

## Disputes Review Board Recommendation

January 19, 2014

Mr. Eric Juhl  
Russell Engineering, Inc.  
10704 Portal Crossing  
Bradenton, FL. 34211

Mr. Paul W. Wingard, PE, LEED AP, CGC  
KCCS  
1400 Colonial Blvd.  
Suite 260  
Ft. Myers, FL. 33907

Re: SR 45 (US Hwy 41) – Corkscrew Road to San Carlos Blvd.  
FIN 195765-1-52-01, Contract No. T1407  
F.A.P. No. 3012095P (Delegated Project)  
Lee County

Dear Sirs:

Russell Engineering (REI) requested a hearing concerning PLAN REVISION 11, ADDED TURN LANE EXTRA WORK DELAY (heretofore known as Issue No. 2). Entitlement (with the exception of extended MOT cost) is not in Dispute; the Board has been requested to issue a quantum recommendation. Summaries of the Department's and REI's positions were forwarded to the Disputes Review Board (DRB), and a hearing was held on December 19, 2013.

### Contractor's Position

*Please refer to **ISSUE NO. 2** in TIA02 for background, problem definition, milestones, controlling items of work affected, time impact analysis, schedule fragnets and other evidence related to **ISSUE NO. 2** supporting Russell's entitlement to an adjustment of time and monetary compensation as a result of the Plan Revision 11 Added Turn Lane Extra Work Delay. The documented evidence in TIA02 referenced above relating to **ISSUE NO. 2** has been extracted and formatted as a standalone document for ease of reference and attached hereto as **EXHIBIT "L"**. See Plan Revision No. 11 attached hereto as **EXHIBIT "M"**.*

*The Engineer agrees that Russell was impacted and the Schedule was critically delayed due to Plan Revision No. 11 Added Turn Lane Extra Work, therefore Russell is entitled to additional time and compensatory delay costs as a result. However, the Engineer rejected the time impact duration calculated for **ISSUE NO. 2** in Russell's Time Impact Analysis (TIA02). The Engineer's method for calculating this critical delay that extended the project completion date in the schedule consists of adding only a portion of the overall time elapsed to complete all items of work associated with the added turn lane work. The Engineer is not comparing the project completion date variance between the before and after fragnets. The Engineer's method for calculating the delay does not comply with the requirements of **Special Provision Sub Article 8-3.2.6 Time Extensions** for analyzing time impacts.*

*Russell submitted a time extension request in accordance with the **Special Provision Sub Article 8-3.2.6 Time Extensions**, attached hereto as **EXHIBIT "I"**, **Section 8-7.3.2 Contract Time Extensions** of the **2010 Standard Specifications**, attached hereto as **EXHIBIT "J"**, **Section 4-3.2 Increase, Decrease or Alteration in the Work** of the*

## Disputes Review Board Recommendation

**2010 Standard Specifications**, attached hereto as **EXHIBIT “N”** and **Section 5-12 Claims by Contractor**, attached hereto as **EXHIBIT “K”**.

Russell is requesting a recommendation on quantum only from the Board on time and compensatory delay cost for all time-cost elements requested in Time Impact Analysis No. 2 (TIA02) due to the Plan Revision 11 Added Turn Lane Extra Work Delay with the exception to Extended MOT cost.

To summarize:

**Entitlement Agreed – Quantum In Dispute**

1. Time Extension
2. Compensatory Extra Work Delay Costs
  - a. Extended Overhead (Average Overhead Per Day)
  - b. Project Supervisory – Project Manager
  - c. Project Supervisory – Project Superintendent
  - d. Additional Survey
  - e. Additional QC

**Entitlement Denied – Entitlement and Quantum In Dispute**

1. Compensatory Extra Work Delay Costs
  - a. Extended MOT Per Day

The Engineer decided Russell has entitlement to both time and compensation for delay costs resulting from the Plan Revision 11 Added Turn Lane Extra Work Delay with the exception to monetary compensation for Extended MOT cost. See the Engineer’s Entitlement Analysis and UL Payment to be processed attached hereto as **EXHIBIT “D”**.

The difference between the time-cost amounts requested vs. agreed is as follows:

The Engineer decided Russell has entitlement to both time and compensation for delay costs resulting from the Plan Revision 11 Added Turn Lane Extra Work Delay with the exception to monetary compensation for Extended MOT cost. See the Engineer’s Entitlement Analysis and UL Payment to be processed attached hereto as **EXHIBIT “D”**.

The difference between the time-cost amounts requested vs. agreed is as follows:

**See Following Page**

COST		COST AMOUNT REQUESTED BY REI ON 07/29/2013 FOR ISSUE NO. 2						
NO.	DESCRIPTION	U/M	QTY	UNIT RATE	AMOUNT	MARKUP		EXTENSION
						%	AMOUNT	
1	PROJECT MGR (PRO-RATED TIME: 50%)	WD	4.50	\$ 467.70	\$ 2,104.65	0%	\$ -	\$ 2,104.65

## Disputes Review Board Recommendation

2	PROJECT SUPER (PRO-RATED TIME:	WD	9.00	\$ 436.43	\$ 3,927.87	0%	\$ -	\$ 3,927.87
3	3/4 TON TRUCK - PROJECT MANAGER	WD	4.50	\$ 226.63	\$ 1,019.84	0%	\$ -	\$ 1,019.84
4	3/4 TON TRUCK - PROJECT SUPER	WD	9.00	\$ 226.63	\$ 2,039.67	0%	\$ -	\$ 2,039.67
5	AVERAGE OVERHEAD - OPTION 2 (NO MARKUP)	CD	12.00	\$ 1,422.09	\$ 17,065.08	0%	\$ -	\$ 17,065.08
6	EXTENDED MOT	CD	12.00	\$ 1,427.07	\$ 17,124.84	0%	\$ -	\$ 17,124.84
7	EXTENDED/ADDITIONAL QC	CD	12.00	\$ 243.75	\$ 2,925.00	0%	\$ -	\$ 2,925.00
8	ADDITIONAL SURVEY	HR	4.00	\$ 125.00	\$ 500.00	0%	\$ -	\$ 500.00
					\$ 46,706.95		\$ -	\$ 46,706.95

COST ELEMENTS (CONT'D)		COST AMOUNT AGREED BY FDOT AS OF 10/31/13 FOR ISSUE NO. 2					
NO.	DESCRIPTION	ENTITLEMENT	QTY	UNIT RATE	AMOUNT	VARIANCE	% VAR.
1	PROJECT MGR (PRO-RATED TIME:	AGREED	3.50	\$ 467.70	\$ 1,636.95	\$ (467.70)	-22%
2	PROJECT SUPER (PRO-RATED TIME: 100%)	AGREED	7.00	\$ 436.43	\$ 3,055.01	\$ (872.86)	-22%
3	3/4 TON TRUCK - PROJECT MANAGER	AGREED	1.75	\$ 226.63	\$ 396.60	\$ (623.23)	-61%
4	3/4 TON TRUCK - PROJECT SUPER	AGREED	1.75	\$ 226.63	\$ 396.60	\$ (1,643.07)	-81%
5	AVERAGE OVERHEAD - OPTION 2 NO MARKUP	AGREED	7.00	\$ 1,422.09	\$ 9,954.63	\$ (7,110.45)	-42%
6	EXTENDED MOT	DENIED	0.00	\$ 1,427.07	\$ -	\$ (17,124.84)	-100%
7	EXTENDED/ADDITIONAL QC	AGREED	0.50	\$ 243.75	\$ 121.88	\$ (2,803.13)	-96%
8	ADDITIONAL SURVEY	AGREED	0.50	\$ 125.00	\$ 62.50	\$ (437.50)	-88%
					\$ 15,624.17	\$ (31,082.78)	-67%

**TIME REQUESTED BY REI (CD):**                   **12**  
**TIME AGREED BY FDOT (CD):**                   **7**  
**VARIANCE:**   **-5**  
**% VAR:**   **-42%**

Plan Revision No. 11 issued for construction dated March 21, 2013, changed the median design of SR 45 (U.S. 41) from Sta. 188+94 to Sta. 192+02 MED SR 45 from that which was depicted in the original plan documents for the purpose of adding a southbound turn lane and median opening for access to the Shell driveway at approximate Sta. 189+00 MED SR 45. This design change is located within Phase V – Sta. 221+27 to Sta. 171+00 MED SR 45 of the current approved schedule. The Engineer issued a proposed draft of Plan Revision No. 11 on March 7, 2013. The Engineer issued the NTP on April 5, 2013. In response to the March 7th proposed plan change, Russell submitted a Preliminary Time Extension Request / Notice of Intent (NOI) to Claim Additional Compensation to the Engineer on March 11, 2013. See Preliminary TER / NOI attached hereto as **EXHIBIT "3"**.

This plan change was issued after Russell had already constructed the proposed median curb in accordance with the original plan documents. The newly constructed curb had to be removed as a result of this plan change in

## Disputes Review Board Recommendation

*addition to constructing the new turn lane activities; curb removal, regular excavation, stabilization, base rock, drainage, curb and gutter, traffic separator and asphalt.*

*Russell's resources had already progressed south in the outside Lt. roadway on successive work activities in Phase IVB – Sta. 137+00 to Sta. 117+80 SR 45, which was controlling the critical path when this plan change was issued for construction by the Engineer. This additional turn lane work had to finish before Phase IV – Sta. 208+93 to Sta. 156+00 SR 45 asphalt could start in order to be placed in the same mobilization, and not impact our planned sequence for work remaining.*

*The as-planned sequence-of-construction for work remaining north of the bridge in both the Lt. roadway (Phase IV) and median (Phase V) must finish before traffic can be shifted to the outside throughout the entire limits of the project and the median (Phase V) work south of the bridge can begin. Therefore the changes associated with this plan revision had to be completed before progressing further with original plan work in Phase IVB and median work in Phase VA, thus resulting in resources having to be reassigned from Phase IVB controlling items of work in our current approved schedule. This reassignment of resources and delay to the controlling items of work listed below resulted in the total float being exceeded and extended the project completion date through no fault of Russell.*

### ISSUE NO. 2 (TIA02-2) – MILESTONES

No	Description of Event	Date
01	Proposed Plan Revision No. 11 Issued By Engineer	03/07/13
02	Preliminary TER / Notice of Intent to Claim Additional Compensation for Plan Revision No. 11	03/11/13
03	Plan Revision No. 11 Issued for Construction By Engineer	03/21/13
04	Resources Reassigned from Phase IVB to Phase V / Start Plan Revision No. 11 Turn Lane Extra Changes	04/04/13
05	Finish Plan Revision No. 11 Turn Lane Changes / Resources Reassigned from Phase V to Phase IVB	04/23/13

### ISSUE NO. 2 (TIA02-2) – CONTROLLING ITEMS OF WORK AFFECTED

*The controlling items of work affected in Progress Schedule No. 25 (DD: 03/17/2013) / Before Impact Schedule (DD: 04/03/13) by the changes associated with Plan Revision No. 11 is as follows:*

Activity ID	Activity Description
PIV-270-40-B	SPREAD/MIX TYPE B STABILIZATION 131+00>117+80 LT (S6) - PH IV (CONST. IN PIVB)
PIV-420-20-B	CONST. CURB AND GUTTER TYPE E & F 131+00>117+80 LT (S3) - PH IV (CONST. IN PIVB)

*This added turn lane work delay exceeded the total float and extended the project completion date by fifteen (15) days, less three (3) days of concurrent delay that occurred during this delay period due to inclement weather.*



## Disputes Review Board Recommendation

### Department's Position

*On approximately March 7, 2013 the Department issued Plan Revision #11 to add turn lanes to the project. The documents were provided to REI on March 21, 2013.*

*NTP date March 21, 2013*

*Work Commenced - April 4<sup>th</sup> (according to REI's schedule)*

*Work Completed - April 23<sup>rd</sup> (according to REI's schedule)*

*Days worked on activities included with work order - 6 days (business days)*

*NOI issued by REI – March 12, 2013*

*REI was compensated for all the work efforts contained within the Work Order by paying the Contractor for the actual measured quantities using the existing bid units.*

*Due to a need to provide additional access management points along the corridor, the Department issued Plan Revision #11. In accordance with Article 4-3 the Engineer reserves the right to make, at any time, revisions to the contract plans. The work is to be paid in accordance with the contract documents, unless they are deemed to be a "significant change". The specification defines what a "significant change" is and in this case, none of the individual items rise to that level. Therefore in accordance with Article 4-3.1, payments made in accordance with the unit bid prices will constitute full payment for all work including direct & indirect costs, overhead, profit, et al. Therefore the contractor is not entitled any compensation for extended overhead. However, the contractor was required to pull resources from other portions of the project, therefore the contractor is entitled to be granted a time extension on a day for day basis for each day the contractor's resources were involved in the additional work as outlined in Article 8-7.3.2. The Plan Revision #11 this would amount to a total of 6 business days.*

*Furthermore, the contractor would only be entitled to compensation for extended overhead when in fact the added work extended the contract completion beyond the originally anticipated completion. All contracted work efforts were completed within the original contract date, including adjustments for previous changes, claims, Holiday and weather, which is currently 11/8/13. The only work not completed is the pipe video and repair work. The pipe video and repair was not impacted by the addition of the turn lanes and therefore unaffected by the issues contained herein.*

*KCCS issued their own time analysis as depicted below:*

## Disputes Review Board Recommendation

Revision #11 Time Impact Actual work days on revision 11			
1	4/4/2013	Curb removal	
2	4/8/2013	Embankment	
3	4/9/2013	Subgrade(limerock in lieu of)	
4	4/10/2013	Baserock	
5	4/11/2013	Baserock	
6	4/18/2013	Paving 1st lift	
***	5/1/2013	Traffic Separator	
6	Total non-compensable days		Weather Day

Days	item	rate	subtotal
6	PM 25%	\$0.00	\$0.00*
6	P\$50%	\$0.00	\$0.00*
6	Equipment	\$0.00	\$0.00*
6	Equipment	\$0.00	\$0.00*
6	Days	\$0.00	\$0.00
0	MOT	\$0.00	\$0.00**
0	QC	\$0.00	\$0.00
4	(hours)survey	\$0.00	\$0.00

**Total      \$0.00**

• Need to verify if allowable

\*\*Additional will be paid by overrunning contract unit prices

\*\*\* Weather Day

### **REI Rebuttal**

*The Department states in ¶1 on Page 2 of their Position Paper ...“At the conclusion of the meeting, REI was to provide some additional detail information to support their position. At each subsequent progress meeting KCCS questioned the status of the submittal of the additional information”... The Department continues to make the claim that because Russell did not submit so called “additional detail information” to support our position, as the*

## Disputes Review Board Recommendation

Department calls it, after our meeting on August 15, 2013, when our Request for Contract Time Extension/Equitable Adjustment (Request) was already supported, the Department decided not to respond to our Request. The Department included no reference(s) to “additional detail information” requirements specified in the Contract to support not responding to our Request. See Department’s Position Paper attached hereto as **EXHIBIT “1”**.

There is no requirement specified in the Contract that the Contractor must submit “additional detail information”, as the Department calls it, in order for the Engineer to accept or reject a Request made by the Contractor. Moreover, Russell did not communicate to the Engineer during our meeting on August 15, 2013, or any other progress meeting, that any such information would be submitted for the purpose of supplementing our Request with so called “additional detail information” to further support or position on entitlement or quantum. Russell did not even know which time-cost elements of entitlement the Department was even disputing prior to October 31, 2013.

The Department states in ¶1 on Page 2 of their Position Paper ...“No additional information was submittal and no additional discusses took place until REI submitted their October 8th email **demanding** a response to their Request within seven (7) days and if this was not possible, requesting the issuance of a unilateral work order.”... Russell made no such demand, we asked the Department to please acknowledge our Request and process a UL Payment for quantum not being disputed. As of October 8, 2013, seventy- one (71) days had already elapsed since Russell first submitted its Request without a single written response from the Department, which is why Russell requested that the Department at least process a Unilateral Payment for time and compensatory cost amounts agreed by the Department. This seemed like a reasonable request to Russell, not a demand, especially since **Section 7.2.5(4)** of the **CPAM** states, “The Resident Engineer shall provide written acknowledgment of each Contractor’s time extension request.”... **Section 7.2.5(5)** of the **CPAM** states ... “The denial or approval should include a concise response explaining the findings and decision for each issue raised by the Contractor’s request.”... See Section 7.2 Time Extensions of the CPAM attached hereto as **EXHIBIT “2”**.

Therefore, since the Engineer failed to respond to our Request after ninety-four (94) days elapsed since making our submission, Russell considered our Request denied by the Engineer’s failure to respond, and referred the dispute to the Board for timely resolution as a result.

The Department states in ¶1 on Page 2 of their Position Paper ...“It should be noted that as of October 8th no certified claim package had been submitted by REI. Furthermore, once a certified claim package is submitted, the Department has 120 days to review and respond to the submittal in accordance with specification section 5-12.4.” It is still Russell’s position that none of the three issues brought to the Board for recommendation have become a formal dispute, because Russell has not submitted a written demand “Contract Claim (Claim)” as defined by the Contract. The Contract defines a Contract Claim (Claim) as, “A written demand submitted to the Department by the Contractor in compliance with 5-12.3 seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.”, which activates legal rights and obligations as to the Contractor or Department, whereas a Request for Contract Time Extension/Request for Equitable Adjustment does not. See definition of Contract Claim (Claim) attached hereto as **EXHIBIT “3”**.



## Disputes Review Board Recommendation

*The Contract does not specify that the Department is allowed 120 days to review and respond to a Request for Contract Time Extension/Request for Equitable Adjustment. In our last DRB Meeting held on November 14, 2013, the Department acknowledged that Russell submitted a Request for Equitable Adjustment, not a Contract Claim (Claim).*

*On November 5, 2013, the Department stated in an email to the DRB Chairman ...“we are only at an impasse because the contractor has failed to meet with us following one initial meeting.” The Department’s reason for not responding to our Request for ninety-four (94) days in their Position Paper is not their basis for rejecting entitlement and quantum. See email from the Department to Russell dated November 5, 2013 attached hereto as **EXHIBIT “4”**.*

### **a. Department Statement:**

*(Page 3 of 6 – Paragraph 3)*

*...“Work Commenced – April 4th (according to REI’s schedule)*

*Work Completed – April 23rd (according to REI’s schedule)*

*Days worked on activities included with work order – 6 days (business days)...*

*...REI was compensated for all the work efforts contained with the Work Order by paying the Contractor for the actual measured quantities using the existing bid units.”*

### **a. Russell Rebuttal:**

*The “Work Commenced” and “Work Completed” dates match the start date and end date of the delay period in Russell’s Time Impact Analysis (TIA02) on Page 7 of 14 for this issue, which is not being disputed by the Department, so there’s no issue over the number days controlling item of work Activity **PIV-270-40-B – SPREAD/MIX TYPE B STABILIZATION 131+00>117+80 LT (S6) - PH IV (CONST. IN PIVB)** was delayed from finishing. The Department is not disputing a single controlling item of work affected in the accepted Contract Schedule delayed by this extra work design change that was identified in Russell’s Time Impact Analysis. The actual start dates, actual finish dates and slippage in schedule updates; Progress Schedule No. 26 (DD: 04/21/13) and Progress Schedule No. 27 (DD: 04/21/13), were accepted by the Engineer. However, when it comes to calculating the number of days of delay, the Engineer is not comparing duration variance between project completion dates in accordance with the Contract, i.e., Before and After Fragnet. Instead of explaining what information in our Request for Time Extension TIA does not meet the requirements of Sub Article 8-3.2.6 of the Special Provisions, the Department is attempting to calculate the time impact duration in a Critical Path Method (CPM) Contract Schedule using some method similar to tacking time and material for extra costs, which is not an acceptable method for analyzing a critical delay to the Critical Path Method (CPM) Contract Schedule. See Progress Schedule No. 26 (DD: 04/21/13) attached hereto as **EXHIBIT “6”** and Progress Schedule No. 27 (DD: 04/21/13) attached hereto as **EXHIBIT “7”**.*

*If controlling item of work Activity **PIV-270-40-B – SPREAD/MIX TYPE B STABILIZATION 131+00>117+80 LT (S6) - PH IV (CONST. IN PIVB)** in the accepted Contract Schedule was affected for a period of twenty (20) days due to an extra work design change, and a the project completion date is extended fifteen (15) days beyond what it was prior to the delay, that’s the time impact duration variance, less three (3) days of concurrent delay due to weather or holidays. Additionally, Contract Time is in calendar days, not work days, therefore, so is a Time Extension.*

## **Disputes Review Board Recommendation**

*Russell has not been compensated for any delay costs that resulted from the project completion date being extended twelve (12) days additional days due to this added turn lane work extra work delay.*

### **FDOT/KCCS Rebuttal**

*On page 11 of REI's position paper REI alleges that the Engineer did not verify the schedule impacts as outline by Specification Section 8-3.2.6. While this is a correct statement, the specification is intended for the Contractor. Nowhere does it bind the Engineer to do an evaluation following any specific format. The method used to calculate the number of days attributable to the delay was to simply count the actual days worked on the activities included in the plan revisions as documented by the CEI field staff.*

*In REI's position paper REI includes a fragnet for each of the issues in question. They claim the fragnet has been prepared in accordance the Specification Section 8-3.2.6. However, each alleged delay is shown only as a single bar on the CPM, with no breakdown or detailed information. Specification Section 8-3.2.3, Schedule Content, details how the project schedule is to be prepared. According to section 8-3.2.3 all non-procurement items must be less than 20 days in duration. Each activity must include the quantity of work and must clearly communicate the amount of work. This is to allow the Engineer the opportunity to evaluate the activity duration. If this is not done, which is the case here, the contractor has the ability to create a work item which inflates the overall schedule duration.*

*Due to a need to provide additional access management points along the corridor, the Department issued Plan Revision #11. In accordance with Article 4-3 the Engineer reserves the right to make, at any time, revisions to the contract plans. The work is to be paid in accordance with the contract documents, unless they are deemed to be a "significant change". The specification defines what a "significant change" is and in this case, none of the individual items rise to that level. Therefore in accordance with Article 4-3.1, payments made in accordance with the unit bid prices will constitute full payment for all work including direct & indirect costs, overhead, profit, et al. Therefore the contractor is not entitled any compensation for extended overhead. However, the contractor was required to pull resources from other portions of the project, therefore the contractor is entitled to be granted a time extension on a day for day basis for each day the contractor's resources were involved in the additional work as outlined in Article 8-7.3.2. The Plan Revision #11 this would amount to a total of 6 business days.*

*Furthermore, the contractor would only be entitled to compensation for extended overhead when in fact the added work extended the contact completion beyond the originally anticipated completion. All contracted work efforts were completed within the original contract date, including adjustments for previous changes, claims, Holiday and weather, which is currently 11/8/13. The only work not completed is the pipe video and repair work. The pipe video and repair was not impacted by the addition of the turn lanes and therefore unaffected by the issues contained herein.*

### **Applicable Specifications**

Special Provision Sub Article 8-3.2.6 Time Extensions

Section 8-7.3.2 Contract Time Extensions of the 2010 Standard Specifications,

## Disputes Review Board Recommendation

Section 4-3.2 Increase, Decrease or Alteration in the Work of the 2010 Standard Specifications

Section 5-12 Claims by Contractor, attached hereto as EXHIBIT "K".

### ISSUE NO. 2 Plan Revision 11 Discussion and Findings

REI submitted a "before and after" fragnet (see page 5) which indicated the final completion of the project (FC-9999) was impacted by 15 contract days, less 3 weather days, equals 12 total days. This is the amount of time REI is requesting as an Excusable-Compensable delay.

Section 8-3.2.6, Time Extensions states:

*"The Contractor is responsible for submitting a request for Contract Time extension in accordance with 8-7.3.2 of the standard specifications. An extension of time for performance shall be considered only to the extent that a delay to an activity or activities exceeds the total float along the project critical paths within the current approved schedule.*

*As a minimum, time extension requests shall contain:*

- a. A descriptive summary of the changes*
- b. An analysis of project impact*
- c. A fragnet that shows the impacted activities before the change.*
- d. A fragnet that shows the impacted activities after the change."*

KCCS argues "each alleged delay is shown only as a single bar on the CPM, with no breakdown or detailed information." The Board finds no requirement in the specification for more information other than what REI provided. The Board believes the fragnets, as inserted in the schedule, accurately depicts the delay.

KCCS believes the Contractor has been fully compensated for its delay via previous payments of the actual measured quantities of the pertinent contract bid items which constitute full payment for all work including direct & indirect costs, overhead, profit, et al.

REI believes it has not been paid any delay costs, whatsoever, through previous payments it has received to construct Turn Lane 11.

It is the Board's opinion that both the Engineer and the Contractor are both partially correct and partially incorrect in their positions, wherein we believe that the Contractor has received a portion of its indirect overhead costs via the pertinent pay items, but not all due under the provisions of the Contract, notably 4-3.2.1 Allowable Costs for Extra Work.

Finally, KCCS acknowledges that REI did pull resources from other critical portions of the project. However KCCS believes that since all work efforts were completed within the contract time, the Contractor is not due delay compensation, notwithstanding the fact that liquidated damages are being assessed due to incomplete pipe videos and repair. It is the Board's opinion that whether REI completed the project on time, or not, is irrelevant and that barring a documented delay on that basis is contrary to the Contract Specifications.

## Disputes Review Board Recommendation

### ISSUE NO. 2 Plan Revision 11 DRB Recommendation

The Board finds **entitlement** to much of the Contractor's position and recommends that it be compensated for most costs involved with this delay. Therefore the Board recommends a contract time extension of 12 days and recommends associated costs to be computed and summed as follows:

At the DRB meeting held on November 14, 2013 it appeared that Russell and KCCS had agreed to all unit costs excluding the MOT rate. However, KCCS's full position paper has denied all costs in total. The Board is unsure if KCCS remains in agreement to the unit costs or has denied them simply due to its position of "No Entitlement". Therefore we are addressing cost calculations in detail even though the Contractor has not definitely asked the Board to do so.

1. Project Supervisory – Project Manager	\$2,104.65
2. Project Supervisory – Project Superintendent	\$3,927.87
3. ¾ Ton Truck – Project Manager	\$1,019.84
4. ¾ Ton Truck – Project Superintendent	\$2,039.67

5. Extended Overhead (Average Overhead Per Day):

Overhead shall be computed as follows:

REI is **entitled** to extended overhead of **\$17,065.08 LESS overhead** that was included in the original contract items. It is reasonable to assume that REI included some percentage for home office overhead within these items at the time of bid. REI should give some form of credit to allow for this. Absent more detailed information the Board cannot make a recommendation of what this deduction might be and leaves it up to the parties to negotiate.

6. Extended MOT: **Entitled**

12 days multiplied by a MOT daily rate that reflects the estimated time sensitive costs that were borne by the Contractor. Reimbursement for extended MOT costs are not specifically defined but are a direct cost analogous to extended labor and equipment as defined in 4.3.2.1 (a) and (c). It should be noted that the Board was specifically requested to rule on entitlement only on the MOT portion of the issue. The Board is unsure if KCCS remains in agreement to the unit costs or has denied them simply due to its position of "No Entitlement". Therefore we are addressing cost entitlement in detail even though the Contractor did not specifically ask the Board to do so. The Contractor is **not entitled** to recover a daily rate by calculating the Lump Sum MOT costs divided by the Original

## Disputes Review Board Recommendation

Contract Time. There are certain fixed costs included in the pay item which are not time sensitive (i.e. temp asphalt, temp embankment, etc.). The Contractor **is entitled** to remuneration for any daily crew costs, signs or devices not covered under pay items. This will most likely require further negotiation between the parties.

7. Extended/Additional QC: **Entitled**

The methodology for quantum determination should be similar to MOT above. There are some QC costs which are time sensitive and others that are not. The Contractor is **not entitled** to recover a daily rate by calculating the Lump Sum QC costs divided by the Original Contract Time. Absent more detailed information the Board cannot make a recommendation of what this deduction might be and leaves it up to the parties to negotiate.

8. Additional Survey: **Entitled**

**\$500.00**

The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. Please remember that failure to respond to the DRB and the other party concerning your acceptance or rejection of the DRB recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in all of the meetings of the DRB regarding the Dispute indicated above and concur with the findings and recommendations.

Respectfully Submitted,

Disputes Review Board

Rammy Cone, DRB Chairman as appointed by the Members

James Guyer, DRB Member

Roy Adams, DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:



DRB Chairman

CC: file