

# DISPUTE REVIEW BOARD RECOMMENDATION

January 15, 2006

E-Mailed January 15, 2006

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RE: SR 60 (E. of Tiger Lake Rd to E. of CR 630)  
FIN No.: 197395-1-52-01  
County: Polk

## Issue – Sod Payment

Dear Sirs:

The Owner, Florida Department of Transportation (Department) and Contractor, Cherry Hill Construction, Inc., (CHC) requested a hearing to determine **entitlement** of CHC to **additional payment to CHC's subcontractor, Swart's Landscaping, Inc. ("SLI"), for an additional 42,807.81 square yards of sod** on the above referenced project. Should entitlement be established, the Dispute Review Board (Board) was not to decide the quantum of such entitlement at this time, as the parties would attempt to negotiate the value of entitlement.

Pertinent issues, correspondence and other information relating to the Department's and the Contractor's positions were forwarded to this Board for review and discussion at the hearing that was held on January 9<sup>th</sup> 2006.

## CONTRACTOR'S POSITION:

*Request for Compensation  
For Additional Quantity of 575-1 Sodding  
Due to Sod as Temporary Erosion Control*

*Executive Summary  
Project Summary:*

*The Department awarded Cherry Hill Construction, Inc. ("CHC"), as lowest responsible bidder, the general contract, ("Contract"), for*

*Project No. 197395-1-52-01*

*SR 60 From a Point East of Tiger Lake Road to a Point East of CR630, Polk County, Florida.*

*CHC and Swart's Landscaping, Inc. ("SLI"), entered into a subcontract for the Project whereby SLI agreed to lay sod, fertilizer and apply water along the highway. SLI bid the job to CHC on June 17, 2002, signed the subcontract agreement with CHC on November 11, 2002, commenced work in December of 2002 and complete work in July 2004.*

*Pursuant to the subcontract, SLI agreed to perform the contracted work in accordance with the contract documents.*

• 570-1	626,386.000	SY	Sod	\$1.08	\$676,496.88
• 570-5	2.900	TN	Fertilizer	250.00	725.00
• 570-9	809.000	MG	Water for Grass	\$30.00	<u>24,270.00</u>
			<b>Total Value of Subcontract</b>		<b>\$701,491.88</b>

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## Introduction:

Swart's Landscaping, Inc. ("SLI") submits this request for additional compensation of \$ 46,232.43 in accordance with Section 5-12 Claims by Contractor of The Florida Department of Transportation's ("Department") Standard Specifications for Road and Bridge Construction 2000. (Exhibit A)

SLI presents this request based upon Section 104 Prevention, Control, and Abatement of Erosion and Water Pollution of The Florida Department of Transportation's Standard Specifications for Road and Bridge Construction 2000.

Specifically, we refer to section 104-6.4.3 Temporary Sod for the justification of the additional quantities of sod used for temporary erosion control. (Exhibit B) This additional sod quantity was work directed by CHC at the direction of the Department.

This request has been prepared for a Disputes Review Board hearing as allowed by the contract. The intent of this request is to establish the fact that SLI is entitled to this compensation or to any other amounts that are deemed just and fair.

SLI has reason to feel entitled to claim for this additional quantity. To begin, the FDOT Project Plans, Engineer of Record: Thomas M. Pridgen, P.E. included in the Summary of Pay Item Notes, 575-1 Sodding fo, Temporary Grassing. There is 78,839 square yards of temporary sodding included in the 575-1 sod plan quantity. (Exhibit C) To continue, in November 2002, SLI include a letter with the signed contract notifying CHC that sodding may be used for erosion control purposes per Section 104. (Exhibit D) And lastly, the Erosion Control Plan submitted to James Young, FDOT on September 19, 2002 by CHC includes references to sodding as a possible form of erosion control. (Exhibit E) p 21.

The Department has denied our position for additional quantities stating that they were not notified that temporary sod was being used on the project. In hindsight, of course, SLI regrets that we did not request in writing acknowledgement of the large quantities of temporary sod on the project. But we refute, sighting that the Contractor, per the Storm Water Pollution-Prevention Plan Sheet No 256, has the ultimate responsibility for -determining if any modifications o additional controls are necessary to meet requirements for all SWPPP inspections required for the NPDES permit. Th's fact in combination with temporary sodding already included in the 575-1 line item provide SLI with the security to re-sod at the direction of CHC without documentation that the first sod would be paid for as temporary sod.

The Department, CHC and SLI are in agreement with the permanent sodding quantity paid on Progress Estimate Number 0026. (Exhibit F) This is the total permanent sod on the job. We have measured and calculated and meet many times and we are in agreement with this number for permanent sod on the Right Roadway, Left Roadway, and Median.

The discrepancy between the total sod quantity per Swart's Landscaping, Inc. and the paid permanent sod quantity is the temporary sod quantity.

Permanent Sod paid by DOT-	593,884.00 sy
Temporary Sod in dispute -	42,807.81 sv
Total sod used on project to be paid by DOT	636,691.81 sy

\*\* The plan quantity for the job is 626,386.00 sy. The total on project would represent a 1.60% overrun.

In the analysis to follow, SLI will explain how sod was used to keep silt from entering drainage pipes and how the quantity was then re-laid as permanent sod. SLI and CHC were at no point during the job or the final stages of the job expecting a quantity discrepancy of this magnitude. Although the Progress Estimates were consistently short paid since January 2004, (Exhibit G) we thought the quantities would be resolved with little difficulty at the end of the project. SLI did not recognize the eminent danger to follow.

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## Analysis:

The Florida Department of Transportation has written a criterion for temporary sod to be used on a project under Section 104 Prevention, Control, and Abatement of Erosion and Water Pollution. The Department's Specification, 1046.4.3 Temporary Sod states...

### **104-64.3 Temporary Sod:**

**"Furnish and place sod in accordance with Section 575 within areas designated by the Engineer to temporarily control erosion. If the Engineer determines that the sod will be of a temporary nature, he may not require fertilizer and lime. Keep sod in a moist condition in order to ensure growth. The Department will pay for all required watering under Item No. 570-9 [2570-91]." (Exhibit B)**

The Department's stance that they were not notified that temporary sod was being incorporated into the project and that they did not designate the areas is not justified. In fact during the Pre Construction Meeting on August 27, 2002 at 10:00 AM in the Bartow Construction Conference Room the Erosion Control Plan was Item No. VIII. Mark Openshaw, P.E. from CHC, has written on his agenda...

**"(the Department) wants to see us use the temporary quantities for grassing... (will pay)" (Exhibit H)**

According to Mark Openshaw, it was Mr. James Young at the FDOT who spoke about the Department's desire for CHC to use the temporary grassing provided in the plans in order to prevent against erosion and permit problems.

The Engineer of Record: Thomas M. Pridgen, P.E. included in the Summary of Pay Item Notes, 575-1 Sodding for Temporary Grassing.

**"575-1 includes approximately 78,839 sy sodding for temporary grassing." (Exhibit C)**

To continue, in November 2002, SLI include a letter with the signed contract notifying CHC that sodding may be used for erosion control per Section 104.

**"At certain times Swart's Landscaping Inc. may be sodding and grassing for the prevention, control, and abatement of erosion and water pollution as per Section 104 of The Standard Specifications for Road and Bridge Construction.**

**If these operations are performed Swart's will expect payment be made under Section 570 and 575 of The Standard Specifications for Road and Bridge Construction. There may be certain times where operations are performed and it may appear to be permanent work and later, because of erosion control measures, be determined as temporary sod." (Exhibit D)**

And lastly, the Erosion Control Plan submitted to The Department on September 19, 2002 by CHC specifically included the Project Plan Sheets for the Storm Water Pollution Prevention Plan, Sheets No. 256 thru 259. Sheet No. 256 second full paragraph from the top states...

**"The Contractor shall be required to prepare a site specific erosion control plan along with a specific construction schedule for implementation. The Contractor will be required to modify the plan of materials to adapt to seasonal variations, construction activity variations, or as directed by the Engineer. Applicable erosion control devices and implementation procedures are supplied in the FDOT Standard Indexes 100 through 106...**

**... The Contractor is responsible for determining if any modifications or additional controls are required and to assist and obtain deployment schedules for the implementation of all additional erosion control devices." (Exhibit E)**

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SLI and CHC complied with the requirements outlined in the above. It is unfortunate that SLI waited until May 27, 2004 to document in writing to CHC that the temporary sod issue was not being addressed by the Department.

**"Swart's Landscaping, Inc. has been in contact with you (CHC) in regards to the temporary sod laid on the above referenced project, for the last three weeks. You informed us on numerous occasions that Tom with HDR and Tim with DOT said they will be paying for these areas. Each time including today, Tom Kline said he knows nothing about payment for this sod.**

**At this time Swart's Landscaping, Inc. is over 45,000 sy short because of this situation..." (Exhibit I)**

SLI trusted that the contract plans and specifications would ensure payment for the temporary sod quantities. Even after this letter was written, we continued to re-lay sod in the spirit of partnering and issue resolution at the lowest level.

### **Construction Process that led to Temporary Sod:**

According to Sheet No. 257 of the Storm Water Pollution Prevention Plan, it states that...

**"The on-site runoff is conveyed through roadside ditches and outfalls to Lake Weohyakapka and then to the Kissimmee River." (Exhibit E)**

In addition, in the FDOT/CHC Weekly Progress Meeting #12 on December 12, 2002 it is noted in Item #3 Erosion Control that...

**"Pumping water off site cannot be done. It must run into project ditch(es)..." (Exhibit J)**

During construction of Phase I and Phase II the Left Roadway and Right Roadway ditches were, at times, holding water. When it came time to sod the back slope, bottom and front slope of the ditches, the procedure was to sod everything, including placing sod in the water in the -bottom of the ditch (if the water wasn't too deep). This decision was made to minimize the amount of silt entering the drainage pipes, but knowing there was temporary sod in the contract. In the Weekly Project Minutes dated June 3, 2004 Item # 7 states:

**"Cherry Hill feels like the sod item is under run. Extra sod was placed at the contractors own discretion to keep silt from entering drainage pipes. The contractor wants to be paid for temporary sod; they feel it would be right and easily explained..." (Exhibit K)**

It was clear that parts of the ditches would have to be re-worked as the temporary sod would only be able to help not prevent all silting and erosion. In the final stages of construction, it was necessary for CHC to clean the ditches of the silt and in the process remove the temporary sod that was on the ditch berms/slopes and/or covered by silt in the ditch bottoms.

The Daily Report of Construction documented numerous days when CHC was on site re-grading slopes, berms and ditches on Left and Right Roadway.

- 03-09-04 "Regarding berms along Rt Rdwy / ditch at various locations..."
- 03-11-04 "Continued to regrade ditch berms as needed along Rt Rdwy Rt Ditch..."
- 03-18-04 "Continued to regrade Rt Rdwy Rt ditch berms as needed for corrective work..."
- 04-05-04 "Regraded back berm @ Rt ditch to tie in lateral Ditches, Sta 998+00 & 1006+00..."
- 05-17-04 "Cont. to regrade/excavate for back ditch behind berm, right ditch, Sta 943+00 to 947+00..."
- 05-18-04 "Regrading Rt Ditch berm Sta 942+00 to Sta: 951+00..."

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- 05-19-04 *"Continuing to regrade ditch berm slopes, Rt ditch Rt of Rt Rdwy Sta: 951+00 to Sta: 956+00..."*
- 05-20-04 *"Continuing to regrade Rt ditch & berm, Sta: 956+00 to Sta: 965+00 Rt of Rt Rdwy..."*
- 06-04-04 *"Finished regarding for sod, around driveway @ Sta. 1000+20 1000+99 Lt Rdwy..."*
- 6-16-04 *"Placing sod in patch areas (ditch bottoms) along LT of LT RDWY Sta: 720+00 — Sta: 759+15..."*
- 6-23-04 *"Sod crew placing sod in patch areas in LT ditch Sta: 1020+00 to Sta: 950+00..." (Exhibit L)*

Starting months before the project would finish, CHC proceeded judiciously on the re-work, not wanting to go over the 78,629 sy of temporary sod allowed per contract. SLI followed behind CHC re-grading crews laying the permanent sod in the ditches and on the side slopes of the berms. CHC was cautious to remove as minimal an amount of the sod as possible knowing that, that quantity of sod would later be the temporary sod quantity that the plans allowed.

The quantity of temporary sod on the Left Roadway ditches is 6,240.78 sy.

The quantity of temporary sod on the Right Roadway ditches is 10,867.45 sy.

The latitude and departure field measurements are attached. (Exhibit M)

The temporary sod that was used on the Right Roadway Shoulder and the Median was also placed as an erosion control measure. Sod was initially placed on the front slope of the berm all the way up the slope. In Phase II, when construction started on the final dressing, CHC removed a large portion of the temporary sod on the front slope of the shoulder and sections in the median that had been used as stabilization. According to Sheet No. 257 of the Storm Water Pollution Prevention Plan it states:

***"Stabilization measures, such as sodding or seeding of the side slopes shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case the time be greater than 14 days after the construction activity temporarily or permanently ceases..."***

CHC built the job knowing there was a quantity for temporary grassing. They chose to sod the full side slope in the beginning and later when it was time to tie-into the asphalt remove most of the sod on the side slope as temporary sod. In a much smaller scale, the same things happened on sections of the median.

The quantity of temporary sod on the Right Roadway Shoulder is 23,395.83 sy. The quantity of temporary sod on the Median is 2,303.75 sy.

The latitude and departure field measurements are attached. (Exhibit M)

### **Conclusion:**

- Temporary sod (78,839 square yards) was included in the 575-1 sod plan quantity.
- SLI notified CHC that sod may be used for erosion control purposes.
- The Erosion Control Plan references to sod as a possible form of erosion control.
- The Contractor has the ultimate responsibility (SWPPP) for determining if any modifications or additional controls are needed to meet requirements for all inspections required for the NPDES permit.
- During the construction process, temporary sod was used to keep silt from entering drainage pipes and stabilize the shoulder to maintain the permit regulations.
- SLI feels that since the Department agreed that the sod was used and that areas were laid twice, it is unjust to deny payment.

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- *Clearly, there were critical times during the project that SLI and CHC should have insisted on written documentation concerning temporary sod quantities.*
- *CHC and SLI have been addressing the short quantities in the Weekly Project Meetings. (Exhibit N)*
- *The Department has only paid once for all the areas that was sodded twice.*

## **DEPARTMENT'S POSITION:**

### **Contractor's Claim**

*The Contractor, Cherry Hill Construction, Inc. (CHC), has requested additional compensation on behalf of their Subcontractor, Swart's Landscaping, Inc. (SLI), for temporary sodding on the SR 60 Project. The Contractor has stated "SLI submits this request for additional compensation of \$46,232.43...based upon Section 104 Prevention, Control, and Abatement of Erosion and Water Pollution of the Florida Department of Transportation's Standard Specifications for Road and Bridge Construction 2000. Specifically, we refer to section 104-6.4.3 Temporary Sod for the justification of the additional quantities of sod used for temporary erosion control. (Exhibit B) This additional sod quantity was work directed by CHC at the direction of the Department."*

### **Amount Requested by Contractor:**

<b><u>Issue</u></b>	<b><u>Compensation</u></b>
Temporary Sod	\$46,232.43

### **Overview of Claim Analysis**

*The Contractor's basis of claim is that the Department failed to compensate the Contractor for Temporary Sod incorporated into work that was allegedly directed by the Department and called for in the plans. The Contractor has specifically identified the following areas:*

<b><u>Location</u></b>	<b><u>Quantity</u></b>	<b><u>Compensation</u></b>
Left Roadway	6,240.78 SY	\$6,740.04
Right Roadway	34,263.28 SY	37,004.34
Median	2,303.75 SY	2,488.05
Total	42,807.81 SY	\$46,232.43

*The original review of the Contractor's Claim package performed by the Department recommended no entitlement for this issue. However, in the spirit of partnering, the Department elected to have an Independent Claim Analysis performed on the Contractor's Claim package.*

*Both the Department's review and the Independent Claim Analysis concluded that there was no entitlement for this claim.*

*The following discussion is provided to highlight the Contractor's basis of claim for this issue and the Department's position:*

### **Analysis of Contractor's Request**

*The Contractor's basis of claim is that the Department failed to compensate the Contractor for Temporary Sod incorporated into work that was allegedly directed by the Department and called for in the plans.*

#### **- Median**

*Based on our review, the Plans identify the use of Temporary Sod within the Summary of Sodding Matrix as well as the Pay Item Notes. The total Temporary Sod quantity identified is 78,839 SY.*

*A review of the Project Quantity Computation Book depicts Temporary Sod being placed in the left half of the median, in Phase I, for erosion control. **More specifically, the Computation Book shows Temporary Sod being placed on the left half of the median from Station 726+00 to Station 1034+50, 23-foot wide.***

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*A review of the Typical Section depicts the left half of the Median measuring 23-foot.*

*A review of the Phase I Traffic Control Plan depicts the construction of the new Left Roadway with the exception of the Friction Course. In addition, Phase I sequencing identifies the construction of a temporary roadway transition across the median at the beginning of the project.*

*It is clear that the Designers intent was to provide Temporary Sod on the Left side of the Median during Phase I to prevent erosion and maintain the stability of the left roadway median slope until the inside slopes could be final dressed and Permanent Sod could be placed during Phase III. The Designer clearly detailed the removal of the existing and temporary crossovers at the beginning of the project to be removed in Phase III. **Thus, CHC could not complete the entire median and place Permanent Sod until Phase III.***

***Temporary Sod was not placed as intended by the Designer in Phase I.** CHC, at its discretion, elected to final dress the left median slope, with the exception of the crossover areas, and SLI placed the Permanent Sod prior to the completion of Phase I. As such, the necessity for the 78,839 SY of Temporary Sodding was eliminated with the exception of that required around the temporary crossover in the median. Further, Department records show that CHC was compensated for Temporary Sod at the crossover location by Pay Item Number 575-1. As such, no further compensation is warranted in the median area.*

## **- Right and Left Roadway**

*As depicted in the Typical Sections and the construction phasing for the project, CHC was to complete the outside slopes of the left and right roadway during the respective Phases. Thus, the necessity of Temporary Sodding in these areas was not warranted.*

*SLI clearly stated "this additional sod quantity was work directed by CHC at direction of the Department". **The Department denies any implication of directing CHC to place Temporary Sod.***

*Project staff notified CHC that the outside slopes, on which SLI had placed Permanent Sod, had been constructed incorrectly by CHC. The decision to place Permanent Sod on the slopes was that of CHC and SLI. Once CHC was made aware that the slopes had been constructed incorrectly they removed the Permanent Sod, reworked the slopes and then placed Permanent Sod for a second time. This replacement of the Permanent Sod was not a result of any Department action. Therefore, the cost should be borne by CHC/SLI.*

*As such, no compensation is warranted for the left and right roadway.*

*In response to SLI's submittal statement that "the Erosion Control Plan submitted to James Young, FDOT on September 19, 2002 by CHC includes references to sodding as a possible form of erosion control." Item B of the Erosion and Pollution Control Plan submitted by CHC and included in SLI's submittal (Exhibit E, page 25) depicts the Type of all erosion control devices. CHC did not list Temporary Sod as an erosion control device.*

## **Entitlement**

*Based on our review it appears the Contractor's request has no merit as the Department compensated CHC for the Temporary Sod placed in the median as placed. In addition, the "Temporary Sod" placed on the Left and Right Roadway slopes, was truly Permanent Sod removed due to incorrect slope construction by CHC. As such, this cost should be borne by CHC and any additional compensation due SLI is between them and CHC as per their agreement.*

*It should be noted that contrary to SLI's statement made in the introduction for their submitted claim they have not submitted the request as required by Section 5-12 of the Standard Specifications. Section 5-12.9 clearly requires "When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith..."*

***Consequently, based on all of the above, it is the Department's position that the Dispute Review Board should rule that there is no entitlement for this claim and should uphold the Department's original denial of the claim.***

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## **BOARD RECOMMENDATION:**

Specifications considered by the Board:

*Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 2000 edition:*

**DIVISION I  
GENERAL REQUIREMENTS AND COVENANTS  
SECTION 5**

**CONTROL OF THE WORK**

**5-10 Final Inspection.**

**5-10.1 Maintenance until Acceptance:** **Maintain all Work** until the Engineer has given final acceptance in accordance with 5-11.

**SECTION 7  
LEGAL REQUIREMENTS AND  
RESPONSIBILITY TO THE PUBLIC**

**7-14 Contractor's Responsibility for Work.**

Until the Department's acceptance of the work, take charge and custody of the work, and **take every necessary precaution against injury or damage to the work by the action of the elements or from any other cause whatsoever**, arising either from the execution or from the nonexecution of the work. **Rebuild, repair, restore, and make good, without additional expense to the Department**, all injury or **damage to any portion of the work occasioned by any of the above causes before its completion and acceptance, except that in case of extensive or catastrophic damage**. The **Department may, at its discretion, reimburse the Contractor for the repair of such damage** due to unforeseeable causes beyond the control of and **without the fault or negligence of the Contractor**, including but not restricted to Acts of God, of the public enemy, or of governmental authorities.

**DIVISION II  
CONSTRUCTION DETAILS  
GENERAL CONSTRUCTION OPERATIONS  
SECTION 104  
PREVENTION, CONTROL, AND ABATEMENT OF  
EROSION AND WATER POLLUTION**

**104-1 Description.**

**Provide erosion control measures on the project** and in areas outside the right-of-way where work is accomplished in conjunction with the project, **so as to prevent** pollution of water, detrimental effects to public or private property adjacent to the project right-of-way and **damage to work on the project**. **Construct and maintain temporary erosion** control features or, where practical, **construct and maintain permanent erosion control** features as **shown in the plans or as may be directed by the Engineer**.

**104-2 General.**

**Coordinate the installation** of temporary erosion control features with the construction of the permanent erosion control features **to the extent necessary to ensure economical, effective, and continuous control of erosion** and water pollution throughout the life of the Contract. Due to unanticipated conditions, the **Engineer may direct the use of control features or methods other than those included in the original Contract**. In such event, the Department will pay for this additional work as unforeseeable work.

...



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## 104-5 Preconstruction Conference.

At the Preconstruction Conference, **provide to the Department a special plan to prevent, control, and reduce erosion and water pollution, meeting the requirements or special conditions of all permits** authorizing project construction. If no permits are required or the approved permits do not contain special conditions or specifically address erosion and water pollution, the project erosion control plan will be governed by Subarticles 7-1.1, 7-2.2, 7-8.1, 7-8.2, and Articles 104-1 through 104-10.

When a National Pollutant Discharge Elimination System (NPDES) Permit is issued or approved by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR Part 122.26, the Contractor's plan shall be prepared as a part of the Department's Stormwater Pollution Prevention Plan (SWPPP). **The SWPPP will include this erosion control plan** and all additional measures that will be employed to dispose of, control, or prevent the discharge of solid, hazardous, and sanitary wastes to waters of the U.S.. Include procedures to control off-site tracking of soil by vehicles and construction equipment and a procedure for cleanup and reporting of non-storm water discharges, such as contaminated groundwater or accidental spills. The Department will review and approve the Contractor's part of the SWPPP, including required signed certification statements, before soil disturbing activities begin.

Failure to sign any required documents or certification statements will be considered a default of the Contract. Any earth disturbing activities performed without the required signed documents or certification statements may be considered a violation of the Clean Water Act by the EPA.

When the SWPPP is required, prepare the erosion control plan in accordance with the sequence of operations and present in the NPDES Stormwater Pollution Prevention Plan required format provided by the Department. The erosion control plan shall describe, but not be limited to, the following items or activities:

- (1) For each phase of construction operations or activities, supply the following information:
  - (A) Locations of all erosion control devices
  - (B) Types of all erosion control devices
  - (C) Estimated time erosion control devices will be in operation
  - (D) Monitoring schedules for maintenance of erosion control devices
  - (E) Methods of maintaining erosion control devices
  - (F) Containment or removal methods for pollutants or hazardous wastes
- (2) The name and telephone number of the person responsible for monitoring and maintaining the erosion control devices.
- (3) Submit for approval the erosion control plans meeting paragraphs 3A, 3B, or 3C below:
  - (A) Projects permitted by the Southwest Florida Water Management District, require the following:

Submit a copy of the erosion control plan to the Engineer for review and to the appropriate Southwest Florida Water Management District Office (SWFWMD) for review and approval. Include the SWFWMD permit number on all submitted data or correspondence.

The Contractor may schedule a meeting with the appropriate SWFWMD Office to discuss his erosion control plan in detail, to expedite the review and approval process. Advise the Engineer of the time and place of any meetings scheduled with SWFWMD.

Do not begin construction activities until the erosion control plan receives written approval from both SWFWMD and the Engineer.

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(B) Projects permitted by the South Florida Water Management District or the St. Johns River Water Management District, require the following:

**Obtain the Engineer's approval of the erosion control plan.**

**Do not begin construction activities until the erosion control plan receives written approval from the Engineer.**

(C) Projects authorized by permitting agencies other than the Water Management Districts or projects for which no permits are required require the following:

The Engineer will review and approve the Contractor's erosion control plan.

Do not begin construction activities until the erosion control plan receives written approval from the Engineer.

Comply with the approved erosion control plan.

## 104-6 Construction Requirements.

### 104-6.4 Details for Temporary Erosion Control Features:

**104-6.4.1 General: Use temporary erosion** and water pollution control features that **consist of**, but are not limited to, temporary grassing, **temporary sodding**, temporary mulching, sandbagging, slope drains, sediment basins, sediment checks, berms, baled hay or straw, floating turbidity barrier, staked turbidity barrier and silt fence. For design details for some of these items, refer to the Water Quality Section of the Roadway and Traffic Design Standards.

...

**104-6.4.3 Temporary Sod: Furnish and place sod in accordance with Section 575 within areas designated by the Engineer** to temporarily control erosion. If the Engineer determines that the sod will be of a temporary nature, he may not require fertilizer and lime. Keep the sod in a moist condition in order to ensure growth. The Department will pay for all required watering under Item No. 570-9 [2570-9]

## 104-7 Maintenance of Erosion Control Features.

**104-7.1 General Provide routine maintenance of permanent and temporary erosion control features**, at no expense to the Department, until the project is complete and accepted. If **reconstruction** of such erosion control features is **necessary due to the Contractor's negligence or carelessness** or, in the case of temporary erosion control features, failure by the Contractor to install permanent erosion control features as scheduled, the **Contractor shall replace such erosion control features at no expense to the Department. If reconstruction of permanent or temporary erosion control features is necessary due to factors beyond the control of the Contractor**, the **Department will pay for replacement under the appropriate Contract pay item or items.**

## SECTION 120

### EXCAVATION AND EMBANKMENT

#### 120-10 Maintenance and Protection of Work.

While construction is in progress, maintain adequate drainage for the roadbed at all times. Maintain a shoulder at least 3 feet [1 m] wide adjacent to all pavement or base construction in order to provide support for the edges.

Maintain all earthwork construction throughout the life of the Contract, and **take all reasonable precautions to prevent loss of material from the roadway due to the action of wind or water. Repair, at no expense to the Department, except as otherwise provided herein**, any slides, washouts, settlement, subsidence, or other mishap which may occur prior to final

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acceptance of the work. **Perform maintenance and protection of earthwork construction in accordance with Section 104.**

Maintain all channels excavated as a part of the Contract work against natural shoaling or other encroachments to the lines, grades, and cross-sections shown in the plans, until final acceptance of the project.

### **SECTION 575 SODDING**

#### **575-1 Description.**

Establish a stand of grass within the specified areas, by furnishing and placing sod, and rolling, fertilizing, watering, and **maintaining the sodded areas** to ensure a healthy stand of grass.

**575-3.4 Maintenance:** Maintain the sodded areas in a satisfactory condition until final acceptance of the project. Include in such maintenance the filling, leveling, and repairing of any washed or eroded areas, as may be necessary. **The Department will pay for resodding necessary due to factors determined to be beyond the control of the Contractor.**

No supplemental specifications were cited that modified the above.

It was clarified at the hearing that slopes that had been incorrectly graded and had been re-graded after the placement of the sod were not being requested for entitlement.

This issue is essentially the request for payment for the re-sodding of areas damaged due to erosion as opposed to payment for “temporary sod” since the sod was originally placed as permanent and temporary sod (at these locations) was not authorized or directed by the Engineer.

Absent a Contractor’s:

failure to utilize appropriate erosion control measures as approved by the Engineer in his submitted erosion control plan,

failure to implement additional erosion measures as approved and/or directed by the Engineer,

or carelessness/negligence in erecting or maintaining approved erosion control measures **(there was no testimony that this occurred on this project),**

**the Contractor is entitled to payment for re-sodding those areas deemed to be unsuitable due to factors beyond his control.** Pursuant to Section 7-14, at the Department’s discretion it **may** reimburse the Contractor for the repair of extensive damage to other work resulting from unforeseeable causes beyond the control of and without the fault or negligence of the Contractor. Section 575-3.4 states that the **Department will pay for resodding necessary due to factors determined to be beyond the control of the Contractor.**

The Contractor would of necessity need to identify those areas to the Engineer so that such determination could be made and appropriate measurements taken.

**Based on the materials supplied to the Board, presentations at the DRB hearing and a review of the specifications, the Board recommends payment (at contract unit price) to the Contractor for those areas that such determination can be made.**

This Board sincerely appreciates the cooperation of all parties and the information presented for its review in making this recommendation.

## DISPUTE REVIEW BOARD RECOMMENDATION

Please remember that a response to the DRB and the other party of your acceptance or rejection of this recommendation is required within 15 days. Failure to respond constitutes an acceptance of this recommendation by the non-responding party.

I certify that I have participated in all of the meetings of this DRB regarding this issue and concur with the findings and recommendations.

Respectfully Submitted  
Disputes Review Board

John H. Duke Sr., DRB Chairman  
Keith Richardson; DRB Member  
Rammy Cone; DRB Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:

A handwritten signature in black ink, appearing to read "J H Duke Sr.", written in a cursive style.

John H. Duke, Sr.  
DRB Chairman