

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 No. 10 & 12 Added Turn Lane Extra Work Delay (heretofore known as Issue No. 3). Entitlement on Plan Revision 12 is not in Dispute; only quantum. Both entitlement and quantum are in dispute with respect to Plan Revision 10. Entitlement only was requested for extended MOT costs. 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

*The Engineer decided Russell has entitlement to both time and compensation for delay costs resulting from the Plan Revision 12 Added Turn Lane Extra Work Delay with the exception of monetary compensation for Extended MOT cost, and no entitlement to time or compensatory delay costs resulting from the Plan Revision 10 Added Turn Lane Extra Work Delay. See the Engineer’s Entitlement Analysis and UL Payment to be processed attached hereto as **EXHIBIT “D”**.*

TIME REQUESTED BY REI (CD): 27

TIME AGREED BY FDOT (CD): 4

VARIANCE: -23

% VAR: -85%

COST ELEMENTS		COST AMOUNT REQUESTED BY REI ON 07/29/2013 FOR ISSUE NO. 3						
NO.	DESCRIPTION	U/M	QTY	UNIT RATE	AMOUNT	MARKUP		EXTENSION
						%	AMOUNT	
1	PROJECT MGR (PRO-RATED TIME: 50%)	WD	9.50	\$ 467.70	\$ 4,443.15	0%	\$ -	\$ 4,443.15
2	PROJECT SUPER (PRO-RATED TIME: 100%)	WD	19.00	\$ 436.43	\$ 8,292.17	0%	\$ -	\$ 8,292.17
3	3/4 TON TRUCK - PROJECT MANAGER	WD	9.50	\$ 226.63	\$ 2,152.99	0%	\$ -	\$ 2,152.99

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4	3/4 TON TRUCK - PROJECT SUPER	WD	19.00	\$ 226.63	\$ 4,305.97	0%	\$ -	\$ 4,305.97
COST ELEMENTS		COST AMOUNT REQUESTED BY REI ON 07/29/2013 FOR ISSUE NO. 3						
5	AVERAGE OVERHEAD - OPTION 2 NO MARKUP	CD	27.00	\$ 1,422.09	\$ 38,396.43	0%	\$ -	\$ 38,396.43
6	EXTENDED MOT	CD	27.00	\$ 1,427.07	\$ 38,530.89	0%	\$ -	\$ 38,530.89
7	EXTENDED/ADDITIONAL QC	CD	27.00	\$ 243.75	\$ 6,581.25	0%	\$ -	\$ 6,581.25
8	ADDITIONAL SURVEY	HR	8.00	\$ 125.00	\$ 1,000.00	0%	\$ -	\$ 1,000.00
					\$ 103,702.85		\$ -	\$ 103,702.85

COST ELEMENTS (CONT'D)		AMOUNT AGREED BY FDOT AS OF 10/31/13					
NO.	DESCRIPTION	ENTITLEMENT	QTY	UNIT RATE	AMOUNT	VARIANCE	% VAR.
1	PROJECT MGR (PRO-RATED TIME: 50%)	AGREED	2.00	\$ 467.70	\$ 935.40	\$ (3,507.75)	-79%
2	PROJECT SUPER (PRO-RATED TIME: 100%)	AGREED	4.00	\$ 436.43	\$ 1,745.72	\$ (6,546.45)	-79%
3	3/4 TON TRUCK - PROJECT MANAGER	AGREED	1.00	\$ 226.63	\$ 226.63	\$ (1,926.36)	-89%
4	3/4 TON TRUCK - PROJECT SUPER	AGREED	1.00	\$ 226.63	\$ 226.63	\$ (4,079.34)	-95%
5	AVERAGE OVERHEAD - OPTION 2 NO MARKUP	AGREED	4.00	\$ 1,422.09	\$ 5,688.36	\$ (32,708.07)	-85%
6	EXTENDED MOT	DENIED	0.00	\$ 1,427.07	\$ -	\$ (38,530.89)	-100%
7	EXTENDED/ADDITIONAL QC	AGREED	0.50	\$ 243.75	\$ 121.88	\$ (6,459.38)	-98%
8	ADDITIONAL SURVEY	AGREED	0.50	\$ 125.00	\$ 62.50	\$ (937.50)	-94%
					\$ 9,007.12	\$ (94,695.73)	-91%

Please refer to **ISSUE NO. 3** in TIA02 for background, problem definition, milestones, controlling items of work affected, time impact analysis, schedule fragments and other evidence related to **ISSUE NO. 3** supporting Russell's entitlement to an adjustment of time and monetary compensation as a result of the Plan Revision 10 & 12 Added Turn Lane Extra Work Delay. The documented evidence in TIA02 referenced above relating to **ISSUE NO. 3** has been extracted and formatted as a standalone document for ease of reference and attached hereto as **EXHIBIT "O"**. See Plan Revision No. 10 attached hereto as **EXHIBIT "P"** and Plan Revision No. 12 as **EXHIBIT "Q"**.

The Engineer denied Russell's entitlement to time and delay costs resulting from **ISSUE NO. 3** – Plan Revision 10 Added Turn Lane Extra Work Delay, because Russell signed Work Order No. 9999-21-07, which granted zero (0) days. See **WO 9999-21-07** attached hereto as **EXHIBIT "R"**. The Work Order **Description of Work** only describes the removal and reconstruction of a portion of Trailside Drive and The modification of drainage structures S-181 & S-184, it does not describe the added turn lane work in the median from Sta. 151+99 to Sta. 156+00 on SR 45. Therefore, Russell has not waived any rights to claim additional time and compensatory delay costs for the added turn lane work on SR 45 associated with Plan Revision No. 10. See Engineer's Entitlement Analysis and UL Payment to be processed attached hereto as **EXHIBIT "D"**.

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The Engineer also rejected the time impact duration calculated for ISSUE NO. 3 – Plan Revision No. 12 Added Turn Lane Extra Work Delay calculated 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 for both Plan Revision No. 10 and 12 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 **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 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 10 and 12 Added Turn Lane Extra Work Delay with the exception to Extended MOT cost.

➤ **Entitlement Agreed – Quantum In Dispute**

1. Time Extension (Plan Revision 12)
2. Compensatory Extra Work Delay Costs (Plan Revision 12)
 - 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. Time Extension (Plan Revision 10)
2. Compensatory Extra Work Delay Costs (Plan Revision 10)
 - a. Extended Overhead
 - b. Project Supervisory – Project Manager
 - c. Project Supervisory – Project Superintendent
 - d. Additional Survey
 - e. Additional QC
 - f. Extended MOT Per Day
3. Compensatory Extra Work Delay Costs (Plan Revision 12)
 - a. Extended MOT Per Day

Plan Revision No. 10 issued for construction on December 13, 2012, changed the median design of SR 45 (U.S. 41) from Sta. Sta. 151+99 to Sta. 156+00 MED SR 45 from that which was depicted

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in the original plan documents for the purpose of adding a northbound turn lane and median opening for access to Trailside Drive at approximate Sta. 155+40 RT SR 45. This turn lane design change is located in Phase VA – Sta. 171+00 to Sta. 143+00 MED SR 45 of the current approved schedule. The Engineer issued the NTP on December 19, 2012.

Plan Revision No. 12 issued for construction on April 18, 2013, changed the median design of SR 45 (U.S. 41) from Sta. 149+71 to Sta. 146+01 MED SR 45 from that which was depicted in the original plan documents for the purpose of adding a northbound turn lane and median opening for access to an asphalt driveway at approximate Sta. 149+70 LT SR 45. This turn lane design change is also located in Phase VA – Sta. 171+00 to Sta. 143+00 MED SR 45 of the current approved schedule. The Engineer did not issue the NTP for this plan change.

*In response to these proposed plan changes, Russell submitted a Preliminary Time Extension Request / Notice of Intent (NOI) to Claim Additional Compensation to the Engineer on May 20, 2013, after this additional turn lane work started. See Preliminary TER / NOI attached hereto as **EXHIBIT “4”**.*

These plan changes were issued after Russell had already finished constructing the proposed Type E median curb in accordance with the original plan documents on October 13, 2012 while resources were working in Phase IVA – Sta. 156+00 to Sta. 137+00 LT SR 45. The newly constructed Type E curb had to be removed as a result of this plan change in addition to constructing the new turn lane activities; curb removal, drainage, regular excavation, stabilization, base rock, curb and gutter, asphalt and traffic separator.

This additional turn lane work could not start until after Phase V – Sta. 221+27 to Sta. 171+00 MED SR 45 was finished and had to finish before Phase IVA – Sta. 156+00 to Sta. 137+00 LT SR 45 asphalt could start in order to be included in the same asphalt 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 IV BDWY and median work in Phase VB, thus resulting in resources having to be reassigned from Phase IV BDWY 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.

II-C-1. ISSUE NO. 3 (TIA02-3) – MILESTONES

No	Description of Event	Date
01	Plan Revision No. 10 Issued for Construction	12/13/12
02	Plan Revision No. 10 Notice To Proceed Issued	12/19/12

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03	<i>Plan Revision No. 12 Issued for</i>	<i>04/18/13</i>
04	<i>Preliminary TER / Notice of Intent to Claim Additional Compensation for Plan Revision No. 10 & 12</i>	<i>05/20/13</i>
05	<i>Resources Reassigned from Phase IV / Start Plan Revision No. 10 & 12 Added Turn Lane Work</i>	<i>05/16/13</i>
06	<i>Finish Plan Revision No. 10 & 12 Added Turn Lane Work / Resources Reassigned from Phase VA to</i>	<i>07/09/13</i>

**This date does not reflect the finish of asphalt paving or traffic separator.*

The controlling items of work affected in Progress Schedule No. 27 (DD: 05/19/2013) / Before Impact Schedule (DD: 05/15/13) by the changes associated with Plan Revision No. 10 & 12 is as follows:

Activity ID	Activity Description
PII-BW-290-50	FINISH BASE COURSE 2ND LIFT 305+60>312+40/BDWY - PH II (CONST. IN PH IV)
PII-BW-330-20	PLACE STRUCTURAL ASPHALT 305+60>312+40 RT/BDWY - PH II (CONST. IN PH IV)
PII-BW-240-20	PLACE TEMP. PAVEMENT MARKINGS 305+60>319+25/BDWY - PH II (CONST. IN PH IV)
PIII-BW-120-10	CLEARING AND GRUBBING 305+60>312+40 RT/BDWY - PH III (CONST. IN PH IV)
PIII-BW-250-10	CONST. REGULAR EXCAVATION 305+60>312+40 RT/BDWY - PH III (CONST. IN PIV)
PIII-BW-260-10	CONST. EMBANKMENT 305+60>312+40 RT/BDWY - PH III (CONST. IN PH IV)
PIII-BW-270-10	MIX TYPE B STABILIZATION 305+60>312+40 RT/BDWY - PH III (CONST. IN PH IV)
PIII-BW-270-20	GRADE/COMPACT TYPE B STABILIZATION 305+60>312+40 RT/BDWY - PH III (CONST. IN PH IV)
PIII-BW-290-10	SPREAD/COMPACT BASE COURSE 1ST LIFT 305+60>312+40 RT/BDWY - PH III (CONST. IN PH IV)
PIII-BW-290-20	SPREAD/COMPACT BASE COURSE 2ND LIFT 305+60>312+40 RT/BDWY - PH III (CONST. IN PH IV)
PIII-BW-290-30	FINISH BASE COURSE 2ND LIFT 305+60>312+40 RT/BDWY - PH III (CONST. IN PH IV)

Progress Schedule No. 27 (DD: 05/19/2013) was utilized as the baseline schedule for analyzing the time impact associated with this Plan Change Delay. The physical impact was encountered on 05/16/2013, therefore the Data Date was adjusted to 05/15/2013 and the physical progress reflected in the before impact schedule was updated through 05/15/2013 to include the most current physical progress as of the day before the actual impact started.

III-C-1. SCHEDULED DAYS – PS25 (DD: 05/19/13) / BEFORE IMPACT SCHEDULE (DD: 05/15/13)

Early Start Date: 31-JAN-11

Early Finish Date: 28-OCT-13

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III-C-2. START OF DELAY PERIOD #3 – PLAN REVISION NO. 10 & 12 ADDITIONAL TURN LANE WORK DELAY

DATE: 16-MAY-13

This delay period started after Russell’s resources were reassigned from earthwork controlling item of work Activities PII-BW-290-50, PIII-BW-250-10, PIII-BW-260-10 and PIII-BW-270-10 to Phase VA – Sta. 171+00 to Sta. 143+00 MED SR 45 in order to complete the added turn lane work changes associated with Plan Revision No. 10 & 11. The added turn lane work activities became controlling items of work and the driver of the most critical-longest path throughout this delay period.

III-C-3. END OF DELAY PERIOD #3 – PLAN REVISION NO. 10 & 12 ADDITIONAL TURN LANE WORK DELAY

DATE: 09-JUL-13

This delay period ended after the added turn lane earthwork and concrete work associated with Plan Revision No. 10 & 11 finished and Russell’s resources were reassigned to Phase IV Broadway Activities PII-BW-290-50, PIII-BW-250-10, PIII-BW-260-10 and PIII-BW-270-10.

III-C-4. DAYS OF IMPACT – PS27 / TIA02-3-BI (DD: 05/15/13) VS. AFTER IMPACT / TIA02-3-AI (DD: 05/15/13)

<u>SCHEDULE</u>	<u>PS27/TIA02-3-BI</u>	<u>TIA02-3-AI</u>
Construction Start	31-JAN-11	31-JAN-11
Construction Duration (C/D)	995	1038
Substantial Completion	21-OCT-13	03-DEC-13
Variance BL Finish Date	--	-43

Activity Name	AD	Early Start	Early Finish	Early Start (TIA02-3)	Early Finish (TIA02-3)	Var. Star	Var. Finis
TIA02-3 IMPACT	1009	31-JAN-11	21-OCT-13	31-JAN-11	03-DEC-13	0	43

III-C-5. MILESTONE DATES

Project Completion Date Before the Change 21-OCT-13
Before TIA Delay Start – Without Impact

Project Completion Date After the Change 03-DEC-13
After TIA Delay finish – With Impact

The overall duration variance/impact resulting from this plan change delay is forty-three (43) days, less sixteen (-16) days of concurrent delay that occurred during this delay period due to inclement weather, therefore Russell contends the Department is responsible for ~~twenty seven (27)~~ **twenty seven (27)** days of excusable-compensable delay.

Days of concurrent delay to controlling items of work (added turn lane work) due to

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inclement weather:

06/04/13, 06/05/13, 06/06/13, 06/07/13, 06/08/13, 06/10/13, 06/11/13,
06/12/13, 06/14/13,
06/19/13, 06/20/13, 06/21/13, 06/22/13, 06/24/13, 06/26/13 and 06/27/13.

III-C-6. FRAGNETS – SEE FRAGNETS ATTACHED HERETO AS EXHIBITS 7.1 THRU 7.4

- o Exhibit “7.1” – Before Impact Fragnet – PS25/TIA02-3-BI – Actual Progress Thru 05/15/2013
- o **Exhibit “7.2” – After Impact Fragnet – TIA02-2-AI – Actual Progress Thru 07/09/2013**
- o Exhibit “7.3” – Before Impact Longest Path – PS24/TIA02-3-BI – Actual Progress Thru 05/15/2013
- o **Exhibit “7.4” – After Impact Longest Path – TIA02-1/TIA02-3-AI – Actual Progress Thru 07/09/2013**

This added turn lane work delay exceeded the total float and extended the project completion date by forty-three (43) days, less sixteen (16) days of concurrent delay that occurred during this delay period due to inclement weather.

Based on this Time Impact Analysis (TIA) and the Contract Documents, Russell Engineering, Inc. is requesting an equitable adjustment of **twenty-seven (27)** calendar days of excusable-compensable time.

Days of Excusable-Compensable Delay: 27

This represents an increase of 3.4% of Original Contract Time

Department’s Position

REI outlined three issues, however for clarity purposes this position paper will delineate the issues as four separate items as follows: 1) Issue 1 Lee County Utility Removal Delay, 2) Issue 2 Plan Revision 11 – Added Turn Lanes Extra Work Delay 3) **Issue 3-A Plan Revision 10 – Added Turn Lanes Extra Work Delay and 4) Issue 3-B Plan Revision 12 – Added Turn Lanes Extra Work Delay.**

On approximately December 13th the Department issued Plan Revision #10 to add turn lanes to the project. The documents were provided to REI on December 19th.

NTP date December 19th

Work Commenced - May 16th (according to REI’s schedule)

Work Completed - July 9th (according to REI’s schedule)

NOI issued by REI – May 20th

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.

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A formal Work Order was issued to REI on January 10, 2013. REI signed and returned the document on January 10, 2013. In the Work Order, see attachment D-2, it clearly states that “The Department and the Contractor agree that the contract time adjustment and sum agreed to in this document constitute a full and complete settlement of the matters set forth herein, including all direct and indirect costs for equipment, manpower, materials, overhead, profit and delay relating to the issues set forth in this document.”

On approximately April 18th the Department issued Plan Revision #12 to add turn lanes to the project. The documents were provided to REI on April 18th.

NTP date – not issued

Work Commenced - May 16th (according to REI’s schedule)

Work Completed - July 9th (according to REI’s schedule)

Days worked on activities included with work order - 4 days (business days)

NOI issued by REI – May 20, 2013

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.

Issue 3-A Plan Revision 10 – Added Turn Lanes Extra Work Delay – no entitlement

REI signed a formal Work Order, Attachment D-2, which represents full compensation for the work efforts contained with the Plan Revision. Therefore REI is not entitled to any further compensation, either for additional time or monetary payment.

Issue 3-B Plan Revision 12 – Added Turn Lanes Extra Work Delay – entitlement & quantum (time only)

Due to a need to provide additional access management points along the corridor, the Department issued Plan Revision #12. 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 to 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 #12 this would amount to a total of 4 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

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completion. All the work efforts were completed within the original contract date, including adjustments for Holiday and weather, which is 11/8/13 with the exception of the pipe video work which was not impacted by the addition of the turn lanes.

In conclusion, the Department's opinion is that overall there is justifiable reason to add an additional 11 days, calendar days, (10 business days adjusted to include the 6 work day schedule), non-compensable, to the contract duration however there is no justifiable reason for any additional compensation due to the contractor. The contractor has, through the existing bid items, been fully compensated, in accordance with the contract, for all direct & indirect costs, overhead, profit, et al.

REI Rebuttal

NO. 3-A – PLAN REVISION 10 ADDED TURN LANE EXTRA WORK DELAY

a. Department Statement:

(Page 3 of 6 – Paragraph 4-5)

...“Work Commenced – May 16th (according to REI’s schedule)

Work Completed – July 9th (according to REI’s schedule)

...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 formal Work Order was issued to REI on January 10, 2013.”...

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 8 of 14 for this issue, which is not being disputed by the Department, so there’s no issue over the number days the controlling items of work identified in our Time Impact Analysis (TIA02) on Page 5 of 14 were delayed from finishing. The Department is also 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. 27 (DD: 05/19/13), Progress Schedule No. 28 (DD: 06/09/13) and Progress Schedule No. 29 (DD: 07/21/13), 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. 27 (DD: 05/19/13) attached hereto

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as **EXHIBIT “8”**, Progress Schedule No. 28 (DD: 06/09/13) attached hereto as **EXHIBIT “9”** and Progress Schedule No. 29 (DD: 07/21/13) attached here to as **EXHIBIT “10”**.

If the controlling item of work identified in our Time Impact Analysis (TIA02) on Page 5 of 14 were affected by Plan Revision 10 & 12 added turn lane extra work for a period of sixty-five (65) days due to an extra work design change, and a the project completion date is extended forty-three (43) days beyond what it was prior to the delay, that’s the time impact duration variance, less sixteen (16) 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.

Russell has not been compensated for any delay costs that resulted from the project completion date being extended twenty-seven (27) days additional days due to this added turn lane work extra work delay.

*Work Order No. 9999-21-07 granted zero (0) days and no compensation for delay costs for the work on Trailside only. The Work Order **Description of Work** only describes the removal and reconstruction of a portion of Trailside Drive and the modification of drainage structures S-181 & S-184, the Work Order does not include the added turn lane work in the median from Sta. 151+99 to Sta. 156+00 on SR 45. Therefore, Russell has not waived any rights to claim additional time and compensatory delay costs for the added turn lane work on SR 45 associated with Plan Revision No. 10.*

ISSUE NO. 3-B – PLAN REVISION 12 ADDED TURN LANE EXTRA WORK DELAY

a. Department Statement:

(Page 3-4 of 6 – Paragraph 6)

...“Work Commenced – May 16th (according to REI’s schedule)

Work Completed – July 9th (according to REI’s schedule)

Days worked on activities included with work order – 4 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 8 of 14 for this issue, which is not being disputed by the Department, so there’s no issue over the number days the controlling items of work identified in our Time Impact Analysis (TIA02) on Page 5 of 14 were delayed from finishing. The Department is also 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. 27 (DD: 05/19/13), Progress Schedule No. 28 (DD:

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06/09/13) and Progress Schedule No. 29 (DD: 07/21/13), 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.

If the controlling item of work identified in our Time Impact Analysis (TIA02) on Page 5 of 14 were affected by Plan Revision 10 & 12 added turn lane extra work for a period of sixty-five (65) days due to an extra work design change, and a the project completion date is extended forty-three (43) days beyond what it was prior to the delay, that's the time impact duration variance, less sixteen (16) 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.

Russell has not been compensated for any delay costs that resulted from the project completion date being extended twenty-seven (27) days additional days due to this added turn lane work extra work delay.

KCCS/FDOT Rebuttal

On page 4 of REI's position paper REI states that the Department agreed to grant a certain quantum in time and costs (compensable days) as shown in a draft Unilateral. At that time, no certified claim package had been submitted, the CEI and Contractor were still in negotiations and the document was only written as a draft.

Any agreement was only in general terms and as quoted on page 3 of REI's position paper, the statement was made that if a Unilateral is processed "it will be for the associated days we documented that you worked on these issues and the appropriate extended overhead..." The appropriate overhead could be any amount, including zero dollars.

On page 12 of REI's position paper REI states that Plan Revision 10 only addresses the removal and reconstruction of Trailside Drive and the modifications of some drainage structures. The description of the work only addresses the added work not covered by existing unit price bid items as does the added costs of \$3,187.40. However under the reason for the change, the document states that "the decision was made to add a directional left turn lane... at the north entrance of Trailside Drive." Furthermore the drawings associated with this change, clearly depict the addition of the turn lane.

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Also no NOI was submitted for the claim associated with Plan Revision 10. An NOI was submitted on May 20th for turn lane work, however the Email clearly states that the NOI is for Plan Revision #12 and specifically references the turn lane at Sta. 147+00.

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.

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,

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".

Discussion and Findings

In KCCS/FDOT's exhibits of what they call "Issue 3A" a copy of the first page of the signed work order was submitted. On this page, there were headings for "Description of Work" and "Reason". REI stated that the "Description" is precedent over the "Reason" and that it is, in essence, the only scope of the work.

The Board then requested that it be furnished a complete copy of Work Order 9999-21-07 for a complete examination of the document as a whole. This was furnished the next business day. On page 3 of the document the following language was included:

DESCRIPTION OF WORK (continued)

Revised Plan Sheets: 2A, 28, 2C, 2E, 5, 20, 23, 25, 32, 47, 69, 70, 71, 148, 150, 176, 215-219, 262, 284, 347, 362, 388, 389, S-2, S-3, S-11, S-12, LD-2, LD-3, LD-4, LD-5, LD-6, LD-21, LD-22, LD-33, LD-34, LD-50, LD-51, LD-52.

While not provided all of the revised plan sheets the Board assumes that this would be the inclusion and is the entire scope of the work for the agreement. The Board further assumes that these plan pages provided to REI entail work other than what was listed in the "Description" on page one. Therefore, all of this work is part of the work order agreement. By signing the agreement REI has waived any future claim and time rights.

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“Issue 3B” was memorialized by a Unilateral Agreement, therefore REI has not waived future rights. REI’s fragnet which combines “Issue 3A” and “Issue 3B” shows concurrency in the delay. Consequently, since the work was performed concurrently with the same resources, there is a possibility that when REI was working on Issue 3A, 3B was being delayed; and, *vice versa* as evidenced by the execution of Work order 9999-21-07, REI cannot request for time and delay on 3A. However, they can ask for time and delay on 3B. This presents the Board with somewhat of a quandary on a methodology for calculation of impacts relating to the Issue 3B portion of the dispute because the fragnet, as depicted appears to show total concurrency.

The Board believes that REI has demonstrated impacts to 3B and believes the bifurcation of Issue 3 is warranted.

DRB Recommendation

The Board finds **NO entitlement** to the Contractor’s position on Plan Revision 10 (3-A KCCS) as the Contractor signed the work order, constituting a full and complete settlement for this issue.

The Board finds **entitlement** to the Contractor’s position on Plan Revision 12 (3-B KCCS) and recommends that it be compensated for particular costs involved with this delay taking into consideration its **concurrency** with Plan Revision 10 (3-A KCCS).

Therefore, the Board recommends that the parties attempt to resolve the matter in one of the following ways:

1. Compute the time of impact by granting half the time (13.5 days rounded to 14) and basing monetary damages on half of the 27 days of delay according to REI’s methodology.
2. Attempt to reconfigure the CPM fragnet whereby the actual delay of Issue 3B may be determined (i.e. completely separating 3A and 3B). Arrive at an agreed upon time of impact and calculate damages per this agreed upon delay.

REI **is entitled** to extended MOT and QC costs multiplied by a daily rate that reflects the estimated time sensitive costs that were borne by the Contractor. Reimbursement for extended MOT & QC 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 costs divided by the Original 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

Disputes Review Board Recommendation

remuneration for any daily crew costs, signs or devices not covered under pay items. This will most likely require further negotiation between the parties.

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