control phasing at the wye where traffic splits in the eastbound direction. ITD agreed with the proposed layout. Because traffic splits between the city center and eastbound I-84 a work zone will be required with one lane of traffic flow on each side. The Contractors generally don't like traffic flow on each side of the work zone, but in Ken's discussions with Contractors they indicated that it is commonly required in such split traffic situations. ITD also agreed that it was the only way to complete the work. The middle work zone will be wide enough to provide a buffer to the live traffic lanes. It was also agreed to provide 2 traffic attenuator trucks in this situation to increase safety, one adjacent to each live traffic lane on each side.

For the stage 3 work at the ramps and flyovers the following was decided:

- For the ramp from Franklin Road to East I-84, the ramp will be closed and both lanes at the entrance to I-184 will be closed at Franklin Road and detoured to Cole Road.
- For the Exit 49 ramp from I-84 to Franklin/City Center and the Cole Road ramp to Franklin/City Center both can be closed and traffic detoured to Cole Rd/Franklin Road.
- For the Cole Road ramp to I-84 East the ramp can be closed and traffic detoured to Cole/Franklin.
- For the eastbound I-184 exit to Franklin Road the ramp can be closed and traffic detoured before the wye to I-84 then Cole Road at Exit 50-B.
- For the I-84 Exit 50A-B and Exit 50A ramp both will be closed and traffic detoured to Exit 50B.

Because all the work is overnight with all lanes open during the day it is anticipated that there will be some flexibility with ramp/lane closures to improve safety and reduce work times. Bryon indicated he

MEETING NOTES (continued)

would call FHWA to give a general overview of the strategies for ramp closures to get their feedback and to keep them informed to avoid possible delays.

Some of the ramp closures coming from I-84 and using Cole Road for detouring will require that a copy of the traffic control plans be provided to ACHD for their review. ITD will make the contact with ACHD.

It was decided to use the same overnight work hours as the previous I-184 project. 10:00 pm to 5:00 am.

It was decided that since the work is overnight only, Exit closed signs will not be required on the large overhead signs and ground mounted signs only will be used.

Ken confirmed with ITD that only concrete rehabilitation is planned. There is no planned asphalt rehabilitation on any of the ramps that have asphalt.

Of course, no grinding is planned for any of the bridges or approach slabs.

Bryon indicated he had an abstract bid report for the I-184 project. Ken requested a copy and Bryon said it could be provided.

MEETING NOTES

PROJECT NAME: I-84, Five Mile Rd to Orchard Rd & Ramps, Boise **PROJECT NO.:** A019(289); Key 19289

LOCATION: District 3 Offices, Boise, ID **MEETING DATE:** March 2, 2017 **TIME:** 10:00 A.M.

NOTES BY: Ken Colson

ATTENDEES:

NAME	COMPANY	PHONE
Dave Statkus	ITD D/C 2	208-334-8929
Harold Bleil	ITD HQ D/T3	208-334-8564
Bryon Breen	ITD D/C2	208-334-8937
Ken Colson	PARAMETRIX	208-898-0012
Walt Wieme	PARAMETRIX	208-898-0012
Dave Richards	D3 MATERIALS	208-332-7193
Mike Shepard	ITD D/C 2	208-830-3635
Jon Mensinger	ITD D/C 2	208-484-7907
Jim Hoffecker	ITD D/C 2	208-871-1152

SUBJECT: PRELIMINARY DESIGN REVIEW MEETING

These Preliminary Design Review meeting notes are in addition to written comments received from ITD reviewers.

The topic of temporary pavement markings for temporary traffic control was discussed with Harold Bleil. The preliminary temporary traffic control plans are showing temporary pavement marking tape for the areas with temporary tapers across multiple lanes. After discussion at the meeting it was decided that only tubular markers will be used at 35' spacing along the tapers and temporary pavement marking tape will not be used. Harold felt that even though the tubular markers would be crossing existing lane markings that adding temporary tape is not practical for this type of overnight work. Temporary tape will not be used on the temporary traffic control tapers but will still be needed after grinding but prior to placing permanent pavement markings.

The preliminary temporary traffic control plans are showing drums along the tapers. Jim Hoffecker said ITD would prefer that the long and flatter tapers use tubular markers instead of drums. These long flatter tapers are considered tangents. After discussion it was agreed that tubular markers will be used instead of drums on most of the tapers including exit tapers. The exception would be the exit tapers shown on sheet 27. These will show drums on the left side and tubular markers on the right side.



MEETING NOTES (continued)

Harold Bleil said not to use the ½ Mile designation on the W20-5a signs. Use the AHEAD designation instead. Using the AHEAD designation avoids problems when the spacing is not exactly ½ Mile. A special sign detail is not required for the AHEAD designation and the sign number would still be W20-5a. It was agreed this change would be made.

Bryon Breen suggested that we review hourly traffic volume data over the course of the weekends to see if the work times could be extended on Saturday and Sunday mornings. The preliminary plans currently show extending work hours to 7:00 am on Saturday and Sunday mornings and Jim felt that 7:00 am was probably appropriate on Saturday morning but it may be possible to extend hours further on Sunday morning. Ken Colson agreed to review the traffic volume data and to send an e-mail summary of the findings.

The group discussed adding a requirement for double weighted bases on the tubular markers to avoid problems with them being knocked down. Because of all the varied products and weights it was decided to add "All tubular markers shall have double weighted bases or as approved" language.

There was group discussion about the number of assumed working days for the contract and the impact to some of the traffic control items. Dave said he will be reviewing and determining the number of working days to show in the contract. Jim Hoffecker said he felt the Traffic Control Maintenance quantity is too low. Once we determine the number of working days we should assume an average of 6 men times the number of working days times the number of hours per night for the Traffic Control Maintenance Item

It was decided at the meeting to add symbols in the legend for both double and single sign post temporary traffic control signs. It was agreed the change will be made.

Harold would like to change "Construction Work Area" in the legend to "Work Area". It was agreed the change will be made.

After discussion it was decided to close the ramp access at Exit 50A B shown on preliminary plans sheet 16 of 40.

After discussion it was decided it was not necessary or practical to add sign spacing distances for the temporary traffic control signs on the detour sheets. Judgment in the field will have to be applied to avoid conflicts with driveways and other obstructions.

On sheet 34 of 40 of the preliminary plans it was decided sign assembly number 46 should be revised with a Ramp Close Ahead sign and a supplemental Use Alternate Route sign.

On sheet 40 of 40 of the preliminary plans it was decided to show a separate sign assembly number for the Exit Closed/Ramp Closed signing on the Type III Barricades to avoid confusion.

MEETING NOTES

PROJECT NAME: I-84, Five Mile Rd to Orchard Rd & Ramps, Boise **PROJECT NO.:** A019(289); Key 19289

LOCATION: District 3 Offices, Boise, ID **MEETING DATE:** Mar 22, 2017 **TIME:** 10:00 A.M.

NOTES BY: Ken Colson

ATTENDEES:

NAME	COMPANY	PHONE
Dave Statkus	ITD D/C 2	208-334-8929
Bryon Breen	ITD D/C2	208 334 8937
Kyle Arnzen	ITD	208 334-8923
Ken Colson	PARAMETRIX	208 898-0012
Josh Thomas	PARAMETRIX	208 898 0012
Dave Richards	D3 MATERIALS	208-332-7193
Jim Hoffecker	ITD D/C 2	208-871-1152
Erika Bowen	ITD	208 334 8340
Mike Shepard	ITD D/C 2	208 830 3635
Jon Mensinger	ITD D/C 2	208 484 7907

SUBJECT: FINAL DESIGN REVIEW MEETING

These Final Design Review meeting notes are in addition to written comments received from ITD reviewers.

Quite a long discussion about the 420 specification items. The current 2012 spec book does not have a section 420 and the pay items are handled through inserted SSP items. The planned 2017 spec book will add a section 420 but the actual release is still uncertain and may be as late as July. After group discussion of possible options in the end it was decided that the project will use the 2012 spec book and supplements and will include SSP items for the concrete pavement rehabilitation items following the standard 2012 spec book procedure.

The topic of coordination with ACHD was discussed since some detouring will occur from ITD maintained facilities to ACHD maintained facilities. This was also discussed at the kickoff meeting and the discussion was documented in the kickoff meeting minutes. At the kickoff meeting it was decided ITD would contact ACHD. At the Final Design meeting it was decided that Parametrix would contact Shawn Martin at ACHD to discuss the project and allow ACHD the opportunity to provide comments on the temporary traffic control plans. Ken will also discuss with ACHD the possibility of signal timing adjustments if they would be a benefit and could allow temporary traffic control to operate more efficiently.



MEETING NOTES (continued)

One of Harold Bleil's written comments had requested that the (o) designation be placed on some of the special signs to designate black on orange signs. All the details for the special signs currently specify black on orange. On reviewing the comment Ken Colson felt that all the signs are black on orange and therefore all the signs would include the (o) designation. After discussion with the group it was decided that all the special signs would be black on orange even the SE-1 sign showing the temporary exit locations.

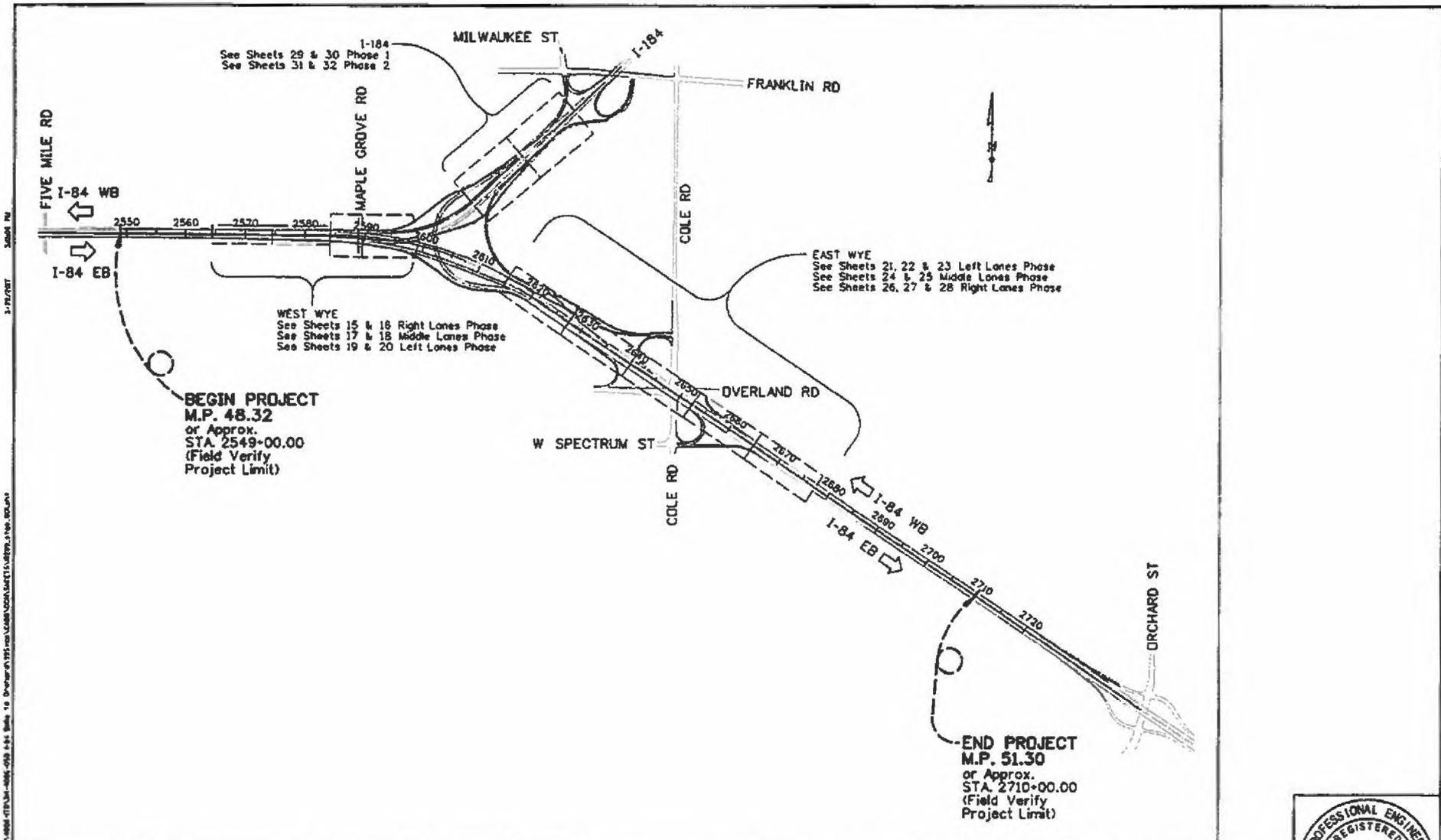
Another of Harold Bleil's written comments indicated that more specific weight information be included in the specification requiring double weighted bases on the tubular markers. Ken had called Specialty Construction and they had said their standard bases for stackable tubular markers are 16 lbs and the non-stackable bases are 12 lbs. So double weighted bases would be 32 lbs and 24 lbs respectively. Specialty Construction had said they did use double weighted bases on the I-84 repair work near Nampa. Jon Mensinger had worked on that project and said the double weighted bases were needed to avoid problems with the markers being knocked over. After discussion it was decided the Contractor's Note would be revised to say "All Portable Tubular Markers shall have double weighted bases weighing a minimum of 30 pounds or as approved".

Jim Hoffecker brought up the idea of adding a flagging item just in case a situation arises that may require flagging. Ken said the current plans don't show a situation for which flagging would be required and the older I-184 project didn't have flagging but agreed that having the item just in case would be beneficial. Jim suggested adding the flagging item with 200 hours just in case it was needed. Ken agreed and the item will be added.

Bryon Breen suggested modifying the special events Contractors Note to be more general in covering restrictions on work for any special events likely to cause increased traffic volumes. Ken agreed to come up with revised wording for special event restrictions and will send the wording to ITD for their opinion and comment.

Bryon Breen thought the Traffic Control Manager specification should be tightened up so that we get a higher caliber more qualified person for this critical job. Mike Shepard mentioned one of his projects that might have a better worded special provision. Some things it was discussed adding included; requirement to provide resume for approval, requirement that the traffic control manager act only in a managerial position and not perform the day to day work activities, requirement that the traffic control manager have a minimum of 5 years experience, requirement that the traffic control manager be a licensed Professional Engineer.

Jim Hoffecker thought the unit cost of inlet protection was too high. Dave said he had used the recommended Estimator unit price for the item.



REVISIONS		
NO.	DATE	DESCRIPTION

DESIGNED	KCC	SCALES SHOWN ARE FOR 8" x 11" PRINTS ONLY
DESIGN CHECKED	PSA	CADD FILE NAME 19289_elge.dwg.sht
DETAILED	KMR/WWW	DRAWING DATE: March 2017
DRAWING CHECKED	PSA	

IDAHO TRANSPORTATION DEPARTMENT



Parametrix

PROJECT NO.
A019(289)

TEMPORARY TRAFFIC CONTROL
I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE
OVERVIEW AND KEYMAP

English
COUNTY Ada
KEY NUMBER 19289
SHEET 9 OF 47

EXHIBIT

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TEMPORARY TRAFFIC CONTROL GENERAL NOTES

- All Temporary Traffic Control Signs, Temporary Traffic Control Devices, And Their Installation Will Conform To The "Manual On Uniform Traffic Control Devices" (MUTCD) As Adapted By The State. All Supports For Temporary Traffic Control Signing Will Be Installed With Bracking Or Yielding Features For Motorist Safety.
- Any Existing Signs, Such As Speed Limit Signs And Overhead Signs, Which Conflict With Construction Operations And Approved Traffic Control Activities Will Be Covered Using An Approved Method. All Signs Will Be Uncovered Once Construction And Traffic Control Operations No Longer Conflict With The Existing Signs. The Contractor Will Not Drill Holes In The Sign Panels That are Covered. Black Plastic Is Not An Approved Covering Method.
- If The Temporary Traffic Control Plan Shown Does Not Conform To The Contractor's Method Of Operation, The Contractor Will Submit A Temporary Traffic Control Plan For Approval. Fourteen (14) Calendar Days Of Review Time Is Required For The Temporary Traffic Control Plan Or Changes Made To The Plan.
- Work Conditions Will Be Monitored By The Contractor Under Varying Conditions Of Traffic Volume, Light, And Weather To Ensure Traffic Control Measures Are Operating Effectively And That All Devices Used Are Clearly Visible At All Times And In Good Repair.
- The Distances Shown Between Temporary Traffic Control Devices Are Approximate Minimums And Some Adjustments May Be Necessary In The Field Depending On Conditions Encountered. Supplemental Devices May Be Required By Actual Traffic Or Construction Situations.
- All Temporary Traffic Control Signing, Tubular Markers, Drums, And Barricades Will Be In Place Prior To Any Diversion Of Traffic.
- Temporary Traffic Control Speed Limit Signs Will Have Two Warning Flags And A Battery Operated Flashing Warning Light In Operation At All Times Unless Otherwise Directed, And Will Be Paid For Under Item 628-10DA, Miscellaneous Temporary Traffic Control Items.
- Temporary Traffic Control Signing That Is Not In Use Will Be Completely Removed From The Edge Of Traveled Way And Laid Down Outside Of Clear Zone Or Behind Guardrail.
- Temporary Traffic Control Signs Must Be Mounted On Wood Posts (Untreated) And Must Comply With Standard Drawing I-8-E. Signs Will Be Made Of Aluminum Or Plywood Posts And Hardware That May Be Required For Temporary Traffic Control Signs Are Incidental To The 826-010A, Const Sign Item.
- Temporary Traffic Control Signing Will Be Coordinated With Any Other Projects In The Area To Eliminate Redundant, Conflicting Or Confusing Signing.
- All Tower Lengths Will Meet Or Exceed The Requirements Of The MUTCD, As Adapted By The State.
- Additional Signing May Be Required As Directed.
- Temporary Speed Limit Changes May Not Be Greater Than Existing Speeds
- For Safety, Truck Mounted Attenuators Are Required Behind The Immediate Work Area And Adjacent To Live Traffic. The Truck Mounted Attenuators Shall Follow Along As Work Progresses To Provide Protection. For The Middle Lanes Phases In Which Live Traffic Is Required On Each Side Of The Work Zone, Two Truck Mounted Attenuators Are Required, One Adjacent To Each Live Traffic Lane

CONSTRUCTION STAGING GENERAL NOTES

- Unless Approved The Limits Of Actual Work Is Limited To One Mile Segments Not Including Advanced Signing.
- Stage 1 Construction Shall Consist Of All Concrete Grinding Work In The Eastbound Direction on I-84. All Concrete Grinding Work Shall Be Completed In The Eastbound Direction Of I-84 Prior To Commencing Stage 2 Construction Of The Joint Resealing Work In The Eastbound Direction Of I-84. Stage 3 Construction Of The Concrete Grinding Work In The Westbound Direction Of I-84 And Stage 2 Construction Of The Joint Resealing Work In The Eastbound Direction Of I-84 Can Occur Concurrently. However, Unless Approved The Limits Of Actual Work Is Limited To One-Mile Segments In Each Direction Not Including Advanced Signing. All Stage 3 Construction Of The Concrete Grinding Work Shall Be Completed In The Westbound Direction Of I-84 Prior To Commencing Stage 4 Construction Of The Joint Resealing Work In The Westbound Direction Of I-84. Upon Completion Of Stages 1-4, Stage 5 Concrete Grinding And Joint Resealing Work At The Ramps In The WYE AREA CAN BEGIN.
- Detour Sheets Included In The Temporary Traffic Control Plans Show Limits Of The Stage 5 Ramp Concrete Grinding And Joint Resealing Work In The WYE AREA AND THE DETOUR SIGNING TO ALLOW CLOSURES TO COMPLETE THE WORK, UNLESS APPROVED ONLY ONE DETOUR AND CLOSURE AS SHOWN IN THE DETOUR PLANS MAY BE IMPLEMENTED AT A TIME.

CONSTRUCTION STAGING GENERAL NOTES (CONT.)

- The Westbound I-84 Loop Off Ramp At Exit 50A And The Eastbound I-84 Loop Off Ramp At 50B Must Remain Open At All Times. Adjust Temporary Exit Channelization To Allow Construction Coverage Of Entire Work Area At The Exit
- Full Closure Is Not Allowed For The Flyover Lanes From Westbound I-84 to Eastbound I-84. Of The Existing Three Lanes, A Minimum Of One Lane Must Remain Open, As Shown In The Traffic Control Plans.
- Concrete Grinding And Joint Resealing Is Not Required At Any Bridges Or Approach Slabs For The Ramps

TEMPORARY TRAFFIC CONTROL PLAN SHEET INDEX

SHEET NO.	DESCRIPTION
9	Temporary Traffic Control Overview and Keymap
10	Temporary Traffic Control General Notes
11	Temporary Traffic Control Quantities
12	Temporary Traffic Control Double Lane Drop Details
13	Temporary Traffic Control Single Lane Drop Details
14	Temporary Traffic Control Signing Details
15 - 18	Temporary Traffic Control West Wye (Right Lane Phase)
17 - 18	Temporary Traffic Control West Wye (Middle Lane Phase)
19 - 20	Temporary Traffic Control West Wye (Left Lane Phase)
21 - 23	Temporary Traffic Control East Wye (Left Lane Phase)
24 - 25	Temporary Traffic Control East Wye (Middle Lane Phase)
26 - 28	Temporary Traffic Control East Wye (Right Lane Phase)
29 - 30	Temporary Traffic Control I-84 Phase - 1
31 - 32	Temporary Traffic Control I-84 Phase - 2
33	Detour Plans I-84 WB & EB at Franklin Rd
34	Detour Plans I-84 EB at Ramp 50A
35	Detour Plans WB I-84 to EB Overhead Rd
36	Detour Plans EB I-84 at Exit 50A-B
37	Detour Plans Cole Rd to WB I-84
38	Detour Plans East 1A to Franklin Rd
39 - 43	Detour Plans Sign Assemblies
44 - 47	Sign Details

NIGHT WORK IS REQUIRED FOR THIS PROJECT

Weekday Nights Sunday Night Through Friday Morning	10:00 pm to 5:00 am (7 Hours Max.)
Weekend Nights Friday Night Through Saturday Morning	10:00 pm to 7:00 am (19 Hours Max.)
Weekend Nights Saturday Night Through Sunday Morning	10:00 pm to 9:00 am (11 Hours Max.)

NO.	DATE	BY	DESCRIPTION

DESIGNED	KCC
DESIGN CHECKED	PSA
DETAILED	KAR/WHM
DRAWING CHECKED	PSA

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DRAWING DATE: March 2017

IDAHO TRANSPORTATION DEPARTMENT

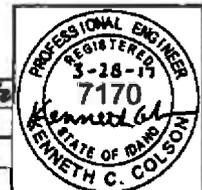


Parametrix

PROJECT NO.
A019(289)

TEMPORARY TRAFFIC CONTROL
I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE
GENERAL NOTES

English
COUNTY Ada
KEY NUMBER 19289
SHEET 10 OF 47



CLASS B TEMPORARY TRAFFIC CONTROL SIGN QUANTITIES

SIGN	DESCRIPTION	SIZE (in)	QUANTITY	AREA (SF)	TOTAL AREA (SF)
D3-1(e)	Overland Rd	48 x 12	2	4.0	8.0
D3-1(o)	Franklin Rd	48 x 12	10	4.0	40.0
E5-2a(o)	Exit Closed	48 x 36	6	12.0	72.0
G20-2	End Road Work	48 x 24	8	8.0	64.0
M1-1(B&)	I-84 Interstate Shield	24 x 24	17	4.0	68.0
M1-1(B&)	I-84 Interstate Shield	30 x 24	9	6.0	45.0
M3-2(B)	East	24 x 12	14	2.0	28.0
M3-2(B/W)	East	24 x 12	2	2.0	4.0
M3-4(B)	West	24 x 12	13	2.0	26.0
M4-8	Delour	24 x 12	15	2.0	30.0
M4-8a	End Delour	24 x 18	2	3.0	6.0
M5-1L(B)	Arrow Left 90	21 x 15	3	2.2	6.6
M5-1L(B/W)	Arrow Left 90	21 x 15	2	2.2	4.4
M5-1R(B)	Arrow Right 90	21 x 15	2	2.2	4.4
M5-1R(B/W)	Arrow Right 90	21 x 15	1	2.2	2.2
M8-1(B)	Arrow Left/Right	21 x 15	5	2.2	10.9
M8-1(B/W)	Arrow Left/Right	21 x 15	4	2.2	8.8
M8-3(B)	Arrow Up	21 x 15	5	2.2	10.9
M8-3(B/W)	Arrow Up	21 x 15	3	2.2	6.6
M8-9(o)	Arrow Left and Right	21 x 15	2	2.2	4.4
R2-1(55)	Speed Limit 55	48 x 60	8	20.0	160.0
R2-1(60)	Speed Limit 60	48 x 60	2	20.0	40.0
R2-1(65)	Speed Limit 65	48 x 60	5	20.0	100.0
R2-1001	Work Zone Speed Violations	72 x 36	8	18.0	144.0
R3-7L	Left Lane Must Turn Left	36 x 36	1	9.0	9.0
R3-7R	Right Lane Must Turn Right	36 x 36	1	9.0	9.0
R3-33	Right Lane Must Exit	78 x 36	1	19.5	19.5
W3-5(o)(55)	55 MPH Speed Zone Ahead	48 x 48	6	18.0	128.0
W4-3(o)	Add Lane	48 x 48	1	18.0	18.0
W4-2L(o)	Left Lane Drop	48 x 48	6	18.0	128.0
W4-2R(o)	Right Lane Drop	48 x 48	8	18.0	128.0
W8-11(o)	Unopen Lanes	48 x 48	4	18.0	84.0
W8-15(o)	Grooved Pavement	48 x 48	4	18.0	84.0
W8-16P(o)	Motorcycle Symbol	36 x 30	4	7.5	30.0
W20-1	Road Work Ahead	48 x 48	8	18.0	128.0
W20-2	Delour Ahead	48 x 48	4	18.0	84.0
W20-3	Road Closed Ahead	48 x 48	4	18.0	84.0
W20-5aL	2 Left Lanes Closed Ahead	48 x 48	3	18.0	48.0
W20-5aR	2 Right Lanes Closed Ahead	48 x 48	3	18.0	48.0
W20-5L	Left Lane Closed Ahead	48 x 48	2	18.0	32.0
W20-5R	Right Lane Closed Ahead	48 x 48	2	18.0	32.0
SE-1(o)	Exit w/Arrow	72 x 60	3	30.0	90.0
SE-2(o)	Ramp Closed	48 x 36	4	12.0	48.0
SG-1(o)	I-84 East City Center Keep Left	132 x 96	1	92.0	92.0
SG-2(o)	I-84 East Min Home Keep Right	132 x 96	1	92.0	92.0
SG-3(o)	I-84 West Nampa Keep Left	132 x 96	1	92.0	92.0
SG-4(o)	I-84 East West Ramp Access	48 x 24	4	8.0	32.0

CLASS B TEMPORARY TRAFFIC CONTROL SIGN QUANTITIES (CONTINUED)

SG-5(o)	Exit 508 Closed Ahead	66 x 36	2	18.5	33.0
SG-6(o)	Exit 49 Closed Ahead	66 x 36	2	18.5	33.0
SG-7(o)	Exit 50A-B Closed Ahead	66 x 46	1	22.0	22.0
SG-8(o)	I-84 West Ramp Access	48 x 24	1	8.0	8.0
SG-9(o)	I-84 East Access	48 x 24	1	8.0	8.0
SG-10(o)	Exit 1A Closed Ahead	72 x 48	2	24.0	48.0
SG-11(o)	Use Alternate Route	48 x 36	1	12.0	12.0
SW-1(o)	Ramp Closed Ahead	48 x 48	1	18.0	18.0
Sub Total					2530
Contingency (20%)					510
Total Class B Signs					3040

TEMPORARY TRAFFIC CONTROL QUANTITIES

ITEM NUMBER	ITEM	UNIT	TOTAL
626-010A	Const Sign	SF	3040
626-040A	Rent Const Barr CL B TY III	EACH	4
626-050A	Drums	EACH	240
626-076A	Arrow Board TY C	HR	4060
626-100A	Miscellaneous Temporary Traffic Control Items	LS	1
626-105A	Traffic Control Maintenance	MHR	4060
626-115A	Portable Tubular Markers	EACH	780
626-120A	Flagger Control	HR	200
626-05A	PCM Sign	HR	3300
626-30A	Traf Ctrlr Manager	DAY	75
626-35A	Night Work Lighting	LS	1
626-45A	Rent Truck Mounted Attenuator	EACH	4
5900-60B	Pav Marking Waterborne Temporary	FT	158970

REVISIONS			
NO.	DATE	BY	DESCRIPTION

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DESIGN CHECKED	PSA	
DETAILED	KMR/WHW	
DRAWING CHECKED	PSA	

IDAHO
TRANSPORTATION
DEPARTMENT

Parametrix

PROJECT NO.	A019(289)
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TEMPORARY TRAFFIC CONTROL
I-84, FIVE MILE RD TO
ORCHARD RD & RAMPS, BOISE
TRAFFIC CONTROL QUANTITIES

English	
COUNTY	Ada
KEY NUMBER	19289
SHEET	11 of 47



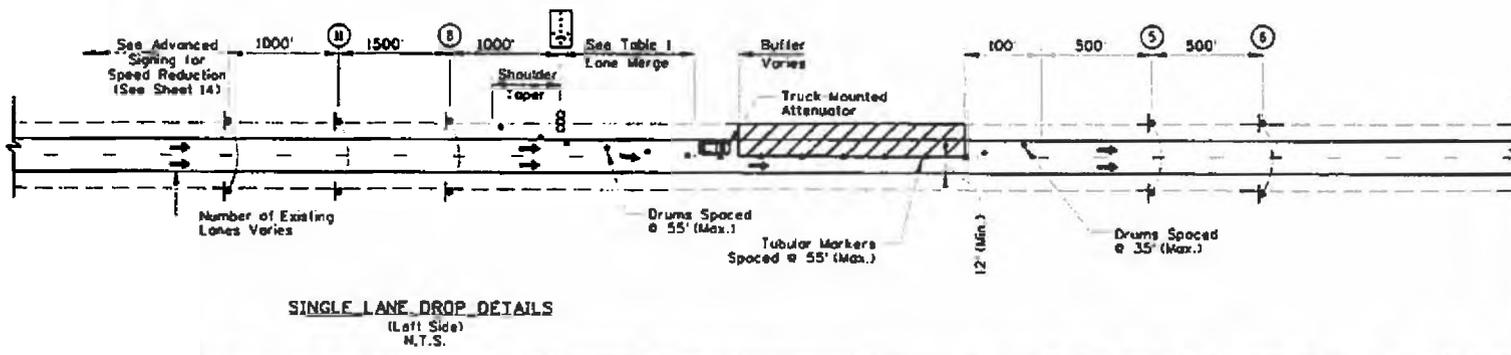
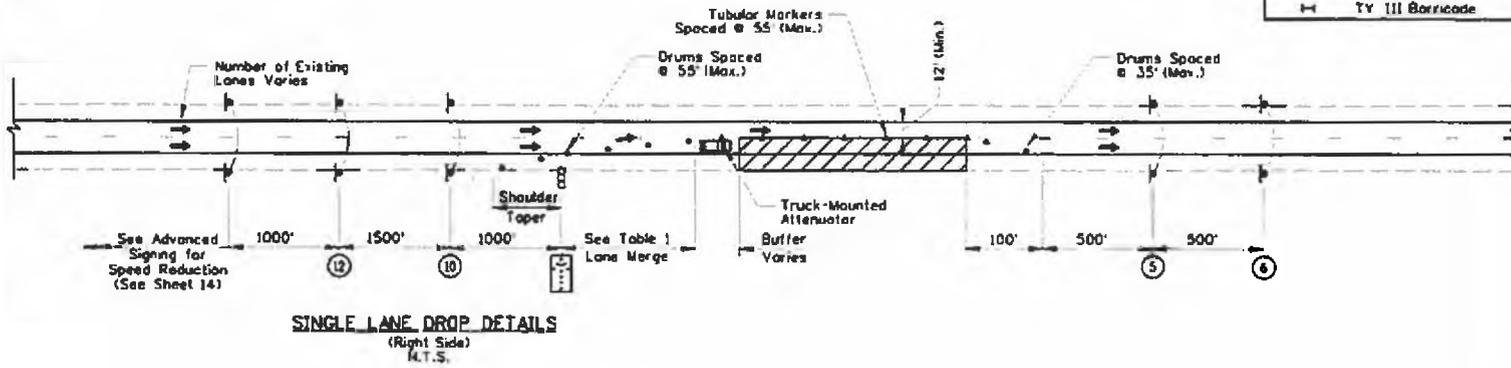
TABLE 1

Posted Speed	No. of Lanes	Width Tapered	Taper Length L	Lane Merge Taper (Min) 1 x L	Lane Shift Taper (Min) 0.5 x L
55 MPH	1	12'	660'	660'	330'
55 MPH	2	24'	1320'	1320'	660'
55 MPH	3	36'	1980'	1980'	990'

55 MPH Taper Rate (Merge) 55 to 1
 55 MPH Taper Rate (Shift) 27.5 to 1
 55 MPH Taper Rate (Shoulder) 18.3 to 1

LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Warning Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TY III Barricade

- ⑤ G20-2 48"x24"
- ⑥ SPEED LIMIT 65
- ⑦ R2-1(65) 48"x60"
- ⑧ W4-2L(a) 48"x48"
- ⑨ W4-2R(a) 48"x48"
- ⑩ W20-5L 48"x48"
- ⑪ LEFT LANE CLOSED AHEAD
- ⑫ W20-5R 48"x48"
- ⑬ RIGHT LANE CLOSED AHEAD



REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED	KCC	SCALES SHOWN ARE FOR 11" X 17" PRINTS ONLY
DESIGN CHECKED	PSA	CADD FILE NAME 19289_trcp_004.dwg
DETAILED	KMR/WRM	DRAWING DATE: March 2017
DRAWING CHECKED	PSA	

IDAHO TRANSPORTATION DEPARTMENT

Parametrix

PROJECT NO.	A019(289)
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TEMPORARY TRAFFIC CONTROL

English

I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE

SINGLE LANE DROP DETAILS

COUNTY	Ada
KEY NUMBER	19289
SHEET	13 OF 47

PROFESSIONAL ENGINEER

REGISTERED 5-28-17

7170

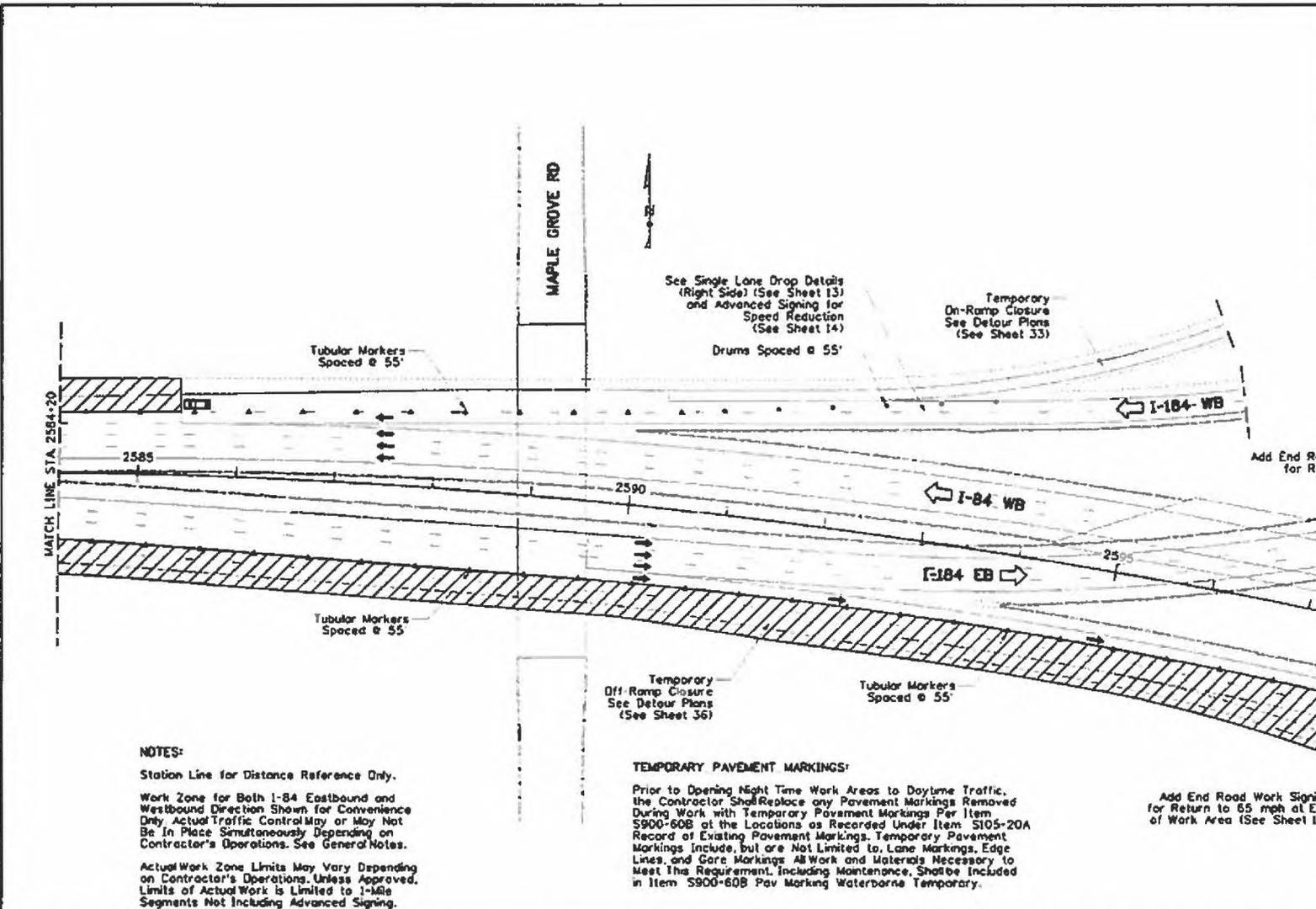
Kenneth C. Colson

STATE OF IDAHO

KENNETH C. COLSON

3:46:08 PM 3/16/2017
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LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Warning Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TY III Barricade



NOTES:

Station Line for Distance Reference Only.

Work Zone for Both I-84 Eastbound and Westbound Direction Shown for Convenience Only. Actual Traffic Control May or May Not Be in Place Simultaneously Depending on Contractor's Operations. See General Notes.

Actual Work Zone Limits May Vary Depending on Contractor's Operations. Unless Approved, Limits of Actual Work is Limited to 1-Mile Segments Not Including Advanced Signing.

TEMPORARY PAVEMENT MARKINGS:

Prior to Opening Night Time Work Areas to Daytime Traffic, the Contractor Shall Replace any Pavement Markings Removed During Work with Temporary Pavement Markings Per Item S900-60B at the Locations as Recorded Under Item S105-20A Record of Existing Pavement Markings. Temporary Pavement Markings Include, but are Not Limited to, Lane Markings, Edge Lines, and Gore Markings. All Work and Materials Necessary to Meet This Requirement, Including Maintenance, Shall be Included in Item S900-60B Pav Marking Waterborne Temporary.

REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED	KCC	SCALES SHOWN ARE FOR PLOT PRINTS ONLY
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DETAILED	KMR/WWH	DRAWING DATE: March 2017
DRAWING CHECKED	PSA	

IDAHO
TRANSPORTATION
DEPARTMENT

Parametrix

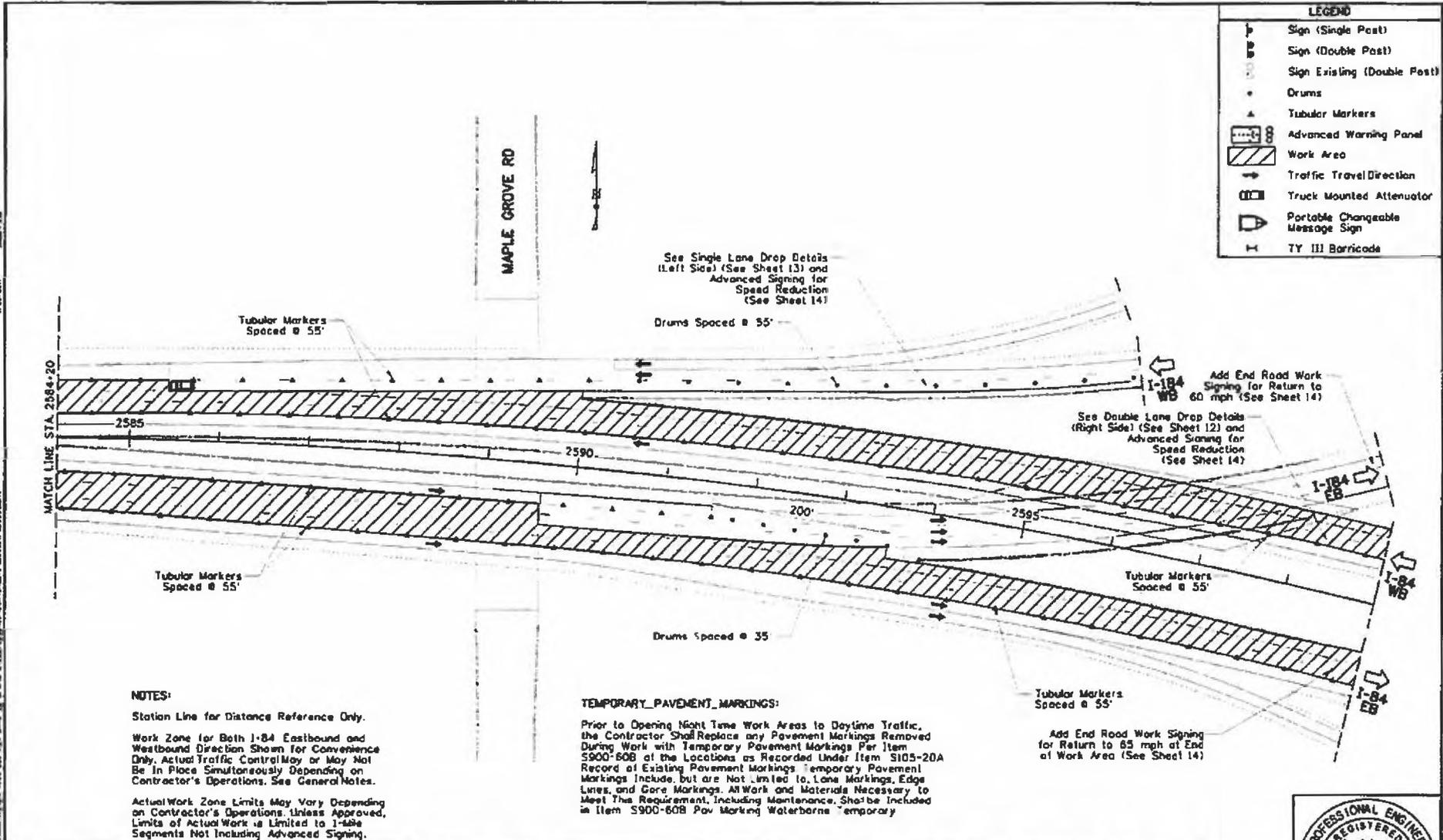
PROJECT NO.	AO19(289)
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TEMPORARY TRAFFIC CONTROL	English
I-84, FIVE MILE RD TO ORCHARD RD & RAMP, BOISE WEST WYE (RIGHT LANES PHASE)	COUNTY Ada
	KEY NUMBER 19289
	SHEET 16 OF 47

PROFESSIONAL ENGINEER
 REGISTERED
 3-28-17
7170

 STATE OF IDAHO
KENNETH C. COLSON

LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Warning Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TY III Barricade



NOTES:
 Station Line for Distance Reference Only.
 Work Zone for Both I-84 Eastbound and Westbound Direction Shown for Convenience Only. Actual Traffic Control May or May Not Be in Place Simultaneously Depending on Contractor's Operations. See General Notes.
 Actual Work Zone Limits May Vary Depending on Contractor's Operations. Unless Approved, Limits of Actual Work is Limited to 1-table Segments Not Including Advanced Signing.

TEMPORARY PAVEMENT MARKINGS:
 Prior to Opening Night Time Work Areas to Daytime Traffic, the Contractor Shall Replace any Pavement Markings Removed During Work with Temporary Pavement Markings Per Item S900-60B at the Locations as Recorded Under Item S105-20A. Record of Existing Pavement Markings. Temporary Pavement Markings Include, but are Not Limited to, Lane Markings, Edge Lines, and Gore Markings. All Work and Materials Necessary to Meet This Requirement, Including Maintenance, Shall be Included in Item S900-60B Pav Marking Waterborne Temporary

REVISIONS		
NO.	DATE	DESCRIPTION

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DETAILED	KMB/BNM	CADD FILE NAME: 19789_top_009.plt
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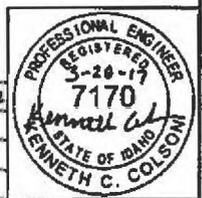
IDAHO TRANSPORTATION DEPARTMENT

Parametrix

PROJECT NO.	TEMPORARY TRAFFIC CONTROL
A019(289)	

I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE WEST WYE (MIDDLE LANES PHASE)

English	
COUNTY	ADD
KEY NUMBER	19289
SHEET	18 OF 47

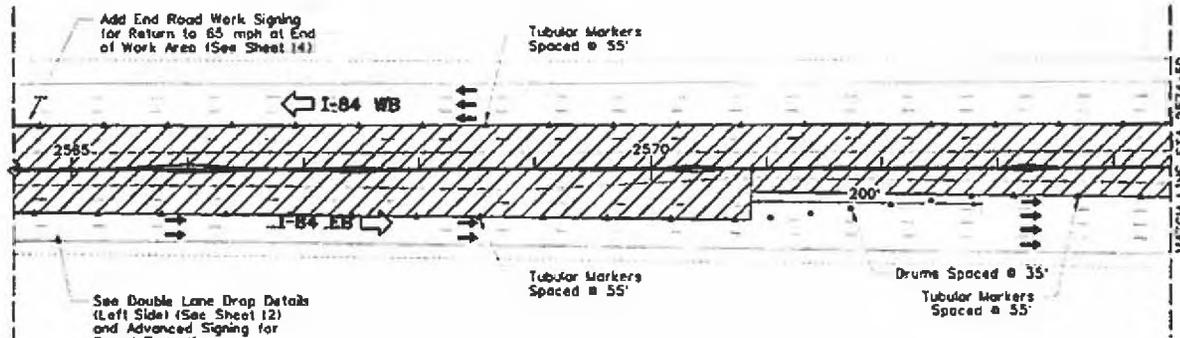


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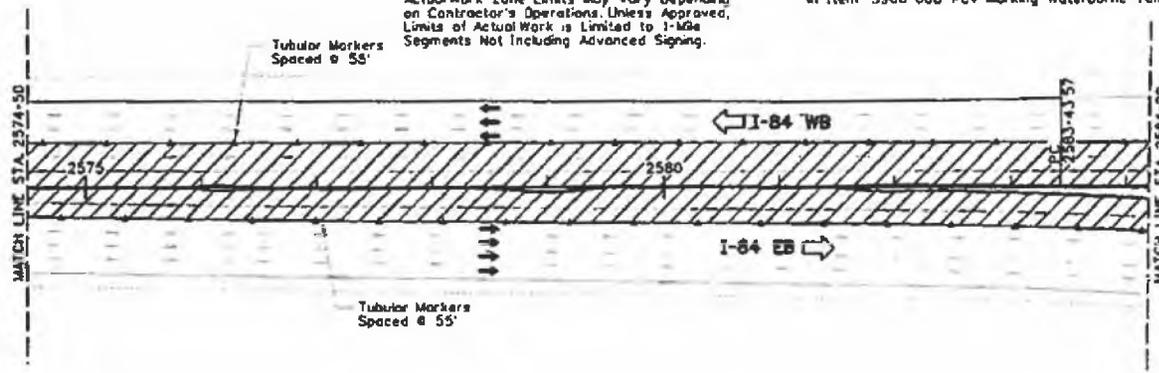
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Approx. 2800' to Five Mile Overpass.
Approx. 1550' to Project Limit of M.P. 48.32
or Approx. Sta. 2549+00.
(Field Verify Project Limits)



See Double Lane Drop Details
(Left Side) (See Sheet 12)
and Advanced Signing for
Speed Reduction
(See Sheet 14)

Approx. 2250' to Eastbound Project Limit
of M.P. 48.51 or Approx. Sta. 2559+00.
(Field Verify Project Limits)



NOTES:

Station Line for Distance Reference Only.
Work Zone for Both I-84 Eastbound and
Westbound Direction Shown for Convenience
Only. Actual Traffic Control May or May Not
Be in Place Simultaneously Depending on
Contractor's Operations. See General Notes.
Actual Work Zone Limits May Vary Depending
on Contractor's Operations. Unless Approved,
Limits of Actual Work is Limited to 1-Mile
Segments Not Including Advanced Signing.

TEMPORARY PAVEMENT MARKINGS:

Prior to Opening Night Time Work Areas to Daytime Traffic,
the Contractor Shall Replace any Pavement Markings Removed
During Work with Temporary Pavement Markings Per Item
S900-608 at the Locations as Recorded Under Item S105-20A
Record of Existing Pavement Markings. Temporary Pavement
Markings Include, but are Not Limited to, Lane Markings, Edge
Lines, and Core Markings. All Work and Materials Necessary to
Meet This Requirement, Including Maintenance, Shall be Included
in Item S900-608 Pav Marking Waterborne Temporary.

LEGEND

- Sign (Single Post)
- Sign (Double Post)
- Sign Existing (Double Post)
- Drums
- Tubular Markers
- Advanced Warning Panel
- Work Area
- Traffic Travel Direction
- Truck Mounted Attenuator
- Portable Changeable Message Sign
- Ty III Barricade

REVISIONS		
NO.	DATE	DESCRIPTION

DESIGNED	KCC
DESIGN CHECKED	PSA
DETAILED	KGR/WHM
DRAWING CHECKED	PSA

SCALES SHOWN
ARE FOR 8" X 11"
PRINTS ONLY

CADD FILE NAME
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DRAWING DATE
March 2017

IDAHO
TRANSPORTATION
DEPARTMENT

Parametrix

PROJECT NO.
A019(289)

TEMPORARY TRAFFIC CONTROL

**I-84, FIVE MILE RD TO
ORCHARD RD & RAMPS, BOISE
WEST WYE (LEFT LANES PHASE)**

English

COUNTY Add

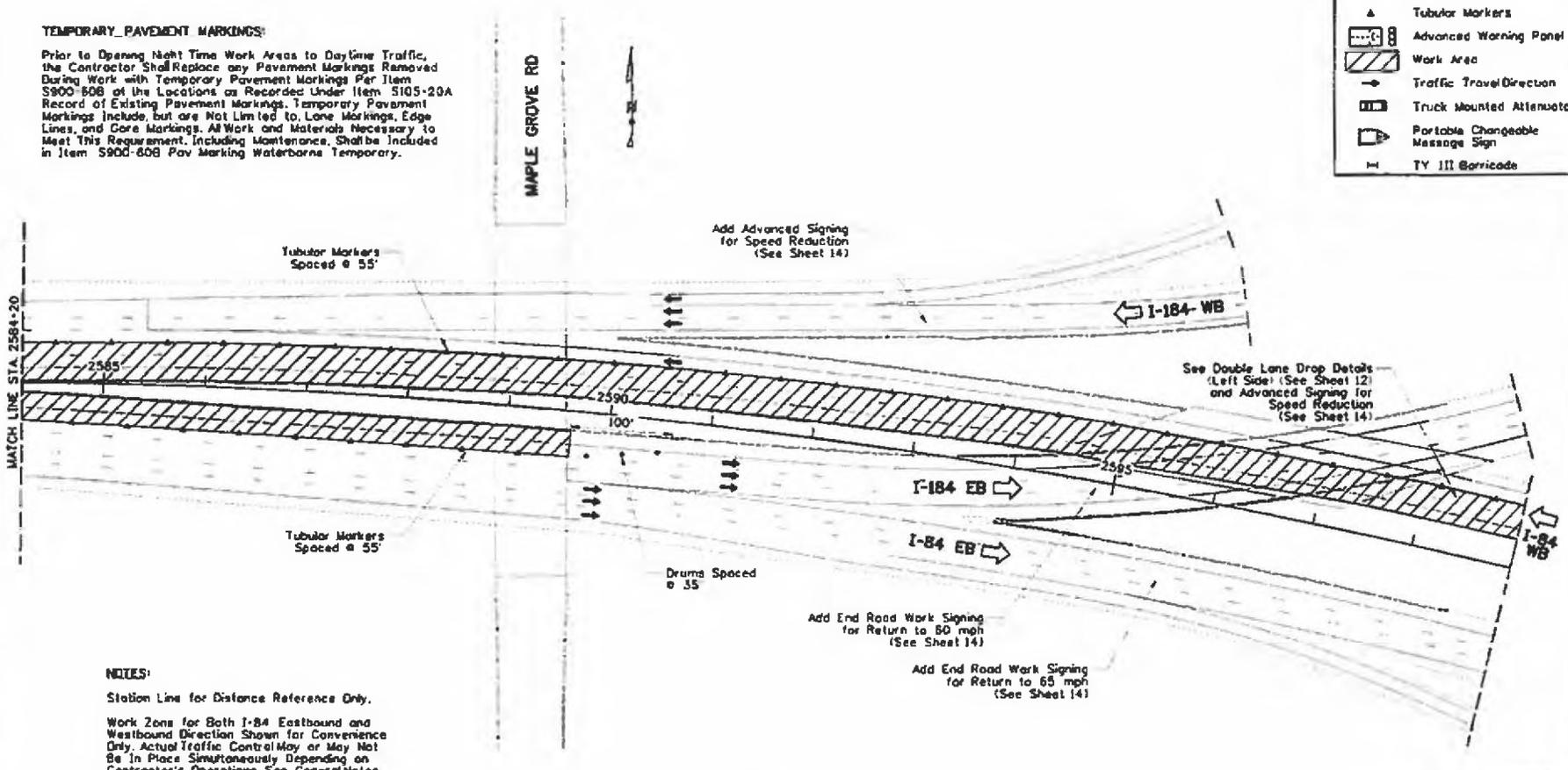
KEY NUMBER 19289

SHEET 16 OF 47

TEMPORARY PAVEMENT MARKINGS:

Prior to Opening Night Time Work Areas to Daytime Traffic, the Contractor Shall Replace any Pavement Markings Removed During Work with Temporary Pavement Markings Per Item S900-506 at the Locations as Recorded Under Item S105-20A Record of Existing Pavement Markings. Temporary Pavement Markings include, but are Not Limited to, Lane Markings, Edge Lines, and Core Markings. All Work and Materials Necessary to Meet This Requirement, Including Maintenance, Shall be Included in Item S900-606 Pav Marking Waterborne Temporary.

LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Warning Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TY III Barricade



NOTES:

Station Line for Distance Reference Only.
 Work Zone for Both I-84 Eastbound and Westbound Direction Shown for Convenience Only. Actual Traffic Control May or May Not Be in Place Simultaneously Depending on Contractor's Operations. See General Notes.
 Actual Work Zone Limits May Vary Depending on Contractor's Operations. Unless Approved, Limits of Actual Work is Limited to 1-Mile Segments Not Including Advanced Signing.

REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED	HCC
DESIGN CHECKED	PSA
DETAILED	KMR/WMM
DRAWING CHECKED	PSA

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IDAHO TRANSPORTATION DEPARTMENT

Parametrix

PROJECT NO.	AO19(289)
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TEMPORARY TRAFFIC CONTROL

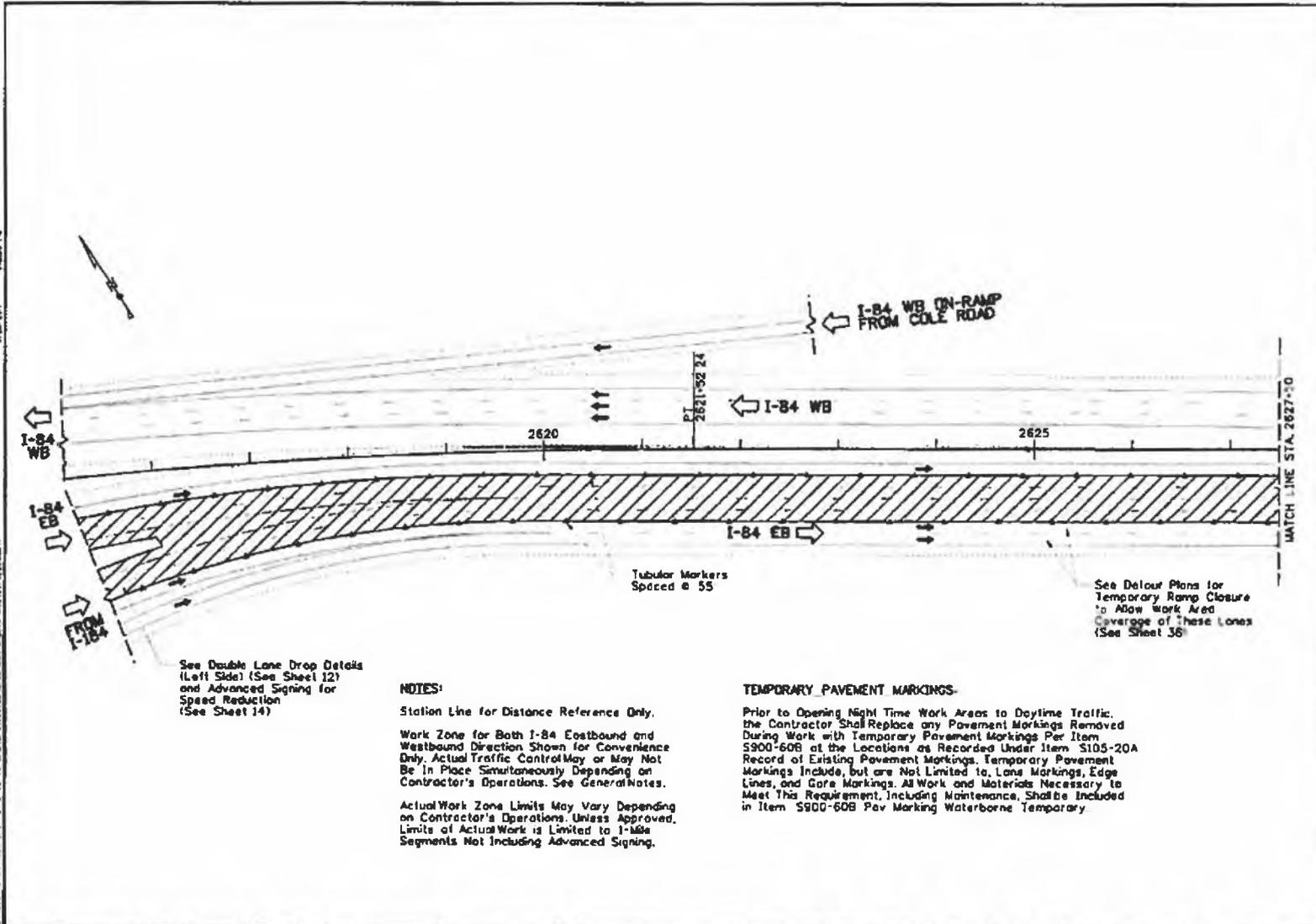
I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE WEST WYE (LEFT LANES PHASE)

English	
COUNTY	Ada
KEY NUMBER	19289
SHEET 20 OF 47	

PROFESSIONAL ENGINEER
 REGISTERED
 7-28-17
 7170
 Kenneth C. Colson
 STATE OF IDAHO
 KENNETH C. COLSON

1/28/2017 14:03:24

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LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Warning Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TY III Barricade

See Double Lane Drop Details (Left Side) (See Sheet 12) and Advanced Signing for Speed Reduction (See Sheet 14)

NOTES:
 Station Line for Distance Reference Only.
 Work Zone for Both I-84 Eastbound and Westbound Direction Shown for Convenience Only. Actual Traffic Control May or May Not Be in Place Simultaneously Depending on Contractor's Operations. See General Notes.
 Actual Work Zone Limits May Vary Depending on Contractor's Operations. Unless Approved, Limits of Actual Work is Limited to 1-Mile Segments Not Including Advanced Signing.

TEMPORARY PAVEMENT MARKINGS-
 Prior to Opening Night Time Work Areas to Daytime Traffic, the Contractor Shall Replace any Pavement Markings Removed During Work with Temporary Pavement Markings Per Item S900-606 of the Location as Recorded Under Item S105-20A Record of Existing Pavement Markings. Temporary Pavement Markings Include, but are Not Limited to, Lane Markings, Edge Lines, and Gore Markings. All Work and Materials Necessary to Meet This Requirement, Including Maintenance, Shall be Included in Item S900-606 Pav Marking Waterborne Temporary.

REVISIONS		
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DETAILED	KMR/WNV
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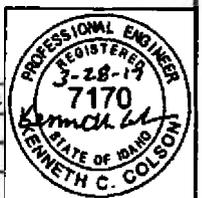
IDAHO
 TRANSPORTATION
 DEPARTMENT

 Parametrix

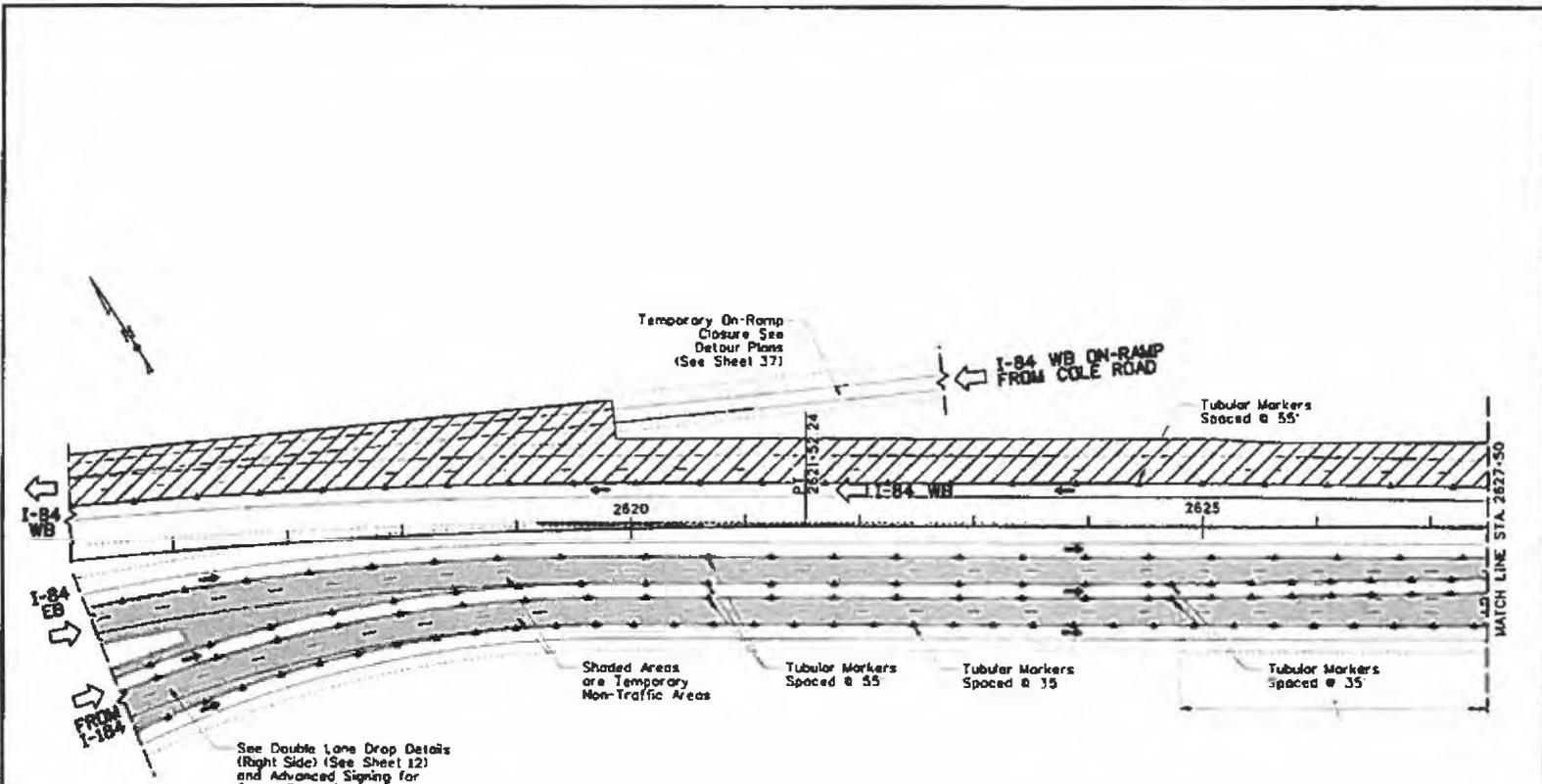
PROJECT NO.	A019(289)
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TEMPORARY TRAFFIC CONTROL
English
 I-84, FIVE MILE RD TO
 ORCHARD RD & RAMPS, BOISE
 EAST WYE (MIDDLE LANES PHASE)

COUNTY	AGO
KEY NUMBER	28289
SHEET	24 OF 47



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NOTES:

Station Line for Distance Reference Only.

Work Zone for Both I-84 Eastbound and Westbound Direction Shown for Convenience Only. Actual Traffic Control May or May Not Be in Place Simultaneously Depending on Contractor's Operations. See General Notes.

Actual Work Zone Limits May Vary Depending on Contractor's Operations Unless Approved. Limits of Actual Work is Limited to 1-Mile Segments Not Including Advanced Signing

TEMPORARY PAVEMENT MARKINGS:

Prior to Opening Night Time Work Areas to Daytime Traffic, the Contractor Shall Replace any Pavement Markings Removed During Work with Temporary Pavement Markings Per Item 5900-608 at the Locations as Recorded under Item 5105-20A Record of Existing Pavement Markings. Temporary Pavement Markings include, but are Not Limited to, Lane Markings, Edge Lines, and Gore Markings. All Work and Materials Necessary to Meet This Requirement, Including Maintenance, Shall be Included in Item 5900-608 Pav Marking Waterborne Temporary.

REVISIONS			
NO.	DATE	BY	DESCRIPTION

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DESIGN CHECKED	PSA	
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IDAHO TRANSPORTATION DEPARTMENT

Parametrix

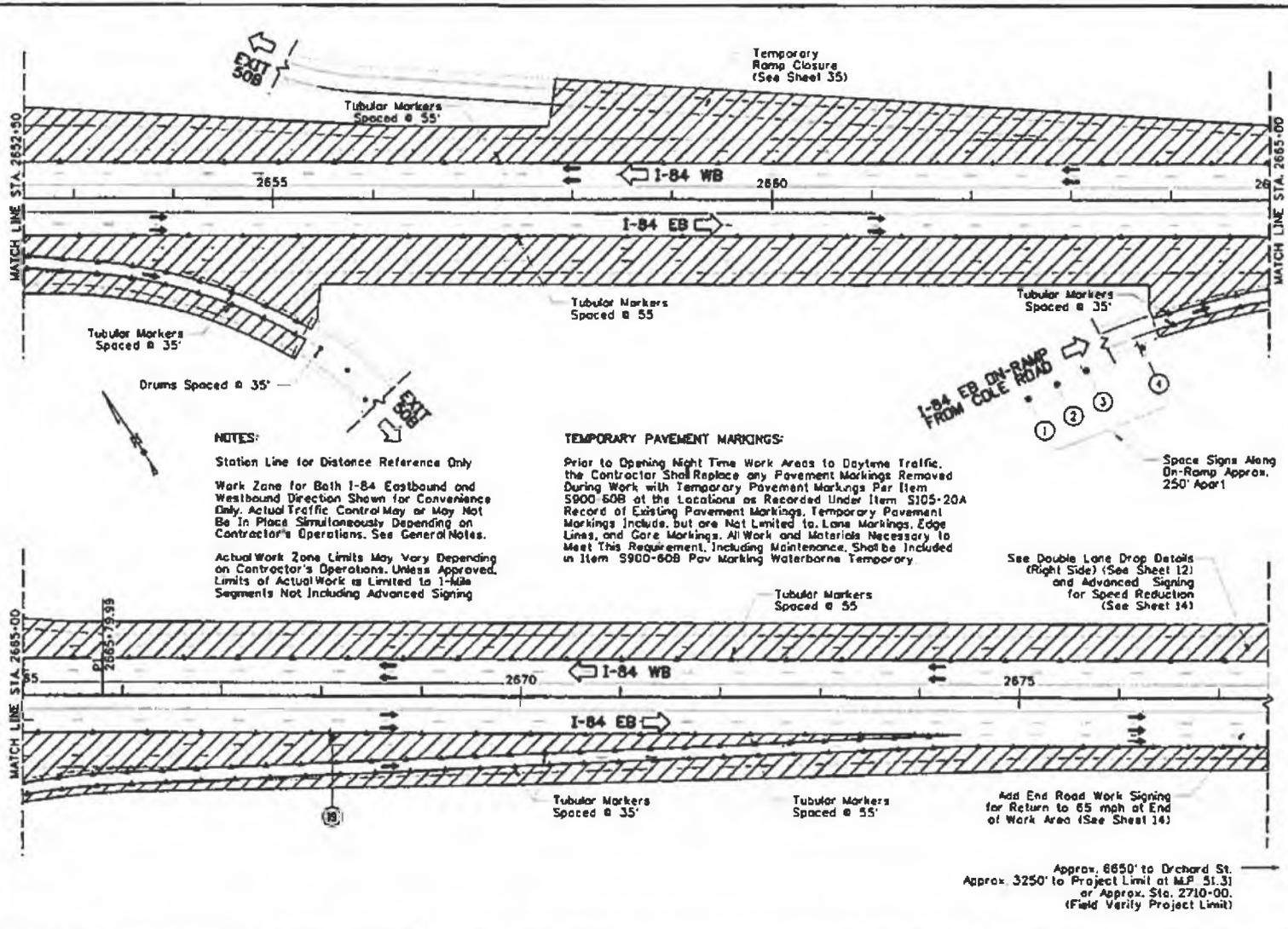
PROJECT NO.	TEMPORARY TRAFFIC CONTROL
A019(289)	

I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE EAST WYE (RIGHT LANES PHASE)

English	
COUNTY	Ada
KEY NUMBER	19289
SHEET 26 OF 47	



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NOTES:

Station Line for Distance Reference Only

Work Zone for Both I-84 Eastbound and Westbound Direction Shown for Convenience Only. Actual Traffic Control May or May Not Be in Place Simultaneously Depending on Contractor's Operations. See General Notes.

Actual Work Zone Limits May Vary Depending on Contractor's Operations. Unless Approved, Limits of Actual Work is Limited to 1-Mile Segments Not Including Advanced Signing

TEMPORARY PAVEMENT MARKINGS:

Prior to Opening Night Time Work Areas to Daytime Traffic, the Contractor Shall Replace any Pavement Markings Removed During Work with Temporary Pavement Markings Per Item 5900-60B at the Locations as Recorded Under Item S105-20A Record of Existing Pavement Markings. Temporary Pavement Markings Include, but are Not Limited to, Lane Markings, Edge Lines, and Core Markings. All Work and Materials Necessary to Meet This Requirement, Including Maintenance, Shall be Included in Item 5900-60B Pav Marking Waterborne Temporary.

Approx. 6650' to Orchard St.
 Approx. 3250' to Project Limit at M.P. 51.31
 or Approx. Sta. 2710+00.
 (Field Verify Project Limit)

LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Signing Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TV III Barricade

- ① W20-1 48"x48"
- ② R2-1001 72"x36"
- ③ W3-5(a)(55) 48"x48"
- ④ R2-1((55) 48"x60"
- ⑤ W4-3(a) 48"x48"

REVISIONS		
NO.	DATE	DESCRIPTION

DESIGNED	KCC	SCALES SHOWN ARE FOR P X IT PRINTS ONLY
DESIGN CHECKED	PSA	CADD FILE NAME 19289_trcp_019.sht
DETAILED	KMR/WMM	DRAWING DATE: March 2017
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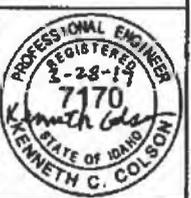
IDAHO TRANSPORTATION DEPARTMENT

Parametrix

PROJECT NO.	19289
TEMPORARY TRAFFIC CONTROL	I-84, FIVE MILE RD TO ORCHARD RD & RAMP, BOISE EAST WYE (RIGHT LANES PHASE)

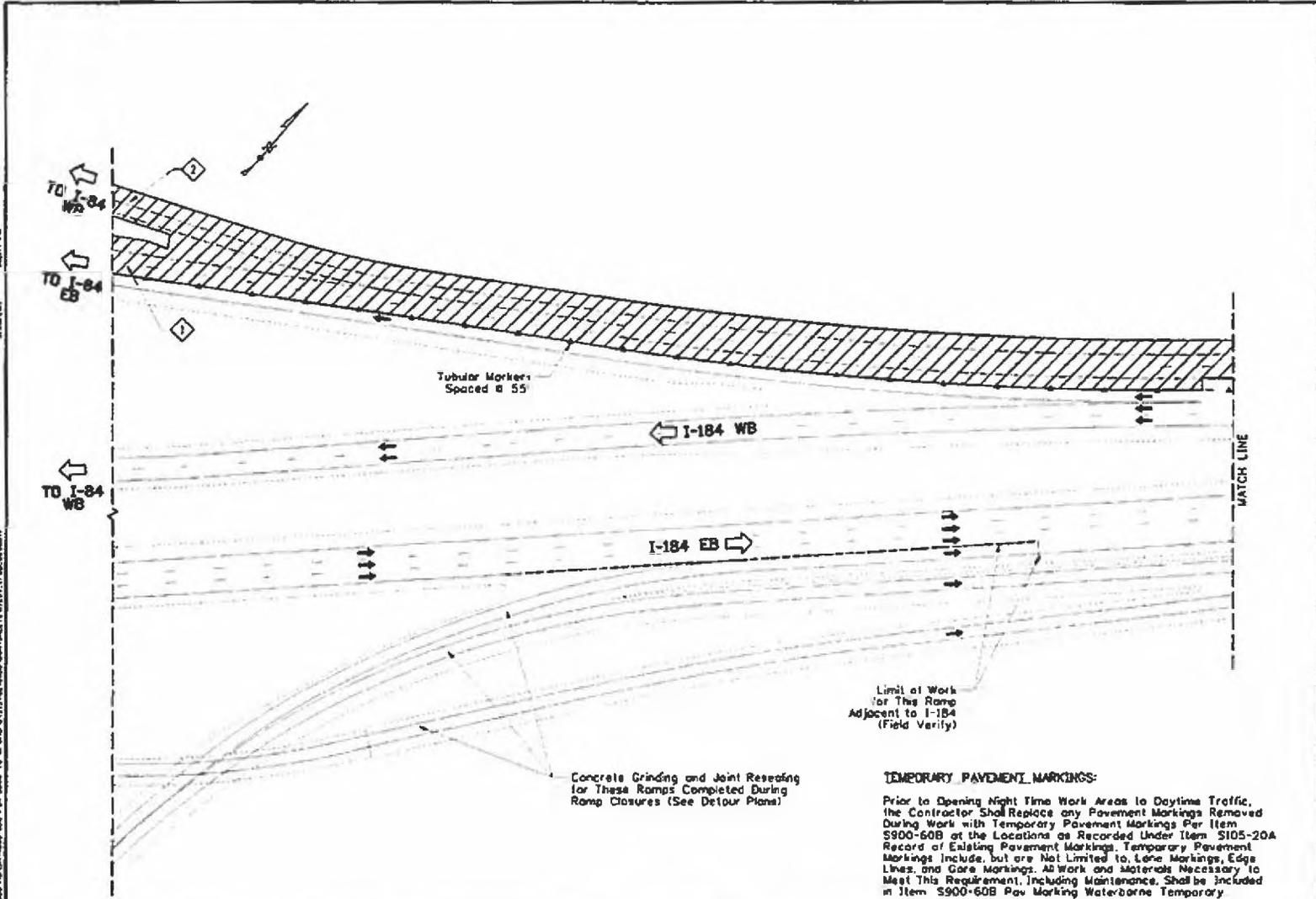
COUNTY	Ada
KEY NUMBER	19289
SHEET 28	OF 47

English



SHEET NO.

SHEET NO.



LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Warning Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TY III Barricade

- 1 Work Zone Extends Across Flyover to Merge Point With I-84 Eastbound Bridge and Approach Slabs are Excluded From Concrete Grinding and Joint Resealing. Add End Road Work Signing for Return to 65 mph at End of Work Zone. (See Sheet 14)
- 2 Work Zone Extends Along the Entire Ramp to the Merge Point with I-84 Westbound. Add End Road Work Signing for Return to 65 mph at End of Work Zone. (See Sheet 14)

REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED	KCC	SCALES SHOWN ARC FOR P X IT PRINTS ONLY
DESIGN CHECKED	PSA	CARD FILE NAME 19209_trap_020.sht
DETAILED	KMR/WWH	DRAWING DATE: March 2017
DRAWING CHECKED	PSA	

**IDAHO
TRANSPORTATION
DEPARTMENT**

Parametrix

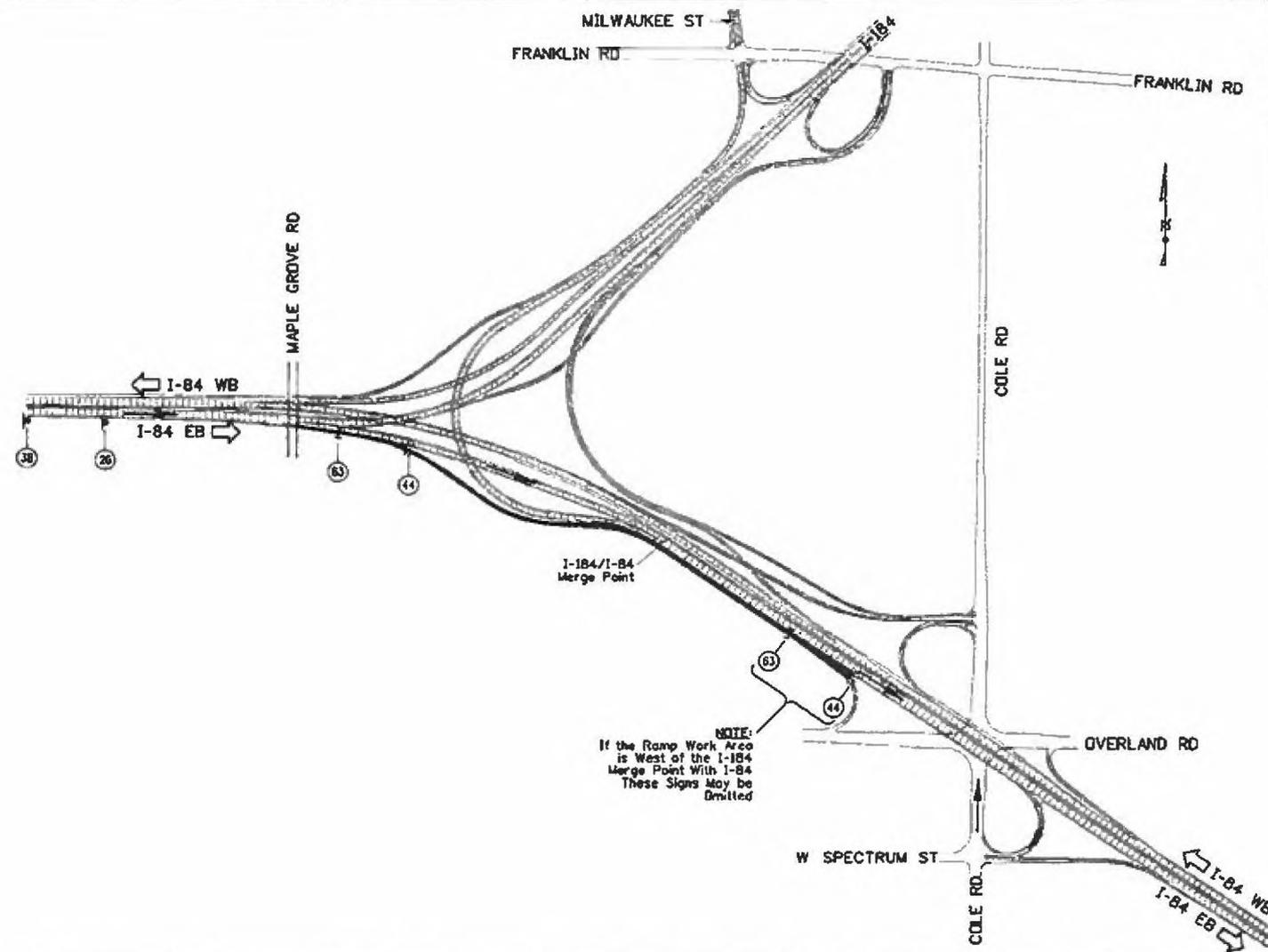
PROJECT NO.	A019(289)
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TEMPORARY TRAFFIC CONTROL	I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE I-184 PHASE - 1
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English	
COUNTY	Ada
KEY NUMBER	19209
SHEET 29 OF 43	

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LEGEND

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[Symbol]	Sign (Double Post)
[Symbol]	Sign Existing (Double Post)
[Symbol]	Drums
[Symbol]	Tubular Markers
[Symbol]	Advanced Warning Panel
[Symbol]	Work Area
[Symbol]	Traffic Travel Direction
[Symbol]	Truck Mounted Attenuator
[Symbol]	Portable Changeable Message Sign
[Symbol]	TY III Barricade

NOTE:
See Sheets 39 and 40 for Sign Assemblies.
See Sheets 41 to 47 for Sign Details.
Temporary Traffic Control Sign Placement Spacing as per MUTCO Part 8. Adjust as Necessary to Avoid Conflicting Driveways and Other Obstructions.

NOTE:
If the Ramp Work Area is West of the I-184 Merge Point with I-84 These Signs May be Omitted

REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED	KCC	SCALES SHOWN ARE FOR 1" X 17" PRINTS ONLY IDAD FILE NAME 19289.dwg (001.dwg) DRAWING DATE: March 2017
DESIGN CHECKED	PSA	
DETAILED	KMR/MMM	
DRAINAGE CHECKED	PSA	

IDAHO TRANSPORTATION DEPARTMENT

Parametrix

PROJECT NO.	A019(289)
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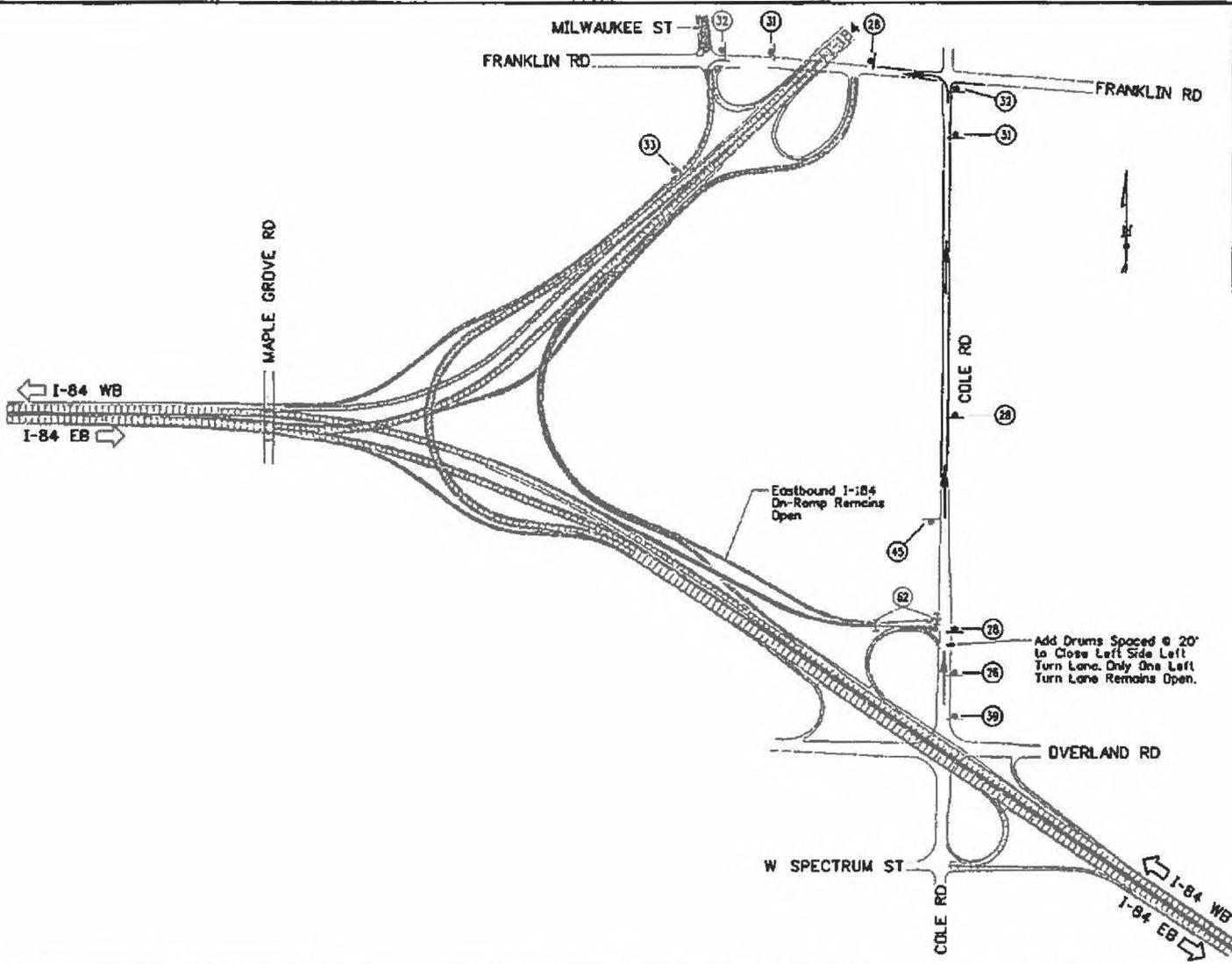
DETOUR PLANS
 I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE
 EB I-84 AT EXIT 50A-B

COUNTY	Ada
KEY NUMBER	19289
SHEET	36 OF 47

PROFESSIONAL ENGINEER
 REGISTERED
 3-20-17
 7170
Kenneth C. Colson
 STATE OF IDAHO
KENNETH C. COLSON

3/28/2017 6:03 PM

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LEGEND	
	Sign (Single Post)
	Sign (Double Post)
	Sign Existing (Double Post)
	Drums
	Tubular Markers
	Advanced Warning Panel
	Work Area
	Traffic Travel Direction
	Truck Mounted Attenuator
	Portable Changeable Message Sign
	TY III Barricade

NOTE:
See Sheets 39 and 40 for Sign Assemblies.
See Sheets 41 to 47 for Sign Details.
Temporary Traffic Control Sign Placement Spacing as per MUTCD Part 6. Adjust as Necessary to Avoid Conflicting Driveways and Other Obstructions.

REVISIONS		
NO.	DATE	DESCRIPTION

DESIGNED	KCC
DESIGN CHECKED	PSA
DETAILED	KMR/WMM
DRAWING CHECKED	PSA

SCALES SHOWN ARE FOR 8" X 11" PRINTS ONLY

IDAHO TRANSPORTATION DEPARTMENT



Parametrix

PROJECT NO.	A019(289)
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DETOUR PLANS

I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE
COLE RD TO WB I-84

COUNTY	ADD
REV NUMBER	19289
SHEET	37 OF 47

PROFESSIONAL ENGINEER
REGISTERED
3-30-17
7170
Kenneth C. Colson
STATE OF IDAHO
KENNETH C. COLSON

3/28/2011 10:42 AM

I:\Users\jcollins\OneDrive\Documents\Projects\19289\19289.dwg



19.15 37 18.88
20.38 19.25 26.38
72
SE-1(s), 72x88, Exit Gate, 0.00" Radius, 1.00" Border, Black on Orange;
[EXIT] E Mod 2K; Arrow Curves - 24.00° AS°;
Table of widths and spaces:

19.15	0.60	1.03	10.00	2.50	2.34	2.25	8.88	15.88
W								
20.38	19.25	26.38						



18.25 11.5 18.25
6.5 35 6.5
13.88 20.25 13.88
48

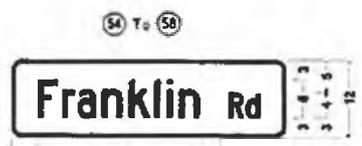
50-1160;
2.25" Radius, 0.88" Border, 0.83" Indent, Black on Orange;
[USE] C 2K 85% spacing;
[ALTERNATE] C 2K 85% spacing;
[ROUTE] C 2K;
Table of widths and spaces:

18.25	3.38	0.88	3.38	0.75	3.13	18.25										
6.50	3.88	0.75	3.00	0.38	3.00	0.88	3.38	0.88	3.38	0.75	3.75	0.38	3.00	0.75	3.00	4.83
13.88	3.38	0.88	3.63	1.13	3.58	0.88	3.00	0.88	3.00	14.00						



5.75 27.25 4.5 4.75 5.75
48
1.50" Radius, 0.50" Border, Black on Orange;
[Overland] C 2K; [Rd] C 2K;
Table of widths and spaces:

5.75	3.83	0.83	3.50	0.50	3.00	0.65	1.88	0.75	0.75	0.88	2.88	1.00	3.00	0.88	3.00
W															
4.50	2.25	0.50	2.00	8.88											



3.88 25 4.5 4.75 3.88
42
1.50" Radius, 0.50" Border, Black on Orange;
[Franklin] C 2K; [Rd] C 2K;
Table of widths and spaces:

3.88	3.13	0.75	1.88	0.38	2.88	1.00	3.13	1.00	3.25	0.83	0.88	1.00	0.88	1.13	3.00
W															
4.50	2.25	0.50	2.00	4.00											

REVISIONS			
NO.	DATE	BY	DESCRIPTION

DESIGNED	KCC/MNW
DESIGN CHECKED	PSA
DETAILS	MW/MCW
DRAWING CHECKED	MW

SCALES SHOWN ARE FOR PLOT PRINTS ONLY
CADD FILE NAME 19289_tcd1_008.dwg
DRAWING DATE: March 2012

IDAHO TRANSPORTATION DEPARTMENT
Parametrix

PROJECT NO. A019(289)

SIGN DETAILS
I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE

English
COUNTY Ada
KEY NUMBER 19289
SHEET 48 OF 47



**SPECIAL PROVISIONS
IDAHO FEDERAL AID PROJECT NO. A019(289)**

I-84, FIVE MILE RD TO ORCHARD RD & RAMPS

Ada County

The following Special Provisions and all addenda issued supplement or modify the 2012 Idaho Transportation Department Standard Specifications for Highway Construction; January 2016 Supplemental Specifications, Quality Assurance Manual and QA Special Provisions; December 2016 Standard Drawings; SSP-420 SSP-428 Concrete Pavement Rehabilitation; Title VI Special Provisions; FHWA-1273 Federal Aid Contract Provisions with supplement; EEO Special Provisions 2011; DBE RN 2011 Special Provisions; DBE RC 2011 Special Provisions; General Wage Decision ID16 ____;

SOURCE IDENTIFICATION

Designated source(s): Designated source(s) are not identified for this project.

Contractor provided source(s): Provide approved source(s) for all materials. A list of Department owned or controlled sources is available at the District office.

Cost. For Department controlled sources, the source recovery fee shall be the applicable rate as established in the Department's Materials Manual Section 270.02.05 Source Control at the time of bidding.

COMPLETION TIME AND LIQUIDATED DAMAGES

Complete work within 75 Working Days.

The amount of Liquidated Damages for failure to complete the work on time will be \$1600 per day.

CONTRACTOR NOTES

BIDDER REGISTRATION

01/16

All contractors, consultants, suppliers, and service providers bidding and performing on Idaho Transportation Department federal-aid projects are required to register as vendors at <https://itd.dbesystem.com>. Vendors register online once, with annual reminders to check and update their company information as needed.

The information vendors provide in the registration process is federally required. Also, Vendors must have system accounts in order to participate in ITD's online contract payment reporting program. This system is used by many neighboring states, so be sure to conduct a search for your business before creating new account. If you have questions, the ITD Diversity Management System includes a "Help/First Time Visitors" section and training tutorials.

EMPLOYMENT AGENCY

1/16

The designated employment agency is as follows:

Idaho Department of Labor Office
219 W. Main St.
Boise, ID 83735-0030

PROJECT NO. A019(289); KEY NO. 19289



Page 1 of 27

Delete 107.17.C Erosion and Sediment Control Plan

ENVIRONMENTAL REQUIREMENT – EROSION AND SEDIMENT CONTROL PLAN

1/16

The Project Clearance Summary Sheet identifies if an Erosion and Sediment Control Plan (ESCP) or National Pollutant Discharge Elimination System Stormwater Pollution Prevention Plan (SWPPP) is required based on the area of disturbance or presence of the potential to discharge pollutants to Waters of the United States from the project limits as presented in this project's plans. This project requires an ESCP.

ESCP Defined

An ESCP is a Pollution Prevention Plan that addresses Best Management Practices (BMPs) including, but not limited to, erosion and sediment control, good housekeeping practices, spill prevention, response, and cleanup, and inspection procedures. The Department requires an Engineer approved ESCP for all projects that do not require a Construction General Permit (CGP) SWPPP.

Project Expansion or Addition of Construction Support Activities Resulting in a Requirement for SWPPP

Evaluate all construction support activities. If construction support activities resulting in an area of soil disturbance that equals or exceeds 1 acre when added to the project disturbance, or adds a support activity that results in a potential to discharge pollutants to Waters of the United States, a CGP will be required. The Contractor shall then prepare the entire SWPPP using the template provided by the Engineer. If a CGP and SWPPP become required as a result of Contractor added support activities, the Department's special provision for the NPDES Construction General Permit shall become applicable. The special provision may be obtained from the Engineer. Comply with the Department's NPDES Construction General Permit special provision if it becomes applicable.

ESCP Development and Approval

Develop and implement the final ESCP. This includes any required ESCP modifications, updates, or additions during construction.

1. Prepare an ESCP using the template provided by the Engineer, form ITD-2788 (Erosion and Sediment Control Plan). Meet applicable requirements of Section 212.
2. Submit the ESCP in a 3-ring binder with dividers and tabs, unless otherwise approved by the Engineer. The Engineer may also require submittal of an electronic, editable version of the ESCP. Submit the ESCP for Department review and approval no later than the pre-construction meeting.
3. Allow 15 working days for Engineer review, unless otherwise specified. Incorporate revisions, based on Engineer review, and resubmit. The Department will not make adjustments in cost or time for Engineer's Failure to approve all or part of any such ESCP.
4. Once Engineer approved, the Engineer, Contractor, and subcontractors shall sign the ESCP. The ESCP must be approved prior to staging.

ESCP Implementation

1. Allow no construction activities, construction support activities, or pollutant-generating activities beyond the limits or schedule shown in the ESCP or project plans.
2. Perform all work in accordance with Federal, State, local, and Tribal laws, regulations, policies, and ordinances addressing protection of the environment.

Inspection Requirements

Inspect the construction site and all construction support activities as follows:

- Inspect and maintain all control measures, pollution prevention measures, solid and liquid waste storage and disposal areas, and material storage and staging areas for functionality at least every 7 calendar days
- Conduct inspections by a person who is knowledgeable in erosion and sediment control and pollution prevention practices. This includes professional accreditation such as certification through ITD's Water Pollution Control Manager training, Certified Professional in Erosion Control (CPESC) or Certified Erosion, Sediment and Stormwater Inspector (CESSWI) certifications, or other applicable site management or project management experience which can be documented and provided to the Engineer.
- Document the inspections using either form ITD-2802 (Stormwater Compliance Inspection Form) or ITD-2786 (Construction Site Inspection Report), available on ITD's website or upon request from the Engineer
- Correct deficiencies as soon as practicable, but no later than 7 days following inspection
- Sign the inspection reports to certify BMP maintenance or corrective actions have been satisfactorily completed and to certify project compliance with all environmental requirements
- Maintain a current ESCP, including completed and certified inspection reports. Within 24 hours of completion, insert the certified inspections into the ESCP recordkeeping section
- The Contractor's inspection frequency may be reduced by the Engineer in writing
- At the request of the Engineer, submit a copy of the Contractor's certified inspection form within 24 hours
- If requested by the Engineer, submit the final and most current version of the ESCP and all completed and certified inspections, in electronic format, upon completion of the project

Basis of Payment

The Department considers ESCP development, revisions, modifications, and all costs associated with the inspection and compliance process as incidental and included in the applicable contract pay items.

Penalties and Damages

Fines, penalties, and costs to the Department for the Contractor's failure to comply with the Clean Water Act, to mitigate environmental damage, or to resolve regulatory actions will be deducted from moneys due the Contractor.

GENERAL WAGE DECISION

01/16

Upon written request 10 days prior to the bid opening date, the Department will provide a missing job classification, wage rate and fringe benefit rate as outlined in FHWA-1273 IV.1.b to all plan holders as addenda.

MANHOLES AND INLETS

Retain and protect all manholes and inlets that are within the project limits.

MEDIA RELATIONS

The Department will handle all media relations on the project. If the Contractor is contacted by a member of the Media concerning the project, the Contractor shall refer that person to the engineer or the State's Public Affairs Office at the following address:

Idaho Transportation Department
Office of Communications
P.O. Box 7129
Boise, Idaho 83707-1129
(208)334-8938

PAVEMENT LANE MARKINGS

Two applications of the final pavement lane markings are required for this project. Apply the first application upon completion of grinding, resealing joints, repairing pavement cracks, repairing spalls and completion of the project. Apply the second application thirty (30) days after the first application, or as directed. The S900-60A Pavement Markings quantity has been calculated to include two pavement lane marking applications.

SITE OF WORK

1/16

Davis-Bacon Act wage rates may be applicable to facilities dedicated exclusively, or nearly so, to the performance of the contract or project. Facilities include, but are not limited to, borrow sources, hot plants and batch plants. Apply the wage rates to facilities that are adjacent or virtually adjacent to the site of work. The Engineer will evaluate the applicability of Davis-Bacon wage rates for facilities on a case-by-case basis. However, all facilities located within a 1-mile distance of the project site will be considered virtually adjacent by the Department, and subject to Davis-Bacon wage rate requirements, unless it can be shown otherwise by the Contractor.

STAGING AND TEMPORARY TRAFFIC CONTROL PLANS

Construction staging shall be as identified in the temporary traffic control construction staging general notes of the construction plans.

Alternate Staging and Temporary Traffic Control Plan:

The Contractor, at no additional cost to the Department, may submit alternate staging and temporary traffic control plans if his method of operation differs from the ones shown in the Contract. Alternate plans may replace or supplement the Contract plans and shall illustrate the proposed traffic routing, including, but not limited to lane restrictions, lane shifts, and placement of temporary traffic control devices.

The alternate staging and temporary traffic control plans must be submitted using the Contractor's drawing title block and be signed and sealed by an Engineer licensed in Idaho. Temporary traffic control plans shall be in conformance with the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, as adopted by the Department. Allow 14 calendar days for the Engineer to review alternate staging and temporary traffic control plans that replace or supplement the Contract construction staging and temporary traffic control plans. Allow seven (7) calendar days for each resubmittal. There is no guarantee, real or implied, that an alternate plan will be approved. Changes in traffic will not be allowed until alternate plans are approved in writing. Once alternate plans are approved, the approved plans must be followed unless new plans are submitted and approved.

The Department considers costs to develop alternate staging or temporary traffic control plans as incidental to Item Z629-05A Mobilization, and no additional payment will be made.

TEMPORARY PAVEMENT MARKINGS

Temporary pavement marking tape are to be applied to clean, dry pavement. Concrete grinding slurry residue will be removed completely by mechanical means as approved by the Engineer such as air blasting, or pressure washing. If required, the Contractor will use external heat to ensure the pavement is dry enough to provide a secure bond.

Temporary pavement marking tape will meet the requirements of section 6F.78 of the current Edition of the Manual on Uniform Traffic Control Devices as adopted by the State. Temporary pavement marking tape shall have a minimum segment length of two (2) feet, and will be replaced with permanent pavement striping within XX (x) weeks from the time of installation.

TEMPORARY TRAFFIC CONTROL DEVICES

Signs and channelizing devices shall be new or in like new condition and meet the reflectivity requirements of 712.02.

All Portable Tubular Markers shall have double weighted bases or as approved and the cost shall be included in Item 626-115A Portable Tubular Markers.

USE TAX

1/16

The exercise of control over State-owned material by a Contractor who is improving real property (roadways, etc.) will incur the imposition of a use tax by the State.

Contact the Idaho State Tax Commission (Telephone No. (208) 334-7618) concerning Section 63-3609, Idaho Code, and IDAPA 35, Title 01, Chapter 02, Sales Tax Administrative Rule 012, "Contractors Improving Real Property", and Rule 013, "Road and Paving Contractors".

In the case of aggregates the amount of this tax will differ depending on whether the material is obtained from a State-owned material source or whether it is obtained from a State-owned stockpile. Use tax is due on the fair market value of the material, and the crushed value is higher than for unprocessed material.

The tax will also differ depending on whether a Contractor both crushed the material and placed it on the roadway or the Contractor performs only one of these operations and hires a subcontractor to perform the other. If the contractor hires a subcontractor to crush the material, he must pay a sales tax to the crusher for this fabrication labor. If the Contractor crushes and applies the material, or gives material he crushes to a subcontractor for application, the Contractor owes use tax on the royalty value.

WORKING HOURS

Nighttime work is required for this project. This contract specifies nighttime work as a requirement for all construction activities. The hours for night work and the restrictions for construction activities involving lane closures on I-84 and I-184 are defined as follows:

TIME	RESTRICTION
<p align="center">Weekday Nights Sunday Night Through Friday Morning 10:00 p.m. to 5:00 a.m.</p>	<p>For existing 3-lane sections, a minimum of 1-lane shall be maintained in each the Eastbound and Westbound direction.</p> <p>For existing 4-lane sections and greater, a minimum of 2-lanes shall be maintained in each the Eastbound and Westbound direction or as shown in the temporary traffic control plans.</p> <p>For existing 1-lane sections at on-ramps and off-ramps, temporary closures are allowed as shown in the temporary traffic control plans and detour plans or as directed.</p>
<p align="center">Weekend Nights Friday Night Through Saturday Morning 10:00 p.m. to 7:00 a.m.</p>	<p>Same restrictions as listed above for Weekday Nights.</p>
<p align="center">Weekend Nights Saturday Night Through Sunday Morning 10:00 p.m. to 9:00 a.m.</p>	<p>Same restrictions as listed above for Weekday Nights.</p>
<p align="center">All remaining times not listed.</p>	<p>No lane restrictions or construction activities allowed.</p>

Failure to have the stated number of traffic lanes open will result in a charge of \$3,500 per substandard lane per fifteen (15) minute increment of time or any portion thereof until the required number of lanes are opened. The first incremental charge per lane is applied immediately when the required number of lanes are not open at the times.

Work areas in the Eastbound and Westbound direction of I-84 subject to construction staging as identified in the temporary traffic control construction staging general notes of the construction plans.

No lane closures are allowed for the entire night of home Boise State University (BSU) football games. It is the Contractor's responsibility to verify the BSU football home game schedule. The BSU football schedule can be found at <http://www.broncosports.com/>.

The Contractor shall minimize impact to the traveling public by coordinating his/her work to minimize the duration of any proposed lane restrictions. The contractor shall schedule and obtain Engineer approval of the lane restrictions or road closures seven (7) days in advance of the lane restriction or closure. Special consideration shall be given to any special event (concert, sporting event, fair, parade etc.) in and around the area that has the potential to generate larger than normal traffic volumes. All reasonable efforts shall be made to coordinate the work with these special events. No lane restrictions or road closures will be allowed during the times of increased traffic volumes generated from these events.

Lighting for night work will be paid for under S626-35A – Night Work Lighting. The Contractor will be required to comply with applicable noise and lighting ordinances.

ON SHEET 7 OF 71 OF THE JANUARY 2016 SUPPLEMENTAL SPECIFICATIONS, IN REFERENCE TO, ON PAGE 62, SUBSECTION 106.01-SOURCE OF SUPPLY AND QUALITY REQUIREMENTS

1/16

Add the following:

Buy America requirements apply to any steel or iron components of a manufactured product regardless of the overall composition of the manufactured product and to miscellaneous steel or iron components and hardware which include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc. The FHWA *Clarification of Manufactured Products under Buy America* dated December 21, 2012 which established the 90% threshold and the miscellaneous products exception is no longer valid.

260.03.01 MODIFICATION OF EXISTING SPECIFICATIONS

Append Section 420 to the 2012 State Standard Specifications as follows:

420 – CONCRETE PAVEMENT REHABILITATION

420.01 General.

Perform concrete pavement rehabilitation as follows:

1. Repair the roadway 1 lane at a time with traffic being maintained on the remaining lane. Limit the work areas to 2 miles in length, with only the active work area closed within the 2-mile limit. Obtain approval for night work. Open lanes to traffic at night, except for those areas that are in the curing process. Separate work areas by at least 3 miles.
2. Schedule concrete slab replacement operations to ensure removal and replacement are completed during 1 working day. If unforeseen circumstances prevent concrete placing, temporarily fill the cavity with crushed base before leaving the project. Crushed base used to temporarily fill cavities is considered incidental work.
3. Complete the work in the following order:
 - a. G Slab Replacement (full or partial)
 - b. F– Repairing Spalls
 - c. A Subsealing – Grout Method
 - d. B– Grinding
 - e. E– Repairing Cracks and C – Resealing Joints
 - f. D Reconstruction of Plant Mix Shoulders and 606
 - g. H– Sealing Edge Joints

NOTE: A will not precede B by more than 30 days and E/C by 60 days. Grind subsealed pavement and seal crack joints the same construction season.

4. Rehabilitation work is specified in 409.
 - A. **Subsealing.** Provide pavement subsealing by determining a grout hole pattern, drilling holes through the Portland cement concrete pavement, pumping grout through the holes into the voids, and patching the drilled holes with mortar.
 - B. **Grinding.** Grind the Portland cement concrete pavement surface to eliminate joint faulting, restore proper drainage, and provide riding characteristics and skid resistance or any combination as specified.
 - C. **Resealing Joints.** Remove the existing joint materials and clean and reseal Portland cement concrete pavement joints to be rehabilitated.
 - D. **Reconstruction of Plant Mix Shoulders.** Reconstruct and reseal the plant mix shoulder as specified and include cutting, joint preparation, grade control, stockpiling, and clean-up. Stockpile tailings from the milling operation at the designated location.
 - E. **Repairing Cracks.** Repair cracks in concrete pavement by routing or sawing with a small diameter segmented saw, cleaning, and sealing. Complete crack repairs concurrently with joint repair work.

- F. Repairing Spalls.** Core or saw around the perimeter of the specified area, chip or sandblast the spall repair area, and patch the cavity with rapid-hardening concrete or epoxy mortar.
- G. Slab Replacement.** Remove and replace concrete pavement in failing areas.
- H. Sealing Edge Joints.** Cut a sealant reservoir and seal between the existing plant mix shoulder and the concrete pavement.

420.02 Materials

A. Subsealing. Provide grout consisting of Portland cement and water as specified in 705, and fly ash in accordance with ASTM Designation C618 Class C or Class F. Obtain written approval to use other admixtures. Provide materials certification for fly ash as specified in 106.04.

Ensure the grout plant has a positive displacement cement injection pump and a high-speed colloidal mill. Operate the colloidal mixing machine between 800 and 2,000 revolutions per minute, with a rotor operating in close proximity to a stator, creating a high shearing action and subsequent pressure release to make a homogenous mixture. If limestone dust grout is approved for use, a paddle type mixer may be substituted for the high-speed colloidal mixer. Ensure the injection pump has pressure capability of 300 psi when pumping grout slurry mixed to a 12-second flow cone time.

Proportion grout ingredients by volume consisting of 1 part cement, 3 parts fly ash, and enough water to provide a grout efflux time ranging between 10 and 16 seconds when measured in accordance with Idaho Field Test Manual (Corps of Engineers Test Method CRD-C79-58). Control the flowability with time measurements at the beginning of the grouting operation and periodically throughout the injection process. Do not hold mixed material in the mixer or injection sump pump for more than 1 hour after mixing. The Department will not pay for any wasted material held for longer times.

Accurately measure dry cement and fly ash by weight, if in bulk, or provide packaged containers of uniform volume.

Introduce water into the mixing process through a meter or scale with a totalizer to measure the amount of water used during each work shift.

Use mortar to patch holes in pavement slabs that meet 705, or commercial, rapid-setting, concrete patching material meeting ASTM C928. Provide materials certification for commercial, rapid-setting mortar in accordance with 106.04.

B. Grinding. None specified.

C. Resealing Joints. Provide the sealant type as specified:

Hot-Poured Sealant.....	704.03
Cold-Applied Sealant	704.05

Provide heat-resistant backer rod material as recommended by the manufacturer (e.g., cotton or cellulose upholstery cord, premolded urethane foam). Ensure the backer rod is slightly larger in diameter than the width of the sawed joint. Furnish various size backer rods to accommodate variations in joint widths.

D. Reconstruction of Plant Mix Shoulders. Meet the following requirements:

Superpave Hot Mix Asphalt.....	405
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E. Repairing Cracks. Provide sealant types as specified:

Hot-Poured Sealant.....	704.03
Cold-Applied Sealant	704.05

F. Repairing Spalls. Provide rapid-hardening concrete meeting ASTM C928 modified as follows:

1. Water will be the only liquid component.
2. Calcium chloride or metallic aggregate is not allowed.
3. Table 1, physical requirements, minimum compressive strength of 2,500 psi at 3 hours, 4,000 psi at 1 day, and 6,000 psi at 28 days.
4. Furnish certified test reports showing compliance.

OR

Epoxy binder for mortar conforming to AASHTO M 235 or ASTM C881, Type III, Grade 1 or 2 with class selected to meet field temperature.

G. Slab Replacement. Meet materials and testing requirements as specified in 409. Meet the requirements of AASHTO M 235, or ASTM C881; Type I or II, Grade 2 or 3, with class selected to match field temperature of epoxy for grouting tie bars and dowels. Obtain approval to use quick setting, non-shrink mortar or other alternative materials for grouting tie bars and dowels into existing slabs.

H. Sealing Edge Joints. Provide the sealant types as specified:

Hot-Poured Sealant.....	704.03
Cold-Applied Sealant	704.05

Provide heat resistant backer rod material in accordance with the manufacturer's recommendations (e.g., cotton or cellulose upholstery cord, premolded urethane foam). Ensure the backer rod is slightly larger in diameter than the width of the sawed joint. Furnish various size backer rods to accommodate variations in joint widths.

420.03 Construction Requirements

A. Subsealing. Drill holes through the pavement and underlying base to the depth as specified by air or hydraulic equipment 2 inches or less in diameter. Protect the pavement surrounding each hole from damage. Limit the breakout at the bottom of the drill hole to 10 percent or less of the pavement thickness. Limit drilling operations to less than 1 work shift ahead of the grouting operations.

Locate the holes in the configuration as determined. Drill at least 2 consecutive slabs before beginning grouting operations and continue throughout each run or work period.

Pre-wet and wash the holes as necessary to obtain thorough distribution of the injected material.

Pump grout with less than 100 psi pressure, through the holes until voids under the pavement slab are filled. Limit slab movement or rising as a result of pressure grouting to 0.050 inch or less. Provide and utilize suitable devices to monitor slab movement during pressure grouting.

Inject grout into only 1 hole at a time on any slab or adjoining slabs. When grout appears at any longitudinal or transverse joint, crack, or adjacent hole, or when monitoring devices indicate slab movement, cease pressure grouting immediately at that hole. Allow water displaced from the void structure by the grout to flow out freely. Do not allow excessive loss of the grout through cracks, joints, or from back pressure in the hose or in the shoulder area.

If continued grouting is no longer feasible, cease subsealing operations at that location. The Department will pay for holes drilled at the contract unit price for materials used.

Perform pressure grouting when temperatures are above 45 °F, during suitable weather, and when the subgrade material is not frozen.

Take necessary precautions to prevent grout from being pumped or wasted into any drainage facility or other open structure.

Upon completion of the grouting operation, remove grout from the drilled holes to a depth of at least 4 inches below the pavement surface. Clean the holes and fill with mortar and finish flush with the concrete pavement surface. At the end of each work period, leave the work area in a clean, swept, and neat condition.

If cracks develop between adjacent grout injection holes, either from drilling or pumping, repair these cracks using an epoxy injection method satisfactory to the Engineer. The Engineer may require replacement of the entire panel or a designated portion. Either method will be at no additional cost to the Department.

Keep traffic off of a grouted slab for at least 1 hour after grouting.

B. Grinding. The Engineer will not require grinding on bridge decks and roadway shoulders, unless specified or required to improve drainage.

- 1. General.** Schedule and proceed with construction operations to produce a uniform finished surface. Grind to eliminate joint or crack faults and ensure positive lateral drainage is maintained on a constant cross slope between grinding extremities in each lane. Transition auxiliary or ramp lane grinding from the mainline edge to provide positive drainage and acceptable riding surface. Grind the area specified until the pavement surfaces of adjacent sides of transverse joints and cracks are in the same plane and the pavement surface deviations ¼ inch or less when tested with a 10-foot straightedge. Ensure the faulting is eliminated at joints and cracks, the overall riding characteristics

are within the acceptable limits, and the depth of material removed is sufficient for the pavement surface to be textured, including the bottom of ruts. The Engineer will not require extra depth grinding to eliminate minor local depressions.

Remove solid grinding residue before it is blown away by traffic or wind and will prevent residue from flowing across lanes used by traffic or into gutters or drainage facilities. Any damage to these facilities will be corrected at no cost to the Department. Dispose of the grinding residual.

2. Equipment. Furnish grinding equipment meeting the following:
 - a. Self-propelled.
 - b. Designed to smooth and texture Portland cement concrete pavement with diamond blades.
 - c. Effective wheel base of at least 12 feet.
 - d. Cut or plane width at least 3 feet.
 - e. Shape and dimension that does not encroach on traffic movement.
 - f. Does not causes raveling, aggregate fractures, spalls, or joint damage.
3. Surface Finish and Testing. Meet the smoothness requirements of 409.03.K.

Produce a pavement surface that is true to grade and uniform in appearance with longitudinal corrugations that present a narrow ridge, corduroy appearance. The peaks of the ridges shall be approximately $\frac{1}{16}$ inch higher than the bottoms of the grooves with approximately 53 to 57 evenly spaced grooves per foot. Remove fins resulting from grinding prior to opening to traffic.

Inspect transverse joints and transverse cracks to ensure that adjacent surfaces are in the same plane. Grind areas where misalignment of the planes of the surfaces on adjacent sides of the joint or crack are in excess of $\frac{1}{16}$ inch until the surfaces are flush. Make smoothly feathered transitions at transverse boundaries between ground and unground areas of concrete.

Ensure vertical misalignment between ground and unground concrete surfaces at longitudinal boundaries does not exceed $\frac{1}{8}$ inch. If required, perform additional grinding with appropriate cross slope adjustment to feather out the misalignment.

- C. Resealing Joints. Perform joint resealing in accordance with the sealant manufacturer's requirements. Place sealant when the pavement surface and weather conditions are dry.

Remove all of the existing material from the joints with a plow, ripping teeth, wire brush, saw, or other equipment as approved, to the satisfaction of the Engineer. Do not use equipment that will cause spalling of the pavement surface beyond the limits of the joint. The Engineer will not allow gang saws to remove existing material from joints formed with tape. Dispose of material removed from the joints in an approved manner.

Saw the sealant reservoir to the width and depth as specified with a power-driven saw equipped with diamond blades. Repair any damage to the concrete pavement such as spalling or fractures at no cost to the Department. Before sawing the sealant reservoir in new concrete, ensure the concrete has reached a compressive strength of 2,500 psi.

As soon as each joint is cut, thoroughly clean scale, dirt, dust, old sealant residue, and other foreign material from the sides and adjacent pavement surface for a width of approximately 1 inch on each side at the joint. Accomplish this by sandblasting or jet waterblasting. Remove sawing and sandblasting residue from the pavement surface before it is blown by traffic or wind.

Clean, repair, and cure spalls, fractures, breaks, or voids in the surface of the joint before installing the joint sealant.

Immediately before the placement of the backer rod and the sealant, clean the joints by sand blasting using at least 100 psi of compressed air. Stop work if there is oil or moisture in the compressed air, and do not resume work until suitable adjustments have been made.

Submit a copy of the manufacturer's recommendations pertaining to the storage and application of the sealant at least 7 days before beginning installation of the sealant. When silicone joint sealant is used, have a technical representative onsite for at least the first 2 full days when joint preparation and sealing is taking place. Comply with the recommendations made by the technical representative and approved by the Engineer. The Department considers the services of the technical representative incidental and the cost included in the contract unit price.

Apply the sealant material into the joint using equipment and techniques in accordance to the manufacturer's recommendations. Recess the finished joint seal surface as specified.

D. Reconstruction of Plant Mix Shoulders. Provide milling machines or grinders with the following characteristics:

1. Power operated.
2. Self-propelled.
3. Sufficient power, traction, stability, and capability for removing a thickness of asphaltic concrete to the desired profile depth and cross slope in 1 pass.
4. Capable of accurate and automatic establishing and maintaining of profile grades along each edge of the cut by reference from the existing concrete pavement by means of a ski or matching shoe, or from an independent grade control.
5. Controls dust and other particulate matter created by the cutting head.

Mill the plant mix shoulder to the depth, width, and slope as specified. The Engineer may require the pavement milling operations be referenced from an independent grade control rather than a ski in those areas where this type of control is appropriate. Obtain approval for operations to establish and maintain independent grade control.

Load and haul tailings from the milling operation to the stockpile site the same day. Remove loose material by sweeping. The Engineer may require sweeping with a pick-up type broom where milling residue cannot be satisfactorily removed otherwise. Prevent milled plant mix material from being spilled or swept onto any lanes used by traffic. Promptly remove loose material from these areas.

Schedule operations to ensure 2 miles of separation between the milling and paving operations is not exceeded. Meet 405. Apply a tack coat of diluted CSS-1 at a rate of 0.05 gallon per square yard to the milled surface and to the face of the existing concrete pavement before placing the plant mix surfacing.

Saw cut the sealant reservoir between the reconstructed plant mix shoulder and the existing concrete pavement to the width and depth specified. Ensure sawing removes plant mix material from the PCC slab. Where irregularities make this impractical, use hand tools to complete the removal of any remaining bituminous material not tightly bonded to the slab. Apply sealant in accordance with the manufacturer's recommendations. The Engineer requires a backer rod.

E. Repairing Spalls. Repair pavement spalls as specified or as directed. The Engineer will mark spalls to be repaired on the pavement surface. Unless otherwise specified, repair spalls in a rectangular shape, except in cored areas.

Perimeter cut the area to be repaired to a depth of 2 inches with a diamond blade saw or bit. After sawing or coring, chip the cavity out to sound concrete with a jackhammer or other suitable equipment weighing less than 40 pounds to minimize damage to the surrounding concrete. Use a small, hand held chipping hammer for final chipping. Promptly clean loose material from the pavement minimum depth. Make arrangements and use a suitable disposal area for broken concrete and other waste.

Prepare, place, and cure the patch in accordance with the manufacturer's recommendations. Restrict traffic on the patches for at least 4 hours. Maintain existing pavement joints and cracks to the full depth of the cavity by forming through the patch as necessary with a minimum of ¼ inch compressible material. Ensure patching material does not enter the joint or crack below the cavity.

F. Slab Replacement. . Remove concrete slabs designated for full or partial replacement without damaging the surrounding pavement or base. Make full depth saw cuts around the perimeter of the slab area to be removed to prevent damage to the concrete which is to remain in place. Do not use impact methods (e.g., drop hammers, hoe rams) to facilitate slab removal.

The Contractor may leave tie bars in place if they can be straightened and cleaned. If tie bars are sawed off or destroyed during slab removal, install new bars at the spacing specified by drilling and grouting them into the adjacent slabs. Grout load transfer (dowel) bars into the adjacent slabs and then lubricate before placing the concrete as specified. Obtain approval of the template when drilling holes for dowels and tie bars.

Preserve and maintain the existing base in close conformance to the original grade, except where removal of unstable materials is directed.

Load removed concrete, unstable material, and debris as it is removed and dispose in an approved location. The Contractor is responsible for determining a suitable disposal area.

Meet 409, except a 4-inch slump is allowed when hand methods are used or a 3-inch slump for when machine methods are used.

Align transverse joints with existing joints. Provide joint design and sealant as specified.

Install replacement concrete as specified in 409.03, except slip form pavers will not be required. The Engineer will not allow plastic strip joints as permanent joint filler.

Use increased concrete slab depth to fill minor irregularities below grade as directed. Where leveling or excavation and backfill of unstable areas are directed, use plant mix to provide a non-erodible base directly under the replacement slab. Provide plant mix leveling at least 1 inch thick. In reconstructed areas, place at least a 3 inch thick plant mix base. Payment will be made under applicable contract items or as specified in 109.03.

Preserve the existing transverse and longitudinal joint system when placing fresh concrete in the replacement slabs. At locations where new concrete is to be placed against existing concrete, set 2-inch strips of foam tape or other approved material in place before pouring concrete. Thoroughly remove strips by sawing when preparing the joints for sealant. When replacing adjacent or consecutive slabs, control shrinkage cracking with stress relief joints saw cut at interim joint locations.

The Engineer will decide when the replacement slabs will be opened to traffic. The Engineer will not allow the Contractor's equipment or traffic on the new slabs until test specimens have attained a minimum compressive strength of 2,500 psi.

When using higher cement factors to achieve early strength, additional air entraining agent may be required to ensure entrained air content of the fresh concrete is within the normal range of 4 to 7 percent.

G. Sealing Edge Joints. Saw the edge joint sealant reservoir to the dimensions specified. Meet the material storage, joint preparation, and sealant application in accordance to the manufacturer's requirements.

420.04 Method of Measurement. The Engineer will measure acceptably completed work as follows:

1. The quantity of drilled holes will be per each.
2. The quantity of grout actually used for subsealing will be by the cubic feet of grout, dry measure.
The Department considers dry measure, when using bulk material, as computed on the basis that 94 pounds of cement equals 1 dry cubic foot, and 75 pounds of fly ash equals 1 dry cubic foot. Prepackaged material shall consist of 1 cubic foot sacks of the materials. The Department considers water to be incidental and will not be included in grout measurements.
The Engineer will presume cracks emanating radially from the grout injection holes to have been caused by improper injection techniques. The Engineer will reduce grout quantity for each 5 lineal feet of such crack measured by 1 cubic foot.
3. The quantity of pavement grinding, milling pavement from the existing plant mix shoulder, pavement removal and, placing and finishing pavement will be by the square yard.
The Engineer will measure pavement grinding by multiplying the finished ground width, regardless of the number of passes with the grinder, by the total ground length. Pavement removal is computed using the average squared dimensions. Measurement includes removal, disposal, replacement dowel and tie bars, base leveling, preparation, and any other work necessary to prepare the forms for replacement concrete. Placing and finishing pavement will be based on the top surface of the pavement using the average squared dimensions. Measurement includes placing, finishing, curing, and joint construction.
4. The quantity of sealing, resealing joints, crack repair, and sealing edge joints will be by the foot.
5. Plant mix surfacing will be by the ton of mix used in the accepted surface and include the weight of the aggregate, asphalt, and additives in the mixture.
6. Furnished concrete pavement and excavation of unstable material will be by the cubic yard. Concrete measurement is based on batch weights and excavation is computed using the average squared dimensions of the excavated area multiplied by the average depth. Measurement includes providing and delivering the concrete.

420.05 Basis of Payment. The Department will pay for accepted quantities at the contract unit price as follows:

Pay Item	Pay Unit
Drill Hole, Subseal.....	Each
Grout.....	Cubic Foot
Grind Concrete Pavement.....	SY
Resealing Joints.....	ft
Milling Pavement.....	SY
Plant Mix Surfacing.....	Ton
Sealing.....	ft
Repairing Pavement Cracks.....	ft
Repairing Spalls.....	Square Foot
Pavement Removal.....	SY
Furnish Concrete Pavement.....	CY
Placing & Finishing Pavement.....	SY
Excavate Unstable Material.....	CY
Sealing Edge Joints.....	ft

The Department will consider brooming incidental work and the cost included in the milling pavement contract unit price. The Department will consider asphalt, additives, and CSS-I tack coat as incidental and the cost included in the plant mix surfacing contract unit price. The Department will consider backer rod and sealant incidental work and the cost included in the sealing contract unit price.

The Department will consider the cost of repairing damaged or destroyed dowels, base, and plant mix shoulders and slabs as incidental to the pavement removal contract unit price.

S105-20A - RECORD OF EXISTING PAVEMENT MARKINGS

10/12

Description. Record and restore pavement markings as follows:

1. Field measure and record a complete and accurate diagram of the existing pavement markings.
2. Use diagrams to re-establish pavement markings for both temporary and permanent pavement markings.
3. Field reference offsets.
4. Re-establish pavement markings by the placement of reference spots.

Materials. The reference spots may be paint, temporary tape, or as Engineer directed. Match the color of the paint or tape to corresponding pavement marking. Use fluorescent orange paint to mark offset reference stakes .

Construction Requirements. Record in scaled diagrams

1. Either milepost and/or station call outs for: skip lines, no passing zone, tapers, gores, reverse curves, turn lanes, stop bars, crosswalks, arrows, and other miscellaneous messages.
2. Lane widths including shoulder lanes beginning and end of tapers and each side of intersections.
3. Skip line intervals.
4. Width and color. Submit clear and professional diagrams for engineer approval no less than one week prior to commencing any operation that will eliminate the existing pavement markings.

Place stakes for field references that show offsets to the existing pavement markings to facilitate replacement prior to commencing any operation that will eliminate the existing pavement markings. Re-establish temporary pavement markings on each day prior to allowing the traffic to travel on the roadway uncontrolled.

Reference at intervals so original pavement markings can be accurately reestablished to its original position within 2 inches.

Place a reference spot on each lane line at a distance no greater than 50 foot. On tapers, the interval shall be 25 feet. Mark the beginning and end of no passing zones by placing 2 spots to the right of the lane line spot to signify the beginning of a no passing zone, and placing 1 spot to the right of the lane line spot at the end of the no passing zone. Mark arrows and miscellaneous message markings to indicate the center line location of each item.

Assure pavement markings are correct and accurate. Any work by the Department to re-establish the pavement markings shall be charged to the Contractor.

Method of Measurement. The Engineer will measure acceptably completed work on the lump sum basis.

Basis of Payment. The Department will pay for the accepted quantities at the contract unit price as follows:

Pay Item	Pay Unit
Record of Existing Pavement Markings	LS

The Department considers paint, stakes, and other items needed to do the work as incidental and the cost included in the contract unit price for SP Record of Existing Pavement Markings.

Temporary Pavement Marking Tape will be paid for as specified in 626.

S626-05A PCM SIGN

MOD 9/14

Description. Provide Portable Changeable Message Sign (PCM SIGN or PCMS) in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the Department and as required for the Engineer approved traffic control plan.

Materials. Provide the PCMS and its elements and systems to operate in an ambient air temperature range of -20°F to +160°F. Provide a PCMS consisting of a sign cabinet, a message sign panel, a control system, a power source, and a mounting and transportation trailer or truck as specified:

- (a) Sign cabinet constructed of seamless aluminum extrusion with continuous welded corners appropriately sealed to withstand typical weather conditions. Provide a secure lock on the cabinet to prevent tampering.
- (b) Message sign panel that displays at least three message lines each consisting of at least eight characters per line. Each character must have a minimum height of 18 inches, except as noted below, and use at least a five-wide pixel by seven-high pixel matrix, with at least 3 inches between characters. Provide the message sign panel with black background and a front face covered with a UV stable, impact resistant, nonglare protective material. Provide the message sign panel with an adjustable display rate (minimum of 3 seconds per phase and maximum of two phases) so that the entire message can be read at least twice at the speed posted in advance of the PCMS.

If the PCMS is used where the posted speed is less than 45 mph, a shorter character height may be used provided that the message is legible from at least 650 feet under both day and night conditions. If the PCMS is mounted on a service patrol truck, a character height as short as 10 inches may be used.

Provide the message sign panel with a viewing angle left and right of center a minimum of 17 degrees. Use light emitting diodes (LEDs) for the character pixel matrix operating at a dominant wavelength between 590 nm and 650 nm as defined by the 1931 CIE Chromaticity Diagram. Under low light level conditions, automatically adjust the light source to meet the legibility requirements and not impair drivers' vision.

Provide the message sign panel to be rotated 359 degrees about its vertical axis when trailer mounted and to remain fixed in the selected position until readjusted by the operator.

Design PCMS messages with the following factors:

- Each message phase is understandable independent of other phases.
- If the message can be displayed in one phase, present the traffic condition in the first line, the location or distance ahead in the center line, and the recommended driver action in the bottom line.
- Use an additional PCMS if the message needs more than two phases.
- Use abbreviations only if they are MUTCD compliant.
- Do not allow the text to scroll, flash or travel horizontally or vertically across the sign face.

- (c) Control system that includes an hour meter, a keyboard, a display screen, NTCIP compliant software, and other hardware necessary for complete programming and operation of the PCMS. Optionally, provide a modem compatible with the Department's existing equipment to allow for remote operation of the PCMS. The control system can maintain continuous operation and memory with battery backup when primary battery power is unavailable. Securely protect the control system from tampering by securing it in the locked cabinet and by providing password protection.

Provide software for the PCMS which:

- Has in memory at least fifty standard MUTCD messages and can store fifty custom messages created by the operator.
- Allows for download of the system software and download of MUTCD message library upgrades.
- Is multiple site-licensed for message programming by more than one laptop computer or by an off-site computer via modem.
- Can check the battery charge level either at the PCMS or off-site by computer via modem.
- Previews the message on the display screen before displaying on the sign panel.
- Displays an automatic programmed default message when a low battery or other condition causes a PCMS failure.
- Can change the default password.

- (d) Power source of a primary battery and a solar battery charging system to provide continuing operation. The batteries are Marine/RV deep cycle batteries. Provide a weatherproof 120 VAC standard receptacle and a built-in temperature-stable battery charger to allow for connection to an external power source for maintenance of a full charge in the batteries.

- (e) Mount the PCMS on a trailer or a truck as specified:

Trailer mounted – Entire PCMS mounted on a transportation trailer with standard ball type hitch, safety chains, easily removable or collapsible tongue, sign lifting and rotating mechanism for a minimum height of 7 feet from the roadway surface to the bottom of the sign, solar panel which can be angled to prevent the accumulation of rain or snow, and a battery charge level indicator.

The PCMS and solar panel withstand wind gusts up to 90 mph when in operating position with outriggers in place. The trailer wire harness extends at least 24 inches beyond the hitch ball and includes an automotive style trailer plug.

Truck mounted The PCMS is securely mounted on a truck using a method approved by the sign manufacturer. A remote interior-mounted control system monitor displays the current condition and message of the PCMS and allows programming of the PCMS from the cab of the host vehicle. When the sign is in use, its bottom is 7 feet minimum above the roadway surface. The PCMS withstands wind gusts or highway speeds up to 90 mph when in operating position. The wiring harness and the PCMS controls are compatible with the host vehicle's electrical system.

Construction Requirements. Provide, erect, program and maintain the PCMS. Change display messages and relocate the PCMS for the duration of the project. Operate the PCMS during construction operations in accordance with American Traffic Safety Service Association (ATSSA) Guidelines for the Use of Portable Changeable Message Signs. Provide maintenance for the PCMS so it can remain in full and continual service anytime it is needed. Change the PCMS control system password from the default password to prevent tampering.

Method of Measurement. The Engineer will measure acceptably completed work by the hour as shown on the hour meter or as otherwise directed.

Basis of Payment. The Department will pay for accepted quantities at the contract unit price as follows:

Pay Item	Pay Unit
PCM SIGN.....	Hr

S626-30A TRAFFIC CONTROL MANAGER

Description. This work shall be performed in accordance with 105.14 – D. Maintenance of Traffic and shall consist of furnishing an experienced traffic control field representative (Traffic Control Manager) for resolution of traffic control conflicts or suggesting improvements to the traffic control operations and phasing in accordance with the approved traffic control plans.

Construction Requirements. The Contractor shall designate an individual or individuals ATSSA Certified or approved equivalent in traffic control to maintain, monitor, and manage traffic control. Evidence of the required certification and qualifications shall be submitted for approval.

The Traffic Control Manager or an approved alternate representative shall be on-site during active construction operations.

The TCM shall be available within 30 minutes after notification of an emergency situation, prepared to positively respond to repair the work zone traffic control or to provide alternate traffic arrangement. Where reasonable to expect potential problems, emergency plans shall be prepared in advance.

The TCM shall keep daily records of all personnel and incidents encountered, resolved, and submit these records to the Engineer's representative at least weekly. The TCM shall be responsible to ensure that traffic control devices are adequate, but not wasteful, as well as to ensure that the public traffic's safety and convenience are served.

Each daily record provided by the TCM will count as a single day of TCM to be measured for payment. Daily records shall be prepared and certified by the TCM, and approved.

Method of Measurement. The Engineer will measure acceptably completed work by the day.

Basis of Payment. The Department will pay for accepted quantities at the contract unit price as follows:

Pay Item	Pay Unit
Traf Cntl Manager	Day

The Department will pay for Flagging and Traffic Control Maintenance under appropriate contract items. Flagging and Traffic Control Maintenance will not be measured and paid separately for work performed by the Traffic Control Manager.

S626-35A NIGHT WORK – LIGHTING

11/15

Description. Provide temporary illumination for all work on this project between the hours of 7:00 PM and 6:00 AM or as directed.

Construction Requirements. Limit working hours to the hours of 7:00 PM to 6:00 AM. Provide Portable lighting during the hours of darkness at each operation. Maintain a minimum of 5 foot-candles of illumination for each flagging station and work area. Provide self-generating light towers (Gas or Diesel) with fixtures using metal halide or high pressure lamps capable of producing required illumination from a minimum height of 30 feet. Equip all paving equipment with automotive type light sources mounted in such a manner as to illuminate all work areas at the levels specified. Optimize illumination using the requirements of Section 6F.82 of the Manual on Uniform Traffic Control Devices as adopted by the State. Provide necessary lights or other devices for a safe environment for all operations and personnel doing the work and inspection. Maintain on site one additional light plant as a backup. Use backup light plant to illuminate flagging station when the flagging station is being moved to another location.

Method of Measurement. The Engineer will measure acceptably completed work by the lump sum.

Basis of Payment. The Department will pay for the accepted quantities at the contract unit price as follows:

Pay Item	Pay Unit
Night Work - Lighting	LS

S626-45A – RENT TRUCK MOUNTED ATTENUATOR

MOD 01/11

Description. Furnish a protection vehicle with a truck-mounted attenuator (TMA), which includes but is not limited to transporting to and from the project, relocating, and maintaining TMA (s).

Materials. Truck Mounted Attenuator Host vehicle shall comply with NCHRP 350 or MASH requirements and ITD's Qualified Products list. Equip the Truck Mounted Attenuator Host vehicle with lights, reflectors, back up alarm, and amber rotating beacon, arrow board, and fire extinguisher. NCHRP-350 test results and a certified Weigh Slip will be required to verify that the Host Vehicle and TMA combination meet the weight requirements for the specific application.

TMA shall be NCHRP 350 approved. TMA meeting the requirements of NCHRP 350 Test Level 3 are required. Approach ends of TMA shall have impact attenuator markings in accordance with the MUTCD.

Construction Requirements. Use the protection vehicle with TMA in accordance with the Manual on Uniform Traffic Control guidelines as adopted by the Department, the plans, or as directed. The intent of this device is for personnel and traffic protection in unprotected work areas.

Position the TMA(s) to separate and protect work zone activities from normal traffic flow.

If the TMA has been struck, Replace or repair it immediately. If the TMA cannot be replace or repaired immediately, stop work until the unit has been replaced or repaired.

Method of Measurement. The Engineer will measure acceptably completed work by the each.

Basis of Payment. The Department will pay for accepted quantities at the contract unit price as follows:

Pay Item	Pay Unit
Rent Truck Mounted Attenuator.....	Each

The Department will not pay for replacement or repair of the TMA if damaged or for standby or downtime due to replacement or repair of the TMA.

The Department considers the Host Vehicle as incidental and the cost included in the contract unit price.

The Department will not pay for TMA units removed from the project and returned for each subsequent use as needed or as directed.

S900-50A CONTINGENCY AMOUNT WATER POLLUTION AND EROSION CONTROL 12/15

Description. Install and maintain erosion control measures not foreseen in the design of the project. These measures are not shown on the plans but may be ordered for the life of the contract. These measures may consist of seeding, erosion blanket, slope drains, check dams, straw bales and barriers, sediment traps, ditches, berms, swales, dikes, fiber mats, netting, gravel, mulches, and other erosion control devices or methods.

Coordinate contingency erosion control provisions with the permanent erosion control features specified elsewhere in the contract. Use practical, economical, effective, and continuous devices or methods with the permanent erosion controls throughout the construction and post construction period.

Materials. Materials shall meet the requirements specified in the following Subsections:

Seeding	621.02	Mulch	711.10
Metal Apron	708.21	Erosion Blanket	711.11
Pipe	708.21	Gabion	715
Riprap	711.04	Revet Mattress	715
Commercial Fertilizer	711.07	Geotextile	718

Before use provide Engineer approved commercial grade materials.

Construction Requirements. Correct conditions that develop during construction that were not foreseen during the design of the project. These measures are to temporarily control erosion that develops during normal construction practices, which are not associated with the permanent erosion control features on the project.

Perform erosion and pollution control required due to Contractor's negligence, carelessness, or failure to install permanent controls as a part of the work as scheduled or ordered, at Contractor's expense.

Temporary erosion and pollution control may include construction work outside the right-of-way where such work is necessary as a result of roadway construction such as borrow pit operations, haul roads, and equipment storage sites.

Maintain erosion control features installed by the Contractor
Follow Section 212 Erosion and Sediment Control for all temporary erosion and pollution control

Method of Measurement. Work covered under other sections will be measured as outlined in the appropriate section. The Engineer will measure acceptably completed work as specified in 109.03.

Basis of Payment. The Department will pay for the accepted quantities at the contract unit price as follows:

Pay Item	Pay Unit
Contingency Amount Water Pollution and Erosion Control	CA

S900-60A PAVEMENT MARKING WATERBORNE 1/14

Description. This work shall consist of painting pavement markings on the surfaces of the roadway in accordance with these specifications, as shown on the plans, or as directed.

Materials. The Contractor shall be responsible for ordering, delivering, storing, handling, transferring, placing, and disposing of all materials used on this project. The State will not be responsible for any costs of sampling, testing, or certifying any materials done by the Contractor, manufacturer, or supplier to fulfill contract requirements.

- (a) Paint – Acceptable waterborne paint formulae's shall be from the departments Qualified Products List.
- (b) Glass Beads – Acceptable glass beads formula's shall be from the departments Qualified Products List.
- (c) Sampling – The paint may be sampled at the manufacturers' plant by an approved inspector. Paint that is not sampled at the manufacturers' plant shall be sampled according to Idaho Test Method T-7. The sample shall be taken into a one quart lined metal can. The paint shall not encounter any unprotected metal.

Glass beads may be sampled at the manufacturers' plant by an inspector approved. Beads that are not sampled at the manufacturers' plant shall be sampled by submitting one-50lb bag of glass beads. If beads are supplied in bulk quantities, the glass bead manufacturer shall supply with each lot a minimum of one-50lb bag representing the specific lot for testing purposes. Grab samples from bulk bag deliveries shall not be acceptable for testing purposes. Any grab samples delivered to the laboratory shall be unacceptable for testing and will be rejected.

- (d) Testing – Paint and beads from the Qualified Products List (QPL) represent formulations that have been tested and found compliant to the current material specifications for the product listed. Samples of

paint and beads shall be taken following the department's Minimum Testing Requirements and Sampling Test Methods.

The paint and glass bead samples shall be sent to the Headquarters Materials Laboratory for testing and approval. Allow two weeks for laboratory testing time of all materials sent to the Headquarters Materials Laboratory. Testing time will begin once the samples are received into the Headquarters Materials Laboratory Sample Tracking Program. Any paint batch or glass bead lot failing laboratory testing shall be considered unacceptable. All unacceptable markings placed with failing materials shall be placed again with passing materials at the Contractors expense.

Construction Requirements.

(a) Equipment - The paint shall be applied by airless spray-type marking equipment. The equipment must be completely compatible with waterborne paint. The equipment shall provide a uniform marking. The equipment for glass bead application shall distribute the glass beads uniformly and at the appropriate application rate according to the speed of the pavement marking equipment. Application by hand methods shall be permitted only where necessary for proper forming.

(b) Materials on Site - The contractor shall bring to the jobsite paint and beads in their original containers shipped from the manufacturer that are stamped or labeled with the lot numbers on the packaging. Paint or beads that have been transferred previously to holding tanks on the pavement marking equipment without previous inspection and approval for lot number validation will be rejected.

(c) Application - Pavement markings shall be placed with equipment that is capable of producing both straight or uniformly curving lines to match the roadway alignment as required. The markings will be of uniform cross section with clear-cut edges. The markings shall be uniform and free of erratic waves. Line ends shall be square and clean. Dribbling of paint beyond the cutoff will require immediate cleanup. Pavement markings shall not deviate from the intended alignment by more than 2 inches in 100 feet. The designated width of all pavement markings shall be within a tolerance of 5%. A 1.5 ft end-to-end overlap on skip lines is allowed during the initial startup, but the overlap shall be back to within 2 in. within three skip cycles. If the lines are not satisfactorily applied, work shall be stopped until corrective measures can be taken.

Paint shall be applied at a minimum wet film thickness of 17 mils.

The minimum application rate for glass beads shall be 7-lbs per gallon of applied paint.

Glass beads shall be applied immediately following the application of paint and in such a manner as to provide good adhesion and reflection.

No thinning of paint shall be permitted. Paints containing flotation solvents shall be uniformly mixed prior to application, must conform to the paint specifications after mixing, and shall not affect the application or the performance of the paint.

Test Strip I shall be required to determine pavement marking uniformity and thickness prior to the actual placement of the pavement markings to the roadway surface. This test strip shall be for paint only excluding the glass beads. The painted line shall be uniform and have no pulsating cycles present. The pavement marking equipment shall come to full operational speed and spray the paint onto a clean smooth ferrous metal panel that has been taped down securely. The paint on the panel shall be allowed to dry completely before being measured. Thickness of the pavement markings shall be determined by using the ASTM D7091, Standard Test Method for Nondestructive Measurement of Dry Film Thickness of Nonmagnetic Coatings Applied to a Ferrous Base Using Magnetic Pull-Off Gages.

The following equation shall be used to determine the Wet Film Thickness from the Dry Film Thickness reading off the metal panel.

$$\text{Wet Film Thickness} = \text{Dry Film Thickness} \div \text{Percent Volume Solids}$$

Example: 17 mils = $10.6 \div 0.62$ (Use the Percent Volume Solids supplied by the manufacture)

Lines that are marked with less than the minimum thickness are unacceptable and shall be marked again at the Contractors expense.

Test Strip II shall be used to determine glass bead application and retroreflectivity. The beaded line produced from this test section will be allowed to cure for a sufficient amount of time so when it is lightly broomed, or blown down with air no embedded glass is removed. The minimum retroreflectivity shall be 225 millicandelas per square meter per lux for white, and 150 millicandelas per square meter per lux for yellow regardless of the pavement type or surface profile. The retroreflectometer shall be based on a 30 meter geometry distance having an 88.76-degree entrance angle and a 1.05-degree observation angle and compliant to ASTM E1710. Pavement marking falling below the specified minimum retroreflectivity limits shall be unacceptable.

Note: Retroreflectivity of pavement markings placed directly in rumble strip, such as the centerline, shall be evaluated to the standards set forth in these specifications. If the retroreflectivity of the line is below the specified limits, the markings shall be visually evaluated for acceptance during a nighttime evaluation. The markings shall satisfactorily compare to other markings in the project that are not directly located in the rumble area and meet the retroreflectivity specification requirements. In addition, it may be practical to measure the retroreflectivity of this line type if a segment of the line continues out of the rumble area and onto the roadway surface where rumble strips are not placed. If the pavement marking is not acceptable for retroreflectivity in the rumble area the contractor shall make immediate adjustments to provide for a retroreflectivity line as designated by the Engineer.

Both the Contractors and the States instruments will measure the beaded line produced from this test section for instrument comparison and acceptability of the Contractors instrument. The State will use a retroreflectometer that is compliant to ASTM E1710.

The Contractor shall adjust the paint and glass beads to meet the retroreflectivity standards of the specification for both asphalt and concrete roads and surface profile. Excessive application of paint can lead to tracking which is unacceptable. The Contractor shall protect the lines to prevent tracking and to maintain the retroreflectivity of the lines.

The Contractor shall take daily retroreflectivity readings of installed pavement markings with a 30-meter retroreflectometer that is compliant to ASTM E1710 for quality control purposes. The beaded line produced from Test Strip II shall be used to compare the readings from the Contractors' instrument to the States. The Contractors' instrument shall be used for Quality Control and the States instrument will be used for Quality Assurance. The readings from the States instrument will be used to determine acceptability of the installed lines. The States readings shall be final.

The Contractor shall take Quality Control retroreflectivity readings for each edge or skip line installed each day. The Contractor shall remove any free glass beads by blowing down or lightly sweeping the area prior to taking the readings. Readings shall be taken at a minimum of one set per mile, or portion thereof, per line type installed. For areas where less than one mile of markings are placed the Contractor shall take one set of readings for each line type placed. The Contractor shall provide written documentation showing the section of highway the test area will represent, exact sample location, line type, color, and the average retroreflectivity readings.

The Engineer may conduct field measurements and visual evaluations to verify application rates of both paint and beads, and measure the retroreflectivity of the lines. The Engineer may randomly select areas within the pavement marking areas to take retroreflectivity measurements for Quality Assurance.

Caution: Excessive thickness of waterborne paints over the top of a straight emulsion fog coat may cause the fog coat to lift. The Contractor may want to do a test section before applying markings to the entire project to ensure that the fog coat has fully cured and that no reaction between the paint and the emulsion occur. Repair of any lifted fog coat will be the responsibility of the Contractor and at no additional expense to the State.

Test Strip III shall be required to verify the cycling operation of the pavement marking equipment to put down skip lines. The pavement marking equipment shall come to full operational speed, spray the paint and apply the glass beads for a minimum of 5 cycles. The equipment shall be adjusted to the specified tolerance before painting will be allowed.

Skip lines shall be as follows:

50' Skip Line = 12' line with 38' gap. (Rural speeds 40 mph or greater)

(d) Communications - The Contractor shall provide effective and continuous electronic, written, and verbal communications between the Engineers representative and the pavement marking operation. All vehicles in the pavement marking operation shall have continuous internal electronic communications. The pavement marking equipment driver and the painter(s) shall have direct electronic communication at all times while operating.

(e) Daily Submittals - Each day, the Contractor shall submit the retroreflectivity readings and the quantities of paint and glass beads applied during that day's production.

The Contractor shall provide a printout from the truck-mounted electronic equipment for the paint quantity applied each day. The electronic printout for paint shall contain at a minimum the following information:

The date and time.

The gallons of paint used that day.

The actual distance painted that day in feet, exclusive of the gaps between painted skip lines.

The Contractor shall provide the quantity of glass beads applied each day.

If the Contractor has the capability to produce an electronic printout for the glass bead quantities, the printout shall contain at a minimum the following information:

The date and time.

The starting weight of the tank.

The ending weight of the tank.

Total pounds of beads used.

If the Contractor cannot provide an electronic printout for glass bead quantities, the Contractor shall provide a physical accounting of the glass beads applied. The submitted information shall contain at a minimum the following information:

The weight of the individual bead package.

Number of packages added to the bead tank to fill the bead tank to the top.

The total number of pounds of beads applied.

Each day, the Contractor shall also provide the following:

Copies of the invoices for all paint materials, a list of the batch numbers and colors, a list of the container identification numbers from the paint used that day, and the specific beginning and ending location identifications for each different batch of paint applied.

Copies of the invoices for all glass bead materials, a list of the lots of glass beads used that day, and the specific beginning and ending location identifications for each different lot of glass beads applied.

The Contractor must provide written certification that this information is accurate. This will be the basis for verifying contract specifications for application rates.

Based on this provided information, the Engineer will calculate the wet film thickness of paint applied as follows:

$M = (G \times 4812) \div D$, where
M = Wet Film Thickness, (Mils), of paint placed.
G = Gallons of paint applied
D = Distance (Feet)

and the glass bead application rate as follows:

Glass Bead Application Rate = Pounds ÷ Gallons

The State may, at its discretion, conduct occasional field measurements to verify application rates of paint, beads and distance. The State may, at its discretion, employ other verification methods, if a dispute arises.

(f) Weather Limitations - Paint shall be applied only when roadway surfaces are clean, thoroughly dry, when the pavement temperature is between 50° F and 140° F, and the relative humidity is less than 80%. The Contractor shall keep a log of these temperature and humidity ranges at least twice a day for application verification. Work conducted outside of the stated temperature and humidity ranges shall be considered unacceptable. The first reading shall be at the start of work and the second reading shall be taken at a minimum of 4 hours after starting and not more than 8 hours after starting. In the event of rain, no work will be allowed until the rain ceases and the above-cited conditions exist. Any materials placed just prior to a rainstorm shall be considered unacceptable work if the applied materials exhibit any loss of integrity or are destroyed.

(g) Temporary Traffic Control - The Contractor shall provide for the safety and convenience of the public and shall control traffic through the work area in accordance with the Manual on Uniform Traffic Control Devices, as adopted by the State.

The Contractor shall be responsible for protecting all applied materials from traffic until sufficiently dry to prevent damaging or tracking of the markings by normal traffic movements. All damage to private vehicles resulting from the pavement marking operation shall be the responsibility of the Contractor.

Pavement marking problems that impair traffic shall be corrected immediately by the Contractor, at the Contractor's expense, including appropriate traffic control (i.e. improper alignment, broken equipment, spilled product, etc.).

The Contractor shall not perform any work, or close any lane until the area is signed and protected. Equipment and materials that may be required to properly control traffic and protect the work area include, but are not limited to: arrow boards, truck mounted attenuators, ground mounted signs, vehicle mounted signs, changeable message signs, and tubular markers.

(h) Disposal of Waste Materials - The Contractor shall properly dispose of all waste materials in accordance with all applicable federal, state and local laws, rules, and regulations. Cost of disposal shall be considered as incidental to this item.

(i) Unacceptable Materials and Work –All work that does not conform to the requirements of these specifications will be considered unacceptable. Non-specification materials, tracking marks, spilled material, materials not within allowable placement tolerances, rain damaged, unauthorized work, or markings applied in non-specified areas shall be considered as unacceptable work.

Unacceptable work shall be remedied immediately, if in the opinion of the Engineer it causes a safety problem; otherwise, it shall be remedied prior to the completion date.

Removal of unacceptable work shall be accomplished by an effective method (i.e. blasting, hydroblasting, or full width grinding) as approved. Line grinding or blacking out is not an acceptable method of removal. Removal of unacceptable work, collection of removed material, disposal, and remarking the affected area shall be at the Contractor's expense and approved before leaving the area.

Pavement markings that are unacceptable for minimum wet paint film thickness shall require the Contractor to take immediate corrective action to recalibrate the paint application rate, submit to and pass verification testing by the State, and then reapply a compliant pavement marking to the unacceptable section at no additional cost to the State.

Pavement markings that are unacceptable for minimum glass beads application rate shall require the Contractor to take immediate corrective action to recalibrate the glass bead application rate, submit to and pass verification testing by the State, and then reapply a compliant pavement marking to the unacceptable section at no additional cost to the State.

Pavement markings that are unacceptable for minimum retroreflectivity shall require the Contractor to take immediate corrective action by making the necessary adjustments in the paints wet film thickness, and the glass beads application rate to bring the lines into conformance for retroreflectivity. The Contractor shall submit to and pass a verification testing by the State on the pavement in the unacceptable area. The Contractor shall then reapply a compliant pavement marking to the unacceptable section at no additional cost to the State.

Work and materials that conforms to these Specifications shall replace any unacceptable work.

Method of Measurement. Painted 4-inch pavement markings waterborne (white and yellow) will be measured by the foot of actual pavement markings placed, exclusive of the gaps between skip lines. No separate payment will be made for glass beads. The standard application width is considered to be 4 inches. If wider pavement markings are placed the length of those pavement markings will be adjusted by converting them to an equivalent length of a 4-inch line on a proportionate area basis.

The costs of traffic control, waste disposal, and cleanup shall be considered as incidental to this item.

Quantities for skip lines will be determined as follows:

50' Skip Line Cycle:

Total Feet of Skip Line = (Length in Feet /50) X 12

Basis of Payment. Payment for accepted work will be made as follows:

Pay Item

Pay Unit

S900-62A PAVEMENT MARKINGS-THERMOPLASTIC

09/12

Description. This work shall consist of installing heat fused permanent pre-formed thermoplastic pavement markings on the surfaces of the roadway in accordance with these specifications, as shown on the plans, or as directed.

Materials. The Contractor shall be responsible for ordering, delivering, storing, handling, transferring, placing, and disposing of all materials used on this project. The State will not be responsible for any costs of sampling, testing, or certifying any materials done by the Contractor, Manufacturer, or Supplier to fulfill contract requirements.

- (a) Heat Fused Permanent Pre-formed Thermoplastic Pavement Markings shall conform to the current American Association of State Highway and Transportation Officials (AASHTO) Standard M-249, with the exception of the relevant differences for the material being supplied in the pre-formed state. Materials shall be composed of polymeric materials, pigments, binders, and glass beads, factory produced as a product. The dimensions shall meet the requirements of the Manual on Uniform Traffic Control Devices, as adopted by the State.
- (b) Glass Beads - Graded glass beads shall be clear, transparent and shall meet the general requirements of the American Association of State Highway and Transportation Officials (AASHTO) Standard M-247, Type 1. The material shall contain a minimum of thirty percent (30%) graded glass beads by weight with not more than twenty percent (20%) of the glass beads to consist of irregular fused spheroids or silica. The index of refraction shall not be less than 1.50.
- (c) Retroreflectivity – The pavement markings shall upon application exhibit uniform adequate nighttime retroreflectivity. At 88.76 degrees entrance angle and 1.05 degree observation angle, the pavement markings shall have average minimum retroreflectivity of 350 millicandles for white and 200 millicandles for yellow as measured with a retroreflectometer. The retroreflectometer shall be based on a 30 meter geometry distance having an 88.76-degree entrance angle and a 1.05-degree observation angle and compliant to ASTM E 1710. Note - Reversible items do not have surface beads and shall be top dressed with beads to meet specification.
- (d) Skid Resistance - New pavement markings skid resistance shall provide a minimum resistance value of 45 British Pendulum Number (BPN) when tested in accordance to American Society for Testing and Materials (ASTM) Standard ASTM E 303.
- (e) Colors - Pavement markings shall meet the following color requirements:
- White pavement markings shall contain sufficient titanium dioxide pigment to equal Federal Standard 595 B color numbered 17778 (Highway White)
- Yellow pavement markings shall contain sufficient pigment to equal Federal Standard 595 B color numbered 13538 (Highway Yellow). The pigment shall be organic in origin and be lead and chrome free.
- (f) Material Thickness - Pavement marking minimum thickness shall be 125 mils.
- (g) Bonding - Pavement markings adhesive shall retain a minimum of 65% adhesive bond after 100 cycles of freeze-thaw action when tested in accordance to American Society for Testing and Materials (ASTM) Standard C-666, Method B.

- (h) **Material Resistance** - Pavement materials shall be resistant to deterioration by sunlight, water, oil, gasoline, and salt exposure.
- (i) **Storage Life** - The pavement markings shall meet the requirements of this specification after a storage period of two years. Storage will be at the recommended temperatures of the manufacturer. The thermoplastic must also melt uniformly with no evidence of skins or unmelted particles for this two-year period. The Contractor, at no cost to the State, shall replace any pavement markings not meeting the above requirements.
- (j) **Packaging and Shipping** - Pavement markings legends and symbols shall be supplied in a flat container/package in a manner that the contents are not bent, broken or crushed during the shipping process.

Construction Requirements

- (a) **Application** - All pavement markings shall be applied as per the manufacturer's instructions. Pavement markings shall be applied to clean and dry asphalt or Portland cement concrete pavements, using the propane torch method recommended by the manufacturer. The pavement markings shall be capable of being applied at a minimum ambient temperature of 32°F.

The pre-formed markings can be of either of two categories according to the manufacturer's specified application methods.

Category I - Preheat the pavement temperature to a specified temperature range, apply the marking, and top heat the marking for completion of the installation. Heat fusion is accomplished primarily from the preheating process.

Category II - Heat the pavement to remove surface moisture, apply the marking, and top heat the marking for completion of the installation. Heat fusion is accomplished primarily by melting the thermoplastic to the pavement surface.

Care shall be taken to make sure all pre-formed markings are properly aligned upon installation.

Non-specification materials, materials not within allowable placement tolerance or thickness, unauthorized work, or markings applied in non-specified areas shall be considered unacceptable work. Removal of unacceptable work shall be accomplished by an approved method. All unacceptable work shall be remedied immediately as directed. Removal of unacceptable work, collection of removed material, disposal, and reapplication will be at Contractor's expense.

All special pavement markings shall conform to the current FHWA English Edition of "Standard Highway Signs Book, pavement markings".

- (b) **Temporary Traffic Control** - The Contractor shall provide for the safety and convenience of the public and shall control traffic through the work area in accordance with the "Manual on Uniform Traffic Control Devices" Part VI as adopted by the State.

The Contractor shall be responsible for protecting all applied materials from traffic until sufficiently dry so as not to be damaged. All damage to private vehicles is the responsibility of the Contractor.

Incorrect installations that impair traffic will be corrected immediately by the Contractor, at their expense, including appropriate traffic control (i.e. improper alignment, broken equipment, spilled product, etc.).

The Contractor shall not perform any work, or close any lane until the area is signed and protected according to the Contract. Equipment that may be required to properly control traffic and protect the work area include, but are not limited to: arrow boards, truck mounted attenuators, ground mounted signs, vehicle mounted signs, changeable message signs, and tubular markers.

- (c) Disposal of Waste Materials - The Contractor shall properly dispose of all waste materials in accordance with all applicable federal, state and local laws, rules, and regulations. Cost of disposal shall be considered as incidental to this item.

Method of Measurement. Pavement Markings Thermoplastic will be measured by the square foot, complete, in place. Stop bars, crosswalks, arrows, lane text, lines greater in width than 8 inches, railroad crossing markings, and symbols are special pavement markings. All arrows, lane text, railroad crossing markings and symbol special pavement markings will be measured in square foot as follows:

Legend	Approx. Area (Sq. Ft.)
Lane Drop Arrow	43.00
Through Arrow	12.00
Turn Arrow	16.00
Turn and Through Arrow	26.00
ONLY	22.20
SCHOOL (1-Lane)	32.63
SCHOOL (2-Lane)	80.92
SCHOOL XING	54.39
STOP	21.31
STOP AHEAD	51.95
SIGNAL AHEAD	61.94
PED XING	40.63
R X R	63.00 (Does not included Stop Bars)

The costs of temporary traffic control, waste disposal, cleanup, and any other items not specifically identified as pay items shall be considered as incidental to this item.

Basis of Payment. Payment for accepted work will be made as follows:

Pay Item	Pay Unit
Pavement Markings Thermoplastic	SF

Robby Perucca

From: Ken Colson
Sent: Thursday, March 30, 2017 7:02 PM
To: Dave Statkus
Subject: Key No. 19289 - Revised PS&E Items

**I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE
PROJECT NO. A019(289)
KEY NO. 19289**

Hello Dave,

Since I will be in Idaho Falls tomorrow and I know time is still of the essence on finishing this bid package, I wanted to finish up tonight the revised items based on Josh Saak's comments.

I have uploaded the revised PS&E items to the ProjectWise folder listed below.

District 3\prj19289\Project_Development\Traffic\PS&E_Design_Submittal\

The following items were uploaded:

1. KN 19289_PS&E_TC_Const_Plans_Rev_Sheets 11 & 33 to 40.pdf, Revised Sheets 11 & 33 to 40 of 47
2. KN 19289_PS&E_TC_Items_Cost_Est.pdf, Temporary Traffic Control Items Cost Estimate, Pages 1 to 2 of 2
3. KN 19289_PS&E_TC_Items_Cost_Est.est, Estimator Electronic File
4. KN 19289_PS&E_TC_Const_Plans.pdf, Sheets 9 to 47 of 47, This is everything recombined with the revised sheets inserted.

We will also deliver the updated hard copies of the revised sheets in the morning.

The only thing that changed on the estimate was Item 626-010A Const Sign which increased slightly from 3020 to 3040 SF.

You can reach me on my cell phone tomorrow at 208-949-8960 please call if you have any questions.

Thanks

Parametrix

ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

Ken Colson, P.E.
208.898.0012 | office
208.947.1655 | fax



EXHIBIT 25

From: [Ken Colson](#)
To: jason.brinkman@itd.idaho.gov
Cc: [Steve Aisaka](#); [Doug Camenisch](#); [Rob Anderson](#)
Subject: I-84, Five Mile Rd to Orchard & Ramps
Date: Wednesday, September 5, 2018 3:56:00 PM
Attachments: [HCM_STWZ.PDF](#)

I-84, FIVE MILE RD TO ORCHARD RD & RAMPS, BOISE PROJECT NO. A019(289)

KEY NO. 19289

Hello Jason,

We appreciate your invitation to the meeting last Wednesday Aug 29th and appreciate the information you provided.

As discussed, below is some additional information regarding lane capacity.

As you know, on March 7, 2017 Parametrix submitted an e-mail that recommended maintaining a minimum of two lanes open in the four lane sections. Maintaining two lanes open was partly based on past construction projects and consistency in the I-84 corridor. In addition several projects have used the 10:00 pm to 5:00 am weekday time limitation for construction. Parametrix also reviewed 2016 traffic information supplied by ITD. Two counter locations were reviewed and the location with the highest volumes was used for the highest month and the highest day of the week. This conservative approach was applied to the duration of the project even though some months and days of the week have less volumes. This information was all included in the e-mail on March 7, 2017.

For determining the capacity of a lane, 1500 pc/h/ln is a generally accepted value for short-term work zones. The 2010 Highway Capacity Manual suggests that "a capacity of 1600 pc/h/ln be used for short-term freeway work zones, regardless of the lane-closure configuration. However, for some types of closures, a higher value could be appropriate." The 2010 Highway Capacity Manual goes on to say the base value of 1600 pc/h/ln should be adjusted for other conditions like: intensity of work activity, effects of heavy vehicles, and presence of ramps.

The intensity of work activity is somewhat subjective, a value of 5% reduction seemed appropriate, assuming somewhere between no intensity and the most intense.

The effects of heavy vehicles are based on a simple formula listed in the attached section from the 2010 Highway Capacity Manual.

The following values in the formula were estimated:

P_T = proportion of trucks and buses = 8.5% (based on data from ITD)

P_R = proportion of RVs = there was no data on the amount of RVs but since the work was at night RV presence should be low and a conservative value of 3% was estimated.

E_T the passenger car equivalents for trucks and buses and E_R the passenger car equivalents for RVs

are on page 14-15 of the 2010 Highway Capacity Manual for level terrain.
Based on the formula the heavy-vehicle adjustment factor is approximately = 0.954

Based on the criteria listed in the 2010 Highway Capacity Manual the presence of ramps was estimated to not be a factor.

Applying all the adjustment factors results in an estimated lane capacity of approximately 1450 pc/h/l.

Now it is just a matter of comparing this value for each lane needed to the traffic data provided by ITD in each direction.

Strictly speaking, since the traffic data provided by ITD includes all vehicle types the values should be converted to passenger car equivalents by multiplying them by the inverse of the heavy-vehicle adjustment factor above or approximately 1.048.

Thanks

Parametrix

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Ken Colson, P.E.

208.898.0012 | office

208.947.1655 | fax

EXHIBIT 26

Message

From: Scott Reed [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=79BCC90FB37E44BFA752E3F4F649939F-SCOTT REED]
Sent: 6/19/2018 12:00:22 PM
To: Jeromy Magill [jmagill@penhall.com]; Simmitt Bankston [sbankston@penhall.com]
Subject: Meeting w/ Project Manager & Engineer on I-84 Project

Just an FYI:

I am waiting on a time to meet with them this afternoon to discuss one of the major ramps. We have an issue regarding the wording of the contract as to what we can close and what we can't. This is now an issue considering the wreck and the media it is getting. Everybody is following contracts to the "T"

This effects our ability to operate safely without oncoming traffic putting us in danger.

I believe there is a solution, but we will see what they say.

Reason for this email, this may effect our schedule to completion of our half of the project. I will keep y'all posted as soon as we get done meeting with them.

Thanks
Scott

EXHIBIT 27

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF JASON BRINKMAN
January 29 and February 1, 2021
Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

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1 you hadn't --

2 MR. MOORE: Object to the form.

3 Q. (BY MR. ROBBINS) -- anticipated here? I

4 just --

5 Okay.

6 MR. MOORE: Object to the form and

7 foundation.

8 Go ahead.

9 THE WITNESS: I don't know how else to

10 characterize this data.

11 Q. (BY MR. ROBBINS) All right.

12 A. It doesn't provide me with anything on

13 which to draw a much deeper conclusion.

14 Q. Are you able to identify or have you

15 ever seen the documents 502 through 515, monthly

16 speed distribution and monthly, hourly, day of week

17 data volume calendar?

18 Are these documents that you recall

19 having seen?

20 A. I've seen these documents and many

21 documents like them. These are standard reports

22 that the department makes available summarizing the

23 information obtained from our automatic traffic

24 recorders.

25 Q. Okay. Do you have a recollection of

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1 about another hour here. Why don't we take another

2 five-minute break.

3 THE VIDEOGRAPHER: So the time is 12:29 p.m.,

4 and we are off the record.

5 [Lunch break taken from 12:29 p.m. to 1:25 p.m.]

6 THE VIDEOGRAPHER: So the camera is rolling.

7 The time is 1:25 p.m., and we are back on the

8 record.

9 Q. (BY MR. ROBBINS) Mr. Brinkman, welcome

10 back after the break.

11 In the interim, since we were back, are

12 there any changes that you would like to make to

13 your deposition testimony up to this point?

14 A. No, there are not.

15 Q. Thank you, sir.

16 I would ask, if I could, please, for you

17 to direct your attention to, again, Tab 17, and

18 let's go to page 522.

19 What I'd like you to do is I'd like to

20 direct your attention down to subparagraph 5 where

21 it says, "Idaho Transportation Department Work Zone

22 Oversight."

23 A. [Witness indicates.]

24 Q. In that paragraph, we've spoken about

25 the first sentence there, and we've talked about

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1 having utilized these or sending them to the NTSB

2 as part of your involvement in the investigation of

3 this accident?

4 A. I don't specifically recall sending them

5 these May 2018 reports. I may have or, more

6 likely, I pointed them to where they could obtain

7 such data on our website.

8 Q. Okay.

9 A. The number and type of reports are

10 voluminous.

11 Q. Yeah.

12 Can you tell by looking at the reports

13 if they involve the area of the accident that we're

14 discussing here today?

15 A. I can, and it does.

16 Q. Okay.

17 A. This is Site Number 122, which I know to

18 be the Five Mile ATR that's located 1.2 miles west

19 of the junction of I-84, which is the approximate

20 location of the Five Mile overpass on I-84.

21 Q. All right. And how about the other

22 documents, the monthly volume calendar and --

23 A. They appear all to be from the same

24 site.

25 MR. ROBBINS: All right. So we've been going

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1 that and the general traffic control plan.

2 It then continues that, "ITD contracted

3 with Parametrix, a traffic engineering firm, to

4 develop a construction staging and traffic control

5 plan along with special provisions requiring

6 nighttime work and limiting lane closures."

7 Do you believe that to be accurate, at

8 least insofar as it goes there?

9 A. Yes.

10 Q. All right. What I would like to do,

11 sir, is I would ask you to --

12 Actually, we have already talked about

13 Tab 7, the Parametrix contract. What I think I'd

14 like to do is go directly to the memos that

15 memorialize certain meetings that took place. And

16 those would come up at Tab 11.

17 At Tab 11, we have at page 329, a

18 kickoff meeting dated January 18, 2017.

19 Do you have that in front of you, sir?

20 A. I do.

21 Q. It identifies the purpose as being to

22 introduce team members and give an overview of the

23 project.

24 Now, sir, I know that you were not a

25 participant in the meeting, but do you have an

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1 understanding of what generally was discussed
 2 during the course of the meeting from your
 3 communications with either Mr. Statkus, Mr. Breen,
 4 or Mr. Hoeffcker, who I understand has passed
 5 since?
 6 A. Yes, I believe I do, and I believe the
 7 memo fairly well captures that discussion.
 8 Q. Okay. So --
 9 MR. MOORE: Counsel, just so the record --
 10 I'm following along with our court
 11 reporter's system. I think you said 229 and I
 12 think you're looking at page 329.
 13 MR. ROBBINS: You know, if I said 229, Mike,
 14 I apologize. It should be 329.
 15 MR. MOORE: Thank you. I was --
 16 MR. ROBBINS: Thank you.
 17 Q. (BY MR. ROBBINS) So let me ask you then,
 18 sir, please look at page number 330 under Tab 11.
 19 The second paragraph addresses the four-lane
 20 sections, and it said, "It was agreed to show
 21 two-lane work zone with two lanes open to traffic,
 22 but ITD was open to the idea of possibly going down
 23 to one lane when the grinding/joint work passes
 24 closest to the drums if the work coincides with a
 25 low enough traffic volume time of the night. Bryon

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1 occurs within the project limits in very limited
 2 locations --
 3 Q. Right.
 4 A. -- on the very ends of the project.
 5 Q. And I appreciate all of that. However,
 6 I'd ask you to restrict your answers to the
 7 question that I had asked, and really the only
 8 question I asked you there is whether the portion
 9 that speaks of, "Bryon said to review hourly
 10 traffic volumes. ITD can provide an hourly volume
 11 report," is it your understanding that that was a
 12 request Bryon made of Parametrix --
 13 MR. MOORE: Object to --
 14 Q. (BY MR. ROBBINS) -- Mr. Colson?
 15 MR. MOORE: Object to form and foundation,
 16 Counsel.
 17 MR. ROBBINS: That's enough. That's okay.
 18 MR. MOORE: Nothing suggests that he was at
 19 this meeting.
 20 MR. ROBBINS: Mike, and that's fine. Form
 21 and foundation.
 22 THE WITNESS: Not having been in the meeting,
 23 I'm speculating as to his intent. I -- I don't
 24 read it differently than that, but I can't divine
 25 his intent.

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1 said to review hourly traffic volumes. ITD can
 2 provide an hourly volume report."
 3 That direction from Bryon, I take it,
 4 probably was to Parametrix. Would that be your
 5 interpretation of that?
 6 MR. MOORE: Object to the form. Foundation.
 7 Q. (BY MR. ROBBINS) If you have an
 8 interpretation.
 9 MR. MOORE: Object to the form. Foundation.
 10 THE WITNESS: This is a portion of the
 11 discussion, as I understand it, of traffic control
 12 options being contemplated --
 13 Q. (BY MR. ROBBINS) Right.
 14 A. -- for the eventual design. This being
 15 the kickoff meeting, they were only concepts, and
 16 they had yet to be formulated into engineering
 17 recommendations or the plan set or the contract.
 18 So these are only notions of what might be done
 19 during construction.
 20 I'll note again that the lane situation
 21 in the wye is complex, that there are sections with
 22 up to seven lanes in each direction, and that they
 23 were speaking only of three-lane or four-lane
 24 sections here.
 25 A four-lane section, curiously, only

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1 Q. (BY MR. ROBBINS) I'm not asking. I'm
 2 just -- whether you had any independent information
 3 that would allow you to draw a conclusion one way
 4 or the other, and I think what you've told me is
 5 no?
 6 A. I do not.
 7 Q. All right, sir.
 8 Now, insofar as the sentence, it says,
 9 "But ITD was open to the idea of possibly going
 10 down to one lane." And, again, we're talking about
 11 within a four-lane stretch of highway.
 12 Do you know whether that concept was
 13 ever implemented during the course of this project
 14 as approved by ITD?
 15 A. You had a qualifier there that I want to
 16 be careful with.
 17 The concept of going down to or having
 18 only one lane open in a four-lane section was not
 19 provided for in the contract.
 20 Q. Agreed.
 21 A. And to the best of my knowledge and
 22 research, was never requested in the course of
 23 construction in any formal fashion and was never
 24 approved.
 25 Q. When you say "formal fashion," there is

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1 **Would that be part of his job**
 2 **responsibility?**
 3 A. That would be normal practice, yes.
 4 **Q. Yeah.**
 5 **And so would it be also the normal**
 6 **practice that the inspectors would have conferences**
 7 **with the project engineer to let them know what was**
 8 **going on at the project site at various intervals?**
 9 A. Yes.
 10 **Q. And if we are using "engineer**
 11 **representative" to mean the inspector, the**
 12 **inspectors were preparing their own reports on a**
 13 **daily basis concerning issues out at the site.**
 14 **Is that also correct?**
 15 A. The project engineers -- or the project
 16 inspectors, pardon me, prepare a daily diary. I
 17 want to be careful to characterize those as to
 18 their intent and purpose.
 19 The role of the inspectors is foremost
 20 to document the quality and quantity of the work
 21 being performed. They are not insomuch responsible
 22 for the traffic control on the project as they are
 23 documentation of the -- the grinding, the joint
 24 sealing, and the spall repair taking place.
 25 Not that they wouldn't note anything

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1 MR. MOORE: Same objection.
 2 THE WITNESS: I'm not sure I can distill a
 3 yes-or-no question from what you asked.
 4 Perhaps you could restate it for me.
 5 **Q. (BY MR. ROBBINS) Sure.**
 6 **Your ITD inspectors out at the site see**
 7 **a condition that, to them, would indicate a**
 8 **potential hazard to either workers working in the**
 9 **area or motorists driving through the area.**
 10 **Would you expect them to make a notation**
 11 **of that in their daily reports?**
 12 A. If the inspector noted something was a
 13 hazard to workers or traffic -- for example, if
 14 there was an abrupt edge of pavement left -- it
 15 would be commonplace for them to note such a thing
 16 in their diaries.
 17 **Q. Would they also note such things as an**
 18 **excessive backup of traffic through a construction**
 19 **site?**
 20 A. That is somewhat less predictable.
 21 The inspectors, during the course of the
 22 performance of work, are usually stationed with the
 23 workers at the site of work. They may or may not
 24 have a visual line of sight to the location of the
 25 traffic shift or restriction.

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1 that they observed with regard to traffic
 2 conditions, and I would say that perhaps they did,
 3 but their -- their principal role is noting
 4 construction quality issues.
 5 **Q. If they saw something that reflected a**
 6 **violation of the traffic control plan, would you**
 7 **not anticipate that the ITD inspectors would note**
 8 **that in their daily reports?**
 9 A. If they noticed something that they
 10 recognized as a deviation from the plan, it would
 11 be common practice for them to note that.
 12 **Q. And if they recognized something out**
 13 **there that might be a potential hazard to either**
 14 **workers or motorists driving through the area,**
 15 **would you also expect them to make a notation of**
 16 **that in their daily record?**
 17 MR. MOORE: Object to the form and
 18 foundation. Vague.
 19 Go ahead, sir.
 20 THE WITNESS: In my experience, inspectors
 21 note a variety of occurrences on projects,
 22 including anything that is of any special concern
 23 to them.
 24 **Q. (BY MR. ROBBINS) So is the answer to my**
 25 **question yes, sir?**

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1 So they may or may not even be able to
 2 observe traffic from their position.
 3 **Q. Sure. But if they do, would you expect**
 4 **that they would report a traffic backup through a**
 5 **construction zone?**
 6 MR. MOORE: Object to the form.
 7 Go ahead.
 8 THE WITNESS: If they -- if they saw
 9 something that occurred to them to be so out of the
 10 ordinary that it was notable, I -- it's been my
 11 experience that they note that in their diaries.
 12 **Q. (BY MR. ROBBINS) And if the ITD**
 13 **inspector saw something that was going on out in a**
 14 **work zone that potentially presented a hazard to**
 15 **either workers or motorists, did the inspector have**
 16 **the authority to stop work?**
 17 A. I believe that the inspector
 18 constructively has the authority to cause to be
 19 corrected or stop work as it relates to a hazard
 20 with the important caveat that not all work can be
 21 abruptly stopped.
 22 Removing equipment or traffic control
 23 devices from the roadway without ordinary shutdown
 24 might, in and of itself, expose traffic to a hazard
 25 that is caused by the lack of a planned shutdown.

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1 **Q. Sure.**
 2 A. So it --
 3 I mean, just to say, you know, "Remove
 4 thyself from the road," you know, if a hazard or
 5 equipment or workers are still there, it's a
 6 planned shutdown that takes place.
 7 **Q. Did they have the authority to open a**
 8 **lane of traffic if they saw the backup was such as**
 9 **to present a potential hazard to either workers or**
 10 **motorists driving through the area?**
 11 A. There was no explicit provision granting
 12 them that authority.
 13 **Q. Anything saying that they didn't have**
 14 **the authority?**
 15 A. I don't -- I don't know that there's
 16 anything explicitly one way or the other.
 17 The -- in general, the traffic control
 18 plan was submitted and approved, and the inspectors
 19 don't have the authority to deviate from -- you
 20 know, from the traffic control plan.
 21 **Q. Right. Okay. That's good.**
 22 **So they know what the traffic control**
 23 **plan --**
 24 A. Either for the better or the worse of
 25 traffic.

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1 On this project, in light of the duties
 2 and responsibilities of traffic control manager,
 3 the inspector was less responsible for and possibly
 4 less aware of the traffic control provisions than
 5 they would be even on an ordinary ITD project.
 6 **Q. Didn't he have a copy -- or didn't they**
 7 **have a copy of the traffic control plan that they**
 8 **could review and consider?**
 9 A. I believe they have a copy of the
 10 contract with them most of the time.
 11 **Q. Would you like to believe that your**
 12 **inspectors familiarize themselves with the traffic**
 13 **control plan?**
 14 A. They generally do.
 15 **Q. Okay. Let me ask you then to take a**
 16 **look at, please, page 26 under "Construction**
 17 **Requirements." Let's go down to B, down towards**
 18 **the bottom.**
 19 **It says, "Temporary traffic control.**
 20 **The contractor shall provide for the safe -- safety**
 21 **and convenience of the public and shall control**
 22 **traffic through the work area in accordance with**
 23 **the Manual of Uniform Traffic Control Devices."**
 24 **The last paragraph in that section says,**
 25 **"The incorrect installations that impair traffic**

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1 **Q. They have a --**
 2 **They know what the traffic control plan**
 3 **provides for, right?**
 4 A. I didn't specifically state that.
 5 They may well know specifically or
 6 generally what it provides for, but nonetheless,
 7 they don't have the authority to make changes to
 8 it.
 9 **Q. Aren't they expected to know what the**
 10 **provisions of the traffic control plan are if they**
 11 **are out there inspecting the worksite conditions?**
 12 A. The inspectors are expected to be
 13 generally familiar with the entirety of the
 14 contract.
 15 **Q. Yeah. Let's get down to the traffic**
 16 **control plan, though.**
 17 A. But their specific responsibility is
 18 documenting the quality and quantity of the work,
 19 and in this contract in particular, different than
 20 an ordinary ITD contract, a specific individual, a
 21 named traffic control manager, had been provided
 22 for with high responsibilities for the handling of
 23 traffic.
 24 So on this project --
 25 I have to answer this narrowly.

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1 **will be corrected immediately by the contractor at**
 2 **their expense, including appropriate traffic**
 3 **control (i.e., improper alignment, improper**
 4 **equipment, spilled product, etc.)."**
 5 Did you understand that that final
 6 paragraph of subsection B would apply to a
 7 situation where the contractor had, in violation of
 8 the contract, reduced lanes in the work zone from
 9 four to one?
 10 A. No, it does not.
 11 **Q. Okay. Why --**
 12 A. Similar provisions in the contract may,
 13 but this provision is specifically engrossed in the
 14 special provision for pavement markings,
 15 thermoplastic.
 16 **Q. Okay.**
 17 A. So there are similar provisions of the
 18 contract that might so require, but this is limited
 19 to the application of thermoplastic.
 20 **Q. Okay. So it has nothing --**
 21 **Even though it says "temporary traffic**
 22 **control," it only has to do with the application of**
 23 **pavement markings and thermoplastic?**
 24 A. This particular provision is in regard
 25 to that application of thermoplastic.

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1 A. But the string bifurcated and this
 2 appears to be a copy of both ends of the string.
 3 **Q. It is. It is most definitely that.**
 4 **So what we get is at one point,**
 5 **Mr. Coletta makes an inquiry of Mr. Kircher, "Is**
 6 **this an item that your team can do?"**
 7 **I presume that means to draft a formal**
 8 **request for a -- a change in the TCP?**
 9 A. That's my interpretation.
 10 **Q. All right. And Mr. Kircher's response**
 11 **is, "We don't have a staff engineer for designing**
 12 **and stamping these plans."**
 13 **So they didn't have the capacity or --**
 14 **or ability to basically do the formal request?**
 15 A. I interpret Mr. Kircher's statement to
 16 mean that they don't employ one. That's not to say
 17 that they couldn't consult with one.
 18 **Q. Correct. They could have gone out to**
 19 **Parametrix or anyone?**
 20 A. Well, perhaps not because of conflict of
 21 interest, but any number of qualified firms, yes.
 22 **Q. Okay. In any event, one was not**
 23 **ultimately submitted to ITD for review and**
 24 **consideration?**
 25 A. That is correct.

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1 **Q. May I ask you, please, to review that**
 2 **section, Section 6, down to the end of the**
 3 **paragraph that starts, last sentence, "Did occur,**
 4 **they would probably be notified by the State**
 5 **Highway Patrol."**
 6 **I'd ask you to read that section, and my**
 7 **question to you is: Do you have any issues with**
 8 **the factual report insofar as this portion of it is**
 9 **concerned?**
 10 A. Yes, I have numerous issues with this
 11 section.
 12 **Q. Okay. Let's start with the first. And**
 13 **let me also --**
 14 **Okay. So where is the first location**
 15 **where you have an issue?**
 16 A. My first moment of reflection has to do
 17 with the third sentence of the first paragraph, "No
 18 law enforcement personnel were invited." That
 19 could be an inference that there was some oversight
 20 or that they ought to have been invited.
 21 I don't know factually that they weren't
 22 invited. We do have an attendance log and a
 23 recording of that meeting --
 24 **Q. We do.**
 25 A. -- and possibly invites, so the

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1 **Q. Okay. Secondly is another request for a**
 2 **modification that's at 684, going to 685.**
 3 **Am I correct that there wasn't a formal**
 4 **written request for a modification of the traffic**
 5 **control plan submitted for this?**
 6 A. Certainly not a proper request as signed
 7 and sealed by an engineer.
 8 **Q. But in any event, the request was**
 9 **definitively addressed by Mr. Statkus and denied**
 10 **the request?**
 11 A. Yes.
 12 **Q. Okay. So does that indicate to you that**
 13 **Penhall and Specialty Supply knew the appropriate**
 14 **steps that should be taken at least to make a**
 15 **request before they attempt to implement a change**
 16 **in the TCP?**
 17 A. I drew that conclusion from this, yes.
 18 **Q. All right. Let's go then to the next**
 19 **section, "Pre-Construction Conference Meeting."**
 20 **I'll ask you to just --**
 21 A. Could you help me with the page number.
 22 **Q. Oh, I'm so sorry. Yes, page --**
 23 **We're talking again about the factual**
 24 **report, Tab 17 on page 523.**
 25 A. Okay. Very good.

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1 inference that somehow law enforcement were perhaps
 2 omitted or intentionally not invited, and I don't
 3 know that to be a --
 4 **Q. Yeah. Okay.**
 5 A. -- reasonable insinuation.
 6 **Q. I mean, it's a -- it's a statement of**
 7 **fact, that no law enforcement personnel were**
 8 **invited.**
 9 **Do you know if any law enforcement**
 10 **personnel were invited to the -- this particular**
 11 **pre-construction conference meeting?**
 12 A. I don't have a specific recollection of
 13 that invite list readily available, but it's fairly
 14 common for us to do so. It's also fairly common
 15 for them not to attend.
 16 **Q. Well, let me --**
 17 A. So --
 18 **Q. Let me ask you to take a look at Tab 18,**
 19 **pages 640 to 645. Again, this is a document I**
 20 **obtained from the NTSB docket.**
 21 A. Okay.
 22 **Q. Okay. And I note that you were not**
 23 **present during this pre-construction conference**
 24 **meeting, correct?**
 25 A. That is correct. I was not.

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1 traffic restrictions and lane closures. I don't
 2 represent that anything this specific was agenda'd
 3 or discussed.
 4 **Q. Okay.**
 5 A. And this list, this numbered list,
 6 follows the colon, it says, "Agenda discussions
 7 included the following items."
 8 **Q. Right.**
 9 A. I'm inferring that "agenda discussions"
 10 means topics that were both listed and discussed.
 11 It's a little bit inarticulate.
 12 But the -- the published agenda is what
 13 you referred to me -- referred me to on 640.
 14 **Q. Yeah.**
 15 A. So the format of these meetings and the
 16 portion of this meeting I listened to broadly
 17 followed this -- this scripted agenda.
 18 **Q. Well, but, again, is it your testimony**
 19 **that on the audio recording of this meeting, there**
 20 **was no discussion of limiting lane closures to two**
 21 **lanes in four-lane sections?**
 22 A. I can't conclude that there was none and
 23 that I have not reviewed the entirety of the audio.
 24 **Q. All right.**
 25 A. What I heard, it was not represented

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1 specifically.
 2 **Q. Okay. Anything else? We've gone**
 3 **through 6. Is there anything else about 6 that --**
 4 A. Nothing else regarding 6.
 5 **Q. 7?**
 6 A. In 7, I didn't find an agenda item or
 7 discussion that was presented in this way. This
 8 seems to infer that this was a spoken note or a
 9 question that came up, and I don't know how
 10 explicitly this was handled in the agenda.
 11 This -- this entire list seems as if
 12 it's insinuating that these are the high points of
 13 the meeting when these were, at best, passing
 14 statements in the meeting if they came up.
 15 **Q. Okay. Item Number 8?**
 16 A. The portion of the tape I have listened
 17 to, I did not come across this specific topic. I
 18 believe there was a reference made to law
 19 enforcement by one of the individuals I've talked
 20 to, as if that was asked.
 21 But, again, it's an odd construction
 22 here how they write, "Any law enforcement component
 23 provide for -- none." I don't know if that's
 24 question-and-answer or if they're representing that
 25 was a statement made.

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1 I -- it doesn't look like an agenda
 2 topic to me.
 3 **Q. All right. There's a -- a discussion**
 4 **that's related down in the paragraph following**
 5 **Bullet Point 10.**
 6 **Do you have any criticism of the**
 7 **description of that discussion as related at**
 8 **page -- at that page of the factual report?**
 9 A. I have not checked that for the verbatim
 10 statement made in the meeting, but that generally
 11 represents a portion of discussion that I believe
 12 took place in the meeting.
 13 **Q. So in other words, your general**
 14 **recollection of listening to the tape, you recall**
 15 **hearing something regarding Penhall having a**
 16 **question regarding what to do if traffic was backed**
 17 **up?**
 18 A. I believe Penhall asked about that, yes.
 19 **Q. And to whom did they ask? Do you know?**
 20 A. I don't know that they targeted their
 21 question to any one individual. It was -- it was
 22 asked to the group at large.
 23 **Q. Okay.**
 24 A. But presumably, they were asking ITD.
 25 **Q. And the next is, "They," Penhall, I**

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1 **presume, "asked about any special provisions**
 2 **similar to the East Coast where contractors would**
 3 **be required to terminate a lane closure if the**
 4 **traffic backed up."**
 5 **Do you recall that as being discussed as**
 6 **reflected in the audio recording?**
 7 A. I believe that was part of the
 8 discussion.
 9 **Q. Okay. And there is an indication, "ITD**
 10 **indicated that they had accounted for the traffic**
 11 **and did not expect anything like that to occur."**
 12 **Who is it --**
 13 **Do you have a recollection of who it was**
 14 **with ITD that made that statement?**
 15 A. My best recollection is it was probably
 16 Dave Statkus.
 17 **Q. Okay. In the next, it says, "ITD**
 18 **indicated that if severe congestion did occur, they**
 19 **would probably be notified by the state highway**
 20 **patrol."**
 21 **Is that your recollection of what was**
 22 **related there by some representative of ITD?**
 23 A. I believe that was related. I believe
 24 they used the term "ISP" instead of "state highway
 25 patrol."

<p style="text-align: right;">Page 182</p> <p>1 Q. Yeah. 2 A. This is an interpretation issue by the 3 writer from Texas. 4 Q. What do you understand is meant by the 5 term "severe congestion"? 6 A. I don't know that there was common 7 understanding of that, but anything that would 8 require action or changes would be the insinuation 9 in this context. 10 Q. Based upon your background and 11 experience, would you consider that the magnitude 12 of the congestion at eastbound I-84 on June 16 13 would be considered severe congestion? 14 A. I think the term "severe" as it relates 15 to congestion is used on a continuum that's 16 relative to a baseline condition in a given area. 17 So I -- 18 Q. Can you -- 19 A. I'm trying to say this without 20 equivocating. 21 Q. I'd like you to answer my question, is 22 really what I'd like. 23 A. I believe severe congestion on 405 in 24 L.A. and severe congestion on I-84 in Nampa have a 25 different definition.</p>	<p style="text-align: right;">Page 183</p> <p>1 Q. Okay. 2 A. But this is a -- what we know and 3 experienced in this construction zone is of a 4 similar duration, delay, length, and nature of what 5 is experienced on this portion of I-84 on nearly a 6 daily basis. 7 Q. My question, and I'll make it very, I 8 hope, clear: The magnitude of the congestion on 9 eastbound I-84 on the evening of June 16 at 10 approximately 11:30 p.m. at the location of this 11 accident, would you, based upon your background and 12 experience, characterize that level of congestion 13 as being severe? 14 A. No. 15 Q. Okay. There has been a conclusion in 16 the NTSB report that the backup spanned from -- for 17 approximately 1.2 miles from the lane reduction to 18 the point of the accident. 19 Do you not consider that as being 20 indicative of severe congestion for that area? 21 A. No. 22 Q. How about two miles? 23 A. Congestion is -- 24 Severity is somewhat conditional. We're 25 speaking of the length relative to one open lane,</p>
<p style="text-align: right;">Page 184</p> <p>1 but the speed and how smoothly it flows and the 2 total delay are also measures of congestion. 3 So it's -- it's not measured on length 4 alone. Two miles at 40 miles per hour is quite a 5 bit different than two miles at 10 miles per hour. 6 Q. But that's not what we're dealing with 7 here. We're dealing with stop-and-go traffic. So 8 let's get down to the facts that surrounded this 9 particular incident and the nights preceding. 10 Would you consider stop-and-go traffic 11 through a construction area that extended two miles 12 to be severe congestion? 13 A. Again, I don't tend to characterize 14 "congestion" simply in the length of the queue. 15 The number of lanes, the total delay, the distance 16 for which the stop-and-go condition versus a 17 slow-moving progression occurred all factor into 18 severity. 19 Q. And you mentioned the duration of delay. 20 What was the anticipated accepted 21 duration of delay through a worksite as 22 contemplated by the traffic control plan? 23 A. The traffic control plan was designed to 24 allow for the relatively free flow of traffic at 25 the posted reduced speed, and so the delay from a</p>	<p style="text-align: right;">Page 185</p> <p>1 normal condition through the work zone would be the 2 speed difference between, perhaps, 65 miles per 3 hour or thereabouts and 55 miles per hour for the 4 distance that was under traffic control on any 5 particular night, which was different almost every 6 night. 7 Q. Okay. 8 A. So ordinarily, the delay would be 9 measured in minutes, at best; single-digit minutes. 10 Q. Well, wasn't there a requirement that it 11 be no longer than a 15-minute delay and no greater 12 than a 30-minute delay through the entire 13 construction zone? 14 A. There is such a requirement in the 15 contract, yes. 16 Q. All right. And on the night in 17 question, June 16, did the backup not exceed those 18 requirements? 19 A. I have no reason to believe that the 20 delay on that night was in excess of 15 minutes. I 21 believe it was less than that. 22 Q. How long was the delay, and what do you 23 base that on? 24 A. I haven't calculated the specific delay. 25 Q. Okay.</p>

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1 THE WITNESS: My recollection of the
 2 specifics of those studies are vague. My general
 3 recollection is they were complex and wordy.
 4 I didn't draw any hard conclusions with
 5 applicability for our situation based on my review.
 6 I don't deny that somebody may have found hazards
 7 related to that. There are hazards related to any
 8 number of conditions that are present on the
 9 roadway.
 10 But I didn't draw any specific
 11 conclusions from the limited portion I reviewed.
 12 **Q. (BY MR. ROBBINS) Okay. The next section**
 13 **says, "In fact, on Thursday night, June 15, 2017,"**
 14 **that's the night before this accident, "Idaho State**
 15 **Police were notified of traffic congestion and**
 16 **signing problems in the work zone.**
 17 **"ISP Sergeant Beckner, who was in the**
 18 **area attending to a disabled vehicle, answered the**
 19 **dispatch interrogative with the statement that the**
 20 **zone was signed."**
 21 **Did you ever talk to Sergeant Beckner**
 22 **about his observations on the night of the**
 23 **June 15th?**
 24 MR. MOORE: Object to the form and
 25 foundation.

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1 **identifies that there were diaries and who was**
 2 **doing those diaries, I guess, at the time.**
 3 **Do you have any problem with the first**
 4 **paragraph?**
 5 **Excuse me.**
 6 **Do you have any issue with the first --**
 7 **the information contained in the first paragraph?**
 8 MR. MOORE: Can you hold up for just a
 9 second?
 10 MR. ROBBINS: Yeah.
 11 MR. MOORE: You're reading from 524?
 12 MR. ROBBINS: 524 to 7, "ITD Work Zone
 13 Inspector."
 14 MR. MOORE: Go ahead. Just a second.
 15 **Q. (BY MR. ROBBINS) Just the first**
 16 **paragraph.**
 17 A. Right. So with regard to the first
 18 paragraph, it seems to blend events of 2017 and
 19 2018.
 20 **Q. And we'll be going over --**
 21 A. Mr. Schwendiman and Mr. Mensinger were
 22 specifically inspecting in 2018, and the, at least,
 23 start of the paragraph is about the duration of
 24 construction in 2017.
 25 **Q. Yep.**

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1 MR. ROBBINS: Okay.
 2 MR. MOORE: Go ahead, sir.
 3 THE WITNESS: I have not spoken with
 4 Mr. Beckner.
 5 **Q. (BY MR. ROBBINS) Have you spoken with**
 6 **anybody who had spoken to Sergeant Beckner about**
 7 **his observations on the evening of June 15?**
 8 A. I have not spoken to anyone about
 9 Mr. Beckner's observations at the Idaho State
 10 Police. I've spoken with counsel about
 11 Mr. Beckner's observations.
 12 **Q. Well, I can't get into that, as much as**
 13 **I would like to.**
 14 MR. MOORE: Well, maybe we can have a
 15 discussion at some other time.
 16 MR. ROBBINS: No. We'll have a deposition at
 17 some other time.
 18 MR. MOORE: That's fine too. You probably
 19 might --
 20 MR. ROBBINS: Okay.
 21 **Q. (BY MR. ROBBINS) Let's go on to page --**
 22 **on the factual report, page 9. Here it's talking**
 23 **about the "ITD Work Zone Inspector and**
 24 **Subcontractor Traffic Control Manager Diaries," and**
 25 **it just -- basically in that first paragraph just**

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1 A. So other than the clarity of
 2 Mr. Van Lydegraf was there in '17, Mr. Mensinger
 3 and Schwendiman in '18, I have no other objection.
 4 **Q. Okay. Now, how about the next paragraph**
 5 **speaking of a pre-construction conference meeting.**
 6 **That was for the startup after work had been**
 7 **stopped, I think, for weather -- weather reasons on**
 8 **May 31, 2018.**
 9 **I'd ask that you review that paragraph**
 10 **and let me know if you have any issues with what is**
 11 **related there.**
 12 A. So I have a few issues with this.
 13 We, in practice only, have one meeting
 14 that we title a "pre-construction conference," and
 15 that's the one with the formal notes and
 16 transcript. This was a seasonal startup meeting or
 17 pre-operational meeting, so the connotation is
 18 correct, just the title.
 19 **Q. Okay.**
 20 A. However, I don't believe that was on
 21 May 31st. I believe they are mistaken on the date.
 22 **Q. What --**
 23 **Do you have any document to reflect what**
 24 **was -- when that meeting took place and what was**
 25 **discussed during that meeting?**

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1 A. Again, I was not in that meeting, but
 2 records seem to indicate and the recollection of
 3 individuals immediately after the accident was that
 4 that meeting actually took place approximately
 5 April 23rd of 2018.
 6 May 31st was the date in which physical
 7 work resumed on the contract.
 8 **Q. Did you discuss that with Mr. Breen? Is**
 9 **it Mr. Breen's recollection, as you understand it,**
 10 **that this second construction conference meeting**
 11 **occurred on a date other than May 31, 2018?**
 12 A. Yes. I have discussed it with Mr. Breen
 13 and other members of staff, and that is their
 14 recollection.
 15 **Q. Who else did you discuss it with on**
 16 **staff?**
 17 A. I've discussed that with Mr. Mensinger,
 18 who I believe was there. I believe either
 19 Mr. Statkus or Mr. Hoffecker were there. And I
 20 discussed it with Mr. Breen.
 21 **Q. Okay. You've discussed it with**
 22 **Mr. Mensinger?**
 23 A. I have.
 24 **Q. And you've discussed it with**
 25 **Mr. Statkus?**

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1 factual. That was Bryon's initial statement in the
 2 meeting.
 3 And then it says, "His clarified comment
 4 was that he specifically told the contractor that
 5 they had -- a written request was required to
 6 change the traffic control plan," that he had told
 7 them.
 8 This clarification came, basically,
 9 immediately. He -- there was no interjection in
 10 between. He -- he said, "Well, I'm not sure.
 11 Well, I would have told them that they'd have to do
 12 that in writing."
 13 **Q. Well, what he would have and what he**
 14 **actually did are two different concepts.**
 15 **Now, I can understand somebody saying,**
 16 **"It's my custom and practice to say X, Y, and Z,"**
 17 **but do you recall that Mr. Breen said, "I told him**
 18 **that he would have to submit it in writing"?**
 19 A. I don't recall Bryon's exact choice of
 20 words in that meeting. I recall him trying to
 21 recollect what he said specifically.
 22 **Q. Okay.**
 23 A. Mr. Mensinger is much more keen in his
 24 recollection of this and, you know, believes Bryon
 25 unequivocally said that.

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1 A. Yes.
 2 **Q. Both of them acknowledge that there was**
 3 **a pre-startup conference that occurred on a date,**
 4 **correct?**
 5 A. They -- they do.
 6 **Q. Okay. Their recollection is, though,**
 7 **that it's a date other than May 31, 2018?**
 8 A. Correct. I believe everybody is in
 9 agreement that the date was earlier.
 10 **Q. Okay. Is their recollection anything**
 11 **different from --**
 12 **And by "their," I mean the recollection**
 13 **of Mr. Breen, Mr. Mensinger, and Mr. Statkus.**
 14 **Is anything different from what is**
 15 **related by the NTSB in the remainder of this**
 16 **paragraph?**
 17 A. Well, I was in a meeting in -- I believe
 18 it was August of 2018 where the subject of the
 19 April meeting came up, and Mr. Rayburn asked
 20 Mr. Breen and Mr. Mensinger and others specifically
 21 about this meeting.
 22 One of the characterizations in here is
 23 how Bryon, the resident engineer, told the NTSB
 24 that he recalled one item coming up but was not
 25 sure how it was resolved. I believe that is

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1 **Q. Okay. Other than the timing aspects**
 2 **that we're dealing with here, is there anything**
 3 **factually that is an issue for you in the remainder**
 4 **of this paragraph?**
 5 A. While I wasn't there, I mean --
 6 **Q. No, no.**
 7 A. -- the discussions I've had and the
 8 meeting with Mr. Rayburn shortly after the
 9 accident, I have no reason to doubt the general
 10 basis of this, just as of that other date.
 11 **Q. Okay. So I'm just trying to find out --**
 12 A. As of that April date.
 13 **Q. -- if you have any other objections.**
 14 A. No other objections to the nature of
 15 this.
 16 **Q. All right. Do you know --**
 17 **Did Mr. Breen relate during the course**
 18 **of this meeting what Mr. Kidd's response to his**
 19 **comment that a written report would -- a written**
 20 **request would have to be submitted?**
 21 MR. MOORE: Counsel, we're talking about two
 22 different meetings, and could you clarify? We're
 23 talking about the meeting in which this discussion
 24 came up between Mr. Breen and Mr. Kidd, and you've
 25 been talking about the meeting between

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1 the contract would be performed within the calendar
 2 days provided in the contract as -- as issued or
 3 subsequently changed by formal change order.
 4 **Q. (BY MR. ORLER) When the project**
 5 **restarted in May, did the ITD -- or were there any**
 6 **discussions that, "Yes, we think that the project**
 7 **will be finished by late June, early July"?**
 8 **Anything like that?**
 9 A. I don't recall any discussions that
 10 involved me specifically. Those sort of
 11 conversations are common at weekly update meetings
 12 or in the administration of the contract, but none
 13 that involved me.
 14 **Q. Who within the ITD would have a better**
 15 **understanding of that?**
 16 A. Those topics likely came up in meetings
 17 that would have been attended by Bryon Breen, Dave
 18 Statkus, or Jim Hoffecker. Bryon probably most
 19 formally.
 20 MR. ORLER: That's all the questions I have
 21 for now. I'll pass it along to the next person.
 22 MR. MORTIMER: Real briefly, Mr. Brinkman.
 23 ///
 24 ///
 25 ///

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1 **traffic control diaries provided for Mr. Erichson.**
 2 **Do any exist, to your knowledge?**
 3 A. I do not believe any ITD inspectors
 4 created traffic control diaries.
 5 **Q. Okay. What is it that they created?**
 6 A. ITD inspectors would complete an ITD
 7 inspection diary, an ITD 25 form.
 8 **Q. Okay. Did Mr. Erichson complete an**
 9 **ITD inspection diary?**
 10 A. In interviewing Mr. Erichson, he
 11 represents that he did. However, those are not in
 12 ITD's files at this time, and Mr. Erichson has told
 13 me that he does not know where those are located at
 14 this time, that he does not have them of record any
 15 longer.
 16 **Q. Should those records have been preserved**
 17 **by Mr. Erichson?**
 18 MR. MOORE: Object to the form.
 19 Go ahead, sir.
 20 THE WITNESS: If Mr. Erichson had those
 21 records, they should have been submitted to the
 22 project file. Certainly, if Mr. Erichson had those
 23 records as of the date of the records hold, they
 24 certainly should have been preserved, yes.
 25 **Q. (BY MR. BOTTARI) Understood. Thank**

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1 EXAMINATION
 2 BY MR. MORTIMER:
 3 **Q. Did you ever serve in the military?**
 4 A. I have not.
 5 MR. MORTIMER: I don't have any other
 6 questions.
 7 MR. ROBBINS: Open it up to other counsel.
 8 MR. BOTTARI: Mr. Brinkman, my name is Jake
 9 Bottari, and I have some questions unless someone
 10 else would like to go before me.
 11 MR. ROBBINS: You're the first one to say
 12 anything.
 13
 14 EXAMINATION
 15 BY MR. BOTTARI:
 16 **Q. Mr. Brinkman, I represent Defendant**
 17 **Penhall Company in this case. I'm one of the**
 18 **attorneys representing Penhall, and I'll try to be**
 19 **as quick as possible.**
 20 **Who were the work zone construction ITD**
 21 **inspectors on site in the fall of 2017?**
 22 A. Mr. David Van Lydegraf and Mr. Steve
 23 Erichson.
 24 **Q. And I've seen traffic control diaries**
 25 **from Mr. Van Lydegraf, but I have not seen any**

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1 you.
 2 **And with regard to the spring and,**
 3 **I guess, May and June 2018, who were the ITD**
 4 **inspectors inspecting the work zone?**
 5 A. The ITD inspectors in 2018 were
 6 Mr. Jon Mensinger and Mr. Blaine Schwendiman.
 7 **Q. Okay. Now, with respect to all of the**
 8 **ITD inspectors -- Steve Erichson, David**
 9 **Van Lydegraf, Jon Mensinger, and Blaine**
 10 **Schwendiman -- do they have -- do any of those**
 11 **individuals have knowledge with regard to traffic**
 12 **control within work zones?**
 13 MR. MOORE: Object to the form.
 14 Go ahead.
 15 THE WITNESS: All four of those individuals
 16 are generally familiar with traffic control within
 17 work zones. None of them were specifically
 18 assigned that responsibility on this project.
 19 **Q. (BY MR. BOTTARI) Okay. To your**
 20 **knowledge, does Mr. Mensinger have any education**
 21 **and experience with regard to traffic control**
 22 **within work zones?**
 23 A. Mr. Mensinger is a long-term ITD
 24 employee, and to the best of my knowledge, he would
 25 have training and experience in traffic control in

<p style="text-align: right;">Page 386</p> <p>1 ITD had a special provision requiring 2 the provisioning of a traffic control manager who 3 had a requirement to daily submit their diaries. 4 The special provisions stated that they be 5 submitted to the engineer. 6 In practice, I've come to believe that 7 the diaries were ordinarily being submitted through 8 Mr. Steve Erichson who, at least on most occasions, 9 appeared to be receiving them daily. 10 Mr. Erichson would have caused those 11 documents to be stored in our electronic file 12 system, which would have been available to the 13 engineer, Mr. Bryon Breen, and any other members of 14 the project team. 15 Q. Is there any way to determine -- 16 MR. MOORE: I don't think he was finished, 17 Dave. 18 THE WITNESS: On at least one occasion, 19 there's an e-mail in the record where a traffic 20 control diary was provided to additional 21 individuals. 22 Q. (BY MR. PERKINS) That was getting to my 23 next question. 24 Is there any way to determine who 25 reviewed these diaries and when those diaries were</p>	<p style="text-align: right;">Page 387</p> <p>1 reviewed? 2 A. I cannot say with certainty. The 3 electronic file system that the Idaho 4 Transportation Department uses and was using at the 5 time of the project is a Bentley project known as 6 ProjectWise. There are audit reports in the 7 software that might indicate when a document was 8 accessed or modified. I have not investigated 9 those on this project. 10 Q. In a similar vein, could you describe to 11 me what happened with the ITD standard construction 12 diaries, the procedures for handling those? 13 A. I do not know the procedures for the 14 entirety of the diaries. 15 Individuals would either handwrite their 16 diaries or type their diaries. They may do that 17 directly in the field on a bound pad of ITD 0025 18 forms, the standard construction diary, which may 19 or may not include carbonless copies, or they may 20 type them on an electronic copy of the ITD 25 form. 21 Regardless of how they were produced, 22 the standard procedure would be for those diaries 23 to be logged in the ProjectWise document system for 24 the project. They may have been done so directly 25 by the individual or they may have been routed</p>
<p style="text-align: right;">Page 388</p> <p>1 through someone like Mr. Hoffecker. 2 I have attempted to ask about that in 3 the course of my preparation for these depositions, 4 and I have not been able to get specific 5 recollections to a person of the procedures that 6 they were following. 7 Q. Thank you. 8 Other than the traffic control 9 maintenance diaries and standard construction 10 diaries, are there any other reports that you're 11 aware of that would address site conditions on this 12 project? 13 MR. MOORE: Did you say site conditions? 14 MR. PERKINS: Uh-huh. The conditions on the 15 site; lane closures, the status of traffic. 16 Q. (BY MR. PERKINS) What I'm getting at, I 17 suppose, maybe just to give you some general 18 references: Did Penhall or Diamond or any other 19 contractor produce information similar to the 20 information on the two reports we've been looking 21 at? 22 A. I'm not aware of any other reports that 23 have been made known to me regarding the work, the 24 site, the traffic control, or the condition. 25 Our Idaho State Communications</p>	<p style="text-align: right;">Page 389</p> <p>1 dispatchers keep a log of any correspondence 2 related to sections of roadway by location, and at 3 least one or two pages of their record is in the 4 document set. 5 It would be common practice for a 6 superintendent or foreman of prime contractors and 7 subcontractors to keep some form of records, forms, 8 or diaries. None have been provided to me or come 9 to my review on this project. 10 Q. Earlier, you testified in going through 11 the traffic control maintenance diaries and the 12 standard construction diaries that you weren't 13 aware of where those four-to-one-lane closures were 14 taking place based on those documents. 15 Are you aware of any method or means 16 that we could determine where those closures were 17 taking place at this point in time? 18 A. I'm not aware of a definitive way to 19 ascertain where those exact closures were located 20 at this time. 21 Had the diaries at the time used more 22 specific references or descriptors such as the 23 project stationing that appears in the plans or 24 mile point references, they would have been more 25 discernable, but I know of no way to reconstruct</p>

EXHIBIT 28

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF DAVID VAN LYDEGRAF

March 12, 2021

Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

<p style="text-align: right;">Page 26</p> <p>1 Five Mile to Orchard and Ramps project? 2 A. Can you repeat the question? 3 Q. Sure. 4 After that two-week period of time that 5 you worked on this project under Mike Shepard, were 6 you then assigned to the I-84 Five Mile to Orchard 7 and Ramps project? 8 A. Yes. 9 Q. Okay. And you were assigned to act as 10 the inspector on that project? 11 A. An inspector, yes. 12 Q. I didn't quite understand. "An 13 inspector." 14 Okay. So in other words, there were 15 other inspectors that were assigned to work on that 16 project? 17 A. I was not the lead inspector. 18 Q. All right. And who was the lead 19 inspector at the time that you worked? 20 A. Steve Erichson. 21 Q. All right. And how was work split up 22 between you and Mr. Erichson on this project? 23 A. That's very -- 24 Q. Strike that. 25 Was it just you and Mr. Erichson as the</p>	<p style="text-align: right;">Page 27</p> <p>1 inspectors on the project initially? 2 A. Initially, yes. 3 Q. All right. And how was the work on this 4 project split up insofar as inspections were 5 concerned between you and Mr. Erichson? 6 A. He, for the most part, inspected spall 7 repairs until the grinding crew -- 8 Sorry. I'd like to backtrack that. 9 Q. Surely. 10 A. Him and I both inspected the spall 11 repairs until the grinding crew showed up, and he 12 was mostly involved with the spall repairs. I was 13 mostly inspecting the grinding operation. 14 Q. Okay. 15 A. But there's an overlap in both. 16 Q. All right. And before you started 17 working at -- on what we'll call "the project," did 18 you have occasion to review the temporary traffic 19 control plans? 20 A. Yes. 21 Q. Okay. And did you have a chance to 22 review the special provisions for the temporary 23 traffic control plans? 24 A. Yes. 25 Q. Okay. And was it your understanding</p>
<p style="text-align: right;">Page 28</p> <p>1 that your inspection responsibilities included 2 oversight, to some degree, of the installation of 3 the temporary traffic control plan for this 4 project? 5 MR. MOORE: Object to the form. Foundation. 6 Go ahead, sir. Go ahead and answer the 7 question, if you can. 8 THE WITNESS: Can you repeat the question, 9 please, then? 10 Q. (BY MR. ROBBINS) Sure. Okay. 11 And was it your understanding that your 12 inspection responsibilities included oversight, 13 to some degree, of the installation of the 14 temporary traffic control plan for the project? 15 MR. MOORE: Same objection. 16 Go ahead. 17 THE WITNESS: Not in its entirety. 18 Q. (BY MR. ROBBINS) Well, okay. Why don't 19 you describe for me the extent to which your job 20 duties include oversight or monitoring of the 21 installation of the temporary traffic control plan. 22 A. My responsibility was not to ensure 23 compliance to the -- to the plans but was to verify 24 quantities for pay of the items installed. 25 Q. Okay. But you knew what the -- what was</p>	<p style="text-align: right;">Page 29</p> <p>1 called for in the temporary traffic control plan 2 for this project, right? 3 A. I had an idea. 4 Q. You looked at the plan and the special 5 provisions, I think you previously testified. 6 Would you agree? 7 A. Yes. 8 Q. And based upon that review, you had an 9 understanding that in sections of the highway being 10 worked on that were four-lane sections, those 11 sections could not be reduced any more than two 12 lanes. 13 Did you have that understanding? 14 A. Yes. 15 Q. All right. And did you have a further 16 understanding that the temporary traffic control 17 plan, one of the purposes is to provide for the 18 safety of both the workers on the project and the 19 motoring public? 20 A. Yes. 21 Q. Okay. And did you have an understanding 22 that one of the reasons of the temporary traffic 23 control plan is to reduce, as much as possible, the 24 creation of traffic queues or traffic jams through 25 the worksite?</p>

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1 A. I suppose.
 2 MR. PERKINS: Object to the form.
 3 **Q. (BY MR. ROBBINS) All right. And one of**
 4 **the reasons that you want to reduce the occurrence**
 5 **of traffic queues on the worksite is because a**
 6 **traffic job in a worksite creates a hazard for both**
 7 **the workers and the motoring public.**
 8 **Would you agree with that concept?**
 9 MR. MOORE: Object to the form and
 10 foundation.
 11 **Q. (BY MR. ROBBINS) You can respond.**
 12 A. No. I do not think so.
 13 **Q. Do you not think that a traffic jam**
 14 **through a worksite is a potential hazard to workers**
 15 **at that worksite?**
 16 MR. MOORE: Object to the form.
 17 THE WITNESS: I think it is a warning but not
 18 a hazard.
 19 **Q. (BY MR. ROBBINS) All right. Do you**
 20 **recognize that a traffic jam through a worksite can**
 21 **present a hazard to the motoring public,**
 22 **particularly at the end of the queue?**
 23 MR. MOORE: Object to the form. Foundation.
 24 THE WITNESS: It can if the traveling public
 25 is not paying attention.

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1 **construction site?**
 2 A. Yes.
 3 **Q. And in your position as an inspector, if**
 4 **you saw that a temporary traffic control plan on**
 5 **this project was not being properly implemented,**
 6 **would you bring that to the attention of somebody?**
 7 A. Yes.
 8 **Q. Based upon your custom and practice, to**
 9 **whom would you bring that to the attention of?**
 10 A. Either to the traffic control supervisor
 11 or the lead inspector, Steve.
 12 **Q. All right. Now, there's a traffic --**
 13 **In this particular project, on the**
 14 **project we're talking about, the temporary traffic**
 15 **control setting was taken care of or was**
 16 **subcontracted out to an outfit by the name of**
 17 **Specialty?**
 18 A. That's correct.
 19 **Q. All right. And did you have interaction**
 20 **with any -- with --**
 21 **Strike that.**
 22 **Do you know or do you have a**
 23 **recollection of who the traffic control manager**
 24 **with Specialty was during the time you were on the**
 25 **project?**

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1 **Q. (BY MR. ROBBINS) Sure. Because you have**
 2 **a queue that's building up through that area in the**
 3 **first place, correct?**
 4 MR. MOORE: Object to the form. Foundation.
 5 Go ahead, sir.
 6 THE WITNESS: Yes.
 7 **Q. (BY MR. ROBBINS) Okay. And do you**
 8 **recognize that there is a hazard of rear-end**
 9 **collisions associated with the creation of traffic**
 10 **queues in work zone areas?**
 11 MR. MOORE: Object to the form. Foundation.
 12 THE WITNESS: Yes.
 13 **Q. (BY MR. ROBBINS) Okay. And one of the**
 14 **reasons to reduce --**
 15 **Strike that.**
 16 **One of the ways to reduce that -- the**
 17 **occurrence of that traffic queue that can create**
 18 **that hazard is to have a properly implemented**
 19 **temporary traffic control plan.**
 20 **Would you agree with that?**
 21 MR. MOORE: Object to the form. Foundation.
 22 THE WITNESS: Yes.
 23 **Q. (BY MR. ROBBINS) Do you believe that**
 24 **it's important that a temporary traffic control**
 25 **plan as approved be properly implemented at a**

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1 A. No.
 2 **Q. Okay. Do you recall the name of Mason**
 3 **Garling? Does that ring a bell with you?**
 4 A. It rings a bell.
 5 **Q. How about Josh Roper? Does that ring a**
 6 **bell with you?**
 7 A. Yes.
 8 **Q. Okay. Did you have any interactions**
 9 **with either Mason Garling or Josh Roper with**
 10 **respect to the temporary traffic control for the**
 11 **project while you were an inspector there?**
 12 A. Any interaction with those individuals
 13 would have been to bring up -- say if I noticed a
 14 series of drums or candles that were knocked down
 15 and needed to be placed back up.
 16 **Q. Okay.**
 17 A. Or if -- they're called flashing warning
 18 beacon lights. They have batteries. Their
 19 batteries went out, then they would not be
 20 flashing.
 21 **Q. Okay.**
 22 A. That they would need to be replaced.
 23 **Q. And if you saw that the temporary**
 24 **traffic control plan on the project was not being**
 25 **properly implemented by the traffic control**

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1 approves the reduction of a four-lane section of
 2 highway down to a single lane?
 3 A. That would take some time to read this
 4 entire thing.
 5 Q. Okay. You can take a look at the
 6 traffic control general notes. That's the first
 7 section up there, I think. And take your time.
 8 A. I would say no.
 9 Q. All right. Let me ask you to take a
 10 look at page 255. That's Sheet 11 of 47.
 11 There on the left-hand side of that
 12 sheet, Class B, "Temporary Traffic Control Sign
 13 Quantities," and there's a listing of traffic
 14 control signs.
 15 Do you see any sign indicated there that
 16 provides for three left or right lanes closed
 17 ahead?
 18 A. No.
 19 Q. Okay. Let me ask you to take a look at
 20 pages 256 and 257. That's Sheets 12 and 13 of 47.
 21 A. Okay.
 22 Q. Okay. Those are the provisions for a
 23 double-lane drop and a single-lane drop
 24 respectively, agree?
 25 A. Yes.

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1 no further takers, I believe we can conclude this
 2 deposition.
 3 Mr. Van Lydegraf, I thank you very much
 4 for your time, sir.
 5 THE VIDEOGRAPHER: Okay. So this concludes
 6 our video deposition with David Van Lydegraf on
 7 March 12th, 2021. The time is 3:55 p.m., and we
 8 are off the record.
 9
 10 (The videotaped deposition concluded at 3:55 p.m.)
 11 * * *
 12 (Signature was requested.)
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 Q. Any provisions in those sheets or any of
 2 the remaining sheets in this section that provide
 3 for a triple-lane drop?
 4 A. Not that I see.
 5 MR. ROBBINS: Okay. Mr. Van Lydegraf, I very
 6 much appreciate your time. I don't think I have
 7 any other questions for you.
 8 MR. ORLER: No questions from me either.
 9 MR. ROBBINS: We're up to the board.
 10 MR. BOTTARI: This is Jake Bottari. No
 11 questions on behalf of Penhall.
 12 MR. JENKINS: This is Dan Jenkins on behalf
 13 of the Johnson plaintiffs. I have no questions.
 14 Thank you.
 15 MR. DOWDLE: This is Warren Dowdle. I don't
 16 have any questions.
 17 MR. PERKINS: David Perkins. I do not have
 18 any questions.
 19 MR. GALE: Eric Gale. I don't have any
 20 questions. Thank you.
 21 MR. GRAHAM: Chris Graham. No questions.
 22 Thanks.
 23 MS. JANKLOW: Lindsey Janklow on behalf of
 24 the Westall plaintiffs. No questions. Thank you.
 25 MR. ROBBINS: Okay. There apparently being

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VERIFICATION

1
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)

6 I, DAVID VAN LYDEGRAF, being first duly sworn on
 7 my oath, depose and say:
 8 That I am the witness named in the foregoing
 9 videotaped deposition taken the 12th day of March, 2021,
 10 consisting of pages numbered 1 to 64, inclusive; that
 11 I have read the said deposition and know the contents
 12 thereof; that the questions contained therein were
 13 propounded to me; that the answers to said questions
 14 were given by me, and that the answers as contained
 15 therein (or as corrected by me therein) are true and
 16 correct.

Corrections Made: Yes _____ No _____

 DAVID VAN LYDEGRAF

Subscribed and sworn to before me this _____
 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____.

17
 18
 19
 20
 21
 22
 23
 24
 25

1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

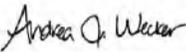
5 I, ANDREA J. WECKER, Certified Shorthand Reporter
6 and Notary Public in and for the State of Idaho, do hereby
7 certify:

8 That prior to being examined, the witness named in
9 the foregoing deposition was by me duly sworn to testify
10 to the truth, the whole truth and nothing but the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and
13 thereafter reduced to typewriting under my direction,
14 and that the foregoing transcript contains a full, true
15 and verbatim record of said deposition.

16 I further certify that I have no interest in the
17 event of the action.

18 WITNESS my hand and seal this 1st day of April,
19 2021.

20
21 



22 ANDREA J. WECKER
23 CSR, RDR, CRR, CRC and Notary
24 Public in and for the
25 State of Idaho.

24 My Commission Expires: 02-14-23

EXHIBIT 29

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF JON MENSINGER
March 11 and 12, 2021
Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 30

1 **didn't interact with either, just let me know.**
 2 **You can respond.**
 3 A. I did not interact with Specialty at
 4 all.
 5 **Q. All right.**
 6 A. I did not interact dealing with traffic
 7 control with the superintendent for Penhall.
 8 **Q. Okay.**
 9 A. I was just out there to get
 10 measurements, and I did not care what other people
 11 were doing.
 12 **Q. When you say you were just out there to**
 13 **take measurements, you were working as an inspector**
 14 **on the project, though, correct?**
 15 A. Yes.
 16 **Q. All right. Did you familiarize yourself**
 17 **with the traffic control plan before you started**
 18 **work on the project?**
 19 A. I did not.
 20 **Q. Is there a reason why you did not?**
 21 A. I was on a job where for the first time
 22 I didn't have to, and I liked it.
 23 **Q. Why is it that you perceived that you**
 24 **didn't have to familiarize yourself with the**
 25 **traffic control plan?**

Page 32

1 A. I did not.
 2 **Q. Okay. Now, I've mentioned the traffic**
 3 **control plan.**
 4 **Did you ever review the special**
 5 **provisions for the traffic control plan before you**
 6 **went out on the project?**
 7 A. I probably read through all of the pink
 8 pages, special provisions, but as far as studying
 9 them, committing them to memory, I did not.
 10 **Q. Did you have enough of them committed to**
 11 **memory to know that the lane reductions for this**
 12 **project were approved only from -- for four-lane**
 13 **down to a two-lane and were never approved down to**
 14 **four to one?**
 15 A. I had heard maybe once that that was --
 16 they were supposed to only take -- or two lanes
 17 were supposed to be open.
 18 **Q. Yes.**
 19 A. I didn't dwell on that. I didn't think
 20 about it. I had -- I had a different assignment.
 21 **Q. Who did you hear that from?**
 22 A. You know, that was just -- I probably
 23 heard that from Bryon Breen.
 24 **Q. Okay. Do you recall within what context**
 25 **that was that that conversation took place?**

Page 31

1 A. Because they -- there was a hired man
 2 from Specialty to run that.
 3 **Q. Okay. But when you were out there as an**
 4 **inspector, did you not also undertake to check to**
 5 **see whether the traffic control devices were placed**
 6 **out there?**
 7 A. Not --
 8 No.
 9 **Q. Okay. Was there anyone with ITD whose**
 10 **job included monitoring the placement of traffic**
 11 **control devices to make sure that they complied**
 12 **with the traffic control plan?**
 13 A. I do not know this.
 14 **Q. Okay. Now, on this particular project,**
 15 **there was another individual who was also acting as**
 16 **an inspector. Actually, there are two other**
 17 **individuals, but Blaine Schwendiman -- during the**
 18 **period of time that you were doing the inspection.**
 19 **Had you ever worked with Blaine before?**
 20 A. I had not.
 21 **Q. Okay. Do you know --**
 22 **Strike that.**
 23 **Did you have any discussions with**
 24 **Mr. Schwendiman about the traffic control plan for**
 25 **this project?**

Page 33

1 A. I am pretty sure he was talking to
 2 Penhall in a meeting.
 3 **Q. Was that a meeting before the startup --**
 4 A. Yes.
 5 **Q. -- that occurred in --**
 6 A. Oh.
 7 **Q. -- March or April -- or April or May of**
 8 **2018?**
 9 A. Yes.
 10 MR. MOORE: You're getting it down.
 11 **Q. (BY MR. ROBBINS) You're doing good.**
 12 **All right. We're going to get back to**
 13 **that, but let's go through some documents here**
 14 **since they were produced.**
 15 **Counsel has produced last night and we**
 16 **had printed out today a couple of different**
 17 **documents. First is what we will mark as Exhibit**
 18 **No. 40. It has got handwriting on the front of it.**
 19 **It's Xeroxed copies of the pages of a book, and on**
 20 **the front, it's I-84 Five Mile Road to Orchard**
 21 **Road, A019(289) 19289. I'll show you what we've**
 22 **marked as Exhibit No. 40.**
 23 **Sir, do you recognize that document or**
 24 **at least a copy of the document that we have?**
 25 A. Yes, I do.

<p style="text-align: right;">Page 34</p> <p>1 Q. All right. And what is that, sir? 2 A. That is my notebook I carry in my hip 3 pocket on a project to write down specifics usually 4 for pay, to pay a contractor, bid items. 5 Q. Okay. All right. 6 Do you use this notebook to also take 7 down information that ultimately finds its way in 8 the standard construction diary? 9 A. Some of it does, yes. 10 Q. Okay. And is this your handwriting on 11 the front page? 12 A. Yes, it is. 13 Q. And the "A019," what does that relate 14 to? Is that the contract designation? 15 A. That's a project number. 16 Q. Okay. When we have W/A I163840 -- 17 A. Work authority number. 18 Q. All right. And then the contract is the 19 contract number, 8217? 20 A. Yes. 21 Q. Okay. Next page is 4142, and there you 22 have various names written down. 23 Bruce Kidd and Mr. -- and Scott Reed are 24 representatives of Penhall? 25 A. Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Steve Erichson is also with Penhall? 2 A. No. 3 Q. Okay. He's with whom? 4 A. ITD. 5 Q. Okay. What position did Mr. Erichson 6 hold on this project? 7 A. He was running -- 8 Well, for ITD, I think he was running 9 the project the year before when they ground the 10 concrete smooth. 11 Q. Are you talking about September/October 12 of 2017? 13 A. Yeah. I really wasn't even -- didn't 14 even know that was going on. 15 Q. Yeah. Your involvement on this project, 16 at least out on the scene, didn't start until 17 April/May of 2018? 18 A. May, anyway, yeah. 19 Q. At least May? 20 A. Probably. 21 Q. Okay. And the next is Josh Roper, I 22 believe that is? 23 A. Yes. 24 Q. That's Specialty? 25 A. Yes.</p>
<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. And then Blaine Schwendiman is 2 ITD? 3 A. That's correct. 4 Q. All right. And were these your contacts 5 with both Penhall and Specialty for this project? 6 A. You know, contacts. I -- 7 If I needed to get ahold of somebody, I 8 wanted their telephone number. 9 Q. All right. If you saw something that 10 you perceived to be an issue on the project that 11 needed somebody's attention, your first contact 12 would be Bruce Kidd, would it be? Or would it be 13 Mr. Reed? 14 A. I would say that it's Bruce Kidd. 15 Q. Okay. 16 A. We all looked at him as the 17 superintendent. 18 Q. All right. All right. 19 Let's take a look at page number 4143, 20 and there we have the meeting -- a reference to a 21 meeting that occurred on 4/23/18. 22 And is that a reference to the startup 23 meeting or the re-startup meeting, I guess is how 24 it's been termed? 25 A. Yeah. I think we called it a</p>	<p style="text-align: right;">Page 37</p> <p>1 get-to-know-each-other meeting -- 2 Q. All right. 3 A. -- or meet and greet or something. 4 Q. All right. But this is when the project 5 started up again after, I guess, it had been -- 6 A. It -- 7 Q. -- closed down for the winter? 8 A. It -- 9 You're close. 10 Q. Almost? 11 A. It hadn't started yet -- started up yet. 12 Q. Oh, it hadn't -- 13 A. That I'm aware of. 14 Q. It hadn't started up as of 4/23/18? 15 A. That's correct. 16 Q. Okay. Previously, the project had been 17 undergoing, though, over on the westbound lanes? 18 MR. MOORE: Object to the form. 19 Q. (BY MR. ROBBINS) Tell me, in your own 20 mind, when -- if you know, what aspect of the 21 project had been underway in the fall of 2017. 22 A. I did not know anything of what was 23 going on in 2017. I didn't even know we had 24 concrete grinding out there. 25 Q. Okay. And we'll get to that in a</p>

Page 38

1 second. But here we're talking about a 4/23/18
 2 meeting with Penhall.
 3 Was there any representative that you
 4 could recall of Specialty present during that
 5 meeting?
 6 A. There was not.
 7 Q. Okay. Do you recall who was there from
 8 Penhall, if anybody?
 9 A. Pat, I can't remember his last name.
 10 And I can't --
 11 Q. I'm looking at -- you can take a look at
 12 it. Is it Pat Cartwright?
 13 A. Whatever. Cartwright?
 14 Q. I don't know.
 15 A. Maybe.
 16 And there was another guy, and I can't
 17 remember who that was.
 18 Q. Okay. Do you recall Bruce Kidd being
 19 present?
 20 A. I do not recall that. I know from that
 21 meeting until the next one on the -- that we had,
 22 the -- Penhall's personnel changed.
 23 Q. When was the next meeting that was held
 24 for this project after 4/23/18?
 25 A. I guess that was on 5/30 of '18.

Page 40

1 A. No.
 2 Q. Do you know, was it explained to you why
 3 you should hold onto your notes?
 4 A. I -- it didn't have to be. I knew.
 5 Q. What did you know?
 6 A. That's probably when I put that note,
 7 that sticky note -- that's actually a yellow sticky
 8 note on there -- to remind me of --
 9 I've got a few notes --
 10 Q. Okay.
 11 A. -- of the meetings.
 12 Q. And for you to keep those notes?
 13 A. Yeah.
 14 Q. Now, you're not the only one that got
 15 that e-mail.
 16 Was it sent out to essentially all the
 17 ITD personnel on the project?
 18 A. Correct.
 19 Q. Okay.
 20 A. I imagine.
 21 Q. Okay. You don't know?
 22 A. I --
 23 Q. All right.
 24 MR. MOORE: Don't guess.
 25 Q. (BY MR. ROBBINS) All right. Now, during

Page 39

1 Q. Okay. And we have a note of 5/30/18
 2 meeting on the next -- on the next side of 4143,
 3 correct?
 4 A. Yes.
 5 Q. All right. And underneath, it says,
 6 "Jon Mensinger's meeting notes with Penhall."
 7 Is that in your handwriting?
 8 A. That is.
 9 Q. All right. Were you asked to produce
 10 whatever notes you had pertaining to the re-startup
 11 or get-together meetings that were held between ITD
 12 and Penhall in the April to May time frame?
 13 A. I was not asked to produce. I was told
 14 to hang on to, don't throw away.
 15 Q. Who told you that?
 16 A. I think --
 17 I believe we had an e-mail.
 18 Q. Do you remember when that e-mail went
 19 out?
 20 A. Oh, I do not.
 21 Q. Was it before or after the accident, if
 22 you know?
 23 A. After.
 24 Q. Okay. Do you know how long after the
 25 accident it was that that e-mail went out?

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1 the meeting that took place on April 23, do you
 2 recall a discussion that took place between the
 3 Penhall representative, whoever that was, and the
 4 ITD resident engineer where Penhall indicated that
 5 they had requested to be allowed to close a third
 6 lane during joint sealing operations?
 7 Do you recall that?
 8 A. I do.
 9 Q. Okay. And do you recall who it was that
 10 made that request?
 11 A. I do not.
 12 Q. Okay. Do you recall to whom that
 13 request was presented?
 14 A. Bryon Breen.
 15 Q. All right. And do you recall what
 16 Mr. Breen's response was to that?
 17 A. "Submit it, and we will look at it."
 18 Q. And when he said "submit it," did you
 19 understand that to mean that any such request for a
 20 change had, under the terms of the contract, to be
 21 presented to ITD in writing?
 22 A. Yes.
 23 Q. Okay.
 24 A. That's --
 25 Q. And that would be only under

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1 circumstances where ITD had reviewed and approved
 2 that written request that any change of the
 3 contract terms would be allowed on this project?
 4 A. Correct.
 5 Q. Fairly standard for other projects that
 6 you've been on --
 7 A. Yes.
 8 Q. -- with ITD?
 9 All right. And do you recall any
 10 response from the Penhall representative to what
 11 Mr. Breen had told him about submitting that
 12 request in writing?
 13 A. No, I don't remember any response. I do
 14 know it was right at the end of the meeting.
 15 Q. All right. And do you know what meeting
 16 that was at? Was it the 4/23 meeting or the 5/30
 17 meeting?
 18 A. I believe it was the 4/23.
 19 Q. Okay. Why is it you believe that?
 20 A. They were talking about their plan of
 21 attack, their operation, how they wanted to do
 22 things.
 23 Q. Do you recall during that meeting the
 24 discussion was held wherein the Penhall
 25 representative had said that during their

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1 project?
 2 A. I did not know this.
 3 Q. Okay. To your knowledge, did Penhall or
 4 any representative of Penhall ever submit a written
 5 request to be allowed to change the contract
 6 provisions to allow a reduction of open lanes down
 7 to a single lane in a four-lane stretch?
 8 A. I never knew if they did.
 9 Q. Okay. Did you ever hear from Bruce Kidd
 10 or from Scott Reed that they intended to submit
 11 such a written request?
 12 A. I did not.
 13 Q. Okay. Do you know one way or the other
 14 as to whether Specialty had the engineering
 15 background on their staff to prepare an appropriate
 16 written submittal to reduce lanes from a four-lane
 17 stretch to a one-lane stretch?
 18 A. I do not know that.
 19 Q. Okay. Going back to the 4/23 meeting,
 20 there's a reference to, "Penhall needs to produce
 21 their best schedule to get the work done."
 22 Do you have a recollection as to what
 23 that pertained to?
 24 A. They were worried about time.
 25 Q. Okay. Was that part and parcel to the

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1 construction activities on the westbound lanes of
 2 I-84 on this project, that they had reduced the
 3 lanes down to a single open lane in a four-lane
 4 stretch?
 5 A. I --
 6 MR. MOORE: Object to the form.
 7 Go ahead, sir.
 8 THE WITNESS: I never heard that.
 9 Q. (BY MR. ROBBINS) Okay. Did you ever
 10 come to find out that on the part of the project
 11 that was being done in the September to October
 12 time frame, that there were locations on a
 13 four-lane stretch of highway that had been reduced
 14 down to a single lane?
 15 MR. MOORE: Object to the form and
 16 foundation.
 17 Q. (BY MR. ROBBINS) You can respond.
 18 MR. MOORE: Go ahead.
 19 Q. (BY MR. ROBBINS) Yeah, unless he tells
 20 you don't --
 21 A. I -- I never heard that.
 22 Q. Okay. Did you know on this project,
 23 though, prior to June 16 of 2018, that there were
 24 sections of the four-lane highway of I-84 that had
 25 been reduced down to a single lane during the work

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1 request to change the contract provisions that we
 2 discussed about?
 3 A. Not that I'm aware of.
 4 Q. Okay.
 5 A. I --
 6 At this time, I did not know what was
 7 going to go on out there.
 8 Q. By "out there," do you mean on the
 9 eastbound lanes of I-84?
 10 A. On -- on any of the freeway work to be
 11 done.
 12 As I stated, I didn't even know they had
 13 ground --
 14 Q. Okay.
 15 A. -- the freeway. I never go out there.
 16 Q. Okay. But your job was to act as an
 17 inspector?
 18 A. Yes.
 19 Q. But within the context of your job as an
 20 inspector, was it your understanding that you had
 21 limited responsibilities beyond what you had done
 22 previously as an inspector?
 23 A. I --
 24 Ask me that again.
 25 Q. Sure.

<p style="text-align: right;">Page 70</p> <p>1 4. Station 45 plus 10." And that is my 2 stationing, not what the plans had in. 3 Q. All right. So when it says, "Start 4 Lanes 2, 3, and 4," does that mean to you that 5 Lanes 2, 3, and 4 would be closed down? 6 A. That would be correct. 7 Q. Okay. Can you tell me by taking a look 8 at Exhibit 41 where that work was being performed 9 that night? 10 A. I don't even have to look. I know where 11 it was being performed. 12 Q. Well, if you could be so kind as to show 13 me where it was performed in Exhibit 41, I would 14 appreciate it. 15 And if you could point me out the Bates 16 stamp numbers in the lower right-hand corner. 17 A. That would be this number? 18 Q. Yes, sir. 19 A. The 4162, and actually 4163, the very 20 left -- 21 Uh-oh. No, no, no. I'm sorry. Wrong 22 off-ramp. 23 Q. Okay. 24 A. Boy. I happen to know that is the 25 off-ramp to eastbound Overland which goes around</p>	<p style="text-align: right;">Page 71</p> <p>1 the Outback Steakhouse. 2 Q. Okay. 3 A. And those are those ramps. 4 And if you go back to the start of the 5 project, that was at Station 27 -- 6 Oh, you know what? Maybe I should put 7 these on. 8 2707 plus 97.85, Milepost 51.31, if you 9 go westbound -- 10 Q. Can you tell me what Bates stamp number 11 you're looking at, sir. 12 A. I am looking at 4166. 13 Q. Okay. 14 A. And if you go westbound on I-84 4,510 15 feet, that will tell you where we're at. 16 Q. And can you point out where that is on 17 4166? 18 A. I don't have my calculator on me. 19 It actually -- 20 Let's see. 4,500 from 27. 21 It has got to be right around Station -- 22 on page 4164 -- 23 Q. Okay. 24 A. -- I have written here Station 43 plus 25 47.85 --</p>
<p style="text-align: right;">Page 72</p> <p>1 Q. Right. 2 A. -- where that's at, so it would be a 3 couple hundred feet to the east of that. 4 Q. All right. That's a four-lane stretch 5 of highway? 6 A. Yes, it is. 7 Q. All right. And in your notes, it 8 reflects that three of those four lanes were going 9 to be shut down that night? 10 A. That's what it appears, yes. 11 Q. Okay. Do you recall making any inquiry 12 of anyone as to whether there had been an approval 13 obtained? 14 A. I did not. The reason why I wrote those 15 lanes closed down is it tells me how many 16 longitudinal lines we are sealing. 17 Q. Right. But it also tells us that three 18 of four lanes were closed -- 19 A. That's correct. 20 Q. -- at that location. 21 My question to you is: Did you make any 22 inquiry as to whether approval had been obtained to 23 reduce the -- 24 A. I did not. 25 Q. You've got to wait for me to finish my</p>	<p style="text-align: right;">Page 73</p> <p>1 question to you, sir, okay? 2 Was any inquiry made by you to find out 3 whether authority had been obtained to close the 4 open lanes of the four-lane stretch down to a 5 single open lane? 6 A. There was none. 7 Q. Okay. Reason being? Not your job? 8 A. Pretty much. Didn't want to take on 9 more than I had to. 10 Q. There you go. Okay. 11 So next is Lanes 1, 2, 3, and 4. The -- 12 the width of those lanes is indicated. They're 13 12-foot lanes, are they? 14 A. For the most part, yeah. 15 Q. Yeah. 16 A. They're supposed to be. 17 Q. All right. And then what we have going 18 down here are the -- 19 What do we have after STA 44 plus 49.5? 20 A. Those are just joints that I measured 21 up. 22 Q. Okay. 23 A. Totaling them up. 24 Q. And your measurements for that night, do 25 they continue on the next page there?</p>

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1 okay.

2 MR. MOORE: That's --

3 Q. (BY MR. ROBBINS) I want to know if they

4 were the same people at both meetings for ITD.

5 MR. MOORE: You didn't carry through the

6 balance of it, but go ahead.

7 THE WITNESS: I believe they were the same.

8 Q. (BY MR. ROBBINS) Okay. And were there

9 discussions at both of those meetings between ITD

10 and Penhall about the possibility of reducing lanes

11 to a single through lane in the four-lane stretches

12 in order to accomplish the work that they were to

13 do in this portion of the project?

14 MR. MOORE: Object. Object to the form and

15 foundation. Misstates his prior testimony.

16 Go ahead, sir.

17 MR. ROBBINS: It was an inquiry, was there

18 such. I wasn't making an affirmative statement at

19 all.

20 MR. MOORE: I think the way you phrased it

21 was a little bit different, but go ahead.

22 MR. ROBBINS: Okay.

23 THE WITNESS: I don't recall if that was

24 spoken about at both meetings. I know it was at

25 the second meeting.

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1 Q. Okay. Did you at any time participate

2 in a meeting that was held by and called by the

3 NTSB concerning the June 16, 2018, accident that

4 took place on August 17, 2018?

5 A. I do not -- I did not meet with the

6 NTSB.

7 Q. Okay. Did you hear anything about that

8 meeting occurring?

9 A. I did not.

10 Q. Now, looking -- you don't need to refer

11 back to the document, but I see that on the agenda

12 notes for the July 26, 2017, pre-construction

13 meeting that there's a reference to Steve Erichson

14 being the project lead inspector.

15 Did you ever have an understanding that

16 Steve Erichson was the project lead inspector for

17 this project?

18 A. Not beforehand. Not before the project

19 started.

20 Q. Okay.

21 A. After the 2017 --

22 It was grinding on the freeway is

23 actually the first that I heard that they were out

24 there grinding.

25 Q. Right.

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1 Q. (BY MR. ROBBINS) The May 30 meeting?

2 A. Yes, the May 30th.

3 Q. Okay.

4 A. I -- I'm sure --

5 Well, here again, I know it was spoken

6 about at one of the meetings. I can't remember for

7 sure which one.

8 Q. All right.

9 A. Or if it was both.

10 Q. And do you have a recollection of that

11 subject being addressed between Penhall and ITD

12 personnel at any other time prior to June 16, 2018?

13 A. I do not.

14 Q. Okay. There has been in the documents

15 some suggestion that there was a post-accident

16 meeting. And when I say "post-accident," a meeting

17 between State and construction personnel after the

18 June 16, 2018, accident that was attended by

19 Mr. Breen, Mr. Kircher, and a number of Penhall

20 representatives and multiple ITD representatives.

21 Do you recall participating in that

22 post-accident meeting?

23 A. I did not.

24 Q. Did you hear of the meeting?

25 A. I did not.

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1 A. I didn't know that was going on until

2 after -- until the winter of '17/'18.

3 Q. Right. Okay. But my question relates

4 to your awareness of Steve Erichson being

5 identified as the project lead inspector for this

6 project.

7 Were you ever aware of that?

8 A. I --

9 No.

10 Q. Okay. Was there a lead inspector for

11 this project, to the best of your understanding?

12 A. In 2018, I believe Blaine Schwendiman

13 was chosen to be the lead inspector. At that time,

14 we were going through horizontal career path

15 changes, and since he has a little different job

16 than what our inspectors normally have, he needed

17 to pick up some hours for construction. Well, CE

18 is what we call it and --

19 Q. Construction experience? Is that a CE,

20 or what is it?

21 THE WITNESS: Jason, what is that?

22 Q. (BY MR. ROBBINS) Well, you can't do

23 that.

24 A. Oh, okay. I'm sorry.

25 Q. Whatever CE is, it is, right?

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1 A. Yes.

2 **Q. Okay.**

3 A. That's the way it appears.

4 **Q. Now, let me ask you to take a look at**

5 **your note for June 1 that's on page 371 of Tab 13.**

6 **Can you tell by looking at your notes**

7 **there whether there was a reduction of four lanes**

8 **down to one at that -- at the location where you**

9 **were working at?**

10 MR. MOORE: Counsel, maybe my numbers are

11 wrong. You said June 1, and then you said

12 page 371.

13 THE WITNESS: Yeah.

14 MR. ROBBINS: 372, I should say.

15 THE WITNESS: Okay. I was reading the wrong

16 page also.

17 MR. MOORE: And then 372 is blank.

18 MR. ROBBINS: We gotcha. We gotcha, Mike.

19 MR. MOORE: Okay. Okay.

20 MR. ROBBINS: We're together. Thank you for

21 that.

22 THE WITNESS: Now, what am I reading?

23 **Q. (BY MR. ROBBINS) I'm asking you to take**

24 **a look at your note on 373 for June 1.**

25 A. Okay.

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1 **there was a reduction of three out of the four**

2 **available lanes in that location?**

3 A. It says they sealed Lanes 2, 3, and 4

4 from Station 45 plus 10 westbound. That is a

5 four-lane section.

6 **Q. All right. So the answer is yes, that**

7 **was a closure of three lanes --**

8 A. Yes.

9 **Q. -- in a four-lane section?**

10 A. Yes.

11 **Q. All right. Now, finally, let me ask you**

12 **to take a look at your note for -- or I won't say**

13 **"finally." Let me ask you to take a look at your**

14 **note for June 12. That's at page 387.**

15 **There, I believe what you say is, "They**

16 **had the freeway closed down to one lane at**

17 **10:00 p.m. They sealed Lanes 2, 3, and 4 from**

18 **Station 72, 22 westbound, WB."**

19 **Does that indicate that at least in some**

20 **area of where that work was being done, that three**

21 **out of four available lanes had been closed down?**

22 A. That is not a four-lane section.

23 **Q. It says, "These are westbound Lanes 2,**

24 **3, and 4 where there is a fourth lane. Some of**

25 **that area is only three lanes wide."**

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1 **Q. And I'm asking whether you can tell from**

2 **that note whether you were working in an area where**

3 **a four-lane section of highway had been closed down**

4 **to a single open lane.**

5 A. Just from the statement I put in, they

6 also saw cut all transfers, joints to half of

7 Lane 2.

8 **Q. Uh-huh.**

9 A. If we had had a three-lane closure in a

10 four-lane section, they would have saw cut into

11 half of Lane 3 --

12 **Q. Uh-huh.**

13 A. -- and that's not what I say here.

14 **Q. All right.**

15 A. So other than that, I cannot tell that

16 they had a three-lane closure.

17 **Q. Three-lane --**

18 **Okay. So you can't tell from just**

19 **looking at your note that they had a three-lane**

20 **closure there?**

21 A. Right.

22 **Q. All right. Let me ask you to take a**

23 **look at your note of June 11, which is 386.**

24 A. Yep.

25 **Q. June 11, does that indicate to you that**

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1 A. Oh.

2 **Q. So that's where my question comes to**

3 **you, sir.**

4 A. Oh, okay.

5 **Q. So some of the work being performed**

6 **there was on a four-lane section --**

7 A. Okay.

8 **Q. -- where three of the available lanes**

9 **had been closed down.**

10 **Would you agree with me?**

11 A. Yes.

12 **Q. Thank you.**

13 **Let's take a look at the note -- your**

14 **note for June 13. Are you able to tell --**

15 **Well, just the second sentence there**

16 **says, "They had the freeway closed down to one lane**

17 **at 10:00 p.m.," essentially like the last note.**

18 **And my question to you, sir, is: Does**

19 **that indicate to you that at least some of the work**

20 **that was being performed on I-84 that night was in**

21 **a section of four lanes that had been closed --**

22 **where three lanes had been closed down?**

23 A. That is correct.

24 **Q. Okay. Next going to page --**

25 **Again, those were -- the closures were**

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1 seem to be talking about Maple Grove over ramp?
 2 A. Maple Grove is the overpass.
 3 Q. Okay. But here in Mr. Van Lydegraf's
 4 note, he speaks of lanes being closed from Orchard
 5 to about 41 -- Milepost 41.85?
 6 A. Okay. Westbound --
 7 I'm on his page 630.
 8 Q. Yep. Four lines down. "Three WB lanes
 9 are closed from Orchard to about MP 48.5."
 10 A. Okay. I had not read that far yet.
 11 48.5, I -- have I got a mile -- I don't
 12 have a milepost here.
 13 Q. All right.
 14 MR. MOORE: Which chart are you looking at?
 15 Which page are you looking at?
 16 THE WITNESS: I am looking at 4158, what has
 17 the Maple Grove Road overpass on it.
 18 Q. (BY MR. ROBBINS) Where would that be
 19 relative to Orchard?
 20 A. Orchard is east of our project limits.
 21 Q. All right.
 22 A. It's down, oh, a mile and a half further
 23 east, Orchard is.
 24 Q. Okay. So we're not looking at the area
 25 that's referenced by Mr. Van Lydegraf in his

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1 highway?
 2 MR. MOORE: Object to the form.
 3 Go ahead, if you can.
 4 THE WITNESS: West of Orchard is a four-lane
 5 section of road.
 6 Q. (BY MR. ROBBINS) Okay. So that would
 7 indicate that three lanes --
 8 A. Three of the four were closed.
 9 MR. ROBBINS: All right. Mr. Mensinger, I
 10 very much appreciate your time yesterday and today,
 11 sir. I don't have any other questions for you.
 12
 13 EXAMINATION
 14 BY MR. ORLER:
 15 Q. Mr. Mensinger, my name is Mark Orler.
 16 We met, obviously, yesterday, and thanks again for
 17 being here today.
 18 Prior to you starting your work on the
 19 project in -- I guess it was, well, April or May
 20 when you were on the project, did you review the
 21 temporary traffic control plan and the special
 22 provisions?
 23 A. I did.
 24 Q. Okay. And where did you do that at?
 25 A. At my desk.

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1 October 24 note when we're looking at 4158, are we?
 2 A. Let's see.
 3 Yeah, we are.
 4 Q. Okay.
 5 A. Outbound City Center Connector to 184.
 6 That's right by Maple Grove.
 7 Q. All right.
 8 A. And then down it says, "Three westbound
 9 lanes are closed from Orchard to Milepost 48.5."
 10 Oh, the Cole Road on-ramp --
 11 Oh, no. That's a different sentence.
 12 Q. Yeah. The period is after 48.5.
 13 A. And 48.5, I'm not exactly sure where
 14 that's at.
 15 Q. Okay.
 16 A. I could mathematically figure it out
 17 with a calculator.
 18 Q. Well, sir, I don't want to necessarily
 19 get to that length.
 20 But basically, by taking a look at this
 21 diary note of October 24 and taking a look at the
 22 plans on Exhibit 41, are you able to tell us where
 23 that work was being performed, one; and then, two,
 24 are you able to say whether the three lanes being
 25 closed were in an otherwise four-lane stretch of

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1 Q. And when you were working on the project
 2 in the field, did you also have available to you
 3 the temporary traffic control plan and also the
 4 special provisions?
 5 A. I had a full set of plans with me. This
 6 exhibit, this Exhibit 41, is mainly what I worked
 7 off of because I was joint sealing.
 8 Q. Understandable.
 9 I was curious, when I look at -- well,
 10 if we look at your Exhibit -- well, it's
 11 Exhibit 41, your plans, why were they -- they were
 12 the preliminary. I just was curious.
 13 A. Oh.
 14 Q. Do you see where they're marked
 15 "preliminary"?
 16 A. Dave Statkus gave me that originally
 17 just because it was a clean, easy set to look at
 18 where the lane -- what the lane configuration was.
 19 Q. Okay. So did you have then an
 20 understanding of when the work on the -- the time
 21 that the work was supposed to commence on the
 22 project on a given day?
 23 MR. MOORE: Can you rephrase that?
 24 MR. ORLER: Sure.
 25 Q. (BY MR. ORLER) Do you have an

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1 **understanding of when the work was supposed to**
 2 **begin on the project on any given day, at what**
 3 **time?**
 4 A. They could not get on --
 5 The answer is yes.
 6 **Q. Okay. And so what was the time?**
 7 A. I think they couldn't close the lanes
 8 down until 10:00. And it changed on -- that was
 9 weekdays. I don't remember what it was for
 10 Saturday and Sunday, but usually traffic isn't as
 11 heavy.
 12 **Q. So it's your understanding that the**
 13 **start time for the project could vary from day to**
 14 **day. Is that --**
 15 **Am I understanding that correctly?**
 16 A. There's a lot of variables, but yes.
 17 **Q. So help me understand that more.**
 18 **What's your understanding of the time**
 19 **that work could begin?**
 20 A. 10:00 p.m. mostly --
 21 **Q. Okay.**
 22 A. -- throughout the week, on a weekday.
 23 **Q. And so on the weekends, could it -- was**
 24 **it different?**
 25 A. Yes. I don't remember what it was right

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1 **through Friday morning, 10:00 p.m. to 5:00 a.m.?**
 2 A. That is correct.
 3 **Q. Okay. Weekend nights, Friday night**
 4 **through Saturday morning, 10:00 p.m. to 7:00 a.m.?**
 5 A. That is correct. I see that.
 6 **Q. And weekend nights, Saturday night**
 7 **through Sunday morning, 10:00 p.m. to 9:00 a.m.**
 8 **Do you see that?**
 9 A. I see that.
 10 **Q. So what is your understanding then of**
 11 **why it could -- the time could be different?**
 12 A. I'm sorry. The -- the start time seems
 13 to be the same.
 14 **Q. Okay.**
 15 A. But the end time when we had to get off
 16 the highway is different.
 17 **Q. And do you see the column to the right**
 18 **that talks about restriction?**
 19 A. Yes.
 20 **Q. And had you reviewed that and were you**
 21 **familiar with those restrictions prior to doing**
 22 **your inspection work on the project?**
 23 A. I read this. I really didn't pay a lot
 24 of attention to stuff I wasn't going to be doing.
 25 I -- you know, I -- some of it sunk in, some of it

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1 offhand, but it was different.
 2 **Q. Okay. And who told you that? Or how**
 3 **did you come to learn that?**
 4 A. Huh. I do not remember how I learned
 5 that. I'm pretty sure --
 6 No, I just don't remember.
 7 **Q. If we could, do you have -- it will be**
 8 **Exhibit -- well, it's Tab 6, if I can point you to**
 9 **Tab 6.**
 10 A. Okay.
 11 **Q. Page 23.**
 12 **Are you there with me?**
 13 A. I am.
 14 **Q. Does that look like the special**
 15 **provisions that were available to you and that you**
 16 **reviewed?**
 17 **And you can take a moment of time to**
 18 **look at that.**
 19 A. It does.
 20 **Q. Okay. So if we turn to page 28.**
 21 A. Okay.
 22 **Q. Do you see the time there? Do you see**
 23 **that section, there's a -- under "Working Hours"?**
 24 A. I do.
 25 **Q. If we take weekday nights, Sunday night**

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1 did not.
 2 **Q. But were you aware of that -- of the**
 3 **restrictions?**
 4 A. I had heard, yes.
 5 MR. ORLER: No other questions. Thank you.
 6 MR. ROBBINS: We're up to the board.
 7 Do we have no questions?
 8 MR. GALE: No questions for this witness from
 9 Defendant Albertsons.
 10 MR. PERKINS: This is David Perkins. I do
 11 have some questions.
 12
 13 EXAMINATION
 14 BY MR. PERKINS:
 15 **Q. I represent Specialty in this case, and**
 16 **I just want to clarify some of the testimony that I**
 17 **hope I wrote down properly.**
 18 **Could you tell me what you believe the**
 19 **scope of your responsibility was as an inspector on**
 20 **this particular project?**
 21 A. My scope on this project was to cover
 22 the joints, the removal of old sealant, the saw
 23 cutting to widen the joints out, the implementation
 24 of backer rod and joint sealer, and to measure it
 25 and pay for it.

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1 THE WITNESS: On May 31.
 2 Q. (BY MR. PERKINS) And on that date when
 3 you were on -- at -- on site, did you have an
 4 opportunity to discuss anything with either Penhall
 5 or Specialty?
 6 A. I don't recall having any discussion
 7 with them.
 8 Q. And that leads me to one of those kind
 9 of clean-up questions.
 10 When you say that you don't recall, does
 11 that mean that you have no memory of it or that as
 12 you sit here today, you don't believe that
 13 happened?
 14 MR. MOORE: I just --
 15 THE WITNESS: Could you repeat that, please?
 16 Q. (BY MR. PERKINS) Sure.
 17 When you say that you don't recall
 18 something, are you saying that you don't think that
 19 happened because you don't have a recollection or
 20 you just don't recall and it might have happened?
 21 MR. MOORE: Object to the form and
 22 foundation. That's calling for speculation. I
 23 object to the form.
 24 If you can answer his question,
 25 go ahead.

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1 THE WITNESS: Sure.
 2 THE VIDEOGRAPHER: So this concludes our
 3 video deposition of Jon Mensinger on March 12th,
 4 2021. The time is 2:28 p.m., and we are off the
 5 record.
 6
 7 (The videotaped deposition concluded at 2:28 p.m.)
 8 * * *
 9 (Signature was requested.)
 10
 11
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1 THE WITNESS: I just flat don't remember.
 2 MR. PERKINS: Okay. That's all the
 3 questions --
 4 Excuse me.
 5 THE WITNESS: That's it.
 6 MR. MOORE: He's holding his thought.
 7 MR. PERKINS: That's all the questions I have
 8 for you, sir. Thank you.
 9 MR. MOORE: Jake? Chris?
 10 MR. ROBBINS: Anybody?
 11 MR. FISHER: This is Steven Fisher. I have
 12 no questions. Thanks.
 13 MR. BOTTARI: This is Jake Bottari. No
 14 questions.
 15 MR. JENKINS: This is Dan Jenkins. I have no
 16 questions. Thank you.
 17 MR. DOWDLE: Warren Dowdle. No questions.
 18 MR. GRAHAM: This is Chris Graham. No
 19 questions, thanks.
 20 MS. JANKLOW: Lindsey Janklow. No questions.
 21 Thank you.
 22 MR. ROBBINS: Yeah, I think we're good.
 23 Thank you, sir, for your time. I do
 24 appreciate you accommodating us on these two days.
 25 I truly do.

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VERIFICATION

1
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)

6 I, JON MENSINGER, being first duly sworn on
 7 my oath, depose and say:
 8 That I am the witness named in the foregoing
 9 videotaped deposition taken the 11th and 12th day of
 10 March, 2021, consisting of pages numbered 1 to 156,
 11 inclusive; that I have read the said deposition and
 12 know the contents thereof; that the questions contained
 13 therein were propounded to me; that the answers to said
 14 questions were given by me, and that the answers as
 15 contained therein (or as corrected by me therein) are
 16 true and correct.

17 Corrections Made: Yes _____ No _____
 18

19 _____
 20 JON MENSINGER

21 Subscribed and sworn to before me this _____
 22 day of _____, 2021, at _____, Idaho.
 23

24 _____
 25 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____

1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

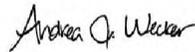
5 I, ANDREA J. WECKER, Certified Shorthand Reporter
6 and Notary Public in and for the State of Idaho, do hereby
7 certify:

8 That prior to being examined, the witness named in
9 the foregoing deposition was by me duly sworn to testify
10 to the truth, the whole truth and nothing but the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and
13 thereafter reduced to typewriting under my direction,
14 and that the foregoing transcript contains a full, true
15 and verbatim record of said deposition.

16 I further certify that I have no interest in the
17 event of the action.

18 WITNESS my hand and seal this 1st day of April,
19 2021.

20
21 



22 ANDREA J. WECKER
23 CSR, RDR, CRR, CRC and Notary
24 Public in and for the
25 State of Idaho.

25 My Commission Expires: 02-14-23

EXHIBIT 30

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
And Consolidated Actions)	
)	

VIDEOTAPED DEPOSITION OF BLAINE SCHWENDIMAN

February 1, 2021

Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

<p style="text-align: right;">Page 18</p> <p>1 A. And also to, when needed, go out and do 2 project inspection for construction projects. 3 Q. And when you say "project inspection for 4 construction projects," is that new construction as 5 well as maintenance projects? 6 A. New construction. 7 Q. Not maintenance projects? 8 A. No. We have another section that does 9 maintenance projects. 10 Q. Okay. The project that you were 11 involved in in June of 2018, was that a new 12 construction project or a maintenance project or 13 neither? 14 A. I guess that was maintenance, so I am 15 wrong. 16 Q. Well, how is it that you then -- 17 Strike that. We'll get there. 18 Now, you mentioned that you're a 19 transportation staff engineer assistant. Do you 20 hold a degree in engineering? 21 A. No. 22 Q. Okay. Prior to June of 2018, what was 23 your experience in inspecting temporary traffic 24 control plans for highway projects? 25 A. I guess I'd have to ask you to --</p>	<p style="text-align: right;">Page 19</p> <p>1 I don't really understand what -- what 2 you mean by "inspecting." 3 Q. Well, I mean monitor for compliance with 4 contract requirements specifying the temporary 5 traffic control plans including, but not limited 6 to, the specifications for any TTCP. 7 A. I don't know that I had any real 8 requirement to inspect them. 9 Q. Okay. Prior to June of 2018, did you 10 have any instruction or training while at ITD as to 11 what a temporary traffic control plan was? 12 A. I've had training, yes. 13 Q. Okay. Describe what that was as it 14 existed prior to June of 2018. 15 A. The training basically consisted of 16 being a flag person for traffic control. 17 Q. Okay. And by being a "flag person," you 18 mean actually holding flags? 19 A. Holding a paddle for stop and go, for 20 stopping traffic and letting traffic proceed -- 21 Q. Sure. 22 A. -- through -- through a lane closure. 23 Q. And that's usually during daylight 24 operations -- 25 A. Correct.</p>
<p style="text-align: right;">Page 20</p> <p>1 Q. -- in work zones? 2 MR. MOORE: Please wait until he finishes. 3 Q. (BY MR. ROBBINS) Did you ever do that in 4 the context of nighttime work in a work zone? 5 A. No. 6 Q. Did you ever have any training or 7 instruction as to what the provisions of a traffic 8 control plan are? 9 MR. MOORE: Object to the question as vague. 10 Object to the form. 11 Go ahead and answer it, if you can. 12 Q. (BY MR. ROBBINS) Yeah. Tell me if you 13 don't understand my question, and I'll rephrase it 14 for you. 15 A. That's what I -- 16 Q. Yeah. 17 A. If you could rephrase that. I'm not 18 sure -- 19 Q. Well, you know what a traffic control 20 plan is? 21 A. Yes. 22 Q. Okay. That's what I'm getting at is: 23 During the time that you worked with ITD, did you 24 receive any instruction and training as to what a 25 traffic control plan is and what a traffic control</p>	<p style="text-align: right;">Page 21</p> <p>1 plan is meant to accomplish? 2 MR. MOORE: Object to the form. 3 Go ahead. 4 THE WITNESS: I've had training as far as 5 what a traffic control plan is. I don't know that 6 I've had training that really explains fully what 7 it's to accomplish. 8 Q. (BY MR. ROBBINS) Prior to -- 9 A. I mean, I understand what it is. 10 Q. All right. Prior to June of 2018, did 11 you have any understanding as to what, generally 12 speaking, a traffic -- a temporary traffic control 13 plan was meant to accomplish? 14 A. No. 15 Q. Did you have any understanding that it 16 had anything to do with facilitating motorists' 17 traffic through a work zone? 18 A. Yes. 19 Q. Did you have any understanding that it 20 was meant to avoid lengthy queues of traffic 21 forming through work zones? 22 MR. MOORE: Object to the form. Foundation. 23 THE WITNESS: I would say no. 24 Q. (BY MR. ROBBINS) Okay. Did you have an 25 understanding that it had -- that is, by "it," I</p>

<p style="text-align: right;">Page 22</p> <p>1 mean traffic control plans -- it had a purpose in 2 providing for the safety of motorists and workers 3 in work zones? 4 A. Yes. 5 Q. Can you give me an idea as to 6 approximately how many hours of training you had 7 received when it came to an understanding of what a 8 temporary traffic control plan is prior to June of 9 2018? 10 A. Can I ask for clarification as -- 11 Q. Yeah. I'm just wondering how much time 12 you spent receiving instruction or training as to 13 what a temporary traffic control plan was prior to 14 June of 2018. 15 A. I -- I don't know. 16 Q. Okay. Prior to June of 2018, in the 17 course of any of your inspection activities at work 18 sites, were you ever called upon to inspect and 19 evaluate whether a temporary traffic control plan 20 had been properly implemented at a worksite? 21 A. No. 22 Q. Never? 23 A. No. 24 Q. My inquiry is correct, you never had any 25 responsibility for evaluating whether a temporary</p>	<p style="text-align: right;">Page 23</p> <p>1 traffic control plan was being properly implemented 2 out at a worksite? 3 A. No. 4 Q. That's a double negative. 5 MR. MOORE: It was, but I was leaving it 6 alone. It's -- 7 Q. (BY MR. ROBBINS) Were you involved in -- 8 Strike that. 9 Yeah. Were you involved prior to June 10 of 2018 in evaluating whether a temporary traffic 11 control plan for a particular highway construction 12 project was being properly implemented at a 13 worksite? 14 A. No. 15 Q. Okay. It's my understanding that you 16 had some involvement in the I-84 Five Mile to 17 Orchard and Ramps project. 18 Is that correct, sir? 19 A. Correct. 20 Q. We will refer to that as "the project" 21 in this deposition as I did in Mr. Brinkman's 22 deposition. 23 Is that okay with you? You'll know what 24 I mean by "the project"? 25 A. Yes.</p>
<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. Sir, you worked as a -- as an 2 inspector during that project? 3 A. Yes. 4 Q. Okay. Prior to your -- 5 Strike that. 6 When did you first perform any work on 7 that project? 8 A. 2018. I couldn't give you a specific 9 time. 10 Q. Okay. Had you just transferred from one 11 portion of ITD to another portion of ITD when you 12 started your work on the project? 13 A. I was just transferred to a new 14 position. 15 Q. Okay. And in the course of that 16 transfer to a new position, what position were you 17 transferred to? 18 A. You'll have to -- get clarification. 19 Q. What was the new position? 20 A. Oh, okay. 21 That was construction inspection. 22 Q. All right. And was this the first 23 highway construction or maintenance project that 24 you had worked as a construction inspector for ITD 25 on?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. No. 2 Q. How many prior to this date had you 3 worked as a construction inspector for ITD? 4 A. Two. 5 Q. Was that -- 6 A. I -- 7 Q. Were those also in 2018? 8 A. No. No, they weren't. They were many 9 years prior. 10 Q. Okay. And do you recall whether those 11 two other construction projects, were they new 12 construction or maintenance projects? 13 A. They were maintenance. 14 Q. Okay. And do you recall whether those 15 other projects involved, during the course of the 16 project within the work zone, a reduction of lanes; 17 leaving a certain number of lanes open during the 18 construction? 19 A. Yes. 20 Q. When you worked on those other projects, 21 did you familiarize yourself with the temporary 22 traffic control plan? 23 A. Yes. 24 Q. Okay. When you were on those other 25 projects, did that temporary traffic control</p>

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1 Q. Okay. Was there then someone else who
 2 took over the job as traffic control manager?
 3 A. Yes.
 4 Q. Who was that?
 5 A. That was Mason.
 6 Q. All right. And so did you have any
 7 discussions with Mason when he took over the
 8 position of temporary traffic control --
 9 Strike that.
 10 Did you have any discussions with Mason
 11 when he took over the position of traffic control
 12 manager concerning the temporary traffic control
 13 plan and/or special provisions associated with that
 14 plan?
 15 A. No.
 16 Q. As you sit here today, am I correct in
 17 understanding that you have never seen the
 18 temporary traffic control plan for the project?
 19 A. I -- I don't know.
 20 Q. You don't know one way or the other?
 21 A. It was a long time ago, and I know I
 22 haven't looked at it now.
 23 Q. At any time during your involvement in
 24 the process --
 25 Strike that.

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1 control manager diaries?
 2 A. No.
 3 Q. During the course of your involvement in
 4 the project, do you have --
 5 Strike that.
 6 During the course of your involvement on
 7 this project, did you develop an understanding of
 8 what the change of distribution was within the
 9 project for standard construction diaries and
 10 traffic control manager diaries?
 11 A. I'm going to have to have you say
 12 that -- state it again. I --
 13 Q. Yeah. I'm trying to find out --
 14 You know what a standard construction
 15 diary is?
 16 A. Correct. Yes.
 17 Q. Those are things that you filled out
 18 yourself, right?
 19 A. Yes.
 20 Q. All right. And once you filled those
 21 out, did you submit them to anybody?
 22 A. In this particular project, I did not.
 23 Q. Okay. Did somebody tell you that you
 24 were not to submit those to anyone?
 25 A. No.

Page 35

1 At any time during your involvement in
 2 the project, do you recall ever having reviewed the
 3 temporary traffic control plan?
 4 A. No.
 5 Q. Okay. At any time during your
 6 involvement in the project, do you have any
 7 recollection of having reviewed the special
 8 provisions for implementation of the temporary
 9 traffic control plan?
 10 A. No.
 11 Q. So if I were to show you those
 12 documents, this would be the first time, as far as
 13 you know, that you would have seen them?
 14 A. [Witness indicates.]
 15 Correct.
 16 Q. Indicating yes? Okay.
 17 Before you took over --
 18 Strike that.
 19 Before you started your job duties and
 20 responsibilities on the project, did you review any
 21 of the earlier standard construction diaries for
 22 the project?
 23 A. No.
 24 Q. Prior to your starting work on the
 25 project, did you review any of the prior traffic

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1 Q. Did you find it odd that you were not to
 2 submit your standard construction diaries to
 3 anyone?
 4 A. Yes.
 5 Q. To your knowledge, did anyone superior
 6 to you, so to speak, just in terms of the chain of
 7 responsibility review your standard construction
 8 diaries?
 9 A. No.
 10 Q. Did you ever have any discussions with
 11 anyone at ITD regarding your standard construction
 12 diaries during your involvement on the project?
 13 A. No.
 14 Q. After the accident on June 16, 2018, did
 15 you have occasion to discuss the contents of your
 16 standard construction diaries with anyone on the
 17 project?
 18 A. No.
 19 Q. Okay. Once you filled out your standard
 20 construction diaries, what did you do with them?
 21 A. I stored them on a -- electronically,
 22 file server for a project folder that we have for
 23 diaries.
 24 Q. And is it your understanding that once
 25 you submitted those to the file, that they would be

<p style="text-align: right;">Page 38</p> <p>1 accessible to anyone who was authorized to access 2 the file to review if they so choose -- 3 A. Yes. 4 Q. -- chose? 5 Okay. Do you know if anybody reviewed 6 your diaries once you submitted them, accessing 7 them electronically? 8 A. No. 9 Q. Okay. Now, the traffic control manager 10 diaries, you're familiar with what those are? 11 A. Yes. 12 Q. Did you have any involvement in 13 reviewing the traffic control manager diaries for 14 the project? 15 A. No. 16 Q. All right. Do you know what was done 17 with the traffic control manager diaries after they 18 were filled out by the traffic control manager? 19 A. Yes. I'm sorry. 20 Q. Not trying to pull teeth here. 21 A. Yes. 22 Q. I'm just trying to find out: Do you 23 know what happened to them once they were filled 24 out? 25 A. Yes, I know. Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Yeah. So what was done with them? 2 A. They were submitted electronically to 3 Steve Erichson, who filled out the pay document to 4 pay the -- the hours for that traffic control 5 manager. 6 Q. Okay. But Steve Erichson was an 7 inspector on the project, correct? 8 A. Prior to June of 2018. 9 Q. Right. 10 Was he an inspector on the project from 11 June of 2018 on? 12 A. No. 13 Q. Okay. So from June of 2018 on, who, if 14 anyone at ITD, received the -- the traffic control 15 manager diaries? 16 A. Steve did. 17 Q. Steve still received them? 18 A. He was -- he was still involved as far 19 as the person receiving that from traffic's -- 20 Specialty. 21 Q. Is it your -- 22 Strike that. 23 What, if any, understanding do you have 24 of what it was Mr. Erichson did with the traffic 25 control manager diaries once he received them?</p>
<p style="text-align: right;">Page 40</p> <p>1 A. I'm sorry. Ask that -- 2 Can you repeat that? 3 Q. Sure. 4 Do you have any understanding of what it 5 is Mr. Erichson did with the traffic control 6 manager diaries after he received them? 7 A. Yes. 8 Q. What's that understanding? 9 A. I'm sorry? 10 Q. What is that understanding, sir? 11 A. Oh. 12 My understanding was that he was filling 13 out the -- the documents to pay the hours for -- 14 per the contract item for that traffic control 15 manager time. 16 Q. Did you have any understanding that he 17 was also reviewing the traffic control manager 18 diaries? 19 A. No. 20 Q. He didn't have to review the diaries in 21 order to fill out the time? 22 MR. MOORE: Counsel, your question is whether 23 he had an understanding, and he said no. And 24 you're taking it a different way than I think the 25 question phrased.</p>	<p style="text-align: right;">Page 41</p> <p>1 But go ahead. Object to the form. 2 Q. (BY MR. ROBBINS) Did you have any 3 understanding that he was -- he didn't have to 4 review the diaries in order to fill out the time? 5 So -- 6 A. I do not know. 7 Q. Okay. You simply don't know what he was 8 doing with the diaries. 9 Is that it? 10 A. Correct, yes. 11 Q. Okay. Do you know if anybody at ITD 12 ever -- prior to June 16 of 2018, ever compared the 13 standard construction diaries with the traffic 14 control manager diaries? 15 A. No. 16 Q. Okay. You never did that, I take it, 17 correct? 18 A. No. 19 Q. You did not do that. 20 Am I correct in that? 21 MR. MOORE: Well, and I object to the form 22 and foundation. 23 I guess are you saying that you don't 24 know or are you saying that they didn't do it? 25 MR. ROBBINS: That's what I was trying to</p>

<p style="text-align: right;">Page 42</p> <p>1 clear up by my question, Mike.</p> <p>2 THE WITNESS: Yeah, I do not know.</p> <p>3 MR. ROBBINS: Thanks.</p> <p>4 MR. MOORE: I --</p> <p>5 MR. ROBBINS: All right.</p> <p>6 MR. MOORE: I appreciate you explaining.</p> <p>7 Q. (BY MR. ROBBINS) Did you ever develop an</p> <p>8 understanding during your involvement in the</p> <p>9 project that on four-lane stretches of highway, the</p> <p>10 contractors were only authorized to reduce open</p> <p>11 lanes to two open lanes?</p> <p>12 A. Sorry. Could you state that again?</p> <p>13 Q. Yeah.</p> <p>14 Did you develop an understanding that</p> <p>15 the project required that on four-lane stretches of</p> <p>16 highway, that lanes could not be reduced any</p> <p>17 further than two lanes?</p> <p>18 MR. MOORE: Counsel, I object to the form of</p> <p>19 the question because it's open-ended and it doesn't</p> <p>20 couch in terms of today versus -- and --</p> <p>21 MR. ROBBINS: Okay. Yeah.</p> <p>22 Q. (BY MR. ROBBINS) During the course of</p> <p>23 your involvement in the project, did you ever</p> <p>24 develop an understanding that the project documents</p> <p>25 required that two lanes remain open during work on</p>	<p style="text-align: right;">Page 43</p> <p>1 four-lane stretches of highway?</p> <p>2 A. Yes.</p> <p>3 Q. When did you develop that understanding?</p> <p>4 A. That would have been June 17th, the day</p> <p>5 after the accident.</p> <p>6 Q. Okay. And how did you find that out?</p> <p>7 A. My clarification? I'm sorry.</p> <p>8 Q. Yeah. That's what I'm asking.</p> <p>9 A. I read the specs, the specifications for</p> <p>10 that project.</p> <p>11 Q. Once you read the specifications for the</p> <p>12 project --</p> <p>13 Well, strike that.</p> <p>14 Did you continue your involvement on the</p> <p>15 project from June 17 until its completion?</p> <p>16 A. Yes.</p> <p>17 Q. Throughout the remainder of your</p> <p>18 involvement in the project, did you make sure that</p> <p>19 on four-lane stretches, no fewer than two lanes</p> <p>20 would remain open?</p> <p>21 MR. MOORE: Object to the form.</p> <p>22 Go ahead.</p> <p>23 THE WITNESS: No.</p> <p>24 Q. (BY MR. ROBBINS) No?</p> <p>25 A. I had a traffic control manager to</p>
<p style="text-align: right;">Page 44</p> <p>1 handle the traffic control.</p> <p>2 Q. So, in other words, after -- on June 17,</p> <p>3 you had an understanding that the plans had</p> <p>4 specifications that called for -- in four-lane</p> <p>5 stretches, for no fewer than two lanes to remain</p> <p>6 open.</p> <p>7 Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And so are you --</p> <p>10 Was there ever a point in time after</p> <p>11 June 16 of 2018 that you ever saw a section of</p> <p>12 four-lane highway being worked on in the project</p> <p>13 that had been reduced down to less than two open</p> <p>14 lanes?</p> <p>15 A. I don't recall.</p> <p>16 Q. Had you seen that after June 16, a</p> <p>17 four-lane stretch had been reduced down to one</p> <p>18 lane, would you have brought that to the attention</p> <p>19 of anyone?</p> <p>20 A. Yes.</p> <p>21 Q. Why?</p> <p>22 A. Simply because I had an understanding of</p> <p>23 what was required at that point, and I would have</p> <p>24 talked to the contractor.</p> <p>25 Q. Did you know that on June 16, the open</p>	<p style="text-align: right;">Page 45</p> <p>1 lanes on I-84 in the area of the work being</p> <p>2 performed on that night had been reduced to only</p> <p>3 one open lane in the eastbound direction?</p> <p>4 A. Yes.</p> <p>5 Q. So if you had reviewed the plans and</p> <p>6 specifications prior to June 16 of 2018, would you</p> <p>7 have brought to the attention of the traffic</p> <p>8 control manager the violation of the contract</p> <p>9 provision in terms of open lanes?</p> <p>10 MR. MOORE: Object to the form. Foundation.</p> <p>11 Q. (BY MR. ROBBINS) You can respond.</p> <p>12 MR. MOORE: Same objection.</p> <p>13 Go ahead.</p> <p>14 THE WITNESS: I would have brought it to</p> <p>15 their attention, but I would have also gone to the</p> <p>16 prime contractor and informed him of it also.</p> <p>17 Q. (BY MR. ROBBINS) So, in other words, you</p> <p>18 would have gone to Penhall and Specialty?</p> <p>19 A. Well, I would have gone to the traffic</p> <p>20 control manager for Specialty --</p> <p>21 Q. Yeah.</p> <p>22 A. -- and let them know that I was going to</p> <p>23 the contractor. I would have left it to the</p> <p>24 contractor to make the -- the determination of what</p> <p>25 they were going to do.</p>

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1 **Could you not just look back in the**
 2 **lanes of traffic and see from the work zone that**
 3 **there was a traffic queue that had developed?**
 4 A. No.
 5 **Q. You wouldn't have been able to see that?**
 6 A. No.
 7 **Q. Okay. Let's take a look at June 15.**
 8 **There it says in your standard construction diary,**
 9 **page 391, "The traffic appeared to not have issues**
 10 **and flowed well."**
 11 **Now let's look at page 363, the traffic**
 12 **control maintenance diary. There about midway**
 13 **through -- 363. There it says, "The traffic**
 14 **eastbound was backed up past Locust Grove" --**
 15 MR. MOORE: Clay, Clay, Clay, hold up. He's
 16 trying to find them.
 17 MR. ROBBINS: Oh. 363, about a third of the
 18 way down.
 19 **Q. (BY MR. ROBBINS) It says, "Traffic EB."**
 20 A. It's almost too small of print for me.
 21 I'm sorry.
 22 **Q. Oh, hell, you're younger than me and my**
 23 **eyes can see it with my corrective lenses that need**
 24 **to be corrected again.**
 25 A. Well, that's the problem. I guess if I

Page 100

1 **putting your observations down on your standard**
 2 **construction diaries, though, as a matter of**
 3 **course.**
 4 A. In the location of where the contractor
 5 was working.
 6 **Q. Well, but I think what you told me is**
 7 **that you were identifying the affect of traffic**
 8 **on -- motorist traffic of the TTCs during the**
 9 **course of an evening.**
 10 **Am I incorrect in that understanding of**
 11 **your testimony?**
 12 A. That is incorrect.
 13 **Q. What is incorrect about it?**
 14 A. That my initial marks in my diary are
 15 from when the traffic control is initially put up.
 16 **Q. Right.**
 17 A. The contractor's operation is moving
 18 constantly through that work zone.
 19 **Q. Okay.**
 20 A. I could have been a mile away from where
 21 traffic control was being reduced or whatever.
 22 **Q. Well, traffic control was reducing**
 23 **traffic in the areas that the TTC was in place,**
 24 **right?**
 25 A. Yes.

Page 99

1 take them off --
 2 **Q. Let me read it into the record. I'm**
 3 **sure if some counsel has an issue with it, they'll**
 4 **advise.**
 5 **There it says that, "Anthony left the**
 6 **job site at 11:00. Traffic EB was backed up past**
 7 **Locust Grove and was at a standstill."**
 8 **Again, that is on June 15. Your June 15**
 9 **note basically doesn't say anything about traffic**
 10 **backup, correct? "Traffic appeared to not have**
 11 **issues. Flowed well."**
 12 **How can you reconcile the two**
 13 **observations? One with a -- what I'm told, is**
 14 **almost a two-mile backup from the work zone and**
 15 **yours where it says that there didn't appear to be**
 16 **any issues with traffic, and yet you were both**
 17 **looking at traffic during the course of this**
 18 **project.**
 19 MR. MOORE: Object to the form and
 20 foundation.
 21 THE WITNESS: I --
 22 MR. MOORE: Go ahead, sir.
 23 **Q. (BY MR. ROBBINS) Yep.**
 24 A. I wasn't monitoring traffic, no.
 25 **Q. You were observing traffic and you were**

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1 **Q. Okay. But I thought you had told me**
 2 **before that you were giving impressions of the**
 3 **traffic at various times during the course of the**
 4 **evening, not just at that one time.**
 5 **Am I incorrect on my understanding of**
 6 **what you told me before?**
 7 A. You're not incorrect. I'm giving the
 8 observations of where the contractor was working,
 9 which is -- could be a completely different area in
 10 the project.
 11 **Q. Okay. Well, sir, I appreciate your**
 12 **time. I don't think I have anything else for you.**
 13 MR. ROBBINS: Pass the witness.
 14 MR. MOORE: You're done. Thank you for
 15 coming here today.
 16 THE VIDEOGRAPHER: All right. So this
 17 concludes our video deposition with Blaine
 18 Schwendiman on February 1st, 2021. The time is
 19 3:56 p.m., and we are off the record.
 20
 21 (The videotaped deposition concluded at 3:56 p.m.)
 22 ***
 23 (Signature was requested.)
 24
 25

1 VERIFICATION
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)

6 I, BLAINE SCHWENDIMAN, being first duly sworn
 7 on my oath, depose and say:
 8 That I am the witness named in the foregoing
 9 deposition taken the 1st day of February, 2021,
 10 consisting of pages numbered 1 to 101, inclusive; that
 11 I have read the said deposition and know the contents
 12 thereof; that the questions contained therein were
 13 propounded to me; that the answers to said questions
 14 were given by me, and that the answers as contained
 15 therein (or as corrected by me therein) are true and
 16 correct.

17 Corrections Made: Yes _____ No _____
 18

19 _____
 20 BLAINE SCHWENDIMAN

21 Subscribed and sworn to before me this _____
 22 day of _____, 2021, at _____, Idaho.

23 _____
 24 Notary Public for Idaho
 25 Residing at _____, Idaho
 My Commission Expires: _____.

1 REPORTER'S CERTIFICATE
 2
 3 STATE OF IDAHO)
 4) ss.
 5 COUNTY OF ADA)

6 I, ANDREA J. WECKER, Certified Shorthand Reporter
 7 and Notary Public in and for the State of Idaho, do hereby
 8 certify:

9 That prior to being examined, the witness named in
 10 the foregoing deposition was by me duly sworn to testify
 11 to the truth, the whole truth and nothing but the truth;

12 That said deposition was taken down by me in
 13 shorthand at the time and place therein named and
 14 thereafter reduced to typewriting under my direction, and
 15 that the foregoing transcript contains a full, true
 16 and verbatim record of said deposition.

17 I further certify that I have no interest in the
 18 event of the action.

19 WITNESS my hand and seal this 6th day of February,
 20 2021.

Andrea J. Wecker



21
 22 ANDREA J. WECKER
 23 CSR, RDR, CRR, CRC and Notary
 24 Public in and for the
 25 State of Idaho.

My Commission Expires: 02-14-23

EXHIBIT 31

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF CHAD LAUGHLIN

April 20, 2021

Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 22

1 Q. All right. Had you been involved in the
 2 staging of that equipment, as you call it, on any
 3 of the days prior to June 16, 2018?
 4 A. No.
 5 Q. Okay. And when you say that you were
 6 involved in standing up the equipment on June 16,
 7 2018, is that the movable signs?
 8 A. Yes.
 9 Q. Okay. What is involved in standing the
 10 equipment up when we're talking about movable
 11 signs?
 12 A. They come on a four-legged -- called a
 13 buster.
 14 Q. Uh-huh.
 15 A. They have springs on them. The legs
 16 fold up and down.
 17 Q. Okay.
 18 A. We can lay them down on the side of the
 19 road so they lay flat for when they're not in use,
 20 and then when we put up the signs for the lane
 21 closures, we just stand them up, fold the legs
 22 down, and they --
 23 Q. Were you involved in the placement of
 24 the signs that advised the number of lanes that
 25 were closed in the eastbound direction of I-84 on

Page 24

1 Q. Okay. On June 16, 2018, do you recall
 2 being requested to drive through with a frequency
 3 greater than every hour?
 4 A. No.
 5 Q. Okay. Do you recall being told on --
 6 Strike that.
 7 You were out at the project on June 14,
 8 2018? Do you recall that?
 9 A. I don't.
 10 Q. Okay. Do you recall at any time on
 11 June 16, 2018, observing the effect on traffic
 12 conditions that the traffic control devices that
 13 were placed had on that evening?
 14 A. Yes.
 15 Q. Okay. Did you observe the backup of
 16 traffic or the formation of a traffic queue on
 17 June 16?
 18 A. I did.
 19 Q. And do you recall how far back that
 20 traffic queue extended on the occasion when you
 21 observed it?
 22 A. I couldn't give exact distance, but it
 23 was backed up a few hundred feet.
 24 Q. Okay. There has been some information
 25 that has been provided through the NTSB that

Page 23

1 June 16?
 2 A. I did not actually stage any, but I did
 3 stand them up, and they did read the amount of
 4 lanes that were closed.
 5 Q. Do you recall how many lanes those signs
 6 read that were being closed?
 7 A. I don't remember.
 8 Q. All right. Can I prompt you, was it
 9 anything more than two lanes closed?
 10 A. I can't --
 11 I don't know.
 12 Q. Okay. All right.
 13 Once the traffic control devices were
 14 set up on June 16, 2018, were you involved in
 15 monitoring the effect those devices had on traffic
 16 traveling through the advanced warning area and
 17 into the construction zone?
 18 A. Yes.
 19 Q. Okay. What was your involvement in that
 20 regard?
 21 A. My involvement is called maintenance.
 22 We just kind of drive through every hour or so, and
 23 if there's anything laying down or in the road or
 24 knocked over, we just pick it up and put it back
 25 where it belongs.

Page 25

1 traffic on I-84 eastbound from the work zone
 2 through the advanced warning area extended
 3 approximately a mile and a quarter.
 4 Do you recall having seen traffic extend
 5 approximately a mile and a quarter at any time that
 6 evening?
 7 A. Not that far, no.
 8 Q. Okay. Did you ever see traffic extend
 9 to South Cloverdale Road that evening?
 10 A. Maybe not quite to Cloverdale.
 11 Q. Okay. Were you present on site when the
 12 accident actually happened?
 13 A. I was on the project. I was not
 14 actually at that site.
 15 Q. Where were you --
 16 A. I was --
 17 Q. -- when the accident happened, if you --
 18 A. I was on the westbound side.
 19 Q. Okay. What were you doing on the
 20 westbound side, if you recall?
 21 A. Zach -- another guy and I, myself, were
 22 holding -- we were making sure that --
 23 The accident had already happened.
 24 Mason took off. He told us to stay down at that
 25 other end on westbound and make sure people didn't

Page 30

1 A. That's -- I had no involvement in
 2 putting them there --
 3 Q. Okay.
 4 A. -- as far as staged.
 5 Q. All right. Did you hear any explanation
 6 of why the decision was made to reduce four open
 7 lanes to a single open lane?
 8 A. No.
 9 Q. Okay. Did you hear anyone associated
 10 with Specialty complain about the decision to close
 11 four open lanes of traffic to a single open lane?
 12 A. No.
 13 Q. Did you have any contact with the
 14 Penhall superintendent for the project, Bruce Kidd?
 15 A. No.
 16 Q. After the accident happened, are you
 17 aware of any changes that were implemented by
 18 Specialty in terms of the decision to reduce four
 19 lanes to a single lane?
 20 A. No.
 21 Q. Okay. Are you aware of any changes that
 22 were implemented by Specialty after the June 16,
 23 2018, accident with regard to their handling of the
 24 temporary traffic control aspects of the project?
 25 A. No.

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1 MR. ORLER: Mark Orler, no questions. Thank
 2 you.
 3 MR. FISHER: Steven Fisher, no questions.
 4 Thank you.
 5 MR. WETHERELL: Johnny Wetherell, no
 6 questions. Thank you.
 7 MR. MONTGOMERY: Gary Montgomery, no
 8 questions. Appreciate your time.
 9 THE VIDEOGRAPHER: This concludes the
 10 deposition of Chad Laughlin, and the time is
 11 2:32 p.m. We are off the record.
 12
 13 (The videotaped deposition concluded at 2:32 p.m.)
 14 * * *
 15 (Signature was requested.)
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 31

1 Q. Okay. After the June 16, 2018,
 2 accident, did you attend any meetings held by
 3 Specialty in which the accident was discussed?
 4 A. No.
 5 Q. Did you attend any meetings that were
 6 attended by representatives of IDT and Penhall
 7 during which the accident was discussed?
 8 A. No.
 9 MR. ROBBINS: Okay. All right.
 10 Well, Mr. Laughlin, I thank you for your
 11 time. I don't think I have any other questions for
 12 you. Thanks.
 13 MR. MOORE: No questions.
 14 MR. MORTIMER: I'm going to regret this, but
 15 I have no questions.
 16 MR. ROBBINS: We're up to the board.
 17 MR. MONTELEONE: This is Jason Monteleone. I
 18 don't have any questions for this witness.
 19 Thank you for your time, Mr. Laughlin.
 20 It's appreciated.
 21 THE WITNESS: You're welcome.
 22 MR. BOTTARI: Jake Bottari on behalf of
 23 Penhall. No questions.
 24 MR. GALE: Eric Gale on behalf of Albertsons.
 25 I have no questions. Thank you.

Page 33

1 VERIFICATION
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)
 6
 7 I, CHAD LAUGHLIN, being first duly sworn on my
 8 oath, depose and say:
 9 That I am the witness named in the foregoing
 10 videotaped deposition taken the 20th day of April, 2021,
 11 consisting of pages numbered 1 to 32, inclusive; that
 12 I have read the said deposition and know the contents
 13 thereof; that the questions contained therein were
 14 propounded to me; that the answers to said questions
 15 were given by me, and that the answers as contained
 16 therein (or as corrected by me therein) are true and
 17 correct.
 18
 19 Corrections Made: Yes _____ No _____
 20
 21 _____
 22 CHAD LAUGHLIN
 23
 24 Subscribed and sworn to before me this _____
 25 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____.

1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

5 I, ANDREA J. WECKER, Certified Shorthand Reporter
6 and Notary Public in and for the State of Idaho, do hereby
7 certify:

8 That prior to being examined, the witness named in
9 the foregoing deposition was by me duly sworn to testify
10 to the truth, the whole truth and nothing but the truth;

11 That said deposition was taken down by me in
12 shorthand at the time and place therein named and
13 thereafter reduced to typewriting under my direction,
14 and that the foregoing transcript contains a full, true
15 and verbatim record of said deposition.

16 I further certify that I have no interest in the
17 event of the action.

18 WITNESS my hand and seal this 30th day of April,
19 2021.

Andrea J. Wecker



22 ANDREA J. WECKER
23 CSR, RDR, CRR, CRC and Notary
24 Public in and for the
25 State of Idaho.

24 My Commission Expires: 02-14-23

EXHIBIT 32

Daniel Worth

From: Daniel Kircher <dkircher@specialtysupply.com>
Sent: Tuesday, May 23, 2017 10:45 AM
To: Daniel Kircher
Subject: : I-84, Five Mile to Orchard

ALSO – My quote states it, but I want to make sure its clear: we do not provide any striping layout. Our quote doesn't include the flexible chip seal markers, but we can install them if needed at the price I included.

Please let me know if you have any questions. Thanks,

DK

From: Daniel Kircher
Sent: Tuesday, May 23, 2017 9:14 AM
To: Forrest Moranda <fmoranda@specialtysupply.com>
Subject: I-84, Five Mile to Orchard

Notes for attached bid:

- We are anticipating using the traffic control plans provided in the bid; if the Prime Contractor would like to revise the staging & phasing plans, an Engineers services would need to be retained.
- Specialty Construction does not have any attenuator trucks available as of now for this summer; however, we are looking at several nearby and are eager to help the Prime Contractor fill the need for this item.
 - If Specialty were to provide a full-time driver for each attenuator truck, figure \$60/hourly for each driver, plus truck rental fees.
- Specialty Construction will have around 4-6 Light Towers available to rent. Monthly price is \$700/each, plus fuel.

Please let me know if you have any other questions. Thank you,

Daniel Kircher
Traffic Control Administrator
Specialty Construction Supply
208.322.6800 phone
208.322.2636 fax
208.573.2682 mobile

EXHIBIT 33

From: Eric Blackburn

Sent: Thursday, July 13, 2017 8:17 PM

To: Vincent Coletta <vcoletta@penhall.com>

Cc: Henry Sullivan <hsullivan@penhall.com>; Casey Holloway <Cholloway@penhall.com>; Todd Beatty <tbeatty@penhall.com>; Simmitt Bankston <sbankston@penhall.com>

Subject: Re: idaho 570140 project

Shields,

I suggest forwarding the Precon invite to the subs. Mainly the TC guy. There are a few areas of the project, (because of the ramps) we will have traffic on both sides of the crew. It's important to get their input and proposal around this risk; which will mean a submittal of a new MOT plan beyond what is in the project drawings that will need to be approved. If nothing else gets submitted, we are obligated to follow what the state has provided.

Eric Blackburn

Sr. Project Manager

Office: 801-355-7364 Ext. 3910

Mobile: 801-330-3982

Salt Lake City/San Leandro 601

On Jul 12, 2017, at 1:49 PM, Vincent Coletta <vcoletta@penhall.com> wrote:

Shields,

We're not ready to have the preconstruction meeting next week. Please push this out a week. Eric and I will attend with you. Develop a list of submittals required for the preconstruction meeting prior to the end of week, and distribute that list in a reply to all of this email.

Thank you.

Vincent Coletta

Sr. Project Manager

Office: 510-357-8810 Ext. 3210

Mobile: 817-975-2905

San Leandro

EXHIBIT 34

PRECONSTRUCTION CONFERENCE AGENDA

July 26, 2017
ITD District 3

I-84, FIVE MILE TO ORCHARD RD & RAMPS

PROJECT #: A019(289)

KEY #: 19289 CONTRACT #: 8217

PRIME CONTRACTOR: Penhall Company
RESIDENT ENGINEER: Bryon Breen, P.E.

INTRODUCTION OF CONFERENCE PARTICIPANTS

Sign-in sheet, Meeting to be recorded

Idaho Transportation Department Project Personnel		Office	Cell
Bryon Breen	Resident Engineer	[REDACTED]	[REDACTED]
Dave Statkus	Project Coordinator	2 [REDACTED]	[REDACTED]
Jim Hoffecker	Residency 2 Transportation Staff	[REDACTED]	[REDACTED]
Steve Erichson	Project Lead Inspector	[REDACTED]	[REDACTED]
Alicia Harry	Office Administrator	[REDACTED]	[REDACTED]

Penhall Contractors Project Personnel

Henry "Shields" Sullivan	Project Manager	[REDACTED]	[REDACTED]
-----------------------------	-----------------	------------	------------

PROJECT EXPLANATION

Designer of the project is: Idaho Transportation Department.

ITD Residency 2 will be administering the project. All project correspondence shall be directed to the Resident 2 Engineer:

Bryon Breen, PE
Residency 2 Engineer
P.O. Box 8028
Boise, Idaho 83707-2028

E-mailed correspondence will be treated as official project documents and will be scanned and filed in project files.

PRECONSTRUCTION CONFERENCE AGENDA

Location: I-84, FIVE MILE TO ORCHARD RD & RAMPS, BOISE

Project: A019(289) Key: 19289

CONTRACT TIME

Date of award: June 20, 2017

Completion Date: October, 2017

The amount of Liquidated Damages for failure to complete the work on time on this project will be \$1,600.00 per day.

Limitation of Operations & Work Restrictions: All work shall be completed within 75 calendar days, once construction has begun.

PRIME CONTRACTOR PROJECT PERSONNEL AND SUB-CONTRACTORS

Contractor representatives to sign progress estimates and change orders: _____

Progress Estimates and Change Orders: _____

Cut-off date for progress estimates will be: _____

PROJECT SCHEDULE/CONTRACTOR'S ANTICIPATED OPERATION

Open for discussion.

COORDINATION OF UTILITIES

N/A

REQUEST TO SUBCONTRACT

Subsection 108.01-Subletting of Contract

- Submit form ITD-315 (Rev 03/12), Request to Subcontract, and the original Subcontract Agreement for approval by the Resident Engineer. Include EEO documentation as required. Both documents must be **approved** before the Subcontractor starts work.
- All contractors, first and lower tier subcontractors and suppliers must register annually on the ITD Bidders List and must have a current Idaho Public Works license.

TRAFFIC CONTROL

The Traffic Control Company on the project is: _____ .

The Contractor's ATSSA certified Worksite Traffic Control Supervisor for the project is:

Name

Number

24 Hour Traffic Control Contact:

TRAFFIC CONTROL ITEMS TO BE AWARE OF.

EXHIBIT 35

Tammy Wilson

From: Daniel Kircher <Daniel@specialtysupply.com>
Sent: Friday, August 11, 2017 12:29 PM
To: Vincent Coletta
Subject: Emailing: KN 19289 Traffic Control Submittals
Attachments: KN 19289 Traffic Control Submittals.pdf

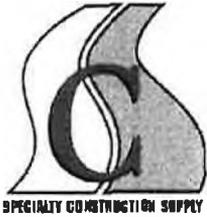
Here are the rest of the submittals. I'm assuming you've already submitted to use the existing traffic control plans from the bid documents?

Your message is ready to be sent with the following file or link attachments:

KN 19289 Traffic Control Submittals

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

**SPECIALTY
CONSTRUCTION
SUPPLY**



Meridian Office:
348 NW 13th Place
Meridian, ID 83642

Phone (208) 322-6800
Fax (208) 322-2636

Idaho Falls Office:
4390 N Yellowstone Hwy
Suite # 1
Idaho Falls, ID 83401

Phone (208) 522-3242
Fax (208) 522-4012

Toll Free 888-574-7732

www.specialtysupply.com

**"Your Safety Is Our
Specialty"**

DATE: 8/11/2017
TO: Penhall Company
ATTENTION: Vincent Coletta
FROM: Daniel Kircher
RE: I-84, Five Mile to Orchard Rd
Traffic Control 24-hour Contact
Traffic Control Supervisor (TCS)
PROJECT NO. A019(289)
KEY NO. 19289
REQUISITION NO. N/A

For this project, Specialty Construction has the following contacts:

24 Hour/Emergency Contact:

Jeremy Hopkins	(mobile)	208.284.5739
Daniel Kircher	(mobile)	208.573.2682

Traffic Control Supervisor/Manager (TCM):

Joshua Roper (TCM)	(mobile)	208.941.6016
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Please let me know if you have any questions.

Thank you,

Daniel Kircher
Traffic Control Administrator
Specialty Construction Supply

EXHIBIT 36

Tammy Wilson

From: Daniel Kircher <Daniel@specialtysupply.com>
Sent: Thursday, August 17, 2017 10:45 AM
To: Steve.Erichson@itd.idaho.gov
Cc: Vincent Coletta
Subject: KN 19289 Traffic Control

Morning Steve,

I would like to formally request an adjustment to the traffic control plan, in order to facilitate a more streamlined operation nightly on this project. The traffic control plans for this project (sheet 12 of 47, for example) show that tubular markers in tangents will be spaced at 55'. I would like to request that this spacing be extended to 110', which is MUTCD standard for lane closure tangents. We believe this will not reduce the safety of the project or the workers, who are protected by Truck Mounted Attenuators, and this will shorten our setup time and allow us to more effectively set up, tear down, and manipulate the lane closures for Penhall. There is precedent for this 110' spacing from all previous concrete grind projects I have ever performed. Currently we are working on a concrete grind in District 4 (KN 19185 & 19348) in which the speed limit is reduced to only 70MPH, and there is a TMA on site, and the spacing for portable tubular markers in tangents is still 2x times the speed limit in feet. Also, KN 13057 Meridian to Five Mile was a concrete grind on the same four-lane expressway, and the tubular marker tangent spacing was also 2x times the speed limit in feet as well. Since our speed is reduced to 55MPH on this project, 110' spacing for tangents is within MUTCD guidelines, as well as a normal and accepted construction practice.

If you have any questions, please feel free to call. Thank you,

Daniel Kircher
Traffic Control Administrator
Specialty Construction Supply
208.322.6800 phone
208.322.2636 fax
208.573.2682 mobile

EXHIBIT 37

Standard Construction Diary



Key Number 19289	Date 06/02/2018	Inspector's Name (Initial if Filling Out Electronically) Blaine Schwendiman
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Page 1 of 1

Notes

Contractor (Penhall) was at AD-111s at 8PM getting ready for the nights operation. Verified that the nights operation was to remove joint material from Lanes 2, 3, & 4 and ramps 50B and 50A. TTC was in place at 10PM. Contractor Equipment: 2-Truck Mounted Attenuators(TMA), 5-Self Propelled Saws, 1-Light Plant, 4 Pickup Trucks, 1-Porta Potty, 1 Self Propelled Broom, 1-6 Wheeled Dump Truck, 2-Service Trucks. Approximately 20 employees on site. Drove through the project to verify the TTC was correct and appeared to be set properly. At the initial TTC lane merges the traffic slowed but maintained moving consistantly. Traffic reduced later (approximately 11:30PM) and flowed without interruption. A spawled area was identified near the taper of the off ramp (50B). Spoke with Penhall who suggested filling with epoxy. I told him that I would need to have a conversation with the engineer to determine acceptability. Off-Ramp 50B was closed at 2:15AM and reopened at 3:00AM. Off-Ramp 50A closed at 3:00AM. Traffic was light and the exit did not get reopened timely. I spoke with the contractor to get the exit opened. He communicated to the crew the need for this ramp to get reopened. The ramp was opened shortly after at 5:45AM. Counted the number of transversers joint to be 541 total. Contractor stopped working at approximately 6:30AM and equipment off project at 7:15AM. Traffic control removed and lanes open at 9AM.

Weather Conditions and Temperatures Clear, Warm		Time Contractor Started Work 10PM	Time Contractor Stopped Work 7:15AM
Contractor Panhall Company		Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 06/02/2018 - Saturday
Inspector's Signature		Reviewer's Signature	
Project Number ^019(289)	Project Location I-84, Five Mile to Orchard & Ramps, Boise	Key Number 19289	Diary Number 3

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Standard Construction Diary



Key Number 19289	Date 06/08/2018	Inspector's Name (Initial if Filling Out Electronically) Blaine Schwendiman
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Page 1 of 1

Notes

Arrived at AD-111s at 9:00PM. The contractor (Penhall) was getting ready for the nights operation. Verified that the nights operation was to finish the joint seal for Lane 1 WB. TTC was in place at 10PM. Contractor Equipment: 2-Truck Mounted Attenuators(TMA), 2-Hot Pots with sealant material, 1-Light Plant, 4 Pickup Trucks, 1-Porta Potty, 1-6 Wheeled Dump Truck with a trailer hauling solid sealant material, 2-Service Trucks and a diesel powered air compressor. Approximately 22 employees on site. Drove through the project to verify the TTC was correct and appeared to be set properly. Traffic flowed without interruption. Identified to the contractor (Bob) that the backer rod in some areas was at the top of the joint. He stated that this was not the correct way for it to be installed and corrected the issue. Identified to the contractor (Bruce) an area that the compression seal had not been removed and a spawl area that had not had the joint cut. Contractor used a hand held power saw to cut the joints clean and installed backer rod as required. Counted the transvers joints to be 7,884 feet in length. The logitudinal joints measured for length of 18,708 feet in length. The total joint length sealed is 25,592 feet. The contractor informed me that they had stated previously that they plan to close the Milwaukee Ramp on Tuesday Night. I told him that I would inform the engineer. Contractor stopped working at approximately 5:00AM and equipment off project at 5:45AM. Traffic control removal was not to begin until 6:15AM. This being due to the contractor having concerns for the sealant getting pulled up from the joint by traffic.

Weather Conditions and Temperatures Clear, Warm		Time Contractor Started Work 10:00PM	Time Contractor Stopped Work 5:40AM
Contractor Panhall Company	Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 06/08/2018-Friday	
Inspector's Signature	Reviewer's Signature		
Project Number A019(289)	Project Location I-84, Five Mile to Orchard & Ramps, Boise	Key Number 19289	Diary Number 8

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Standard Construction Diary



Key Number 19289	Date 06/10/2018	Inspector's Name (Initial if Filling Out Electronically) Blaine Schwendiman
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Page 1 of 1

Notes

Arrived at AD-111s at 9:30PM. The contractor (Penhall) was getting ready for the nights operation. Verified that the nights operation was to start the joint seal for Lane 2,3,&4 WB. TTC was in place at 10PM. Contractor Equipment: 2-Truck Mounted Attenuators(TMA), 2-Hot Pots with sealant material, 1-Light Plant, 4 Pickup Trucks, 1-Porta Potty, 1-6 Wheeled Dump Truck with a trailer hauling solid sealant material, 2-Service Trucks and a diesel powered air compressor. Approximately 22 employees on site. Drove through the project to verify the TTC was correct and appeared to be set properly. Traffic flowed without interruption. Verified each joint that it was clear of rocks and debris. Identified to the contractor (Bruce) some areas that the joint had not been sawed and existing seal material removed. Contractor used a hand held power saw to cut the joints clean and installed backer rod as required. Counted the transvers joints to be 10,866 feet in length. The logitudinal joints measured for length of 13,530 feet in length. The total joint length sealed is 24,396 feet. Contractor stopped work at approximately 3:30AM and equipment off project at 3:45AM. Traffic control removal begin until 3:30AM.

Weather Conditions and Temperatures Cloudy, Cool; 55 Degrees		Time Contractor Started Work	Time Contractor Stopped Work
Contractor Panhall Company		Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 06/10/2018-Sunday
Inspector's Signature		Reviewer's Signature	
Project Number A019(289)	Project Location I-84, Five Mile to Orchard & Ramps, Boise	Key Number 19289	Diary Number 10

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Standard Construction Diary



Key Number 19289	Date 06/14/2018	Inspector's Name (Initial if Filling Out Electronically) Blaine Schwendiman
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Page 1 of 1

Notes

I did not work 06/12-13/18.

Arrived at AD-111s at 9:00PM. I introduced myself to the contractor (Diamond Drilling & Sawing Company) which was getting ready for the nights operation. Diamond Drilling & Sawing Company is a subcontractor to Penhall. Jon Mensinger will be covering work by Penhall. TTC was in place at 10PM. Drove through the EB TTC and verified it appeared to be in place correctly. 3 lanes closed for the nights operation. 3-Arrow Boards in place 10PM-4:30AM.

Contractor Equipment: 1-Truck Mounted Attenuators(TMA)-Penhall truck & operator, 2-Saws, 1-Light Plant, 4 Pickup Trucks, 1-Rented Dump Trailer, 1-Self Propelled Broom, 1-Flat bed trailer to haul the saws. Approximately 12 employees on site. Traffic had issues the first few hours of the lane closures. Appears to be a merge hesitation. At around 12:00 AM traffic volumes reduced and flowed without interruption. The Contractor began removal of compression seal at the West end of the project in the Eastbound I84 lanes working to the east. Unable to verify but the TTC was modified to open the 184 lanes to downtown when the contractor was complete with work in that area. 1 arrow board was no longer needed. Counted the transverse joints to be 10,584 feet in length. The longitudinal joints measured for length of 15,018 feet in length. The total joint length of compression sealed removed is 25,602 feet.

Contractor stopped work at approximately 3:30AM and equipment off project at 4:00AM. Traffic control removal begin at 4:00AM.

Weather Conditions and Temperatures Cloudy, Warm		Time Contractor Started Work 10PM	Time Contractor Stopped Work 4AM
Contractor Penhall/Diamond Drilling & Sawing Company		Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 06/14/2018-Thursday
Inspector's Signature		Reviewer's Signature	
Project Number ^019(289)	Project Location I-84, Five Mile to Orchard & Ramps, Boise	Key Number 19289	Diary Number 12

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Standard Construction Diary



Key Number 19289	Date 6/14/18	Inspector's Name (Initial if Filling Out Electronically) Jon Mensinger
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Page 1 of 1

Notes

Penhall gathered at the staging area around 8:00 pm. They saw cut the I-184 on ramp going to Nampa. At the start of the concrete, Sta 0+00 to the end of this ramp will be sta 43+22. That right hand side longitudinal joint is 4300' long. From the gore, sta 14+85 to sta 43+22 there are 188 ea 12' transverse joints, which equals 2256'. From the gore, sta 14+85 to sta 43+22 the left hand longitudinal joint is 2837' long. At sta 0+00 the center lane of the flyover, to sta 6+25 there are 41 ea 24' transverse joints for 984'. In this same stretch there are 2 longitudinal joints which total 1250'. From sta 6+25 to sta 14+85 there are 58 ea 36' long transverse joints for 2088'. From sta 6+ 25 to sta 14+85 there are two longitudinal joints that are 860' long for a total of 1720'. From sta 14+85 to sta 24+58 there are 63 ea 24' transvers joints for 1512'. In this stretch from sta 14+85 to the flyover bridge there are 2 longitudinal joint that are 973' long for a total of 1946'. All these saw cut joints will total 18,893' of sealant to be put back in. Penhall had 20 people plus 2 supervisors. Diamond Drilling started on the east side of I-84 at mp 48.418 or sta 0+00. Diamond had 10 people plus 1 supervisor.

Weather Conditions and Temperatures Partly Cloudy 48*-75*		Time Contractor Started Work 8:00 pm	Time Contractor Stopped Work 5:00 am
Contractor Penhall Co.		Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 6/14/18
Inspector's Signature		Reviewer's Signature	
Project Number ^019(289)	Project Location I-84, Five Mile to Orchard & Ramps, Boise	Key Number 19289	Diary Number 9

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Standard Construction Diary



Key Number 19289	Date 06/15/2018	Inspector's Name (Initial if Filling Out Electronically) Blaine Schwendiman
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Page 1 of 1

Notes

Arrived at AD-111s at 9:30PM. Contractors preparing for the nights operation. Penhall & Diamond. Penhall is going to seal the 2 lanes of 184 to flyover structure and the Milwaukee on ramp lanes to the WB mainline at the Maple Grove Structure. Diamond Drilling & Sawing Company is a subcontractor to Penhall. They plan to continue sealant removal to the end of project, EB left two lanes, Lane 1 & 2. Lane closure was after the 184 to downtown exit. TTC was in place at 10PM. Drove through the TTC and verified it appeared to be in place correctly. 2 EB lanes closed for the nights operation. 2-Arrow Boards in place 10PM-5:30AM. Diamond Equipment: 1-Truck Mounted Attenuators(TMA)-Penhall truck & operator, 2-Saws, 1-Light Plant, 4 Pickup Trucks, 1-Rented Dump Trailer, 1-Self Propelled Broom, 1-Flat bed trailer to haul the saws. Diamond had 12 employees on site. Traffic appeared to not have issues, flowed well. The Contractor began removal of sealant material from the point ended the previous night of the Eastbound 184 lanes. Contractor stopped work at approximately 5:00AM and equipment off project at 5:17AM. Traffic control removal begin at 5:30AM.

Penhall began work at 10:30PM. Drove through the TTC which appeared to be installed correctly. Penhall equipment: 1-TMA, 2-Hot pots with sealant material, 1-Light Plant, 4-pickups, 1-porta potty, 1-6 wheeled dump truck with trailer loaded with sealant material, 2-service vehicles and a diesel powered air compressor. Penhall had 22 people on site working. Penhall completed work and was off the project at 2:30AM. Penhall informed me they plan to do joint material removal of Cole to Franklin Ramp, 184 EB to Franklin, Cole to 184 Downtown, and Exit49 (84 WB) to 184/Franklin on Saturday night. Contractor off project at 2:30AM. TTC removed after that.

Penhall sealed a total transverse joints of 5,411 Ft and a total longitudinal joints of 11,977 Ft for a total length sealed of 17,388 Ft.

Weather Conditions and Temperatures Clear, Warm; 70/53		Time Contractor Started Work 10:30/10PM	Time Contractor Stopped Work 2:30/4AM
Contractor Penhall/Diamond Drilling & Sawing Company		Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 06/15/2018-Friday
Inspector's Signature		Reviewer's Signature	
Project Number A019(289)	Project Location I-84, Five Mile to Orchard & Ramps, Boise	Key Number 19289	Diary Number 13

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Standard Construction Diary



Key Number 19289	Date 06/16/2018	Inspector's Name (Initial if Filling Out Electronically) Blaine Schwendiman
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Page 1 of 2

Notes

Arrived at AD-111s at 9:00PM. Contractors preparing for the nights operation, Penhall & Diamond. Diamond Drilling & Sawing Company is a subcontractor to Penhall. Penhall is going to remove sealant on the the following ramps & lanes; Cole to Franklin Ramp, 184 EB to Franklin, Cole to 184 Downtown, and 84 WB to 184/Franklin.

TTC setup began at 9:30.

Diamond requested to just blow out the joints and not sandblast. Confirmed with Penhall and Diamond that there are concerns that the sealant may not adhere to the joint. Diamond accepts that if sealant comes out they will clean and reseal the joints. Penhall is to obtain the test method for sealant adhesion. Monday we will identify some random locations to test the sealant adhesion.

Diamond headed out to the project at 10:08PM. Equipment is 4-pickups, 1-Izusu truck with compressor, 2-hot pots with sealant, 1-dump trailer with sealant material and 1-TMA, Penhall Truck with driver. Diamond had 12 people on site. TTC was in place at 10PM. Drove through the TTC and it appeared to be setup correctly. 3 arrowboards used for lane closures. Traffic had issues with the lane closure merges, backing traffic up. moving slow with a lot of stop and go happening. Diamond began applying joint sealant at the project beginning, EB left two lanes, Lane 1 & 2.

was reviewing the joint sealant operation with Diamond to verify acceptability. Work appeared to be good and within acceptable tolerance. At approximately 11:30, I the contractor foreman and employee when reviewing the sealed joints heard what sounded like a gun shot. While trying to determine the cause we noticed flames to the West of us on the interstate. I drove to the beginning of the operations lane closures to verify the fires location. It appeared to be located under the Cloverdale underpass. The Boise Police had setup a road closure for WB traffic near the beginning of the lane closure EB. I spoke with an Boise Police Officer who stated that a semi had drove into several vehicles and the fuel tanks ruptured and caught on fire. WB traffic was moving again at 12AM but then was stopped at 12:15AM. The contractor ask if they should keep working. I informed them to keep the operation going and would notify them if that changed. At approximately 1:55AM 3 large tow trucks headed west in the EB open lane swerved into the work zone and drove to the accident site. Diamond continued working until rain started falling which shut the sealing operation down. Contractor stopped work at approximately 6:00AM and equipment off project. Traffic control removal begin at 6:30AM. Contractor sealed as follows:

Transverse Joints: 23X12=276, 67X24=1608, 67X36=2412, 39X48=1872, 4X36=144, 32X12=384, 185X24=4440;

Totaling 11,136 Ft

Longitudinal Joints: 348X2+15=711, 1000X3=3000, 1533X4=6132, 120X3=360, 2558X2+60+467=5643;

Totaling 15,846 Ft ; Total joints sealed = 11,136+15,846 = 26,982 Ft.

Standard Construction Diary



Reply # 27-008200-1

Diary Number	Date	Inspector's Name (Initial if Filling Out Electronically)
19289	06/16/2018	Blaine Schwendiman

Page 1 of 2

Penhall began work at 10:15PM. Drove through the TTC which appeared to be installed correctly. 1 Arrowboard being used for the ramp closure 84WB to 184 downtown. Penhall equipment: 1-TMA, 4-self propelled saws. 1-Light Plant, 4-pickups, 1-porta potty, 1-6 wheeled dump truck, 1-self propoeled broom, 2-service vehicles. Penhall had 22 people on site working. Penhall completed work and was off the project at 6:30AM.

Weather Conditions and Temperatures Cloudy, Cool; 69/58		Time Contractor Started Work 10:15/10:08PM	Time Contractor Stopped Work 6:30/6:00AM
Contractor Penhall/Diamond Drilling & Sawing Company		Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 06/16/2018-Saturday
Inspector's Signature		Reviewer's Signature	
Project Number A019(289)	Project Location I-84, Five Mile to Orchard & Ramps, Boise	Key Number 19289	Diary Number 14

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Standard Construction Diary



Key Number 19289	Date 06/18/2018	Inspector's Name (Initial if Filling Out Electronically) Blaine Schwendiman
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Page 1 of 1

Notes

No work 06/17/2018 - Sunday

Arrived at AD-111s at 9:30PM. Contractors preparing for the nights operation, Penhall & Diamond. Diamond Drilling & Sawing Company is a subcontractor to Penhall. Penhall is going to place sealant on the the following lanes; 184 EB to EB 84. 2 lanes sealed.

TTC setup began at 9:30.

Penhall began work at 10:30PM. Drove through the TTC which appeared to be installed correctly. 2 Arrowboards being used for the lane closures. Penhall equipment: 1-TMA, 5-self propelled saws. 1-Light Plant, 4-pickups, 1-porta potty, 1-6 wheeled dump truck, 1-self propoeled broom, 2-service vehicles. Penhall had 22 people on site working. Met with Penhall on the roadway to determine the correct location for the removal of existing sealant. We determined that the 184WB to 84WB 2 lanes had not been ground. With review of the plans it was determined that the start location of this work is to begin at 184EB to 84EB, Flyover, left lane. This required modification of the TTC, which transitioned traffic 184 outbound to be shifted onto the Milwaukee On-Ramp. A lane closure was required on Milwaukee and a left turn lane at Franklin/Milwaukee. Penhall completed work and was off the project at 3:15AM.

Diamond headed out to the project at 10:00PM. Equipment is 4-pickups, 1-Broom, 4-Saws, 2-trailers for hauling saws, 1-Light plant, 1-porta potty, 1-dump trailer and 1-TMA, Penhall Truck with driver. Diamond had 13 people on site. TTC was in place at 10PM. Drove through the TTC and it appeared to be setup correctly. 2 arrowboards used for lane closures. Diamond began removal of existing joint sealant at the beginning of project, EB right two lanes, Lane 3 & 4. Met with Contractor (Diamond) who had questions on if the 84EB off ramp to exit 50A & 50B was to have the sealant removed. After reviewing the ramp and identifying that it had not been ground, I notified them to not remove the sealant on this ramp. Diamond coordinated with Penhall to have the traffic control extended across the 184EB flyover and removed the existing sealant from the inside 2 lanes. Contractor stopped work at approximately 3:00AM and eqipment off project. Traffic control removal begin at 4:10AM.

Weather Conditions and Temperatures Cloudy, Cool;		Time Contractor Started Work 10:00/10:10PM	Time Contractor Stopped Work 3:15/4:00AM
Contractor Penhall/Diamond Drilling & Sawing Company		Chargeable Days <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date and Day of Week 06/18/2018-Monday
Inspector's Signature		Reviewer's Signature	

Standard Construction Diary



Key Number	Date	Inspector's Name (Initial if Filling Out Electronically)
19289	06/18/2018	Blaine Schwendiman

Page 1 of 1

Project Number	Project Location	Key Number	Diary Number
A019(289)	I-84, Five Mile to Orchard & Ramps, Boise	19289	15

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EXHIBIT 38

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

LAWRENCE MANLAPIT, JR.,)	
individually as father of)	
LAWRENCE P. MANLAPIT, III,	)	Lead Case No.
DECEASED,	)	CV01-2019-06625
)	
Plaintiff,	)	Consolidated with Case Nos.
	)	CV01-2019-23246
vs.	)	CV01-2020-00653
	)	CV01-2020-02624
KRUJEX FREIGHT TRANSPORT	)	CV01-2020-07803
CORP.; KRUJEX TRANSPORT CORP.)	)	CV01-2020-08172
KRUJEX TRANSPORT SYSTEMS, LLC))	
KRUJEX LOGISTICS INC.;)	
ALBERTSON'S COMPANIES;)	
CORNELIU VISAN; DANIEL VISAN;)	
LIGIA VISAN; STATE OF IDAHO;)	
STATE OF IDAHO DEPARTMENT OF)	
TRANSPORTATION; IDAHO STATE)	
POLICE; PENHALL COMPANY;)	
PARAMETRIX, INC., SPECIALTY)	
CONSTRUCTION SUPPLY LLC, and)	
DOES 1 through 150,)	
inclusive,)	
)	
Defendants.)	
)	
_____)	
And Consolidated Actions)	
_____)	

VIDEOTAPED DEPOSITION OF KENNETH BECKNER

May 25, 2021

Boise, Idaho

Reported by: Andrea J. Wecker, CSR #716, RDR, CRR, CRC

Page 22

1 A. Yes.

2 **Q. Okay. So do you have a recollection**

3 **that evening of passing through the eastbound lanes**

4 **of I-84 sometime prior to 11:33 on that evening?**

5 A. Yes.

6 **Q. Okay. And was that just part of your**

7 **usual patrol that evening or --**

8 A. Yes.

9 **Q. -- were you specifically asked to go**

10 **there?**

11 A. No.

12 MR. MOORE: Can you wait until he finishes.

13 THE WITNESS: Sorry. I apologize.

14 MR. ROBBINS: No worries. No worries.

15 MR. MOORE: That's part of my job.

16 **Q. (BY MR. ROBBINS) As you sit here today,**

17 **do you recall approximately what time of evening it**

18 **was that you passed through the area of**

19 **construction that was going on on Highway I-84**

20 **eastbound?**

21 A. No.

22 **Q. Okay. It was sometime before the**

23 **accident, though?**

24 MR. MOORE: Object to the form. Foundation.

25 Counsel --

Page 24

1 **Q. Yes, sir.**

2 A. Yes.

3 **Q. Okay. And did you happen to see how**

4 **many lanes --**

5 **Strike that.**

6 **Did you pass through the entirety of the**

7 **area of construction that evening?**

8 A. Yes.

9 **Q. And by "that evening," I mean June 15 of**

10 **2018.**

11 A. Yes.

12 **Q. All right. And were you able to see how**

13 **many lanes had been left open by the construction**

14 **crew on eastbound I-84 that evening when you passed**

15 **through it?**

16 MR. MOORE: Object to the form. Vague.

17 Go ahead.

18 **Q. (BY MR. ROBBINS) You can respond.**

19 MR. MOORE: You can answer. Go ahead.

20 THE WITNESS: I believe it was one.

21 **Q. (BY MR. ROBBINS) Okay. Now, when you**

22 **had passed through that area, I think as you**

23 **testified before, it was just part of your normal**

24 **patrol responsibilities that evening?**

25 A. Yes.

Page 23

1 MR. ROBBINS: Strike it.

2 **Q. (BY MR. ROBBINS) Was it sometime before**

3 **the accident that you passed through the area of**

4 **the construction on eastbound I-84?**

5 MR. MOORE: Object to the form and

6 foundation.

7 Counsel, the question is related to an

8 exhibit that's dated June 15, and you're now

9 sticking the June 16 accident in there.

10 MR. ROBBINS: I did, and I do apologize.

11 **Q. (BY MR. ROBBINS) Do you recall passing**

12 **through the area of construction on June 15, the**

13 **evening of June 15, 2018, while construction was**

14 **going on?**

15 A. Yes.

16 **Q. All right. How many times do you recall**

17 **going through that area on the evening of June 15,**

18 **2018?**

19 A. I don't know.

20 **Q. Did you happen to notice a traffic queue**

21 **that had developed through the area of the**

22 **construction?**

23 A. What is a queue?

24 **Q. A traffic jam, a lineup of cars.**

25 A. You mean was traffic backed up?

Page 25

1 **Q. In other words, you weren't directly**

2 **requested to go and drive through that area to**

3 **check traffic conditions?**

4 A. Later on in the evening when dispatch

5 had called me, I had told them that I had already

6 done it. So it was on my own volition, I guess, is

7 the best way to answer.

8 **Q. Okay. And when you said later on in the**

9 **evening when dispatch had called you, do you recall**

10 **how much time elapsed between when you passed**

11 **through the area of construction on June 15 of 2018**

12 **and when dispatch had called you?**

13 A. No.

14 **Q. Okay. Was it more than an hour?**

15 A. I don't know.

16 **Q. Okay. And as you passed through the**

17 **area leading up to the construction zone, as you**

18 **sit here today, do you recall what signage was up**

19 **to warn traffic of a construction zone in the area**

20 **they were approaching on eastbound I-84?**

21 A. Just vaguely.

22 **Q. All right. What do you vaguely recall**

23 **in that regard?**

24 A. I recall warning signs. I recall the

25 big flashing arrows, light sign. I recall multiple

Page 30

1 information is then broadcasted to the patrol units
 2 on duty at that time?
 3 A. It's put out over the radio.
 4 Q. Okay. And do you recall receiving this
 5 broadcast at approximately 11:48 in the evening on
 6 June 13 of 2018?
 7 A. No.
 8 Q. Were you aware prior to your passage
 9 through the construction zone on June 15, 2018,
 10 that there was construction going on eastbound
 11 I-84?
 12 A. Yes.
 13 Q. All right. And had you passed through
 14 that construction zone area on the nights preceding
 15 June 15, 2018, when you were on duty that week?
 16 A. More than likely.
 17 Q. Do you recall traffic conditions at the
 18 times prior to June 15, 2018, when you passed
 19 through the construction zone on eastbound I-84?
 20 A. No.
 21 Q. Do you recall there being a traffic
 22 lineup or traffic queues in the area that you
 23 passed through on the evenings prior to June 15,
 24 2018?
 25 A. I just --

Page 32

1 one lane?
 2 A. I don't recall getting it, but it's
 3 right here, so it happened.
 4 Q. Do you recall a request going out that
 5 you responded to that a trooper helped to slow down
 6 traffic in the area approaching the construction
 7 zone on June 15, 2018?
 8 MR. MOORE: Object to the form.
 9 Go ahead.
 10 THE WITNESS: The CAD states that a tow truck
 11 driver is trying to pick up a broken-down car or an
 12 abandoned car. I'm not sure which one.
 13 Q. (BY MR. ROBBINS) Right.
 14 A. And he's asking for a trooper to show up
 15 so he doesn't get hit.
 16 Q. Sure. The whole comment is,
 17 "Construction has traffic shut down to one lane,"
 18 then the part that you have related.
 19 And my question is: Do you recall going
 20 out that morning of June 15 and providing that
 21 traffic control assistance to this --
 22 A. No, I don't.
 23 Q. Now, to the left of your name after it
 24 gives the number 3421 of "Serial," there's a number
 25 643.

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1 MR. MOORE: Object to the form.
 2 Go ahead.
 3 THE WITNESS: I just remember there being
 4 construction that week.
 5 Q. (BY MR. ROBBINS) Okay. Other than the
 6 conditions on June 15, 2018, do you remember
 7 anything about traffic conditions on any of the
 8 other days that week?
 9 A. No.
 10 Q. Okay. If I could ask you to take a look
 11 at ISP 32. That's for the date June 15, 2018.
 12 Again, this is another copy of a CAD
 13 system communicate?
 14 A. Correct.
 15 Q. And this relates to a point in time,
 16 apparently, at approximately, what, 12:30 in the
 17 morning on June 15?
 18 A. Yes.
 19 Q. All right. And down at approximately
 20 12:34:41, it reports a name, Kenneth Beckner.
 21 Is that you?
 22 A. Yes.
 23 Q. Okay. Do you recall receiving a CAD
 24 communication that morning of June 15, 2018,
 25 advising that construction has traffic shut down to

Page 33

1 Do you know what 643 refers to?
 2 A. Yes.
 3 Q. What is 643?
 4 A. That's my car number.
 5 Q. Okay. What does it mean for that car
 6 number to be identified there with this particular
 7 communication? Was that something that indicates
 8 that you responded to this call?
 9 A. That just means I'm part of the call
 10 somehow.
 11 Q. Okay. And in what ways would you be
 12 part of the call of this nature?
 13 A. So in this case, I was dispatched and
 14 then it shows I arrived on scene and then it showed
 15 I cleared.
 16 Q. Okay. At what time did you arrive on
 17 scene?
 18 A. 00:42:37.
 19 Q. And that's indicated "ONSCN" for
 20 "on scene"?
 21 A. Yes.
 22 Q. And then clear would be at 00:46:27?
 23 A. Yes.
 24 Q. And "643 DISPO NAT," what does that
 25 indicate?

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1 A. It's short for "necessary action taken."
 2 **Q. All right. And you don't recall what**
 3 **that necessary action was at that time?**
 4 A. It's just assisting the tow truck
 5 driver.
 6 **Q. Yeah. And I understand that was the**
 7 **general call or the request, but as you sit here**
 8 **today, you don't recall whether you actually went**
 9 **out into the lanes of traffic to slow traffic down**
 10 **in the area where this occurred?**
 11 A. No, I don't recall the --
 12 Sorry.
 13 **Q. That's all right.**
 14 A. I'm sorry. I thought he had stopped.
 15 **Q. This is eastbound I-84, I take it, as**
 16 **well?**
 17 A. Yes, At 49.
 18 **Q. Okay. So that would have been close to**
 19 **the end of your shift on the morning of June 15th,**
 20 **so that would have been your shift that started**
 21 **June 14 and ended June 15?**
 22 A. Correct.
 23 **Q. All right. So we'll pick up again the**
 24 **next page, ISP 000033.**
 25 **Again, this is a CAD system printout?**

Page 36

1 A. Yes.
 2 **Q. Do you recall how far back on I-84 at 48**
 3 **that traffic extended at approximately 10:12 in the**
 4 **evening of June 15, 2018?**
 5 A. I do not.
 6 **Q. Do you recall whether that traffic --**
 7 **that bumper-to-bumper traffic that's reflected**
 8 **there was associated with construction activities**
 9 **that were on eastbound I-84 that night?**
 10 A. I believe it was.
 11 **Q. This location, eastbound I-84 at 48,**
 12 **where is that located insofar as Cloverfield**
 13 **[sic] --**
 14 A. Cloverdale?
 15 **Q. -- Cloverdale Avenue is concerned?**
 16 A. Milepost 48 is actually right -- almost
 17 right underneath the Cloverdale overpass. However,
 18 when we call out a milepost, it could be anywhere
 19 from, say, 48. -- 47.5 to 48.5.
 20 **Q. Okay.**
 21 A. It's just a general area within that
 22 milepost.
 23 **Q. Are you able to identify from taking a**
 24 **look at this CAD printout where specifically that**
 25 **bumper-to-bumper traffic was located that evening?**

Page 35

1 A. Yes.
 2 **Q. And this would relate to communications**
 3 **pertaining to conditions at eastbound I-84 at 48?**
 4 A. Yes.
 5 **Q. And you again are indicated as being the**
 6 **one that was contacted by dispatch?**
 7 A. I'm the one that's responding to the
 8 call.
 9 **Q. Down at 22:12:02, over to the right of**
 10 **that, that indicates 643.**
 11 **That is your patrol car?**
 12 A. Yes.
 13 **Q. Does this reflect your communication**
 14 **back to dispatch?**
 15 A. At 22:02:20?
 16 **Q. No. 22: -- I'm sorry if I said that.**
 17 **22:12:02.**
 18 A. Oh. Okay.
 19 **Q. To the right of 643, it references**
 20 **"Comment."**
 21 **Does this mean to memorialize the**
 22 **comment that you responded back to dispatch --**
 23 A. Yes.
 24 **Q. -- that there was bumper-to-bumper**
 25 **traffic?**

Page 37

1 A. Not specifically.
 2 **Q. Okay. Let's go to ISP 000035. And,**
 3 **again, this is a CAD system printout for June 15,**
 4 **2018; approximately 11:26 to 11:33 that evening?**
 5 A. Yes.
 6 **Q. Location being eastbound I-84 at 47. So**
 7 **if you could --**
 8 **The last CAD system communication,**
 9 **number 33, we were dealing with eastbound I-84 at**
 10 **48. Here we're dealing with eastbound I-84 at 47.**
 11 **So is that further west of Milepost 48?**
 12 A. Yes.
 13 **Q. Okay. Down at 23:32:57, Miscellaneous,**
 14 **there's a comment and there's a reference to 643.**
 15 **Do you recall advising dispatch on more**
 16 **than one occasion on the evening of June 15, 2018,**
 17 **that in your opinion, there was plenty of signage**
 18 **with flashing lights and cones?**
 19 A. I don't recall it.
 20 **Q. Okay. Do you recall telling dispatch**
 21 **that at approximately that time of night, 23:32,**
 22 **there was no need for reader boards?**
 23 A. I don't recall it.
 24 **Q. Do you recall addressing that issue with**
 25 **dispatch at any time that evening?**

Page 38

1 A. Yes, in a phone call that I received
 2 from dispatch. Two of them, as a matter of fact.
 3 **Q. Were those phone calls that you received**
 4 **before the accident on June 15 -- June 16, 2018?**
 5 A. Yes.
 6 MR. MOORE: Object to the form.
 7 Go ahead.
 8 **Q. (BY MR. ROBBINS) Okay.**
 9 A. It was the day before.
 10 **Q. All right. And can you give me the**
 11 **content of those two phone conversations you had**
 12 **with dispatch regarding reader boards?**
 13 A. They weren't in regard to reader board.
 14 It was just in regard to complaints from other
 15 drivers.
 16 **Q. Okay. And what kind of complaints did**
 17 **you discuss with dispatch?**
 18 A. I would have to listen to the calls, but
 19 I believe it had something to do with people
 20 weren't obeying signs. Stuff to that nature.
 21 **Q. All right.**
 22 A. They weren't driving safely.
 23 **Q. And do you recall what your response was**
 24 **to dispatch in regard to each of these calls?**
 25 A. Yes. I recall saying, and I believe I

Page 39

1 mentioned this earlier, that there were plenty of
 2 signs out, and then I explained the various signs
 3 that were out.
 4 **Q. Okay. Do you recall telling dispatch at**
 5 **some time on June 15, 2018, that in your opinion,**
 6 **reader boards were not required?**
 7 A. I don't recall saying that, no.
 8 **Q. Do you recall forming that opinion, that**
 9 **reader boards were not required that evening --**
 10 A. I don't --
 11 **Q. -- for the traffic conditions on**
 12 **eastbound I-84?**
 13 A. I don't recall it, but if I -- if it's
 14 logged in here, then it happened.
 15 **Q. Well, I don't know, because when you**
 16 **get -- there's --**
 17 **The comment that we've talked about**
 18 **before, "There is plenty of signage with flashing**
 19 **lights and cones," and then we get two strikes and**
 20 **no need for boards, and that's why I indicated**
 21 **whether that was an opinion you expressed or**
 22 **whether that was an opinion that was developed by**
 23 **dispatch or if you know one way or the other.**
 24 A. So it says, "Per 643." They're typing
 25 in basically what I told them.

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1 **Q. Okay. Do you recall having a**
 2 **conversation with dispatch at or around 11:32:57**
 3 **where that subject area was discussed?**
 4 A. I don't know what time.
 5 **Q. Okay. Down below the entry "MISC,"**
 6 **there's a reference, "Notify," and then over to the**
 7 **right of it, "Notified StateComm."**
 8 **Do you know what that is meant to**
 9 **indicate?**
 10 MR. MOORE: Where are you, Counsel? I'm
 11 sorry.
 12 MR. ROBBINS: 23:33:38 on page 35.
 13 MR. MOORE: Thank you.
 14 THE WITNESS: Can I answer?
 15 **Q. (BY MR. ROBBINS) Yeah.**
 16 A. I believe that's ISP dispatch advising
 17 StateComm there was plenty of signage.
 18 **Q. Okay. And then down below that, there's**
 19 **23:33:51. It says, "Select."**
 20 **Do you know what that is meant to**
 21 **indicate?**
 22 A. I do not.
 23 **Q. All right. Below that, 23:33:53, "CAN."**
 24 A. I don't know what that means either.
 25 **Q. Over to the right, there's a reference,**

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1 "DISP: CH, CH."
 2 **Do you know what that means?**
 3 A. I don't.
 4 **Q. Okay. Down below, there's a note in**
 5 **brackets, 06/20/2018. It appears to be a time**
 6 **designation, military time, 15:22:13, "XREF."**
 7 **Is that "cross-reference," if you know?**
 8 A. Yeah. They're -- they're just basically
 9 linking this call to this other event call.
 10 **Q. All right. You're not indicated there**
 11 **as being part of that linkage; that is, your patrol**
 12 **car isn't indicated on that cross-reference?**
 13 A. No. This --
 14 Are you talking about the 3761?
 15 **Q. Yes.**
 16 A. That would be a dispatcher.
 17 **Q. Okay. Do you know what purpose that is**
 18 **served, this "XREF" indication?**
 19 A. If you're asking why they link calls,
 20 it's just so that it's easily accessible.
 21 So you'd be able to click on this -- the
 22 event. It would have, like, a -- a click link so
 23 you'd be able to pull up that event.
 24 **Q. Okay. Let's take a look at ISP 38, if**
 25 **we could. That appears to be another CAD system**

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1 printout from June 15, 2018.
 2 A. Yes.
 3 Q. It appears to be from the time frame,
 4 military 23:45:31 through 23:57:39. Again, it
 5 speaks of traffic conditions on eastbound I-84,
 6 this time at 44.
 7 A. Yes.
 8 Q. And --
 9 A. Well, let me --
 10 Q. Go ahead. Yes.
 11 A. -- back up.
 12 Q. Yes, sir.
 13 A. That may be where that party was. It
 14 may not pertain to where the conditions are.
 15 Q. All right.
 16 A. So it may indicate, like, where are you?
 17 Eastbound I-84 at Meridian Road.
 18 Q. Right. Can you see anywhere in this
 19 document where the traffic conditions that are
 20 being addressed in this communication are located
 21 on eastbound I-84?
 22 A. It just says that vehicles or cars are
 23 driving on the median to pass stopped traffic in
 24 the construction zone.
 25 Q. All right.

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1 eastbound I-84 on June 15/June 16, 2018, were -- as
 2 this says -- placed accordingly?
 3 A. Because I had driven through the area.
 4 Q. All right. Well, when you say "placed
 5 accordingly," that indicates that in your opinion,
 6 the signs had been properly located?
 7 A. I don't know if I specifically said
 8 "placed accordingly." That's just what dispatch
 9 typed in.
 10 Q. All right. But you do know that you
 11 had -- from your recollection, you did advise that
 12 the signs were out and it was appropriately lit?
 13 A. The area was lit and signs were out,
 14 yes.
 15 Q. Okay. Whether or not they were
 16 positioned appropriately along I-84 leading into
 17 the construction zone, do you have an opinion one
 18 way or the other based upon your recollection of
 19 conditions --
 20 A. I don't have an opinion on that.
 21 Q. Okay. When it says, "Notified 643," you
 22 mentioned that you had this -- you believe you had
 23 this communication with dispatch when you were back
 24 at the station?
 25 A. Yes.

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1 A. So it doesn't specifically state where
 2 it's at.
 3 Q. But the location, LOCDESC, isn't meant
 4 to identify the particular location where the
 5 traffic condition is being complained of?
 6 A. Where is that?
 7 Q. See right underneath "Phone"? At
 8 location --
 9 Right under the first grouping of data
 10 over on the right-hand side.
 11 A. Oh, okay. I see.
 12 It's possible. I don't know exactly
 13 what -- how dispatch put it in.
 14 Q. All right. There's a note dated
 15 June 16, 2018, apparently around midnight on
 16 June 16. Your patrol car is indicated again.
 17 Are you able to explain what
 18 significance that entry has based upon your
 19 background and experience with ISP?
 20 A. I believe this was another call to me
 21 while I was in the office, and I just advised them
 22 that, according to the comment, the area is
 23 well-lit and signs are placed accordingly.
 24 Q. Well, how is it that you made the
 25 determination that the signs that were out on

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1 Q. Okay. So it was at a point in time when
 2 you were coming off shift, was it?
 3 A. No.
 4 Q. Okay. You just went back to the station
 5 for whatever reason?
 6 A. Yes.
 7 Q. Okay.
 8 A. Approve reports, whatever.
 9 Q. Do you have recollection of making any
 10 reports describing traffic conditions on I-84
 11 eastbound as you observed them on the evening of
 12 June 15, 2018?
 13 A. No.
 14 Q. Okay. Down below, the next entry after
 15 "Notify," there is "CAN."
 16 Do you understand what that is meant to
 17 communicate?
 18 A. I don't know what the "CAN" stands for.
 19 Q. All right. Over to the right-hand, it
 20 says, "DISP: NR."
 21 Do you know what that indicates?
 22 A. I don't know what the "NR" stands for
 23 either.
 24 Q. "Comment: Sergeant is aware."
 25 A. Yes.

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1 **Q. Presumably referring to you?**
 2 A. Yes.
 3 **Q. Okay. Let's look at ISP 000039. It**
 4 **appears to be another CAD system printout from**
 5 **June 15, 2018.**
 6 MR. MOORE: Counsel, is this the same
 7 document --
 8 MR. ROBBINS: I don't know.
 9 MR. MOORE: -- that you've just been talking
 10 about?
 11 MR. ROBBINS: I don't think so.
 12 MR. MORTIMER: It is not.
 13 MR. ROBBINS: Then why are you printing it,
 14 giving it to me twice, Mike, for God's sake?
 15 You're a foxy opponent.
 16 I don't know. Let me check.
 17 No, it is a different document, Mike.
 18 MR. MOORE: It's slightly --
 19 MR. ROBBINS: Don't you review these
 20 documents I give you? For God's sakes. I digress.
 21 MR. MOORE: Yes, you do.
 22 MR. ROBBINS: We're back on the record. We
 23 never left the record.
 24 MR. MOORE: It's all on the record.
 25 MR. ROBBINS: It is. It is, and proud of it,

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1 A. -- put it next to each other.
 2 So usually what happens in dispatch
 3 is -- they have a separate person that just answers
 4 calls if it's a busy evening. So they'll enter
 5 information, and then they'll pass the information
 6 on to the dispatcher who is working with the
 7 troopers.
 8 **Q. Okay.**
 9 A. So they'll each have --
 10 And you can see up here, at the very top
 11 in the boxes on the far right, those are the serial
 12 numbers of the dispatchers.
 13 **Q. Correct. So, for example, on 38, we're**
 14 **talking about dispatcher 3435?**
 15 A. Correct.
 16 **Q. And on 39, we're talking about dispatch**
 17 **4072 and 3435?**
 18 A. Correct.
 19 **Q. Okay.**
 20 A. And then it's -- on 39, right in the
 21 middle where you have the underlined W --
 22 **Q. Yes.**
 23 A. -- 18, that is a link to 38, which you
 24 can see the number is up at the very top in the
 25 middle.

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1 Mike.
 2 MR. MOORE: I'm sure you are.
 3 **Q. (BY MR. ROBBINS) June 15, 2018, this is**
 4 **for the time frame subsequent to ISP 38. This is**
 5 **for 23:55:28 through 23:57:39.**
 6 **Do you recall having two phone**
 7 **conversations with dispatch regarding traffic**
 8 **conditions while you were at the station at or**
 9 **around 11:55 on the evening of June 14, 2018?**
 10 A. I don't recall the time, but I do recall
 11 two phone calls. And this --
 12 If I can clarify.
 13 **Q. Sure.**
 14 A. This is the same call. It's just
 15 entered by two different dispatchers.
 16 **Q. All right.**
 17 MR. MOORE: You're talking about these two
 18 documents, 38 and 39?
 19 THE WITNESS: 38 and 39, correct.
 20 **Q. (BY MR. ROBBINS) Okay. When you say**
 21 **it's the same call, what makes you think it's the**
 22 **same call as opposed to memorializing two different**
 23 **calls?**
 24 A. I'm going to take this out so I can --
 25 **Q. Yeah, go ahead.**

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1 **Q. Okay. So what is being done there in**
 2 **this? Because if you take a look under "Location,"**
 3 **23:55:28, the location is eastbound I-84 at 48.**
 4 **And on page ISP 38, 23:45:31, location is eastbound**
 5 **I-84 at 44.**
 6 A. Right. It looks like it's just an
 7 additional comment that they put in, and then they
 8 transferred the call over to 3435 who handled it
 9 and then it gets closed out.
 10 **Q. Okay. So these two documents then**
 11 **relate to a single call that was received from the**
 12 **public?**
 13 A. I don't know about the single call, but
 14 it relates to the same time frame.
 15 **Q. Okay.**
 16 A. The two dispatchers are working together
 17 to kind of put this one -- these two calls into
 18 one.
 19 **Q. Do you recall speaking to two different**
 20 **dispatchers regarding your opinion on the evening**
 21 **of -- and early morning hours -- late evening of**
 22 **June 15, early morning hours of June 16, about your**
 23 **opinion that the area of the construction was**
 24 **well-lit and signs were placed accordingly?**
 25 A. Yes, I believe I spoke with two

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1 different dispatchers.
 2 **Q. Okay. And did you happen to make any**
 3 **written memorialization of your conversation with**
 4 **those two dispatchers?**
 5 A. No.
 6 **Q. All right. When did you first become**
 7 **aware of the accident that occurred on June 16,**
 8 **2018, at approximately 11:30 p.m.?**
 9 A. I don't know.
 10 **Q. Okay. Were you on duty that night?**
 11 A. Of the crash?
 12 **Q. Yes.**
 13 A. No.
 14 **Q. Okay. When did you next return to duty**
 15 **after the crash, if you recall?**
 16 A. I don't recall, but it would have been
 17 Monday or Tuesday.
 18 **Q. All right. Were you ever involved in**
 19 **any investigation of the accident itself?**
 20 A. No.
 21 **Q. Okay. Were you contacted by any members**
 22 **of the Idaho State Police that were preparing the**
 23 **incident report on this accident?**
 24 A. No.
 25 **Q. Did you ever have any communications**

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1 reconstruction report that was prepared by Trooper
 2 Chase --
 3 A. No.
 4 **Q. -- concerning this incident?**
 5 A. Sorry.
 6 **Q. That's okay.**
 7 A. No.
 8 MR. ROBBINS: All right, Sergeant. I thank
 9 you for your time. I don't think I have any other
 10 questions for you.
 11
 12 EXAMINATION
 13 BY MR. MORTIMER:
 14 **Q. I do have some questions. Sergeant, my**
 15 **name is Evan Mortimer. I represent the Johnson**
 16 **plaintiffs. I appreciate you being here.**
 17 A couple of follow-ups. If you could
 18 turn your attention to some of those documents we
 19 were looking at earlier, ISP 0035 to start. And
 20 really general questions regarding these forms.
 21 I know you said you -- I think the prior
 22 forms you said you weren't familiar with, but did
 23 you testify that you are familiar with these forms,
 24 these CAD call detailed histories?
 25 A. Yes.

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1 with the Idaho State Police officers who were
 2 involved in the accident reconstruction report
 3 pertaining to this accident?
 4 A. Just casual conversation.
 5 **Q. With whom did you have this casual**
 6 **conversation to the extent that it had anything to**
 7 **do with the accident?**
 8 A. Probably Trooper Chase, Corporal Chase.
 9 Just, you know, "How's the crash going? How's your
 10 investigation going?" You know, just casual
 11 conversation.
 12 **Q. Okay.**
 13 A. Nothing specific.
 14 **Q. Did you provide him with any substantive**
 15 **information about your observations that evening?**
 16 A. No.
 17 **Q. And by "that evening," I mean the**
 18 **evening of June 15, 2018.**
 19 A. No.
 20 **Q. Okay. Did you ever have any**
 21 **conversations with any representative of the NTSB**
 22 **with respect to their investigation of this**
 23 **incident?**
 24 A. No.
 25 **Q. Okay. Did you ever see the accident**

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1 **Q. Okay. At the top of each one of these,**
 2 **there's a priority number, and they differ**
 3 **depending on the call. If you'll look at 35,**
 4 **you'll see the priority is 5.**
 5 **Do you see that?**
 6 A. Yes.
 7 **Q. Okay. And then if we go back one**
 8 **page to 34, it says, "Priority: 1."**
 9 **Do you see that?**
 10 A. Yes.
 11 **Q. Okay. Do you know what that distinction**
 12 **is and who makes it?**
 13 A. That, I do not know.
 14 **Q. Okay. So you don't establish the**
 15 **priority of the call?**
 16 A. No.
 17 **Q. So to the best of your knowledge, that**
 18 **would be dispatch that sets the priority?**
 19 MR. MOORE: Object to the form. Foundation.
 20 **Q. (BY MR. MORTIMER) Go ahead.**
 21 A. I don't know. I don't know if it's
 22 linked to the type of call or what. That's --
 23 that's not something I've ever had any, you know,
 24 dealings with.
 25 **Q. Okay. So when dispatch calls you and**

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1 communications with any of the construction site
 2 personnel pertaining to traffic conditions through
 3 the construction zone prior to June 16, 2018?
 4 A. What do you mean "general conversation"?
 5 Q. Yeah. Well, you had no specific
 6 recollection. I'm wondering if you have a general
 7 recollection of any such --
 8 A. No.
 9 Q. -- communication.
 10 A. No.
 11 Q. Okay. After June 16, 2018, do you have
 12 a recollection of receiving any calls to provide
 13 the construction personnel with any traffic control
 14 assistance through the area of the construction
 15 zone on eastbound I-84?
 16 A. I don't recall helping with any traffic
 17 control. I do remember -- and I don't know if it
 18 was before or after, but there was a call we
 19 responded to where someone had driven through
 20 the -- the cones and one of the construction
 21 workers had thrown something at the car. I
 22 remember it being a Corvette, and we investigated
 23 that.
 24 Q. Yeah. I believe that was --
 25 And I'm familiar with that incident. I

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1 (The videotaped deposition concluded at 11:37 a.m.)
 2 * * *
 3 (Signature was requested.)
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1 believe that was after June 16.
 2 A. Okay.
 3 Q. But I mean specifically being out on
 4 site and providing on-the-ground traffic control.
 5 Do you ever recall receiving any requests, either
 6 directly from construction or through your
 7 supervisors at ISP, that either you or one of those
 8 under your supervision go on site and provide
 9 hands-on traffic control assistance?
 10 A. No.
 11 Q. Okay. And I mean for the -- at any time
 12 after June 16, 2018.
 13 A. No, I don't recall anything like that.
 14 MR. ROBBINS: Okay. Sergeant, again, thank
 15 you for your time.
 16 THE WITNESS: You're welcome.
 17 MR. MOORE: Anything further, Counsel? We're
 18 done.
 19 MR. ROBBINS: No mas. We're done.
 20 MR. MOORE: Thank you for coming, Sergeant.
 21 THE WITNESS: You're welcome.
 22 THE VIDEOGRAPHER: This concludes the
 23 videotaped deposition of Sergeant Beckner, and the
 24 time is 11:37 a.m. We are off the record.
 25

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VERIFICATION

1
 2
 3 STATE OF _____)
 4) ss.
 5 COUNTY OF _____)
 6
 7 I, KENNETH BECKNER, being first duly sworn on
 8 my oath, depose and say:
 9 That I am the witness named in the foregoing
 10 videotaped deposition taken the 25th day of May, 2021,
 11 consisting of pages numbered 1 to 76, inclusive; that
 12 I have read the said deposition and know the contents
 13 thereof; that the questions contained therein were
 14 propounded to me; that the answers to said questions
 15 were given by me, and that the answers as contained
 16 therein (or as corrected by me therein) are true and
 17 correct.
 18
 19 Corrections Made: Yes _____ No _____
 20
 21 _____
 22 KENNETH BECKNER
 23
 24 Subscribed and sworn to before me this _____
 25 day of _____, 2021, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho
 My Commission Expires: _____.

1 REPORTER'S CERTIFICATE

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)

5 I, ANDREA J. WECKER, Certified Shorthand Reporter
6 and Notary Public in and for the State of Idaho, do hereby
7 certify:

8 That prior to being examined, the witness named in
9 the foregoing deposition was by me duly sworn remotely to
10 testify to the truth, the whole truth and nothing but the
11 truth;

12 That said deposition was taken down by me in
13 shorthand at the time and place therein named and
14 thereafter reduced to typewriting under my direction, and
15 that the foregoing transcript contains a full, true
16 and verbatim record of said deposition.

17 I further certify that I have no interest in the
18 event or deposition.

19 WITNESS my hand and seal this 10th, day of June,
20 2021.

21
22 _____
23 ANDREA J. WECKER
24 CSR, RDR, CRR, CRC and Notary
25 Public in and for the
State of Idaho.

My Commission Expires: 02-14-23

