**<u>BOISE, WEDNESDAY, JUNE 17, 2020 AT 10:00 A.M.</u>**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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| **BURNS CONCRETE, INC., an Idaho Corporation, and BURNS HOLDINGS, LLC, an Idaho limited liability company,**<br><br>**Plaintiffs-Counterdefendants-Respondents-Cross Appellants,**<br><br>**v.**<br><br>**TETON COUNTY, a political subdivision of the State of Idaho,**<br><br>**Defendant-Counterclaimant-Appellant-Cross Respondent.** | ) | **Docket Nos. 46827/47496** |

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Teton County. Dane H. Watkins, Jr., District Judge.

Billie J. Siddoway, Teton County Prosecuting Attorney, Driggs, for Appellant.

Parsons Behle & Latimer, Boise, for Respondent.

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This appeal involves a dispute over the construction of a concrete manufacturing facility in Teton County. In 2007, Burns Holdings entered into a development agreement with Teton County regarding property owned by Burns Concrete. The development agreement provided that Burns Holdings would construct a permanent concrete manufacturing facility on the property within eighteen months, but could operate a temporary facility in the meantime. The Burns Companies wanted to build a permanent facility that was seventy-five feet tall, but the applicable zoning ordinance limited building heights to forty-five feet. The County denied Burns Holdings' application for a conditional use permit and its subsequent application for a variance to exceed the height limit. The Burns Companies operated the temporary facility for several years but never constructed the permanent facility.

In 2012, the County sent written notice revoking Burns Holdings' authority to operate the temporary facility and demanding that they remove the temporary facility. The Burns Companies subsequently filed this action, requesting a declaratory judgment and alleging claims for breach of contract and unjust enrichment. The County counterclaimed, alleging breach of contract and seeking declaratory judgment for the removal of the temporary facility. The district court granted the County's motion for summary judgment and entered judgment in its favor. This Court vacated that judgment and remanded the case for further proceedings.

On remand, the district court granted the Burns Companies' motion for summary judgment on the liability component of their breach of contract claim. A trial was held on the issue of damages, and the district court ultimately entered judgment awarding the Burns Companies $1,049,250.90 in damages and declaring that running of the eighteen-month period for construction of the permanent facility was tolled. The County filed a timely notice of appeal and the Burns Companies filed a timely notice of cross appeal. The County argues that the district court erred by (1) granting summary judgment on the liability component of the breach of contract claim; (2) granting declaratory judgment; and (3) awarding damages. The Burns Companies cross-appealed, arguing that the district court erred by (1) reducing their damages; (2) holding that they could not rescind the development agreement; and (3) disallowing prejudgment interest.

After trial, but before the district court determined the amount of damages owed to the Burns Companies, the Burns Companies entered into a modified engagement agreement with Parsons Behle & Latimer (the "contingency fee agreement"). They agreed that legal fees not paid within 120 days of their invoice dates would be converted to a contingent fee basis, whereby three times of the total amount of those fees would become payable to Parsons Behle, but only out of any damages recovered from the County. Legal fees paid within 120 days would continue to be billed at the regular hourly rate. After the district court entered judgment awarding damages, the Burns Companies filed a memorandum of fees and costs, which the district court granted in part. They then moved the district court to award additional fees incurred since the filing of their memorandum of fees and costs. This was also granted in part. The County timely appealed from the order granting the Burns Companies' first fee request. It argues that the district court abused its discretion by awarding contingency fees because the contingency fee agreement is unreasonable, usurious, and prospective. The Burns Companies timely appealed from both orders. They argue that the district court abused its discretion by reducing their requested fees without adequate explanation. The parties' appeals on the merits of the case have been consolidated with their appeals regarding attorney fees.