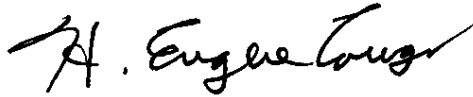


STATE ARBITRATION BOARD

ORDER NO. 1-00

NOTICE

In the case of Community Asphalt Corporation versus the Florida Department of Transportation on Project No. 86200-3504 in Broward County, Florida, both parties are advised that State Arbitration Board Order No. 1-00 has been properly filed on July 27, 2000.



H. Eugene Cowger, P.E.
Chairman & Clerk, S.A.B.

Copies of Order & Transcript to:

Jim Wolfe, DOT District 4 Director of Operations

Ignacil Halley, Executive Vice President
Community Asphalt Corp.

7/1/00

STATE ARBITRATION BOARD

ORDER NO.1-00

RE:

Request for Arbitration by
Community Asphalt Corp.
on Job No. 86200-3504
in Broward County

The following members of the State Arbitration Board participated in the disposition of this matter:

H. Eugene Cowger, P.E., Chairman
Bill Albaugh, P. E., Member
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 12:30 p.m. on Monday, June 12, 2000.

The Board Members, having fully considered the evidence presented at the hearing, now enter their Order No. 1-00 in this cause..

ORDER

The Contractor presented a request for arbitration of a claim in the total amount of \$88,020.80 plus interest. The dispute here is whether payment for hot mix asphalt placed under Type IV Concrete Traffic Separator (Option II) is included in the unit price for the traffic separator or is to be included in the pay quantity for the item Asphaltic Concrete Surface Course, Type S.

The Contractor presented the following information in support of their claim:

1. The Detail of Widening Section B-B (for median areas) on the Typical Section sheet shows that both asphalt surface course and the asphalt base course are to be constructed under the traffic separator. Our interpretation is based on there being a solid line at the bottom of the base course within the horizontal limits of the traffic separator. The cross sectioning in the Plan View showing widening does not extend through the traffic separator only in the interest of clarity of detail.

2. Since the governing order of contract documents, contained in Article 5-2 of the Standard Specifications, says that plans govern over Road Design Standards, the note on Index Drawings No. 302 pertaining to Type IV, Option II Traffic Separator reading "No extra payment for pavement" is superseded by the Detail of Widening Section B-B which is silent on payment for pavement constructed under the traffic separator.
3. Since the plans provide for overbuilding the existing pavement to establish a 2% cross slope and the Profile Grade Point is at the outside edge of the existing pavement, it was not possible for a bidder to calculate the quantity of asphalt pavement and base to be constructed under the traffic separator. We, therefore, contend that the Department recognized this during design of the project and intended that the quantity of pavement and base under the traffic separator be included for payment under the asphalt pay items which are per ton pay items. If the designer had intended otherwise, a note would have been included on the Typical Section Sheet saying that pavement under the traffic separator would not be paid for under pavement and base items. In this situation, a bidder has no reason to go to the Road Design Standards to determine how payment will be made.
4. Documentation we have submitted clearly establishes that the cost of base and pavement was not included in our bid price for Traffic Separator Concrete Type IV.
5. At one point in time, the Department included the quantity of base and pavement we constructed under the traffic separator in the pay quantities for those items of work. During the final estimate process, these quantities were deducted. from payment.
6. Plans for other Department projects show that separate payment was made for asphalt placed under traffic separator.
7. We are claiming payment for the 2,750 tons of asphalt mix placed under the traffic separator at the Contract Unit Price for Asphaltic Concrete Type S (\$32.00 per ton) which amounts to \$88,020.80. We are also claiming interest on that amount. The above quantity was furnished by the Department. It may include deductions for other reasons made during the final estimate process. We are willing to change the amount claimed to the quantity of asphalt base and pavement actually constructed under the traffic separator.

The Department of Transportation rebutted the Contractor's claim as follows:

1. The detail for Type IV Concrete Traffic Separator, Option II shown in Standard Index No. 302 clearly indicates "No Extra Payment for Pavement" in the area under the traffic separator. Since the details on the Typical Section sheet were silent on payment for the pavement constructed under the traffic separator, the note on the Standard Index governs.

2. We disagree with the Contractor's position that the plan details show construction of widening pavement and base to extend under the traffic separator. The plan detail shows widening pavement and base only on either side of the traffic separator.
3. The solid line at the bottom of the new base and pavement in Section B-B Detail of Widening on the Typical Section sheet, indicates that new base and pavement is to be constructed under the traffic separator, but not as an extension of widening of the adjacent pavement
4. The details shown in the Typical Section sheet are typically supplemented by details from Standard Index Drawings. For instance, it is not feasible to show details for concrete dimensions, dowels and keyways in the Typical Section.
5. In bidding the work, the Contractor could have planned to construct overbuild over the existing pavement and then excavated for the new base using the profile thus established.
6. Some of the deductions from pay quantities for base and pavement were due to unnecessary waste in areas other than those involved in this dispute. These deductions were made during checking of the yield for hot mix, not during preparation of the final estimate.
7. In this situation, Option II Traffic Separator which is to be constructed over flexible pavement can be constructed faster than Option I Traffic Separator which is constructed over stabilized subgrade.

The Board in considering the testimony and evidence presented found the following points to be of particular significance:

1. The plans details relating to payment for the pavement and base placed under the traffic separator are ambiguous..
2. The Standard Index detail for Type IV Concrete Traffic Separator, Option II shows the traffic separator to be constructed over "flexible pavement". Part of the "flexible pavement" is cross hatched and the remainder is not cross hatched. This could be construed to mean that Option II is for constructing traffic separator over an existing pavement. It also could mean that the only payment to be in payment for the traffic separator is that area shown with cross hatching.
3. The details in both the Standard Index and the Typical Section sheet indicate that a portion of the "flexible pavement" in adjacent areas extend under the traffic separator.
5. The quantity of asphalt mix on which the claim is based is obviously in error Part of that quantity included payment adjustments to asphalt mix items in areas other than under the traffic separator. The Contractor and the Department agreed that the quantity of hot mix placed under the traffic separator was 1,153 tons.

From the foregoing and in light of the testimony and exhibits presented, the State Arbitration Board finds as follows:

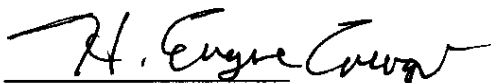
The Department of Transportation is directed to reimburse the Contractor \$ 40,000.00 for his claim.

The Department of Transportation is directed to reimburse the State Arbitration Board the sum of \$ 334.40 for Court Reporting Costs.

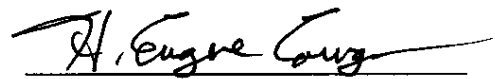
Tallahassee, Florida

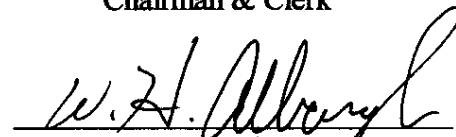
Dated: 7/26/00

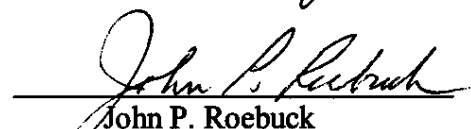
Certified Copy:


H. Eugene Cowger, P. E.
Chairman & Clerk SAB

7/26/00
DATE


H. Eugene Cowger, P. E.
Chairman & Clerk


Bill Albaugh, P. E.
Member


John P. Roebuck
Member

STATE ARBITRATION BOARD

1022 Lothian Drive
Tallahassee, Florida 32312-2837
Phone: 850/385-2410 FAX: 850/385-2410
E-Mail: HECOWGER@AOL.COM

March 3, 2000

Mr. Freddie Simmons, P. E., State Highway Engineer
Florida Department of Transportation
605 Suwannee Street Mail Station 57
Tallahassee, FL 32399-0450

Re: State Job No. 86200-3504
State Road No. 858 Hallandale Beach Boulevard Broward County

Dear Mr. Freddie:

Community Asphalt Corporation has submitted a request for arbitration of a claim that arose out of the work on the subject project. The claim involves payment for base course and structural asphalt course constructed under traffic separator.

Information contained in the request for arbitration package indicates that this claim was considered by the Department Claims Review Committee and found to have no merit.

Community Asphalt has asked that you not serve as the Department appointed member of the State Arbitration Board in this instance, because you were a member of the Claims Review Committee that previously ruled on the claim. The Board has honored such requests in the past.

I recommend that Bill Allbaugh, the Alternate Member of the Board appointed by Secretary Barry, sit as a member of the Board for the hearing on this matter. He is a member of the Claims Review Committee, but did not participate in consideration of the subject claim. Community Asphalt is in agreement with this substitution.

If you concur, I will document the substitution in the Notice of Arbitration Hearing to be issued soon.

Please advise

Sincerely,


H. Eugene Cowger, P. E.
Chairman

c: John P. Roebuck

STATE ARBITRATION BOARD
STATE OF FLORIDA

ORIGINAL

COMMUNITY ASPHALT CORPORATION)
)
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- and -
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)
DEPARTMENT OF TRANSPORTATION)
_____)

PROJECT NO. 86200-3504

LOCATION: Broward County,
Florida

RE: Arbitration In The Above Matter

DATE: Monday, June 12, 2000

PLACE: Florida Transportation Center
1007 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 12:30 p.m.
Concluded at 1:30 p.m.

REPORTED BY: CATHERINE WILKINSON
CSR, CP
Notary Public in and for
the State of Florida at
Large

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida
(904) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
Mr. Jack Roebuck
Mr. Bill Albaugh

APPEARING ON BEHALF OF COMMUNITY ASPHALT CORPORATION:

Mr. Ignacio Halley
Mr. John Morris

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Ms. Jennifer Olson
Ms. Sofia Panico

ALSO PRESENT:

Mr. Freddie Simmons
Mr. John Coxwell

* * *

I N D E X

EXHIBITS

PAGE

Exhibit Nos. 1 and 2 in evidence

4

CERTIFICATE OF REPORTER

61

P R O C E E D I N G S

CHAIRMAN COWGER: This is a hearing of the State Arbitration Board, established in accordance with Section 337.185 of the Florida Statutes.

Mr. Freddie Simmons was appointed by the Secretary of the Department of Transportation as the DOT member of the Board, but since Mr. Simmons sat on a claims review committee of the DOT that heard this claim previously, the alternate member, Mr. Bill Albaugh, will be sitting in for him on this particular claim.

Mr. John Roebuck was elected by the construction companies under contract to the Department of Transportation.

These two members chose me, H. Eugene Cowger, to serve as the third member of the Board and as Chairman.

Our terms expire June 30th, 2001. Of course, I've announced my retirement from the Board effective July 1 of this year, so there will be a new chairman on board July 1st.

Will each person who will make oral presentations during this hearing raise your right hand and be sworn in.

(Whereupon, all witnesses were duly sworn.)

CHAIRMAN COWGER: The request for arbitration of

1 a claim submitted by the claimant, including all
2 attachments thereto and the administrative documents
3 that preceded this hearing are hereby introduced into
4 the record as Exhibit No. 1.

5 We have a rebuttal package from DOT, which
6 consisted of -- Exhibit 2 is the DOT's rebuttal
7 statement, which is a memo dated August the 11th, 1998,
8 to the claims review committee from the district
9 construction engineer dealing with this matter, and it
10 presented the DOT's position at the meeting of the
11 claims review committee.

12 The contractor should have a copy of this. Up at
13 the top it says project number, Hallandale Beach
14 Boulevard, claim for payment of additional asphalt.

15 Okay, so we all got a copy of that.

16 MR. MORRIS: Yes, we do.

17 CHAIRMAN COWGER: That's Exhibit No. 2. Does
18 either party have any other information they wish to
19 put into the record as an exhibit? Hearing nothing, we
20 will move on.

21 (Whereupon, Exhibit Nos. 1 and 2 were received in
22 evidence.)

23 CHAIRMAN COWGER: During this hearing, the
24 parties may offer such evidence and testimony as is
25 pertinent and material to the dispute being considered

1 by the Board, and shall produce such additional
2 evidence as the Board may deem necessary to an
3 understanding of the matter before it.

4 The Board shall be the sole judge of the
5 relevance and materiality of the evidence offered.

6 The parties are instructed to ensure that they
7 receive properly identified copies of each exhibit used
8 in this proceeding, which I think you have.

9 You should retain these exhibits. The Board will
10 send the parties a copy of the court reporter's
11 transcript along with our order, but will not furnish
12 copies of the exhibits to you.

13 As is typical in arbitration proceedings, the
14 hearing will be conducted in an informal manner. The
15 Board is not required to apply a legalistic approach or
16 strictly apply the rules of evidence used in civil
17 court proceedings.

18 We are primarily looking for information in
19 regard to the facts and the contract provisions that
20 apply to this case.

21 The order of proceeding will be for the claimant
22 to present their claim, and then for the respondent to
23 offer rebuttal.

24 Either party may interrupt to bring out a
25 pertinent point by coming through the Chairman. Please

1 keep this orderly.

2 We would prefer that the contractor be allowed to
3 make his presentation, and that the DOT be allowed to
4 make their initial rebuttal without interruption. But
5 if there is something in there that is just burning,
6 that you can't wait, come through the Chair and we will
7 recognize you.

8 Okay. We are ready to go.

9 MR. HALLEY: The main dispute we have here
10 between the Department and Community Asphalt is the
11 pavement of asphalt underneath the traffic separator.

12 The DOT'S sole position as we understand it is
13 basically referring to index 302, which is what we
14 labeled Exhibit 1, where over the type four concrete
15 traffic separator option two, there's a note that we
16 have highlighted in all your payments. It says no
17 extra payment for the pavement that goes underneath the
18 traffic separator will apply.

19 We feel that for this particular project it does
20 not apply because the designer went the extra length in
21 the typical sections of the plans that outline how and
22 why this thing should be paved.

23 If I go -- if I can get you to look at Exhibit 2,
24 which is the actual contract plans that were given to
25 us, the designer of record comes out and gives us a

1 detail of the actual construction that needs to be done
2 with the type two traffic separator.

3 Our principal argument, because if you look at
4 the DOT's response under number three, they say the
5 Department agrees with Community Asphalt that it is new
6 construction, but in the absence of direction on
7 payment in the plans, the design standards govern.

8 Therefore, they go back to the standard details
9 saying that that's what governs.

10 We feel that there is no absence of how that gets
11 paid for. It is clear in the detail, in the plan view
12 of the detail that there is widening underneath the
13 traffic separator and that there is new construction
14 under the traffic separator. It's under the section of
15 widening, and it's very clear how widening is going to
16 be paid for.

17 You are going to be paid for a seven-inch asphalt
18 base. You are going to have 300 pounds of structural,
19 and five-eighths of friction course.

20 So I don't think there's any argument as to the
21 plans being clear or not. I think the designer went
22 the actual length to say, hey, you are going to widen
23 under the traffic separator, you are going to create a
24 base under that traffic separator, and so on down the
25 line.

1 And one of the key issues here is the fact -- and
2 we don't dispute this stuff. I think DOT doesn't
3 dispute that with me, that it does call for new
4 construction underneath the traffic separators, which
5 is what the solid line indicates both in the detail
6 blowup and in the widening of the shoulders. The solid
7 lines in this particular case refers to new
8 construction.

9 So, we look at the plans, and we look at the
10 standards, and there is a conflict. So, our first
11 position, our first argument is, well, what governs?

12 Well, under one of the exhibits, which I think is
13 Exhibit No. 7. This comes straight out of -- is copied
14 straight out of DOT specification standards. It
15 clearly states in case of discrepancies, the governing
16 body of documents shall be as follows.

17 The plans are number three and the road and
18 design standards are number four. So, there's no
19 question to me that if there is a discrepancy between
20 the plans and the design standards that the plans
21 govern.

22 So, therefore, our position is -- the plans are
23 very clear. This new construction, the plans are very
24 clear in describing how this new construction widening
25 is going to be paid for, so therefore, we are asking

1 for payment under what the plans say.

2 And what I also did, to enter into evidence, was
3 Exhibit No. 3, which I would present to the Board and
4 say, here in Exhibit No. 3 you have a clear indication,
5 which is what we are saying. It's drawn better. It's
6 a better detail, a clearer detail that says under a
7 concrete type four -- this is a different job, by the
8 way, but it's another DOT project which was performed,
9 which says, concrete traffic separator, index whatever,
10 option two. And it clearly states that you will be
11 paid for that traffic separator as pavement widening.

12 Just because our plans don't show this legend of
13 pavement widening to show you the hash mark, ours shows
14 pavement widening with a solid line.

15 It's the same drawing, same principle, and it's
16 being paid on a DOT project.

17 Here again, the designer goes and shows in the
18 plan typical sections that he wants to override what is
19 in the standard details. We feel the designer on this
20 job did exactly the same thing, informing us that you
21 are going to build a pavement section under this
22 traffic separator.

23 It does not give us the option to go with an
24 option one, he demands an option two in this particular
25 case.

1 So, we come back and say, you know, what
2 difference is there between this set of DOT plans and
3 this set of DOT plans and take a different
4 interpretation.

5 In either case, our first argument is that if a
6 discrepancy does arise, the order of precedence is
7 plans first, design standards second.

8 So, that's our first argument that we wanted to
9 present to the Board.

10 The other thing -- our next argument is the
11 actual job itself. The actual job itself, if I could
12 describe it to you, it's basically, if you look at my
13 letter of response, in the second page of the response,
14 this project was basically a road that we were going to
15 change the slope on. It was a road that had less than
16 2 percent slope and was fairly flat, you could almost
17 say.

18 And the point of this job was basically to get it
19 up to a 2 percent slope from whatever slope was there,
20 and then you worked it on through.

21 Now, if you could envision this, the plans don't
22 give you any kinds of grades at all. You're basically
23 going to start at the low lane and work your way up.

24 Well, if you take a road that's flat right now,
25 and you work your way up -- and let me describe the

1 road. It's a two-way road on each direction with a
2 turn lane.

3 So, what occurs, as you work your way up on a 2
4 percent slope, you are repairing all the curb in the
5 middle. By the time you got to your traffic separator,
6 which is where you are going to have your turn lane,
7 you are up here on this side of the road. By the time
8 you came 2 percent on this side, you are down here.

9 So, the traffic separators, one of these traffic
10 separators that sits cockeyed, doesn't quite sit flat,
11 because of the difference in your road. Okay?

12 So, as you came up this way -- first of all, you
13 had no plans. You had no grade to say, well, I have a
14 1 percent slope here, and I'm going to go up to a 2
15 percent slope.

16 The job was bid as tons because the designer
17 didn't know either, from what we could tell. I'm not
18 going to put words in the designer's mouth because
19 I don't know what he was thinking. I can only
20 interpret what he gives me in the plans. The job was a
21 tonnage job.

22 So it really didn't matter. You were able to bid
23 the asphalt -- or get paid for the asphalt for exactly
24 what was going to get put in.

25 You didn't know how that traffic separator was

1 going to sit. How was I to calculate the asphalt that
2 was going to go underneath that traffic separator? No
3 way, because it changed -- as the grade of the existing
4 changed, the grade on that traffic separator changed.

5 So it made even more sense to us, okay, that's
6 why he paying it by the ton, I can price it out by the
7 ton and get paid for whatever I did in the plans.

8 Had the designer given us grades and all that,
9 I could understand. I still can't understand the DOT's
10 position, to be honest with you, because I don't think
11 they can get past the first argument.

12 The second argument was the fact that we were not
13 given grades on this job. We were basically going by
14 what was there, and basically dialing it in with the
15 paving machines to get the required slope.

16 And whatever you ended up with over there is what
17 you work with to try to make it work.

18 And you had sections where you were putting a
19 traffic separator on existing asphalt, and you had
20 sections where you were putting a traffic separator --
21 because you were basically making the turn lanes
22 longer.

23 So you had a traffic separator where you had a
24 median before where it was totally new construction.

25 The other thing that basically is my second

1 argument says even if I wanted to be able to calculate,
2 I don't think -- we don't feel the plans give enough
3 information to calculate how much thickness was going
4 to be required there.

5 You know, the DOT will argue that I could have --
6 and we basically did it this way, that we could have
7 came up to the grade and then excavated down, but in a
8 lot of cases, that excavation down surpassed your
9 pavement section. So, you still couldn't calculate it.

10 I also have -- you know, one of the key positions
11 that I want to point out here, too, is that even though
12 the design standard says that there is no pavement
13 under the traffic separator, the designer at the time
14 when he drew up that section and actually outlines the
15 four feet that are called for in the design standards,
16 he could have very easily put down there no payment for
17 design.

18 CHAIRMAN COWGER: Excuse me, which sheet are you
19 looking at, sheet 5?

20 MR. HALLEY: I'm looking at sheet 2.

21 CHAIRMAN COWGER: What's the number up in the
22 right-hand corner?

23 MR. HALLEY: Sheet 5.

24 CHAIRMAN COWGER: Okay. Good enough.

25 MR. HALLEY: Down in the bottom section down here

1 where he has the four feet, he could have very easily
2 included the note of no payment. If he's describing
3 that section, and therefore he's putting it in the
4 plans, that means he's going to supersede his design
5 standard.

6 He could have very easily put that note right
7 here and not misled the contractor. The contractor has
8 no reason to go to the design standards if he's giving
9 them the total picture right here in the plans as to
10 what is going to happen in that situation.

11 So, you know, I'm saying in these plans the
12 asphalt should be paid for underneath the traffic
13 separator.

14 In Exhibit No. 3 that I brought out, it's very
15 clear that they're paying for asphalt underneath the
16 option two concrete traffic separator.

17 Even in this job what governs? Does this govern
18 or does this govern, because there's obviously a
19 discrepancy? It's clearer on this job what governs.

20 MR. ROEBUCK: Point made.

21 MR. HALLEY: Okay. My next question, I have
22 another exhibit that I bring out on another DOT job
23 where -- there's another exhibit here somewhere.

24 CHAIRMAN COWGER: I think in your book it's
25 probably exhibit -- is it 5, 4?

1 MR. HALLEY: I will find it real quick. It's
2 Exhibit 4, where it actually shows you that that's more
3 what the traffic separator looked like on our job where
4 they show asphalt overbuilt underneath the traffic
5 separator.

6 And now there they don't specifically tell you an
7 option two, they actually show an option one. But had
8 we gone with an option two there, then I think anything
9 over the overbuilt there, the contractor is responsible
10 for that.

11 So, those are my first two points that I want to
12 argue, or represent.

13 The third point was I actually gave -- you know,
14 I don't want to get -- I don't want you to feel that
15 I'm getting faults and wrenched. So what I did was
16 I showed what my subcontract was for that item, where
17 I actually paid Smith and Company 21.85 linear foot for
18 the traffic separator. And I was being paid \$20 by the
19 Department.

20 Now, you say why the difference was because we
21 actually -- Smith's total price comes out cheaper. As
22 a contractor you are not going to lose money on an
23 item, but if you look at his whole concrete package to
24 me, although we went with \$20 a linear foot, his whole
25 concrete package was within -- and I actually show the

1 contractor I used in one of my exhibits, which is
2 Homeset Paving, where it is \$20 a linear foot.

3 So it's proof that I did not put that money in my
4 bid. That the way I interpret the plans was that
5 I would be paid for that asphalt under the seven and a
6 half-inch base and the structural asphalt.

7 And one key point that I need to make here, too,
8 is that during the course of construction I was being
9 paid by the Department for this work. Not until the
10 final estimate in that area that we question why the
11 deduction of asphalt. They said, oh, we took it away
12 from the traffic separators. Final estimates said it
13 had to come out from underneath the traffic separators.

14 So, it wasn't an issue brought on in the job, and
15 then we did it, it was an issue that was brought on
16 after the fact that we had already been paid and taken
17 away.

18 CHAIRMAN COWGER: May I interrupt you for a quick
19 second.

20 MR. HALLEY: Sure.

21 CHAIRMAN COWGER: Were there two pay items that
22 you were paid under and deducted from? In other words,
23 this is an asphalt base job. Did the asphalt base go
24 under the traffic separator or not?

25 MR. HALLEY: There was asphalt base under the

1 traffic separator because of the thickness involved.

2 CHAIRMAN COWGER: So then you would have had two
3 items involved because --

4 MR. HALLEY: Two items involved, right.

5 CHAIRMAN COWGER: -- you would have had a
6 deduction from the asphalt base and then also from the
7 structural course?

8 MR. HALLEY: Absolutely.

9 CHAIRMAN COWGER: Okay. Just wanted to get that
10 straight.

11 MR. HALLEY: But in either case, if you look at
12 our bid price, it's the same. Whether you pay it by
13 the square yard or you pay it by the tonnage, it comes
14 out to the same dollar figure. We kind of make a
15 practice of doing that so we could account for the
16 whole asphalt on the project.

17 CHAIRMAN COWGER: Okay. But there are two pay
18 items involved?

19 MR. HALLEY: There are two pay items involved.
20 Naturally, we quantify the amount of asphalt and by the
21 tonnage. I actually provided -- in another exhibit
22 I provide what we bid it at and what the DOT paid for.

23 And I'm not asking for anything more than what my
24 contract unit price was for that item, multiplied by
25 the amount of tonnage that we were shorted on the job

1 for this issue.

2 CHAIRMAN COWGER: And you are saying that tonnage
3 was 2,750 tons?

4 MR. HALLEY: We got that -- Jennifer and I got
5 that number -- I didn't go back and research that
6 number, but that's what we had said we were in dispute
7 of.

8 You basically just take the pavement section
9 underneath there by the square yards, and we are saying
10 that's what it was. That's what we were short.

11 When we did a total asphalt comparison as to what
12 went out -- remember, it was a tonnage job. So when we
13 do the asphalt comparison, that's basically what we
14 were short.

15 CHAIRMAN COWGER: On both the base and the
16 surface course were paid for by the ton?

17 MR. HALLEY: No, no, not the base. The base was
18 paid by the square yard.

19 CHAIRMAN COWGER: Did they deduct from that or
20 not, then?

21 MR. HALLEY: They deducted from both items.

22 CHAIRMAN COWGER: Well, let me go back and make
23 sure I understand. Back near the front of the
24 contractor's submittal on about the fourth page up at
25 the top you've got a little drawing?

1 MR. HALLEY: Right.

2 CHAIRMAN COWGER: January 24th, 2000 letter.

3 MR. HALLEY: Right.

4 CHAIRMAN COWGER: The last paragraph mentions the
5 2,750 tons. Then you come up with a contract price of
6 \$32 per ton.

7 MR. HALLEY: Right.

8 CHAIRMAN COWGER: What was that the contract
9 price for?

10 MR. HALLEY: For the tonnage asphalt.

11 MR. ALBAUGH: Which is only the structural?

12 MR. HALLEY: Which is only the structural, right.
13 You can do it either way. I believe if you take the
14 five-inch or the optional base, seven inches, and you
15 look at that unit price of \$16, it comes out up \$32 a
16 ton.

17 CHAIRMAN COWGER: The asphalt base came out the
18 same price?

19 MR. HALLEY: I believe it does. If you will give
20 me a calculator or computer, but I believe that's why
21 we kept it at a simple figure of \$32. But if not, you
22 could --

23 CHAIRMAN COWGER: Must have been quite a few
24 traffic separators on this job to come up to that
25 quantity.

1 MR. HALLEY: Oh, yeah. There was quite a bit.

2 CHAIRMAN COWGER: Okay. Go ahead. I'm sorry.

3 MR. HALLEY: You could look at the quantity to
4 try to separate it. There was 5,189 feet of four foot,
5 which was the plan section. So there wasn't an overrun
6 or an underrun there. It was basically -- we did
7 exactly what the plans called for.

8 So, it was almost a mile of traffic separators on
9 the job.

10 CHAIRMAN COWGER: What do you have there, a copy
11 of the monthly estimate?

12 MR. HALLEY: Yes.

13 CHAIRMAN COWGER: May I look at it just a second?

14 MR. HALLEY: Yeah, you should have that there in
15 the back of your exhibit. It should be the last
16 exhibit that you have.

17 CHAIRMAN COWGER: Okay. Good enough. Are you
18 about through?

19 MR. ROEBUCK: Let me ask a question. For your
20 claim amount plus interest, what is the date you say
21 that you -- when you closed this job out?

22 MR. HALLEY: It was pretty -- right here, the
23 final item was actually done 9-1-99. But we actually
24 probably laid that like a year before that.

25 MR. ROEBUCK: Yeah, but you were paid for it?

1 MR. HALLEY: Yes, I was paid for it, but they
2 took it away. I can't argue that.

3 Okay. So basically my argument lays on the fact
4 that we feel the plans govern over the design
5 standards. We feel that the plans clearly call for new
6 construction of the traffic separator.

7 I think -- you know, one of the things I didn't
8 mention, and I think DOT will mention, they are going
9 to say that the widening was -- in the plan section,
10 I forgot to bring this point up, but I think it's
11 important for me to bring it up right now.

12 They will claim that the widening is only the
13 hashed areas on the plan view. Our interpretation of
14 that is had the designer hashed out the whole traffic
15 separator and everything along there, you -- it would
16 not have been a clear picture as to what you are doing.
17 So, that's why he gives you the detail section, BB
18 underneath to show you that there is widening.

19 If you actually go out there and you hash out,
20 you physically hash out everything over the traffic
21 separator, it doesn't give you a clear picture of what
22 you are doing. That's why he gives you the section
23 underneath to show you, yeah, underneath the traffic
24 separator, you are also going to do widening. And
25 that's why the solid line all the way through it.

1 And we keep arguing the point, like I said, he
2 should have put the note right there, because this
3 would have overridden the design standards.

4 So going back, our argument is based on the plans
5 govern over the design standards. The plans clearly
6 call for new construction of the traffic separator.
7 I don't think we have an argument there, the DOT agrees
8 with me there.

9 The plans did not provide sufficient information
10 to calculate the quantify of asphalt needed under the
11 traffic separator, due to not providing any grades or
12 anything.

13 And we clearly show that we did not include any
14 asphalt in the traffic separator item when we bid it.
15 We interpret it -- you know, I didn't want to give the
16 impression that we put asphalt in there and then we are
17 asking to get paid twice for the same item.

18 That's basically it.

19 MR. ALBAUGH: On the 2750 tons, does that include
20 the base and the structural?

21 MR. HALLEY: And the structural going on out
22 there. Remember, that structural is debatable as to
23 how much went in there because we didn't even know.

24 MR. ALBAUGH: Well, that's something that I'm
25 confused about a bit, because if I take the traffic

1 separator, which that appears to be clear that's 5189
2 feet times the four feet width, it comes out to 2306
3 square yards. I can do the calculations fairly easily.

4 If I take the tonnage of asphalt that you are
5 talking about, it's over -- it's 24 inches of asphalt.

6 MR. HALLEY: Included in that? We are changing
7 the whole grade.

8 MR. ALBAUGH: Is there that much asphalt in the
9 separators?

10 MR. HALLEY: I don't know whether we did or not.

11 CHAIRMAN COWGER: Did you figure the separator
12 four foot wide?

13 MR. ROEBUCK: Do you question the quantity?

14 MR. HALLEY: That quantity is what we came up
15 with. I don't know how. There may be a question --

16 MR. ALBAUGH: The reason I'm asking him, though,
17 it's his claim. He's saying 2750 tons. I'm just
18 trying to figure out how he got to that.

19 MR. HALLEY: Do you have a calculator there? Can
20 I borrow the calculator?

21 CHAIRMAN COWGER: Let me ask something if I
22 could. Jennifer, are you going to address that when
23 you come to it?

24 MS. OLSON: I can address it now or I can address
25 it later.

1 MR. ROEBUCK: Address it now.

2 MS. OLSON: Actually what we had done is -- if
3 I can also address the pavement. This project because
4 it had a lot of asphalt, it was a milling and
5 resurfacing. We had some other problems in the area.
6 We had problems with driveway plans, things like that.
7 We have gone back and forth with the asphalt
8 quantities.

9 I spoke briefly with Sofia while Iggy was going
10 through his statement.

11 At some point we did do a statement for that, but
12 it was like midway through the project. Just as well
13 as we did a lot of moving around the pavement. As you
14 go through the project, you take a look at what your
15 pay items are, where the asphalt is being put down.
16 You check your asphalt reports.

17 The inspector saw that, saw the design change and
18 said, hey, we are not supposed to pay for that. They
19 took it out as well as taking out some other things
20 that we paid and we hadn't paid for.

21 There was a lot of waste on that job, also, that
22 we said no, we are not going to pay for this waste.
23 So I'm just saying, oh, it went in, everything was
24 clean cut at the end.

25 We had final quantities, and then we took out 80

1 some-odd thousand dollars' worth of asphalt. That's
2 not really a clear representation to it.

3 CHAIRMAN COWGER: You are saying that 2750 tons
4 is places other than under the traffic separators?

5 MS. OLSON: No, I am not saying that. There is
6 another amount of --

7 CHAIRMAN COWGER: Oh, okay.

8 MS. OLSON: -- waste that we have gone through
9 and agreed to.

10 MR. HALLEY: I will say that whatever we can
11 agree was the quantity underneath there is what I'm
12 claiming. The 2750 we came from basically, it was in
13 your response to the Department is probably where
14 I pulled that quantity from.

15 When we went to claims review, the response of
16 DOT was Gabe came up with that 2750. And I remember
17 Sofie calling me and saying, hey, that number may be a
18 little less. I said, well, if it is, it is. We are
19 basically trying to first get past the issue of should
20 it be paid or not.

21 CHAIRMAN COWGER: Rather than spend a lot of time
22 on this, I see it the first paragraph of the DOT's
23 rebuttal, the 2750 tons is mentioned. It's also
24 mentioned seven inches of asphalt. And the base is
25 seven inches thick, so I'm not sure how all that

1 equates.

2 MS. OLSON: Actually Sofia has told me that I was
3 wrong with the 2750. It's really 1153 or something
4 like that we had in our notes.

5 CHAIRMAN COWGER: We can resolve that, because
6 I think the Board would agree if we should find
7 entitlement here, we will just go back and tell the DOT
8 to calculate the quantity that was deducted under the
9 separator and add it back and not give a number.

10 MR. HALLEY: And I agree with that.

11 CHAIRMAN COWGER: Will you all agree with that?
12 Board agree?

13 MR. ALBAUGH: No, not yet.

14 CHAIRMAN COWGER: I'm saying if there is
15 entitlement. If there is no entitlement, we don't even
16 address that.

17 MR. ALBAUGH: I'm interested in hearing what the
18 claim is for, how much. You know, to just say, you
19 know, if he's saying -- and here's what I'm thinking.
20 If he is saying seven-inch base under there and
21 whatever the amounts are, we ought to be able to
22 determine fairly close.

23 I mean 24 inches, to sit here and tell me 24
24 inches under the separator, I got a problem with that.

25 CHAIRMAN COWGER: Well, they just said that the

1 number came from the DOT's --

2 MR. ROEBUCK: They both have been in agreement on
3 that number.

4 CHAIRMAN COWGER: Now DOT says they made a
5 mistake, the number was wrong, and it's some lesser
6 number.

7 MS. OLSON: I was going to honor the 2750 because
8 that was in print. If there is a dispute back and
9 forth, you know, we can --

10 MR. HALLEY: It's not just seven inches of
11 asphalt now. It's seven inches of asphalt plus the
12 overbuilt plus your structural. So it's not just seven
13 inches of asphalt.

14 We had a wedge in there just like Exhibit No. --
15 the exhibit on the wedge. I think it's Exhibit No. 4.
16 There is a wedge where that traffic separator does not
17 sit flat. That traffic separator sits like this
18 (indicating).

19 MR. ALBAUGH: Let me understand the sequence of
20 construction then. Maybe I need to get closer -- you
21 know, what I generally like to see and hear is
22 something presented that I can understand, and I can't
23 understand this at this point.

24 MR. HALLEY: All right.

25 MR. ALBAUGH: The sequence of building it, did

1 you go in and remove the existing curb and separator
2 and build it back before you did the seven-inch
3 structural or the seven-inch base? I'm trying to
4 understand how it was built.

5 MR. HALLEY: I think we did. Sofie, do you
6 remember? We actually -- I think we went there and --
7 we also had widening.

8 MS. PANICO: You put the overbuilt first.

9 MR. HALLEY: We put the overbuilt first.

10 MS. PANICO: Then worked on the traffic
11 separators and the widening.

12 MR. HALLEY: Right, and the widening.

13 MR. ALBAUGH: So, did you remove the existing
14 curb and separator?

15 MR. HALLEY: This is what we did. We came in
16 there and we did some overbuilt, not total overbuilt,
17 we did overbuilt to shift people over into the outside
18 shoulder, put barricades, and then ripped out the curbs
19 and did the widening.

20 MR. ALBAUGH: Okay. But you have this overbuilt,
21 and you rip out the curb and separator, wouldn't you go
22 seven inches below that for your base?

23 MR. HALLEY: Yes.

24 MR. ALBAUGH: And I can understand there being
25 some structural --

1 MR. HALLEY: But see, you can't. Wait, wait,
2 wait, you can't, because my overbuilt came too high,
3 okay?

4 MR. ALBAUGH: Yeah.

5 MR. HALLEY: Of the 2 percent, my overbuilt was
6 too high, and I'm ripping out a curb.

7 MR. ALBAUGH: Yeah.

8 MR. HALLEY: I may have more than seven inches
9 there at that point.

10 MR. ALBAUGH: Why would you put more than a
11 seven-inch base back if it's going to go right on top?

12 MR. HALLEY: I don't have an embankment item on
13 the job.

14 MR. ALBAUGH: So you just filled it with asphalt?

15 MR. HALLEY: What do we do?

16 MS. OLSON: Hence some of the waste.

17 MR. HALLEY: Then I should be claiming for an
18 embankment item, too.

19 CHAIRMAN COWGER: I think we ought to let
20 Jennifer go ahead, but let me ask you a question first.
21 Let's go back to Exhibit No. 3, which is sheet number
22 five of the plans.

23 MR. ALBAUGH: Wrong job, different job.

24 MR. HALLEY: That's a different job.

25 CHAIRMAN COWGER: Two, Exhibit 2. Still sheet

1 number five. I had one thing right and one wrong.
2 Okay. Let me make sure I understand what your
3 testimony is. Down in the lower left-hand corner we've
4 got a plan view and a cross sectional view of the
5 traffic separator and some of the widening.

6 As the plans show, it shows a cross section area
7 and it's got a note that says widening. And I assume
8 that that includes not only the area in the taper
9 there, but that area adjacent to the constant width
10 separator, and then on the other side the same thing.

11 In other words, through the separator, through
12 the new separator area, it shows crosshashed on both
13 sides of the traffic separator.

14 MR. HALLEY: Right.

15 CHAIRMAN COWGER: And your contention is that
16 that indicates that it is widening and that that should
17 have extended -- the crosshash should have extended
18 under the traffic separator to show that all of that
19 was widening, but for sake of clarity, they didn't do
20 it?

21 MR. HALLEY: They didn't extend the crosshash,
22 but they clarified under section BB. If you look at
23 section BB, it says detailed widening, and they show
24 the solid line all the way across the traffic
25 separator.

1 CHAIRMAN COWGER: Okay.

2 MR. HALLEY: So, I come back to the point that
3 says -- they didn't crosshash that whole thing for
4 clarification. If you actually go and you paint a
5 crosshash across that whole thing and you look at it,
6 it's very difficult to even see that there is an
7 existing traffic separator there.

8 I mean I actually physically drew it on another
9 set of plans and looked at it, and it doesn't look
10 like -- so what they do is they give me the detail BB
11 to identify the fact that you have widening. And it
12 says detailed widening, section BB.

13 And it's a solid line on both sides of the
14 traffic separator and through the traffic separator.

15 And we don't disagree with that. DOT doesn't
16 disagree with that.

17 CHAIRMAN COWGER: And that was the way it was
18 built?

19 MR. HALLEY: Yes.

20 CHAIRMAN COWGER: Asphalt base, overbuild an
21 asphalt surface course and put in the area under the
22 traffic separator.

23 MR. HALLEY: Right.

24 CHAIRMAN COWGER: That's all I'm trying to figure
25 out.

1 MS. OLSON: No, there was no overbuild underneath
2 the traffic separator.

3 CHAIRMAN COWGER: How did you do that then?

4 MS. PANICO: You didn't take that out until after
5 you had already put the overbuilt in.

6 MR. HALLEY: We put the overbuilt in, but then we
7 had to carry that overbuilt up. Yes, we put overbuilt
8 there, because we actually put that little widening
9 piece in there. I know that for a fact.

10 CHAIRMAN COWGER: Well, let me make sure
11 I understand what you are saying. Are you saying that
12 they did the widening in this median area before they
13 took the old traffic separator out? Is that what
14 I heard you say, or did I misunderstand?

15 MS. PANICO: They put in the overbuild first, and
16 then went in and started tearing out the traffic
17 separator and the curb and gutter in the median.

18 MS. OLSON: That means that the traffic
19 separator, the existing traffic separator we were
20 narrowing was still there. And they came and tore out
21 the traffic separator, did the widening, and then
22 excavated down for the new traffic separator.

23 MR. HALLEY: Can I interject there?

24 CHAIRMAN COWGER: I'm a little bit confused.
25 Tell me your side of it.

1 MR. HALLEY: The way we did it was we went
2 through lanes. We did the two lanes, and did not do
3 the turn lanes because all I needed was to shift
4 traffic the five feet over, okay? So, I would be able
5 to put a barricade down and get into my reconstruction
6 area.

7 CHAIRMAN COWGER: Is it correct to say you worked
8 the median separately then?

9 MR. HALLEY: We worked the median separately.
10 The overbuild did not go into the turn lanes, when we
11 did the overbuilds.

12 And when we went to go do the traffic separators,
13 we did it all at once, the overbuilt and all at the
14 same time. And the traffic separators just by grades
15 will tell you, the traffic separators is somewhat
16 cocked up. It's not a straight flat grade like most
17 traffic separators are when you have the same section
18 of roadway on both sides.

19 CHAIRMAN COWGER: So you did the -- am I right in
20 saying you did the overbuild in the through lanes on
21 both sides, then came back and worked the median?

22 MR. HALLEY: The through lanes on both sides,
23 yes.

24 CHAIRMAN COWGER: Then you tore the traffic
25 separator out, and you did not only that under the

1 traffic separator, but any other widening that was
2 required?

3 MR. HALLEY: That was required, right. Then we
4 tied it into the overbuilt, and then we came in with
5 the friction course.

6 CHAIRMAN COWGER: Okay. I think we've got enough
7 information for the moment. Let's let Jennifer make
8 her rebuttal and see where we can get from here.

9 MS. OLSON: Okay. If you take a look at the
10 traffic separator design standard in the plans sheet --
11 actually, we'd like to discuss the plan sheet first.

12 If you take a look at the plan sheet, and we have
13 crosshash on either side. It shows you specifically
14 what design detail that they want you to use, which is
15 a type four traffic separator, option two.

16 Now, with the design plans and the design
17 standards, the design standards are supposed to offer
18 more detail on how you're supposed to build it.

19 If you'll also notice on the traffic separator,
20 there is no showing of a keyway or reinforcing steel,
21 which if you follow Iggy's argument that means he
22 wouldn't have to put it in there because the plan shows
23 something with less detail.

24 It also doesn't give you any kind of information
25 on what kind of slopes or what kind of curbs you are

1 supposed to have on it.

2 So the design standards are supposed to show more
3 detail. And the designers use it as this is where you
4 are supposed to go to, this is basically the location
5 I want you to use.

6 The more detail that we have in there is not only
7 there's no extra payment for pavement, there also
8 either the dowels or the keyway. There's also the
9 radius that you are supposed to use and what kind of
10 slope you are supposed to use on the concrete traffic
11 separator. That's what it's supposed to do, give you
12 more detail.

13 CHAIRMAN COWGER: Excuse me just a second. Were
14 dowels and keyway constructed?

15 MS. OLSON: Yes, dowels were used, correct?

16 MS. PANICO: No.

17 MR. HALLEY: No, the keyway was constructed.

18 MS. OLSON: Keyway.

19 CHAIRMAN COWGER: are those optional? Oh, okay,
20 yeah. I see.

21 MR. HALLEY: One or the other.

22 CHAIRMAN COWGER: right. I got you.

23 MS. OLSON: You have to do one or the other, but
24 it's not shown on the plans. So if you used Iggy's
25 argument, you wouldn't have to build that. That's what

1 the design standards are supposed to do, show more
2 detail.

3 So, that's my argument against him with the
4 design standards.

5 As far as, yes, I do say it's new construction
6 because we knew it was going to be new just as the
7 design standard shows new construction.

8 As far as the other projects show something
9 different, where asphalt is to be paved, if you notice
10 in his Exhibit No. 3, in their widening detail of the
11 traffic separator detail, underneath it they hash out
12 underneath that. That was not done in section BB of
13 the widening where there was an opportunity to show
14 even more clarity. That was not shown, even though the
15 hashing was up front.

16 In Exhibit No. 4, they actually point an arrow to
17 it and say type S overbuilt. So we are specifically
18 saying there is going to be type S overbuilt and we'll
19 pay for it, whereas this one there is no comment about
20 payment or anything. Again, it refers you back to the
21 design standard.

22 So the other set of plans had some kind of
23 different detailing. That's what they had is detailing
24 on the plan sheets. The absence of detailing does not
25 assume that we are now responsible for the payment of

1 that.

2 Iggy's next point was the bidding of asphalt and
3 also the building of the asphalt. As far as the
4 bidding of the asphalt and having to know what kind of
5 quantity it is, you know, he described that he would
6 have to take the slope and then dig down and go ahead
7 and built it, which is, in fact, what he did is he
8 established a 2 percent cross slope on the main through
9 lanes, and then went in and dug down and excavated and
10 went and did his traffic separator.

11 So there was a way for him to calculate that
12 information. There wasn't grades on there, but it was
13 basically taking the existing facility and fitting it
14 in.

15 As far as his subcontractor, I can understand
16 he's got different prices coming in from the
17 subcontractor, but even the exhibit he did show did
18 show a higher value than what he gave to us as a bid
19 item.

20 That is something that, yes, I would agree, Iggy
21 doesn't have malice towards us to get additional money
22 out of that, but it's still not our responsibility for
23 his error in the bidding process.

24 And I think I discussed earlier about how it was
25 paid for and then removed. Like I said, we had some --

1 it was a very large amount of asphalt. I think the
2 total tons of asphalt placed was 15,000 tons. So,
3 going back and forth and making those adjustments as we
4 are going through the project, we are checking the
5 standards, checking the procedures to make sure it was
6 proper payment.

7 So it wasn't just that that was pulled out, we
8 had some waste that was out there that we said this is
9 not valid. There was some overexcavation and things
10 like that. And we said, you know, we are not going to
11 be paying for that. We made adjustments as we went
12 along to that.

13 Have I left out anything, Sofie?

14 MS. PANICO: No.

15 MS. OLSON: That's basically our response to
16 that. You know, Iggy brought up a lot of points, but
17 what it comes down to is the plan sheets are not
18 intended to supersede the design standard for every
19 single detail. And I think his method of construction
20 showed that, also.

21 MR. ROEBUCK: Let me ask you a question,
22 Jennifer. Who is this John Grant you referred to in
23 your documents?

24 MS. OLSON: He is -- the best I can recall is the
25 guru up in Tallahassee, with design standards.

1 CHAIRMAN COWGER: He's the guy that does --
2 I know John. He's in the design section in
3 Tallahassee, and he's responsible for the index
4 drawings, right?

5 MR. SIMMONS: He's our standards engineer.

6 MR. ROEBUCK: I thought he might be with the
7 contractor.

8 MS. OLSON: No, he was the -- I called them up,
9 trying to be fair to the contractor. We talked to the
10 designer. They said their intent was for the design
11 standard to be in place, not anything to be
12 misrepresented here. They said if they wanted to pay
13 for the asphalt they would have gone into more detail
14 like Exhibits 3 and 4.

15 Then I contacted John Grant to find out from him
16 what was the background of it. He said no extra
17 payment for pavement. I double checked with them. He
18 said no, that's what it's to be intended for, so the
19 contractor installs that, and we don't pay for that
20 pavement under the traffic separator. And that's
21 what's in the design standards, and it's quite specific
22 with that.

23 MR. HALLEY: Can I rebut her real quick here?

24 CHAIRMAN COWGER: You don't need to say too much.

25 MR. HALLEY: I won't say too much. She says that

1 the plans don't show the crosshash like the other
2 exhibit does. The only reason it doesn't is because on
3 this project the widening is described by a solid line.
4 And designers draw things differently.

5 On that other set of plans, which is more clear,
6 more visible, the widening is described by the
7 crosshash.

8 MS. OLSON: I don't agree with that.

9 MR. HALLEY: These plans -- Jennifer, if you look
10 at the top typical section, how is widening described
11 on the outside? It's very clear.

12 On our plan section the widening here is
13 described not by hashes but by a solid line.

14 MS. OLSON: There is no design standard that's
15 saying there's any kind of different payment. If you
16 are going to have hashing -- they have hashing down in
17 detail in the plan view down there. The hashing -- you
18 said they could not continue that hashing because it
19 would be unclear.

20 They had an opportunity to show hashing down
21 there on the detailed lining, and they did not, which
22 to me means they purposefully did not have that hashing
23 in there because it wasn't for widening.

24 MR. HALLEY: Hold on a second. Let me prove you
25 wrong here real quick. Let me go back to the typical

1 section. The typical section shows widening to be a
2 solid line and clear. Okay?

3 If you go down to the detail, even where you have
4 hashing on both sides of the traffic separator, it's a
5 solid line.

6 MS. OLSON: It's a solid line --

7 MR. HALLEY: Which means --

8 MS. OLSON: All that means is new construction.

9 MR. HALLEY: Wait a minute.

10 CHAIRMAN COWGER: Lady and gentlemen, I don't
11 think we need to argue about that anymore unless the
12 Board needs to hear some more about that.

13 MR. ROEBUCK: No.

14 CHAIRMAN COWGER: Let me ask you a couple of
15 questions, though. First off, there's no question,
16 there's no dispute I guess I should say, that the
17 asphalt base course, the overbuild and additional
18 structure course was in fact placed in the area under
19 the traffic separator. That's what was actually built.
20 We are arguing about payment, I realize that. I want
21 to make sure that's what happened.

22 Let's go back and look at the standard index
23 drawing 302, which is the contractor's Exhibit No. 1 a
24 minute.

25 Option two, type four, in the transfer section,

1 the one on the right-hand side there, I'm a little bit
2 confused there because if you look to the left, it
3 shows a note, flexible pavement that points to the very
4 top of the pavement system to the very bottom of the
5 pavement system, and an arrow going to the bottom of
6 the traffic separator.

7 Now, you notice the top portion of the part
8 that's pavement is crosshashed. The bottom part is not
9 crosshashed, even though the line goes down to that
10 noncrosshashed part, which is down there about a little
11 over a quarter of an inch in thickness.

12 Can somebody explain to me what that detail was
13 really trying to show?

14 MS. OLSON: Structural.

15 CHAIRMAN COWGER: Was it possible that it was
16 trying to show that this type traffic separator goes
17 over an existing pavement?

18 MS. OLSON: I believe it shows structural asphalt
19 in the crosshashed and base asphalt beneath and below
20 it.

21 MR. HALLEY: Can I --

22 CHAIRMAN COWGER: You're saying the noncrossed --
23 let me get straight what she says. You are saying the
24 noncrosshashed portion in your opinion is base?

25 MS. OLSON: Correct, on top of the stabilized --

1 it's flexible pavement, on top of stabilized subgrade.

2 CHAIRMAN COWGER: Let him come back now.

3 MR. HALLEY: See, my interpretation of this whole
4 section here, and I put an exhibit in my contract to
5 show when these things apply.

6 If you go -- I think it's my Exhibit No. 8. It's
7 a clear indication as to why the Department does what
8 they do. And as a contractor, we have always
9 interpreted it that way.

10 If you go to Exhibit 8, you will see where they
11 tell you construct traffic separator, and they don't
12 give you an option.

13 CHAIRMAN COWGER: On that one they didn't run the
14 base and the pavement under the --

15 MR. HALLEY: Okay, that's exactly why option
16 number two -- if you go to option number two and you
17 run the section all the way across there, the
18 Department says, listen, we're not going to pay you for
19 that.

20 CHAIRMAN COWGER: This a wide topping job, too.
21 So I'm not sure how pertinent it is, but --

22 MR. HALLEY: It becomes pertinent because when
23 you get into these kind of projects, when you get under
24 the traffic separator and you pull the traffic
25 separator out and you have the differentials in grades,

1 you end up putting -- it's easier for the contractor to
2 go in there and just put layers of asphalt in there and
3 cut it out than to do the option one, which is a
4 three-step process of you pour your type D curb, then
5 you have the grade inside your type D curb, and then
6 you've got to pour like a sidewalk on top of it.

7 It's a quicker operation. It's not a cheaper
8 operation. It's a quicker operation time-wise. And
9 usually when you're dealing with traffic separators,
10 you're dealing when you're coming into an intersection.
11 So a contractor in most cases wants to get out of there
12 as quickly as possible.

13 So the Department says, well, contractor, in this
14 particular case, if you decide to go to an option two,
15 we are not going to -- because we understand it's
16 quicker and it's faster. It's not cheaper, but it's
17 quicker and faster.

18 And in our business time is money. You could do
19 it that way, and go with option number two, but we are
20 not going to pay you for it.

21 MS. OLSON: But also the Department has the
22 option of calling what options because we want it
23 quicker and faster.

24 MR. HALLEY: And I agree with you.

25 MS. OLSON: And that's what our intention is.

1 And that's why they called out. It was in an urban
2 area. It had a lot of businesses. They said we don't
3 want to deal with this digging out, and putting in lime
4 rock and embankment. We want you to get in, get out
5 and get it done.

6 And that's why the designer said I don't need to
7 put a payment option here or a detail of payment,
8 because that's what the design standard shows. There
9 is no payment for pavement. And that's what they say
10 is the reason why they didn't put any more detail,
11 where the other one said we are going to do something
12 different. We are going to go ahead and pay them for
13 it, so we put the detail in and we put the notes in
14 there.

15 They are doing something contrary to the design
16 standards.

17 MR. HALLEY: I think another point that I just
18 want to bring up to the Board is in my Exhibit 3 where
19 they even tell you that you are going to put widening
20 underneath, and it crosses it all out. It tells you to
21 refer to index 302, option number two. In our plans it
22 doesn't even go that far.

23 MS. OLSON: No, it does. Our plans show traffic
24 separator --

25 MR. HALLEY: Option two. It does not tell you to

1 go to any index number.

2 MS. OLSON: It tells you in the front to go to
3 the index.

4 MR. HALLEY: I am making a subtle point here of
5 how bad these plans are, if you want to go back to it.
6 We have to bid to the Department low bid,
7 competitively, and we've got to do what we can to see
8 what the plans are asking me for, since I know the
9 plans -- the plans govern over design standards.

10 I want to drive that point into the Board. The
11 plans govern over the design standards.

12 CHAIRMAN COWGER: Do either of the Board members
13 think we need to hear any more?

14 MR. ROEBUCK: No, they made good presentations in
15 writing and they've clarified it verbally.

16 CHAIRMAN COWGER: Does either party have anything
17 they've got to say because we are going to close if you
18 haven't.

19 MS. OLSON: Well, if I say something, he's going
20 to say something, and we will be here the rest of the
21 afternoon.

22 CHAIRMAN COWGER: As I like to say, I think we
23 are down to arguing anyway.

24 MR. HALLEY: We actually work well together.
25 I think this is the first time Jennifer and I -- we

1 took this as a learning experience.

2 MR. ROEBUCK: What do we do -- assume we find
3 some entitlement about the quantity. Now you said you
4 and the DOT agree on the 2700 tons. Jennifer thinks
5 there may be a variable. Sofie is not supposed to
6 talk, but she says 1500 or some kind of thing. How do
7 we come to grips -- it was the variability --

8 MS. OLSON: Just tell us entitlement and we will
9 work it out.

10 MR. HALLEY: We'll figure out -- we'll go back to
11 the asphalt reports.

12 MR. ROEBUCK: The thing -- you know, Mr. Albaugh
13 brought up a very good point, it's an excessive amount
14 of asphalt that you can't account for.

15 MR. HALLEY: And they could be wrong on the
16 number. Like I said, we did this two and a half years
17 ago that we were out there.

18 MS. OLSON: Right. And what we did is basically
19 we cross checked our paving reports with the plant
20 reports which he generates. We went through, we
21 subtracted out areas, we subtracted out asphalt where
22 we knew there was tonnage. We have gone through the
23 asphalt over and over.

24 MR. HALLEY: That number came from the
25 Department. It didn't come from me.

1 CHAIRMAN COWGER: We are going to close.

2 MR. ROEBUCK: Sorry I asked the question.

3 CHAIRMAN COWGER: That's enough. Bill is sitting
4 there shaking his head no, so I've got to let him talk.

5 MR. ALBAUGH: I would like a general idea as to
6 what you think is a reasonable amount of asphalt under
7 the separator.

8 MS. OLSON: It's 1153.

9 MS. PANICO: 1153 tons.

10 MR. HALLEY: We will check her number, but it
11 makes sense, because if you take the square yardage it
12 comes out to 807 plus your structural. It could be
13 around there.

14 MR. ALBAUGH: It comes out to 807 tons what I was
15 able to compute.

16 MR. HALLEY: For the base, just the base.

17 MR. ALBAUGH: Yeah. And so if 1153 is
18 acceptable. That's what I want to know, what -- in
19 general terms. That may not be what we settle it --

20 MR. HALLEY: If you take 1153, it almost seems
21 like somewhere they multiplied by two somewhere. And
22 that could be. But all I think we are asking the Board
23 to say here -- and I'm a reasonable contractor --
24 I mean in 20 years of business this is the first time
25 I'm in front of an arbitration board, and never have

1 I sued the Department.

2 If that's basically what we come up that it is --
3 and it makes sense that that's what it is, that's what
4 we will go with. I think we are asking the Board to
5 tell us is there entitlement.

6 MS. OLSON: We are not disputing this --

7 MR. ALBAUGH: Well, there may be more to it than
8 that. And you know, sometimes the Board takes a look
9 at this stuff and says we ain't a hundred percent sure
10 about this or a hundred percent sure about this, but we
11 think this is a reasonable thing.

12 And that's why I'm trying to get down to
13 something that may be reasonable.

14 MR. HALLEY: Bill, I think her number is
15 reasonable.

16 MR. ALBAUGH: Okay. I don't know that's the
17 number we will use, but I'm saying as long as
18 I understand something in the ballpark.

19 MR. HALLEY: I think her numbers look reasonable,
20 because -- you know, you're right. I don't believe --
21 when I tell you that we might have put in one area 24
22 inches of asphalt, I could probably be reasonable and
23 say yeah. In the whole area, no, it would not have
24 made sense.

25 MR. ALBAUGH: That's what didn't make sense to me

1 is that was the average. That means if you had some
2 that were only 12 inches, you had to have some 36 to
3 make it up.

4 CHAIRMAN COWGER: We know that 2750 is the wrong
5 number.

6 MR. ALBAUGH: We think so.

7 MR. HALLEY: What I can tell you is, you know,
8 Sofie keeps very good records. I've done a lot of jobs
9 with her, and I'm pretty satisfied that if she tells me
10 it's only 1153, then I will agree with her.

11 CHAIRMAN COWGER: Okay. Let's close it out,
12 okay? The hearing is hereby closed. The Board will
13 meet to deliberate on this claim in approximately six
14 weeks -- don't count on that exactly -- and the parties
15 will be furnished our order shortly thereafter.

16 MS. OLSON: Is it before you retire or after you
17 retire?

18 CHAIRMAN COWGER: We will have to deliberate
19 after I leave, after I officially retire. You will see
20 one more round of orders come out signed by me.

21 MR. HALLEY: I thank the Board for this
22 opportunity to at least state our case. And, Gene,
23 thank you for your years of service.

24 CHAIRMAN COWGER: Thank you.

25 MR. HALLEY: You've been tremendous to this

1 industry as you were with the Department.

2 (Discussion off the record)

3 (Whereupon, the hearing was concluded at 1:30 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I, CATHERINE WILKINSON, Court Reporter, do hereby
5 certify that I was authorized to and did stenographically
6 report the foregoing proceedings; and that the transcript is
7 a true record of the testimony given.

8 I FURTHER CERTIFY that I am not a relative, employee,
9 attorney or counsel of any of the parties, nor am I a
10 relative or employee of any of the parties' attorney or
11 counsel in connection with the action, nor am I financially
12 interested in the action.

13 Dated this 28th day of June, 2000.

14

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22

23

24

25


CATHERINE WILKINSON
CSR, CP
Post Office Box 13461
Tallahassee, Florida 32317

STATE ARBITRATION BOARD

1022 Lothian Drive
Tallahassee, Florida 32312-2837
Phone: 850/385-2410 FAX: 850/385-2410
E-Mail: hecowger@aol.com

NOTICE OF CHANGE IN DATE AND TIME OF ARBITRATION HEARING

TO: Bill Albaugh, P. E.

Title: Director of Highway Operations
Florida Department of Transportation

TO: Ignacio Halley, P..E.

Title: Executive Vice President

Contracting Firm: Community Asphalt Corporation

Mailing Address: 14005 N. W.. 186th Street Hialeah, FL 33018

Re: State Project No. 86200-3504

Location of Project: SR 858 (Hallandale Beach Blvd.) Broward County
From S R 7 to SR 9 (I-95)

Each of the above parties is hereby given notice that the hearing before the State Arbitration Board originally scheduled to be held on May 31, 2000 has been rescheduled as follows:

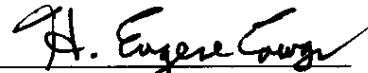
DATE: Monday, June 12, 2000

TIME: 11:00 a.m.

LOCATION: Florida Transportation Center Building
1007 Desoto Park Drive, Tallahassee, FL
(On South side of Lafayette Street about 1/4 mile East of DOT Headquarters Building)

DATE: 5/19/00

SIGNED:


H. Eugene Cowger, P. E.
Chairman, S.A.B.

c. All Board Members
Catherine Wilkinson & Associates



Florida Department of Transportation

JEB BUSH
GOVERNOR

THOMAS F. BARRY, JR.
SECRETARY

March 10, 2000

H. Eugene Cowger, P.E.
Chairman, State Arbitration Board
1022 Lothian Drive
Tallahassee, FL 32312-2837

Re: State Job No. 86200-3504/SR 858 Hallandale Beach Boulevard/Broward County

Dear Gene:

I concur with your recommendation for Bill Albaugh to sit in on the Arbitration Hearing on the above project since I had part in the Claims Review Committee that previously ruled on this.

Please provide Bill with information about the Board's meeting on this issue.

Sincerely,

Freddie Simmons, P.E.
State Highway Engineer

Note:

I am sorry to get your notice of resignation from the Board. I had looked forward to working with you on this and learning from your experience. But, all of us here at DOT wish you the best as you make the decision toward full retirement. You have served the interests of the Transportation Industry in Florida well for many years.

cc: Bill Albaugh

FLORIDA

JEB BUSH
GOVERNOR



DEPARTMENT OF TRANSPORTATION

DISTRICT IV CONSTRUCTION OFFICE
3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309-3421
Telephone: (954) 777-4130

THOMAS F. BARRY
SECRETARY

August 31, 1999

Community Asphalt Corp.
14005 N.W. 186 Street
Hialeah, FL 33018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Z 507 212 525

Gentlemen:

*PROOF OF FINAL
Acceptance.*

OFFER OF FINAL PAYMENT

Work Program Item Number:	4110821
Federal Aid Project Number:	XA-6650-(12) (FM#6650012U)
State Job Number:	86200-3504 (FM#227956 1 52 01)
Contract Number:	19,232; Broward County
Description:	Hallandale Beach Blvd. (441 to CSX R/R)

Enclosed for your information is a copy of ESTIMATE NUMBER 20 AND FINAL showing \$95,328.59 as the amount due on the above referenced Job.

This estimate is being issued to pay a final claim settlement by Supplemental Agreement dated August 16, 1999.

Please sign and return the enclosed Letter of Acceptance to this office.

Please be reminded that Article 9-9 of the 1991 Standard Specifications state in part "Failure on the part of the contractor to furnish all required contract documents within 90 days of the Department's offer of final payment will be considered as sufficient grounds to suspend a Contractor's Certificate of Qualification under the provisions of Florida Administrative Code 14-22.12." This letter constitutes an offer of final payment.

Sincerely,

C. M. Hunter

for Eduardo Caballero
District 4 Final Estimates Engineer

EC:cg.

cc: Patrick M. McCann, P.E., Acting District 4 Construction Engr.
William R. Walsh, P.E., District 4 CEI Engineer
Enclosures:



Florida Department of Transportation

Fort Lauderdale Construction - District 4
5548 Northwest 9th Ave., Ft. Lauderdale, Florida 33309
Telephone: (954) 958-7632 (FAX): (954) 958-7638
www.dot.state.fl.us

JEB BUSH
GOVERNOR

THOMAS F. BARRY, JR.
SECRETARY

Community Asphalt Corporation
14005 N.W. 186th Ave.
Hialeah, Florida 33015

March 26, 1999

Att.: Ignacio Halley
Project Manager

Box 57
SI
#3035
PROOF OF
PRIOR SUBMITTAL

Re: F.P.I. No: 227956 1 52 01
W.P.I. No: 4110821
State Project No: 86200-3507
F.A.P. No: XA-6650(12)
County: Broward
Description: SR 858(Hallandale Beach Blvd) fm SR-7 to SR-9
to SR-9

PRICE QUOTE APPROVAL

Dear Ignacio:

This letter is to confirm the negotiated price reached with this office per our meetings regarding all claims by Community Asphalt Corp. for the above State Project.

ITEM NO.	DESCRIPTION	QUANTITY	UNIT PRICE
1-101-1A	Claim Settlement	1 Lump Sum	\$95,365.00

This additional pay item is a full payment for any and all claims pertaining to the one hundred twenty (120) day delay non-productive work associated with Broward County sewage line installation, FPL irrigation pump wiring, Landscaping issues and asphalt tonnage owed.

A Supplemental Agreement will be processed for the item above. Your cooperation and acknowledgment of the price listed above on the signature line below will be appreciated.

* Asphalt UNDER Separator
to BE TAKEN TO Arbitration.

Sincerely,

Jennifer M. Olson, P.E.
Resident Engineer

Halley Exec. Vice President 4-12-99
Contractor Signature Date

cc: Melvin Finch, Sofia Panico, File, Reading File

STATE ARBITRATION BOARD

1022 Lothian Drive
Tallahassee, Florida 32312-2837
Phone: 850/385-2410 FAX: 850/385-2410
E-Mail: hecowger@aol.com

REQUEST FOR ARBITRATION OF A CLAIM

CONTRACT NUMBER: 19,2332

Contractor's Name: Community Asphalt Corp.

Address: 14005 NW 186th Street Hialeah FL 33018
Street Address or P.O. Box No. City State Zip

State Project No.: 86200-3504 Fed. Aid Project: XA-6650-(12)(EXEMPT)

Location: SR-858 (Hallandale BEach Blvd.), Broward County
from State Road 7 to State Road 9 (I-95)

Amount of Original Contract: \$ 2,367,194.68 Total Amount of Claim: \$ 88,020.80

The Contractor elects to:

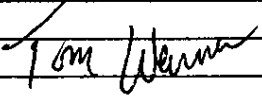
☐ Submit only the written information attached to this request and, subject to agreement by the Department of Transportation, waive an oral presentation to the Board.

OR

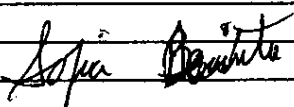
☒ Attend a hearing scheduled by the Board to present testimony and additional exhibits.

The Contractor will be represented by an attorney: ☐ Yes ☒ No

If a hearing is to be held, the Contractor will be represented by the following persons:

Name:	Title:
<u>Ignacio Halley, P.E. ✓</u>	<u>Executive Vice President</u>
<u></u>	<u></u>
<u></u>	<u></u>

If a hearing is to be held, the Contractor requests that the following DOT personnel be present:

Name:	Title:
<u>Jennifer Olson, P.E.</u>	<u>District Construcion Eng</u>
<u></u>	<u></u>
<u></u>	<u></u>

The Contractor acknowledges having read §337.185, Florida Statutes, which authorizes and governs the State Arbitration Board.

January 24, 2000
Date Signature



Ignacio Halley, P.E.
Type or Print Name and Title
Executive Vice President

FLORIDA

LAWTON CHILES
GOVERNOR

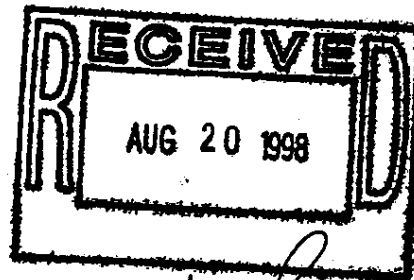


Jennifer 8/9-4-98 *CC: YSUC 30*
DEPARTMENT OF TRANSPORTATION

605 Suwannee Street, Tallahassee, Florida 32399-0450

THOMAS P. BARRY, Jr.
SECRETARY

August 17, 1998



MEMORANDUM

TO: Jim Wolfe, Director of Operations
FROM: Bill Albaugh, Director, Office of Construction *W. H. Albaugh*
COPIES TO: Freddie Simmons, Jimmy Rodgers, Charles Goodman
SUBJECT: CLAIMS REVIEW COMMITTEE
STATE PROJECT NO. 86200-3504
COMMUNITY ASPHALT CORP.

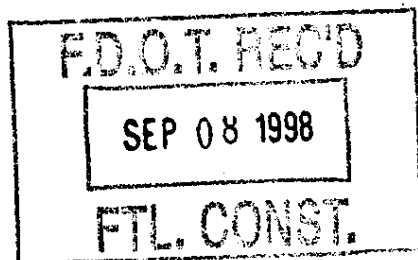
The Claims Review Committee met in Tallahassee on August 13, 1998 to review the claim on the above referenced project.

The Contractor's claim was for payment for base and structural asphalt under the traffic separator on Hallandale Beach Boulevard. (Approximately 2,750 tons of asphalt)

After review of the Contractor's and the District's presentations the Claims Review Committee finds no merit to this claim.

WA/wc

RECEIVED
SEP 3 1998
4th DISTRICT
DISTRICT CONSTRUCTION



FLORIDA

LAWTON CHILES
GOVERNOR



DEPARTMENT OF TRANSPORTATION

Fort Lauderdale Construction - District 4
5548 Northwest 9th Ave., Ft. Lauderdale, Florida 33309
Telephone: (954) 958-7632
(FAX): (954) 958-7638

THOMAS F. BARRY, JR.
SECRETARY

September 24, 1998

Mr. Ignacio Halley
Community Asphalt Corporation
14005 NW 186th Street
Hialeah, Florida 33018

PROOF OF
PRIOR SUBMITTAL

Dear Mr. Halley:

SUBJECT: Work Program Item No.: 4110821
State Project No.: 86200-3504
Federal Job No.: XA-6650-(12) (EXEMPT)
County: Broward
Description: SR-858 (Hallandale Beach Blvd.) From SR-7 to SR-9
(I-95)

CLAIMS REVIEW COMMITTEE

Attached is the formal results of the Claims Review Committee. Please call me if you have any questions.

Sincerely,

Jennifer M. Olson, P.E.
Resident Engineer

JMO:bj

Enclosure

cc: A.J. Yocca
Melvin Finch
Sofia Panico
File
Reading File

86200-3504/

86200-3504/C
2002

<http://www.dot.state.fl.us>

1

ORIGINAL

**REQUEST FOR ARBITRATION
OF A CLAIM**

**COMMUNITY ASPHALT CORP.
14005 NW 186TH STREET
HIALEAH, FL 33018
PHONE: (305) 829-0700
FAX: (305) 829-8772**

STATE ARBITRATION BOARD

1022 Lothian Drive
Tallahassee, Florida 32312-2837
Phone: 850/385-2410 FAX: 850/385-2410
E-Mail: hecowger@aol.com

NOTICE OF ARBITRATION HEARING

TO: Greg Xanders, P. E. **Title:** State Construction Engineer
Florida Department of Transportation

TO: Ignacio Halley, P.E. **Title:** Executive Vice President

Contracting Firm: Community Asphalt Corp.

Mailing Address: 14005 NW 186th Street Hialeah FL 33018

Re: State Project No. 86200-3504
Location of Project: SR 858 (Hallandale Beach Blvd.), Broward County
From SR 7 to SR 9 (I-95)

Each of the above parties is hereby given notice that a hearing before the State Arbitration Board will be held in reference to the claim submitted on the above referred project in accordance with the following:

DATE:	Wednesday, May 31, 2000	TIME:	9:30 a.m.
LOCATION:	Florida Transportation Center Building 1007 Desoto Park Drive, Tallahassee, FL (On South side of Lafayette Street about 1/4 mile East of DOT Headquarters Building)		

The Claimant has advised that they will ☐ will not ☒ be represented by counsel at the hearing.

THE CONTRACTOR WILL HAVE THE FOLLOWING PERSONS PRESENT AT THE HEARING:

Name:	Title:
Ignacio Halley, P. E.	Executive Vice President

THE CONTRACTOR HAS REQUESTED THAT THE DEPARTMENT OF TRANSPORTATION HAVE THE FOLLOWING PERSONS PRESENT AT THE HEARING:

Name:	Title:
Jennifer Olson, P. E.	District Construction Engineer

**NOTE; ALL EXHIBITS PRESENTED AT THE HEARING SHALL
BE SUBMITTED IN QUADRUPLICATE**

DATE: May 8, 2000

SIGNED: _____
H. Eugene Cowger, P. E.
Chairman, S.A.B.

c. All Board Members ✓
John Coxwell
Katherine Wilkinson & Associates

FLORIDA

LANTON CHILES
GOVERNOR



DEPARTMENT OF TRANSPORTATION

THOMAS F. BARRY, JR.
SECRETARY

District Construction Office - District Four
3400 West Commercial Blvd., Ft. Lauderdale, Florida 33309
Telephone: (954) 486-1400
(FAX): (954) 777-4197

MEMORANDUM

DATE: August 11, 1998

TO: Claims Review Committee
Charles Goodman, Construction Engineer
Freddie Simmons, State Director, Office of Design
Jimmy Rogers, Director of Operations

FROM: Aime J. Yocca, District 4 Construction Engineer
BY: Jennifer M. Olson, Resident Engineer *J. M. Olson*

COPIES: J. Wolfe, M. Finch, S. Panico, G. Xanders, I. Halley - Community Asphalt Corp.,
File, Reading File

SUBJECT: W.P.I. No.: 4110821
State Job No.: 86200-3504
F.A.P. #: XA-6650 (12)
Description: Resurfacing and repaving of SR-858 (Hallandale Beach
Boulevard) from SR-7 (US 441) to SR-9 (I-95)

RECEIVED
FDOT D4
CONSTRUCTION
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CLAIM FOR ADDITIONAL ASPHALT

As per Community Asphalt Corporation's request, this claim is replacing their claim for I-95 in Palm Beach County, State Project No. 93220-3436. The I-95 claim was settled on August 10, 1998. Community Asphalt Corporation had previously discussed the Hallandale Beach Boulevard project with our office and we could not come to an agreement on the issue of payment for the asphalt under the Type IV concrete traffic separator. Please review this package for Thursday's Claim Review Committee.

If you have any questions, please contact Jennifer Olson at SC 436-7600, Extension 6110.

AY/JMO/bj

Attachment

jocamemo.wpd



PROJECT NO.: 86200-3504

HALLANDALE BEACH BOULEVARD

CLAIM FOR PAYMENT OF ADDITIONAL ASPHALT

The scope of this project was repavement of the existing roadway with median improvements and minor widening. Community Asphalt Corporation is requesting payment for base and structural asphalt under the traffic separator. This is approximately 7" of asphalt and equates to approximately 2,750 tons of asphalt. Community Asphalt Corporation is requesting payment based on the following:

1. The plans call for a Type IV concrete traffic separator, Option 2. Community Asphalt Corporation feels that since the Department did not give the contractor an option of which Type IV concrete traffic separator to build, then the Department should pay for the additional asphalt.

Design Standard #302 (Attachment #1) states that no extra payment be made for pavement below the traffic separator. We have reviewed the Design Standard and the note is clear and no additional payment should be made. Furthermore, John Grant was contacted and he verified that his intent was that no additional payment be made for pavement.

2. Community Asphalt Corporation contends that the plans show widening through the traffic separator.

The Designer provided an additional detail. (See Plan Sheet #5, Detail A-A and B-B on Attachment #2.) The detail shows widening on either side of the traffic separator and not through the traffic separator.

3. The detail for the traffic separator shows a solid line for the bottom of the base. Community Asphalt Corporation's position is that this line represents new construction and should be paid for as widening.

The Department agrees with Community Asphalt Corporation that it is new construction; but in the absence of direction on payment in the plans, then the Design Standards govern. Therefore, our response is Number 1 as stated above.

4. Because this project calls for overbuilding of the existing pavement and creating a 2% cross slope, no existing or final elevations were given on the plans. Community Asphalt Corporation's opinion is that they would not be able to bid this cost of the asphalt with the traffic separator.

At the time of bid, the contractor could assume that they would place the first lift, a leveling course, and establish a 2 % slope and then excavate for the base under the traffic separator. This would allow for a constant depth and a known cost to be put in the bid of this contract. Community Asphalt Corporation built the project as described above.

It is the District's recommendation that no additional payment be made to Community Asphalt Corporation for the 2,750 tons of asphalt in dispute.



**ROADS
AIRPORTS
COMMERCIAL**

January 24, 2000

State Arbitration Board
1022 Lothian Drive
Tallahassee, FL 32312-2837

X-1

Miami:

14005 N.W. 186th Street
Hialeah, Florida 33018
Phone: (305) 829-0700
Fax: (305) 829-8772

West Palm Beach:

7795 Hooper Road
West Palm Beach
Florida 33411
Phone: (561) 790-6467
Fax: (561) 790-1073

Certified General Contractor
License Number: CG C011475

**RE: FDOT FIN Project No. 227956-1-52-01
State Project No. 86200-3504
State Road 858 (Hallandale Beach Blvd.)
From SR-7 to SR-9
Broward County**

CAC # 3035

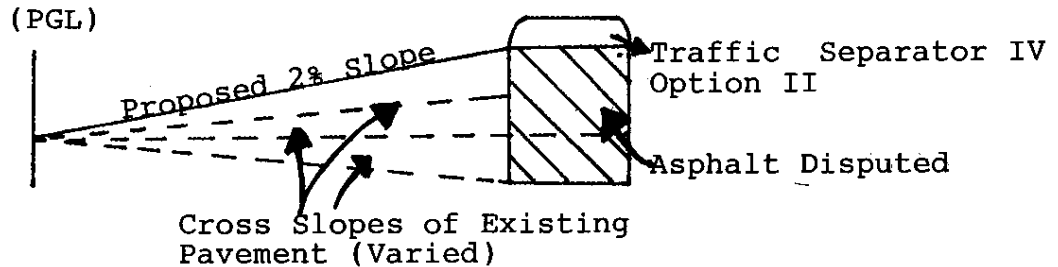
Gentlemen:

The main dispute between Community Asphalt and the Department is whether or not the asphalt placed under a Type II Concrete Traffic Separator (Option II) is compensable or not. The Department's position is based solely on Index 302 (1 of 1) of the Roadway and Design Standards, where the typical Section for Option II, Type IV Concrete Traffic Separator clearly states "no extra payment for pavement" will be made under the traffic separator (Exhibit No. 1).

We have two (2) principal arguments as to why we do not feel that these standards apply to this project.

1. The typical section of the contract plans (Exhibit No. 2) shows a blow-up detail of this area, it clearly indicates that new construction is required for which there are pay items. The note of "no extra payment for pavement" is excluded. In accordance with Section 5-2 of the Standard Specifications for Road and Bridge Construction it states (Exhibit No. 7), "In case of discrepancy, the governing order of the documents shall be as follows: the plans are listed third and the design standards fourth. Therefore, the plans govern over the Standards, so the note in the Standards does not apply. ✓
2. Even if one disagrees with the governing order, the plans do not provide sufficient information to calculate the quantity of asphalt required under the traffic separator. The intent of this project was to correct the existing varied cross-slope with a constant two percent (2%) slope and the reconfiguration of the median turnlanes. The plans do not provide the information on the existing cross slope. It provides a profile grade line (PGL) and a required slope. Figure 1 illustrates what the proposed conditions on site were. ✓





The asphalt between the existing pavement and the proposed 2% slope was being paid by the ton. Therefore, since the quantities could not be exactly calculated, the contractor at bid time could price the asphalt per ton and be paid for every ton placed. This item overran by over 6%.

The same way the asphalt on the roadway could not be calculated by the square yard due to variable thickness, neither can the asphalt under the traffic separator be calculated by the linear foot, that is why we contend that this volume of material was intended to be paid for under the asphalt tonnage item. Exhibits 3 & 4 show two different FDOT Projects, which clearly shows asphalt being paid for under a Type IV Option II Concrete Traffic Separator. It is impossible with the information given on the plans to calculate this volume at bid time. ✓

3. Analysis of Contract Bid Price

Our bid price for Item No. 1-520-5-41 Traffic Separator Concrete (Type IV)(4'wide) was \$20.00/LF. We subcontracted this work to Smith and Company for \$21.85/LF (Exhibit 5). In addition, we are providing the prices for this item from the other subcontractors (Exhibit 6) which proves that our bid price was only for the concrete work and does not include any asphalt.

We attempted to resolve this issue through the Claims Review Process, but were unsuccessful. We found this process to be very one-sided and unproductive. Exhibit No. 8 shows a typical section where Design Index would be used

It is our contention that we should be compensated for the 2,750 tons placed under the traffic separator at the Contract Unit Price of \$32.00/Tons, which equates to **\$88,020.80 (plus interest)** (Exhibit No. 9, verifies contract unit price). Our position is based on the above information that;

FIN
9/1/99

January 24, 2000
Page 3

1. The plans govern over the Design Standards.
2. The plans clearly call for new construction under the traffic separator.
3. The plans did not provide sufficient information to calculate the quantity of asphalt needed under the traffic separator.
4. We clearly show that we did not include any asphalt in the traffic separator pay item as bid.

We request your review of the information provided and your favorable response will be appreciated.

Respectfully submitted,

COMMUNITY ASPHALT CORP.



Ignacio Halley, P.E.
Executive Vice President

WP/CORR/IH/3035
mjr

STATE ARBITRATION BOARD

1022 Lothian Drive
Tallahassee, Florida 32312-2837
Phone: 850/385-2410 FAX: 850/385-2410
E-Mail: hecowger@aol.com

NOTICE OF ARBITRATION HEARING

TO: Greg Xanders, P. E. **Title:** State Construction Engineer
Florida Department of Transportation

TO: Ignacio Halley, P.E. **Title:** Executive Vice President

Contracting Firm: Community Asphalt Corp.

Mailing Address: 14005 NW 186th Street Hialeah FL 33018

Re: State Project No. 86200-3504
Location of Project: SR 858 (Hallandale Beach Blvd.), Broward County
From SR 7 to SR 9 (I-95)

Each of the above parties is hereby given notice that a hearing before the State Arbitration Board will be held in reference to the claim submitted on the above referred project in accordance with the following:

DATE:	Wednesday, May 31, 2000	TIME:	9:30 a.m.
LOCATION:	Florida Transportation Center Building 1007 Desoto Park Drive, Tallahassee, FL (On South side of Lafayette Street about 1/4 mile East of DOT Headquarters Building)		

The Claimant has advised that they will ☐ will not ☒ be represented by counsel at the hearing.

THE CONTRACTOR WILL HAVE THE FOLLOWING PERSONS PRESENT AT THE HEARING:

Name:	Title:
Ignacio Halley, P. E.	Executive Vice President

THE CONTRACTOR HAS REQUESTED THAT THE DEPARTMENT OF TRANSPORTATION HAVE THE FOLLOWING PERSONS PRESENT AT THE HEARING:

Name:	Title:
Jennifer Olson, P. E.	District Construction Engineer

**NOTE; ALL EXHIBITS PRESENTED AT THE HEARING SHALL
BE SUBMITTED IN QUADRUPLICATE**

DATE: May 8, 2000

SIGNED: _____
H. Eugene Cowger, P. E.
Chairman, S.A.B.

c. All Board Members
John Coxwell
Katherine Wilkinson & Associates

Pd: July 6, 2000
SAB ck. #754

**WILKINSON & ASSOCIATES
CERTIFIED COURT REPORTERS
POST OFFICE BOX 13461
TALLAHASSEE, FLORIDA 32317
(850) 224-0127**

TAX ID #256-82-8779

TO: MR. H. E. COWGER, CHAIRMAN
State Arbitration Board
1022 Lothian Drive
Tallahassee, Florida 32312

RE: Community Asphalt Corporation
and FDOT
Arbitration Hearing on
Project No. 86200-3504
SR858 Broward County

INVOICE NO. W2-081

REPORTER: CATHERINE WILKINSON

BILLING DATE: 7-5-00

APPEARANCE FEE FOR: Reporter at arbitration hearing in the
above matter from 11:00 a.m. to 1:30 p.m.
on 6-12-00

\$110.00

TRANSCRIPT COSTS: Arbitration hearing in the above matter
taken on 6-12-00

ORIGINAL, ^{three} ~~ONE~~ COPY, \$ 4.40 PER PAGE 51 PAGES

224.40

ONE COPY, \$ _____ PER PAGE _____ PAGES

MAILING COSTS:

EXHIBITS: _____ PAGES AT \$.35 PER PAGE

THANK YOU!

TOTAL

\$ 334.40

**STATE ARBITRATION BOARD
1022 LOTHIAN DRIVE
TALLAHASSEE, FL 32312-2837
Phone: 850/385-2410**

**AS DIRECTED IN SAB ORDER NO. 1-00, PLEASE PAY
THE AMOUNT SHOWN IN THE ATTACHED INVOICE BY
CHECK MADE OUT TO THE STATE ARBITRATION
BOARD**

MAIL CHECK TO THE ABOVE ADDRESS.

**NOTE: IT IS NOT NECESSARY TO INCLUDE A
COPY OF THE SAB ORDER WITH PAYMENT.**

STATE ARBITRATION BOARD

1022 Lothian Drive
Tallahassee, Florida 32312-2837
Phone: 850/385-2410 FAX: 850/385-2410
E-Mail: hecowger@aol.com

MEMORANDUM

DATE: April 25, 2000
TO: Greg Xanders, P. E., State Construction Engineer
Florida Department of Transportation
FROM: H. Eugene Cowger, P. E., Chairman
RE: REQUEST FOR ARBITRATION OF A CLAIM ON

STATE PROJECT NO: 86200-3504

PROJECT LOCATION: SR 958 Hallandale Beach Boulevard, Broward Co.

CONTRACTOR:

The State Arbitration Board has received the attached Request for Arbitration of a Claim from the Contractor for the above subject projects.

A hearing has been scheduled on May 31, 2000 in Tallahassee. You will receive a Notice of Hearing stating the exact time set for this hearing no later than twenty one (21) days prior to the hearing date.

Since Freddie Simmons sat on the DOT Claims Review Committee which previously acted on this claim, Bill Albaugh the DOT Alternate Member will replace Mr. Simmons for this hearing.

NOTE: In accordance with the procedures adopted by the State Arbitration Board, the Department of Transportation must submit its primary rebuttal exhibit, including a summary of their position, directly to the Contractor and to each Member of the Board so that it is received not less than ten (10) days prior to the date of the hearing. Verbal testimony and simple exhibits may be submitted during the hearing. All exhibits submitted during the hearing shall be in quadruplicate, except a single copy of contract plans, specifications, supplemental specifications and special provisions and pay quantity calculations will be permitted.

THE DEPARTMENT OF TRANSPORTATION IS REQUESTED TO MAKE AVAILABLE AT THE HEARING FOR EXAMINATION BY THE BOARD A COPY OF THE CONTRACT PLANS.

SAB MEMBERS

H. Eugene Cowger, P. E.
1022 Lothian Drive
Tallahassee, FL 32312
Phone: 850/385-2410
Fax: 850/385-2410

Bill Albaugh, P. E.
Highway Operations Director
Department of Transportation
605 Suwannee Street MS 31
Tallahassee, FL 32399-0450

John P. Roebuck
2922 Hawthorne Road
Tampa, FL 33611
Phone: 813/839-5526
Fax: 813/839-5526

4/25/00

5/18/98

STATE ARBITRATION BOARD

CHECKLIST FOR A REQUEST FOR ARBITRATION

DOT JOB NO. 86200-3504 CONTRACTOR Community Asphalt
 DOT DISTRICT 4 DOT CONTACT PERSON _____
 PHONE NO. _____

Issue: Payment for HMA under traffic separator

DONE	DATE	ACTION	COMMENTS
✓	1/28/00	Request Package Received	
✓		Reviewed by Chairman	
✓	3/3/00	Any Problems Resolved With Contractor By Chairman	3/3/00 - Telecon with Jiggle Halley He agreed to postponing scheduling a hearing up to 4/1/00 +/-
✓	4/25/00	Preliminary Transmittal of Request Package to DOT Director of Construction by Memo	The Memo must contain a statement that any written rebuttal package by DOT must be submitted to each Member of the Board and the Contractor so that it is received not less than 10 days prior to the date set for hearing. NOTE: Furnish a list of the Members of the SAB with mailing addresses.
		Set the date for a Hearing. Date Set: <u>5/21/00</u> <u>6/12/00</u>	MUST BE AT LEAST 21 DAYS AFTER DATE ON WHICH NOTICE OF HEARING IS TO BE MAILED.
		Prepare a Schedule for the SAB for the day on which hearing(s) are to be held. SHOW: Time periods for deliberation on claims previously heard and for each hearing. SEND TO: Board Members Court Reporter	

DONE	DATE	ACTION	COMMENTS
	5/8/00 <div style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;"> Notice of Hearing 5/19/00 </div>	Issue a Notice of Hearing SEND TO: Contractor Contractor's Attorney (If Applicable) DOT Director of Construction Court Reporter Board Members* *Attach a Copy of Request for Arbitration Package	DATE OF HEARING MUST BE A MINIMUM OF 21 DAYS AFTER THE DATE ON WHICH THE NOTICE OF HEARING IS SENT OUT. This is necessary in order to allow time for DOT to prepare its Rebuttal Package and have it to the Board and Contractor at least 10 days prior to the hearing.
		10 days prior to hearing check to verify that DOT Rebuttal Package has been received. CHAIRMAN FOLLOW UP IF NECESSARY.	It may be that DOT will not do a written rebuttal package.
		Conduct a Hearing	
		Transcript of Hearing Received from Court Reporter.	
		Chairman review exhibits and transcript and prepare a Confidential Draft Order.	
		Send copy of Confidential Draft Order and copy of transcript to each Board Member.	
		Set a date for deliberation DATE SET: _____	
		DELIBERATION BY SAB	
		Chairman finalize SAB Order	

DONE	DATE	ACTION	COMMENTS
		<p>Process the SAB Order</p> <p>Prepare Filing with Clerk of SAB Distribute a copy of SAB Order to: Contractor* DOT Director of Construction* Each SAB Member SAB File*</p> <p>* With <u>Original</u> Signatures</p>	
		<p>Process Invoice for Reimbursement of Court Reporter Costs as set out in the SAB Order.</p> <p>Invoice Package to Include:</p> <p>Copy of Court Reporters's Invoice Copy of SAB Order Instructions on reimbursement of Court Reporter Costs to SAB</p>	