

ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT

B1

Scott E. Bennett, P.E.
Director
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March 11, 2015

Ms. Brenda Wade
Director of the Arkansas State Claims Commission
101 E. Capitol Avenue, #410
Little Rock, AR 72201

Arkansas
State Claims Commission
MAR 12 2015

RECEIVED

RE: APAC-Tennessee, Inc. v. Arkansas State Highway Department
Claims Commission Case No. 14-0651-CC

Dear Brenda,

The above-referenced matter was referred back to the Arkansas State Claims Commission by the Claims Review Subcommittee at its recent meeting on March 2, 2015.

Please be advised that the parties have now reached a settlement agreement in the amount of \$362,970.00. Accordingly, no hearing before the Commission is necessary. Please remove this matter from the Claims Commission docket.

Respectfully,

A handwritten signature in black ink, appearing to read 'Rita S. Looney', is written over a faint circular stamp.

Rita S. Looney
Chief Legal Counsel for the Arkansas State
Highway Department

cc: Senator Jeremy Hutchinson
Co-Chair, Claims Review Subcommittee

Representative John Payton
Co-Chair, Claims Review Subcommittee

Director
Mark Umeda, Staff Attorney
Jack East, Attorney at Law

**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS AND DAMAGES
ARISING FROM THE CONSTRUCTION OF JOB BB0109 ON INTERSTATE 40 IN
CRITTENDEN COUNTY, ARKANSAS**

This settlement agreement is entered into between the Respondents, the Arkansas State Highway and Transportation Department ("AHTD") and the Arkansas State Highway Commission ("ASHC"), and the Claimant, APAC-Tennessee, Inc. ("APAC").

APAC agrees to fully release AHTD and ASHC of all liability and responsibility with Claim No. 14-0651-CC, filed with the Arkansas State Claims Commission, otherwise entitled APAC-Tennessee, Inc. v. Arkansas State Highway and Transportation Department and Arkansas State Highway Commission. APAC further agrees to release the AHTD and ASHC from all claims or damages arising either directly or indirectly from its involvement in Job BB0109, whether pleaded in said Arkansas State Claims Commission proceedings or not.

In consideration of the above, and as full settlement of Claim No. 14-0651-CC against AHTD and ASHC, and in full settlement of all claims or damages against the AHTD and ASHC arising directly or indirectly from the parties' involvement in Job BB0109, the parties agree as follows:

1. APAC grants to AHTD and ASHC a full release, discharge, and acquittance from its claim asserted in Claim No. 14-0651-CC in the Arkansas State Claims Commission, and from any and all unpleaded claims or damages arising from, or incidentally or consequentially from, its involvement in Job BB0109. As part of said release and discharge, APAC hereby agrees to file with the Arkansas State Claims Commission a satisfaction of award once payment is made to it.

2. In consideration of the recitations set forth above, AHTD and ASHC agrees to pay \$362,970.00 to APAC for its claim.

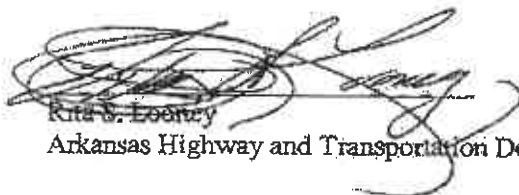
3. All costs and attorney's fees accrued in the course of pursuing or defending Claim No. 14-0651-CC shall be assumed by the party accruing such costs.

4. The terms of this settlement, as set forth herein, shall be governed by Arkansas law.


5. The terms of this settlement, as set forth herein, represent the entirety of the agreement between the parties, and no other terms shall be controlling unless incorporated herein and signed by the parties.

6. Each of the undersigned represents that he or she has full power to act on behalf of or bind his or her respective corporation or agency in this agreement and the settlement it reflects.

In witness whereof, this settlement agreement is executed:


Rita S. Looney
Arkansas Highway and Transportation Dept.

03/19/2015
Date


Jack East, III, Counsel for
APAC-Tennessee, Inc.

03/19/15
Date

Please Read Instructions on Reverse Side of Yellow Copy

Please print in ink or type

ARKANSAS State Claims Commission

FEB 24 2014

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BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

AMENDMENT ATTACHED

Do Not Write in These Spaces
Claim No. 14-0651-CC
Date Filed February 24, 2014
Amount of Claim \$ 893,254.26
Fund AHTD ASHC

APAC-Tennessee, Inc., Claimant

vs.

State of Arkansas, Respondent
Highway Dept.
Highway Comm.

Breach of Contract

COMPLAINT

APAC-Tennessee, Inc. the above named Claimant, of 1210 Harbor Ave. Memphis, TN 38113 (901)947-5600 County of Shelby represented by Jack East III (Legal Counsel, if any, for Claim) of 2725 Cantrell Rd., Ste 202 Little Rock, AR 72202 (501)372-3278 376-0949 says: State agency involved: Arkansas State Highway Commission and Arkansas Highway & Transportation Dept. Month, day, year and place of incident or service: 2013 Explanation: See Complaint and exhibits attached

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof? Yes ; when August 22 2013 ; to whom? AHTD Chief Engineer (Yes or No) (Month) (Day) (Year) (Department) : and that the following action was taken thereon: Claim denied September 6, 2013

and that \$ 0 was paid thereon: (2) Has any third person or corporation an interest in this claim? No ; if so, state name and address (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code) and that the nature thereof is as follows: NA : and was acquired on NA in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Jack East III, Attorney for Claimant (Print Claimant/Representative Name)

Jack East III, Attorney (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock, AR (City) (State)

on this 24th day of February 2014 (Date) (Month) (Year)

Arillana Ingredmo (Notary Public)

My Commission Expires: August 02, 2023 (Month) (Day) (Year)

SF1- R7/99

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

Arkansas
State Claims Commission

MAR 31 2014

RECEIVED

APAC – Tennessee, Inc.

Claimant

v.

NO. 14-0651-CC

State of Arkansas

Respondent

FIRST AMENDMENT TO COMPLAINT

Comes Claimant, APAC – Tennessee, Inc. (APAC), and for its first Amendment to Complaint states:

1. The purpose of this First Amendment to Complaint is: (1) to add an additional claim which has been denied by the Chief Engineer since the original Complaint was filed; (2) to correct a math error in Complaint paragraph ten; and (3) to assert that "Site use charges" are not compensatory charges but are punitive in nature and, therefore, unenforceable.
2. Paragraphs one through nine of the Complaint are incorporated herein by reference.
3. Complaint paragraph ten is amended to read as follows:

As a result of AHTD's breach of contract APAC has suffered time-related damages as follows:

1. Liquidated Damages Withheld-	22 days at \$1,900.00=	\$41,8000.00
2. Site Use Charges-	22 days at \$30,000.00=	\$660,000.00
3. Extended Overhead-	22 days at \$1,850.58=	\$40,712.81
4. Unearned Incentive-	3 days at \$30,000.00=	<u>\$90,000.00</u>
Total Time-related Claim-		\$832,512.81

4. In the alternative APAC asserts the \$660,000.00 site use charge is illegal and unenforceable because it is penal in nature.

5. During performance of the work APAC and its hydrodemolition subcontractor, Chris Hill Construction, were required by the Resident Engineer to perform work described in the Construction Contract as "Bridge Deck Repair". This work consisted of removing by hydroblasting concrete around bridge deck reinforcing steel as per the following specification, and then replacing that concrete:

After hydrodemolition, the deck shall be inspected by sounding to ensure that all deteriorated concrete up to the limit detailed in the plans has been removed. At the direction of the Engineer, the Contractor shall remove the area of deteriorated concrete by additional passes of the hydrodemolition equipment or jackhammers to a depth not exceed the maximum allowed in the plans. When the bond between existing concrete and reinforcing steel that will remain in place has been destroyed, the concrete adjacent to and below the bar to a minimum depth of ¾" below the bar shall be removed in order to permit the new concrete to bond to the entire periphery of the exposed bar. Areas requiring additional removal and repair prior to the subsequent overlay, as determined by the engineer, shall be repaired in accordance with the Job Special Provision "Bridge Deck Repair".

6. The area of "Bridge Deck Repair" work replacement concrete furnished and installed by APAC was 52.59 Cubic Yards as directed by the Engineer. As a result APAC should have been paid for additional "repair concrete" (Pay Item 53) in compliance with the Special Provision regarding Bridge Deck Repairs.

7. In accordance with the Contract APAC was entitled to be paid \$1,155.00 per Cubic Yard for the 52.59 cubic yards of repair concrete, or \$60,741.45.
8. Attached as Exhibit A are relevant Special Provisions of the Contract concerning Hydrodemolition and Bridge Deck Repair.
9. APAC has presented the repair concrete claim to the Resident Engineer and Chief Engineer. A true copy of the Chief Engineer's denial letter is attached as Exhibit B.

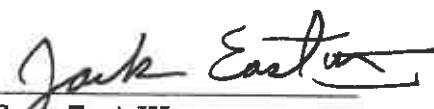
WHEREFORE, APAC – Tennessee, Inc. prays it be awarded \$832,512.81 as reflected in paragraph 3 herein and \$60,741.45 for the Bridge Deck Repair work as described in this First Amended to Complaint for a total claim of \$893,254.26.


JACK EAST III
2725 Cantrell Road, Suite 202
Little Rock, AR 72202
(501) 372-3278
Bar ID No. 75-036
jack@jaceastlaw.com

CERTIFICATE OF SERVICE

I, Jack East III, Attorney at Law, do hereby certify that I have served the foregoing by depositing a copy in the United States Mail, Postage prepaid, this 31st day of March, 2014, addressed to:

Mark Umeda
Staff Attorney
Arkansas State Highway and
Transportation department
P.O. Box 2261
Little Rock, AR 72203-2261


Jack East III

ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT**SPECIAL PROVISION****JOB NO. BB0109****HYDRODEMOLITION**

DESCRIPTION: This work shall consist of the removal of bridge deck concrete using hydrodemolition equipment as preparation for bridge deck repairs or overlay within the constraints of the Maintenance of Traffic special provision. All work shall be performed in accordance with the plans, the Standard Specifications, this Special Provision, and as directed by the Engineer.

HYDRODEMOLITION SPECIALIST AND WORK PLAN: Work shall be performed by a Contractor or Subcontractor who has successfully performed at least eight (8) verifiable projects similar to this project within the last four (4) years. A brief description of each project including the location, start and completion dates, and a reference shall be included for each project listed. As a minimum, the reference shall include an individual's name, affiliation with the project, and current phone number. In addition, the onsite supervisor assigned to this project must have experience in that position on a minimum of five (5) projects which are similar in nature to this project. A summary of the onsite supervisor's experience shall contain enough information for the Engineer to assess the individual's qualifications. The onsite supervisor shall be present during all hydrodemolition operations. The hydrodemolition system shall be operated by a trained individual having sufficient experience with the machinery used for the performance of the hydrodemolition.

The above information shall be submitted to the Engineer along with a Hydrodemolition Work Plan for review and record purposes at least thirty (30) days prior to commencement of hydrodemolition operations. The hydrodemolition work plan shall list all equipment, materials and methods the Contractor proposes for use for the following operations:

1. Hydrodemolition, milling, scarifying, or other removal of concrete.
2. Shielding and other safety devices.
3. Collection and disposal of debris and cleaning of the finished surface.
4. Repair methods and materials for unexpected blow-through of concrete deck or into a deck void form of a voided slab bridge.
5. Detailed schedule of work and conformance to project Maintenance of Traffic plans.

This work shall not commence until the experience record submittal and Hydrodemolition Work Plan have been reviewed by and are satisfactory to the Engineer. Work shall conform to the submitted work plan unless changes are submitted in writing to the Engineer.

MATERIALS AND EQUIPMENT: The hydrodemolition equipment shall be a self-propelled machine that utilizes a high pressure water jet stream capable of removing concrete to the depths shown on the plans or as directed by the Engineer and be capable of removing rust and concrete particles from reinforcing steel. The equipment shall be capable of removing all concrete to the required minimum overlay thickness and unsound concrete up to the limit detailed in the plans and provide a rough and bondable surface. Hand held high pressure wands or pneumatic hammers, 45 pound class maximum, may be used in areas that are inaccessible or inconvenient to the self-propelled machine such as, but not limited to, areas not to exceed one foot away from curbs or joints.



SPECIAL PROVISION JOB NO. BB0109 - HYDRODEMOLITION

Prior to hydrodemolition, cold milling or mechanically scarifying the deck to remove any asphalt overlay or to remove bridge deck concrete to a depth allowed in the plans and which does not come into contact with existing reinforcement is allowed. Cold milling and scarifying equipment shall be self propelled with sufficient power, traction, and stability and capable of uniformly removing the old surface to the depths required in a satisfactory manner.

The operation or placement of equipment and, or materials on the subject bridges shall be subject to the provisions of SS-105-2 "Equipment and Material Storage on Bridge Structures". Certifications of the adequacy of all components for the anticipated loads shall address the capacity of the existing structure at all phases of this work.

CONSTRUCTION REQUIREMENTS: No highway traffic shall be allowed on areas of the deck surface where any existing deck concrete has been removed. The Contractor shall adjust hydrodemolition operations so that overlay placement ends coincide with allowed joint locations as noted in the plans or as approved by the Engineer.

Prior to the commencement of the removal operation, the hydrodemolition equipment shall be calibrated on an area of sound concrete of approximately 25 sq. ft. on the existing bridge deck surface as directed by the Engineer. The cost of the calibration procedure shall be included in the unit price bid for hydrodemolition. The Engineer shall verify the following settings:

1. Water pressure.
2. Machine staging or step control.
3. Nozzle size.
4. Nozzle travel speed.

During the calibration, any or all of the above settings may be adjusted in order to achieve removal in accordance with the requirements of the plans. When the designated depth of removal is attained, the settings shall be recorded and maintained throughout the removal operation unless otherwise directed by the Engineer. The depth of removal shall be verified periodically and, if necessary, the equipment re-calibrated to ensure the planned depth of removal.

The Contractor shall provide shielding, as necessary, to ensure containment of all water and dislodged concrete within the removal area in order to protect the traveling public from flying debris and water spray both on and under the work site. Hydrodemolition operations over roadways or railroads shall conform to Job Special Provisions "Special Safety Requirements for Bridges" or "Insurance, Construction, and Flagging Requirements on Railroad Property (Owner)" as required.

Appropriate care shall be taken to prevent damage to the bridge slab reinforcing steel, joints, drains and other appurtenances. Should any damage occur to these items, they shall be repaired at the Contractor's expense.

After hydrodemolition, the deck shall be inspected by sounding to ensure that all deteriorated concrete up to the limit detailed in the plans has been removed. At the direction of the Engineer, the Contractor shall remove the areas of deteriorated concrete by additional passes of the hydrodemolition equipment or jackhammers to a depth not to exceed the maximum allowed in the plans. When the bond between existing concrete and reinforcing steel that will remain in

SPECIAL PROVISION JOB NO. BB0109 - HYDRODEMOLITION

place has been destroyed, the concrete adjacent to and below the bar to a minimum depth of $\frac{3}{4}$ " below the bar shall be removed in order to permit the new concrete to bond to the entire periphery of the exposed bar. Areas requiring additional removal and repair prior to the subsequent overlay, as determined by the Engineer, shall be repaired in accordance with the Job Special Provision "Bridge Deck Repair". ✓
✓
✓
✓

Wastewater from the hydrodemolition process shall be collected, treated, and released in accordance with Job Special Provision "Management of Hydrodemolition Wastewater" and the Hydrodemolition Work Plan. Bridge joints and deck drains not used to convey waste water to a sediment basin shall be plugged during the hydrodemolition process.

Cleaning of the bridge deck shall be performed with a vacuum system capable of removing wet debris and water. The deck shall then be blown dry with air to remove excess water and residual debris. Cleaning shall be done before debris and water are allowed to dry on the deck surface. All exposed reinforcing steel which is left unsupported by the hydrodemolition process shall be adequately supported and protected from bending by vacuum trucks or any other equipment. All reinforcing steel damaged or dislodged by these operations shall be replaced with bars of the same size at the expense of the Contractor. Reinforcing Steel shall conform to the requirements of Section 804. All material removed during bridge deck demolition and cleaning shall be collected and disposed of in accordance with Job Special Provision "Management of Hydrodemolition Wastewater" and the Hydrodemolition Work Plan.

For slab-on-girder bridges, if the hydrodemolition equipment blows through the deck, hydrodemolition shall cease and the Engineer shall be notified. The Engineer shall determine if the blow through should have been avoided by proper monitoring of the demolition operations. If so, the damaged area shall be the responsibility of the Contractor and shall be repaired at the Contractor's expense to the satisfaction of the Engineer. Before resuming, hydrodemolition operations shall be adjusted to avoid similar blow-through during subsequent demolition. If it was unavoidable due to existing deterioration, the damaged area shall be paid for in accordance with the Job Special Provision "Bridge Deck Repair". All repair methods and materials shall be in accordance with the Job Special Provision "Bridge Deck Repair" and as specified in the Contractor's Work Plan.

For reinforced concrete slab-span bridges, if the hydrodemolition equipment blows through the deck or into a void of a voided slab, hydrodemolition shall cease and the Engineer shall be notified. Before resuming, hydrodemolition operations shall be adjusted to avoid similar blow-through during subsequent demolition. The damaged area shall be the responsibility of the Contractor and shall be repaired at the Contractor's expense to the satisfaction of the Engineer. Repair methods and materials shall be as specified in the Contractor's Work Plan.

SPECIAL PROVISION JOB NO. BB0109 - HYDRODEMOLITION

METHOD OF MEASUREMENT: Hydrodemolition shall be measured by the square yard of the total deck area removed regardless of the depth of removal.

BASIS OF PAYMENT: The accepted quantity of hydrodemolition will be paid for at the contract unit price per square yard, which price will be full compensation for all materials, equipment and labor necessary to remove and dispose of all concrete and other debris to the depth shown on the plans or as directed by the Engineer. This item shall also include calibration of equipment, cold milling, vacuuming, shielding, containment and disposal of wastewater, additional jack hammering, any repair required due to Contractor damage, as determined by the Engineer, and all other aspects of work necessary to remove bridge deck concrete in preparation for repair or overlay.

Payment will be made under:

Pay Item

Pay Unit

Hydrodemolition

Square Yard

ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT**SPECIAL PROVISION****JOB NO. BB0109****BRIDGE DECK REPAIR****BRIDGE NOS. A3131 & B3131**

DESCRIPTION: This item shall consist of removing unsound portions of the bridge deck concrete below the designated depth of removal by hydrodemolition, disposing of the removed concrete, preparing the surface, and the work for replacing the removed volume with repair concrete meeting the requirements of the Job Special Provision "Very Early Strength Latex Modified Concrete Overlay" or "Latex Modified Concrete Overlay", prior to subsequent overlay. This work shall be completed in accordance with the plans, the Standard Specifications, and job Special Provisions; and as directed by the Engineer.

MATERIALS: Repair concrete shall conform to the requirements of the Job Special Provision "Very Early Strength Latex Modified Concrete Overlay" or "Latex Modified Concrete Overlay" as directed in the plans. The Contractor may submit an alternate repair concrete for approval.

Replacement reinforcing steel, if required, shall conform to the requirements of Section 804.

EQUIPMENT: The equipment used shall be subject to the approval of the Engineer. Removal should be accomplished with power-driven hand tools such as chipping hammers or pneumatic hammers, 45 lb. class maximum. Mechanical chipping tools shall generally not be operated at an angle in excess of 45° measured from the surface of the deck. Surface cleaning equipment shall be capable of properly cleaning the exposed reinforcement and existing concrete surface as defined herein.

The operation or placement of equipment and, or materials on the subject bridges shall be subject to the provisions of SS-105-2 "Equipment and Material Storage on Bridge Structures". Certifications of the adequacy of all components for the anticipated loads shall address the capacity of the existing structure at all phases of this work.

PREPARATION OF SURFACE: (a) **Removal:** After cold milling, hydrodemolition, or other ✓
scarifying of the deck surface, the surface shall be sounded and any areas of unsound, ✓
delaminated, or otherwise deteriorated concrete to be repaired shall be marked and measured by ✓
the Engineer. The area shall be made rectangular with sides parallel or perpendicular to the ✓
reinforcing steel. All concrete within the marked area shall be removed with vertical sides to the
depth necessary to remove unsound concrete as directed by the Engineer. If the bottom mat of
reinforcing is exposed, then the removal and repair shall be made full depth. Care shall be taken
to avoid damage to reinforcing steel, steel joint components, drains, or other appurtenances to
remain. These items shall be repaired or replaced at the Contractor's expense if any damage
occurs to them.

The structural integrity and stability of the deck and the structure shall be maintained by limiting the removal to the least area possible and avoiding unnecessary loading near unrepaired removals. Exposed reinforcing steel shall be supported as necessary to protect it from bending by vehicles or equipment loadings.

SPECIAL PROVISION JOB NO. BB0109 – BRIDGE DECK REPAIR**BRIDGE NOS. A3131 & B3131**

The Contractor shall provide shielding, as necessary, to ensure containment of all water and dislodged concrete within the removal area in order to protect the traveling public from flying debris and water spray both on and under the work site.

(b) Cleaning: Prior to placement of repair concrete, the surfaces shall be blast cleaned with high-pressure water, sand or other media until all exposed concrete and reinforcing steel are free from laitance, rust, dust, dirt, oil, grease, bituminous material, paint, and all other foreign matter. The process used to clean the repair area shall be performed so as to conform to Job Special Provision "Management of Hydrodemolition Wastewater and Solid Residue".

(c) Reinforcing: Deteriorated reinforcing steel exhibiting section loss of greater than 25% or reinforcing steel damaged during concrete removal shall be replaced at the direction of the Engineer with new bars of the same or larger size that conform to Section 804. New bars shall be lapped 40 bar diameters to existing bars or dowelled into sound concrete in accordance with Section 804.06.

(d) Formwork: Full depth repairs shall have a bottom surface formed to match the underside of the surrounding deck surface. Existing stay-in-place forms that are sound shall be cleaned and retained, otherwise suitable formwork shall be used and the concrete made to match the surrounding area. Removable formwork shall be removed by the Contractor after repair has obtained the minimum required compressive strength of 3000 psi.

PLACING AND FINISHING CONCRETE: The Contractor shall plan operations for a given repair area to be within the working time of the concrete mixture and the maintenance of traffic special provision for the project.

The work area shall be thoroughly wet down with potable water prior to repair placement and be maintained in a "saturated surface dry" condition until placement. The Contractor shall also remove any standing water in depressions with vacuum or oil-free compressed air ahead of the placement.

After the surface has been cleaned, and immediately before placing repair concrete, a thin coating of the repair concrete shall be scrubbed into the prepared surface with a stiff brush. Course particles that do not adhere to the prepared surface shall be removed. Care shall be exercised to ensure that all areas receive a thorough, even coating and that the coating does not dry before it is covered with the repair concrete.

Repair concrete shall be placed in a continuous operation for a given repair area. Repair areas which extend less than 2 in. below the bottom of the top mat of reinforcing steel may be filled concurrent with the placement of the overlay. Repair areas deeper than 2 in. below the bottom of the top mat and full depth repairs shall be filled with repair concrete and allowed to obtain its required compressive strength of 3000 psi prior to the placement of the overlay.

For repair areas not filled concurrent with the placement of the overlay, the top surface of the repair concrete shall match the surrounding concrete but no closer than $\frac{3}{4}$ in below the bottom of the top mat of reinforcing steel. The concrete shall be consolidated by hand or by machine vibration, depending on depth, and then intentionally roughened to an amplitude of $\frac{1}{4}$ in.

SPECIAL PROVISION JOB NO. BB0109 – BRIDGE DECK REPAIR

BRIDGE NOS. A3131 & B3131

CURING CONCRETE: Immediately after placement, the repair areas shall be moist cured in accordance with the cement manufacturer’s recommendations until it has attained a compressive strength of 3000 psi. Moist curing shall consist of a fog spray of clean water above the area or the application of clean, wetted covering conforming to Subsection 802.17 (1), (3), or (4).

Contractor substitution of lithium silicate curing compounds or other materials for these provisions will not be allowed.

METHOD OF MEASUREMENT: Bridge Deck Repair shall be measured by the square foot of the total deck area repaired at the direction of the Engineer.

Repair concrete shall be measured by the cubic yard as “Very Early Strength Latex Modified Concrete (Variable Depth)” or “Latex Modified Concrete (Variable Depth)” in accordance with Job Special Provision “Very Early Strength Latex Modified Concrete Overlay” or “Latex Modified Concrete Overlay”, as directed in the plans.

Replacement reinforcing steel, if required, shall be measured in accordance with Section 804.

BASIS OF PAYMENT: The completed and accepted quantity of Bridge Deck Repair measured as provided above will be paid for at the contract unit price per square foot, which price will be full compensation for removal of concrete to the depth directed; collection and disposal of removed concrete and other debris; for surface preparation; for cleaning; for furnishing materials not measured separately; for the installation and removal of any required formwork; for mixing, placing, finishing, and curing the repair concrete; and for any tools, labor, equipment or incidentals necessary to complete to perform the work in accordance with the plans, the Standard Specifications, this Special Provision, and as directed by the Engineer.

Payment will be made under:

Pay Item

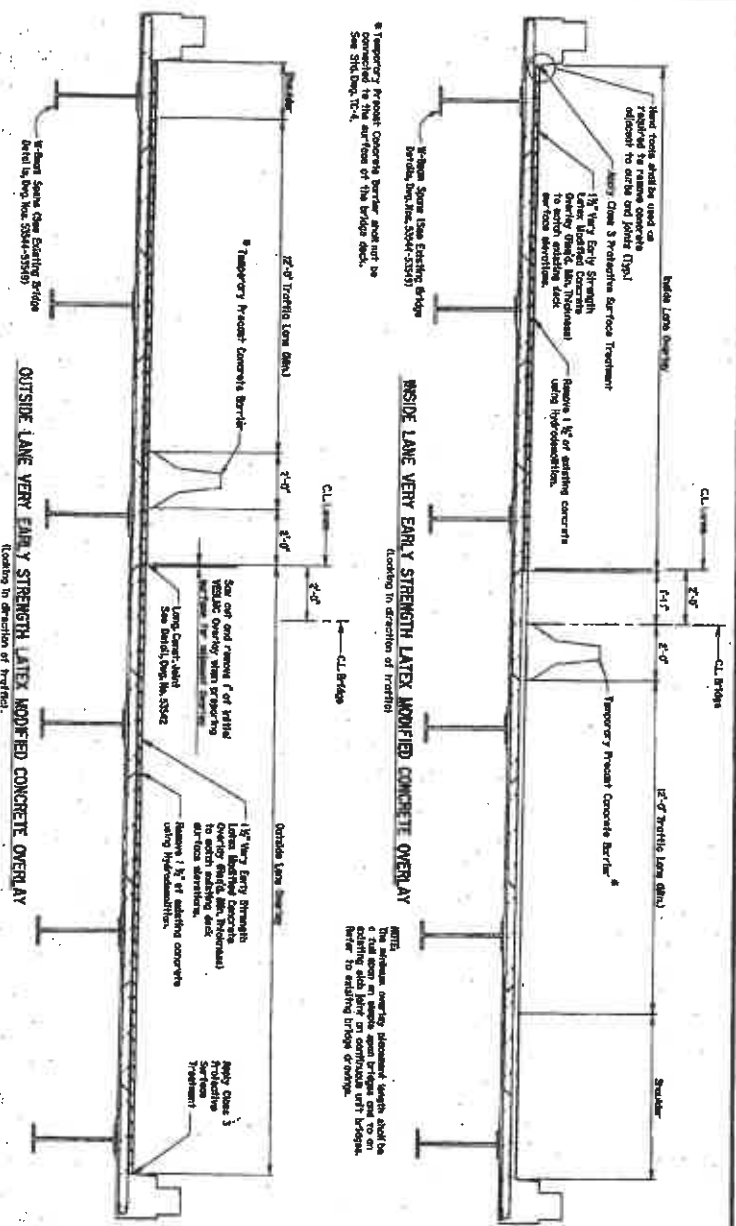
Pay Unit

Bridge Deck Repair

Square Foot

Repair concrete shall be paid for as “Very Early Strength Latex Modified Concrete (Variable Depth)” or “Latex Modified Concrete (Variable Depth)” in accordance with Job Special Provision “Very Early Strength Latex Modified Concrete Overlay” or “Latex Modified Concrete Overlay”, as directed in the plans.

Replacement reinforcing steel, if required, shall be paid for in accordance with Section 804.

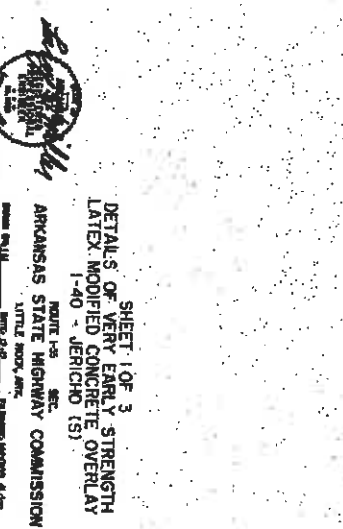


Hand tools shall be used on finished concrete surface adjacent to curb and joints (Type 1) to remove excess concrete. Excess concrete shall be removed by using a hand held power saw or similar equipment. The surface shall be finished to a smooth, uniform texture.

1. Hand tools shall be used on finished concrete surface adjacent to curb and joints (Type 1) to remove excess concrete. Excess concrete shall be removed by using a hand held power saw or similar equipment. The surface shall be finished to a smooth, uniform texture.

2. A minimum of 1/2 inch of additional concrete shall be placed over the existing concrete. The concrete shall be finished to a smooth, uniform texture. The concrete shall be finished to a smooth, uniform texture.

3. A minimum of 1/2 inch of additional concrete shall be placed over the existing concrete. The concrete shall be finished to a smooth, uniform texture. The concrete shall be finished to a smooth, uniform texture.



4. A minimum of 1/2 inch of additional concrete shall be placed over the existing concrete. The concrete shall be finished to a smooth, uniform texture. The concrete shall be finished to a smooth, uniform texture.

5. A minimum of 1/2 inch of additional concrete shall be placed over the existing concrete. The concrete shall be finished to a smooth, uniform texture. The concrete shall be finished to a smooth, uniform texture.

NO.	DATE	BY	CHKD.	APP.	REVISION
1	12/15/13	J. B. BROWN	J. B. BROWN	J. B. BROWN	ISSUED FOR BIDDING

GENERAL NOTES:
 1. CONSTRUCTION SPECIFICATIONS ARKANSAS STATE HIGHWAY COMMISSION STANDARD SPECIFICATIONS FOR CONSTRUCTION OF ARKANSAS STATE HIGHWAYS, LATEST EDITION, SHALL APPLY TO THIS PROJECT. REFER TO THE STANDARD SPECIFICATIONS FOR THE STANDARD SPECIFICATIONS.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARKANSAS STATE HIGHWAY COMMISSION AND THE ARKANSAS STATE HIGHWAY DEPARTMENT.
 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARKANSAS STATE HIGHWAY COMMISSION AND THE ARKANSAS STATE HIGHWAY DEPARTMENT.
 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARKANSAS STATE HIGHWAY COMMISSION AND THE ARKANSAS STATE HIGHWAY DEPARTMENT.
 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARKANSAS STATE HIGHWAY COMMISSION AND THE ARKANSAS STATE HIGHWAY DEPARTMENT.

DETAILS OF VERY EARLY STRENGTH LATEX MODIFIED CONCRETE OVERLAY
 ROUTE 1-43
 1-40 - JERICHO (S)
 SHEET 1 OF 3
 ARKANSAS STATE HIGHWAY COMMISSION
 LITTLE ROCK, ARK.
 DATE: 12/15/13
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 APPROVED BY: J. B. BROWN

ARKANSAS STATE HIGHWAY
AND
TRANSPORTATION DEPARTMENT

RECEIVED
MAR 13 2014
APAC TENNESSEE, INC.

Scott E. Bennett
Director
Telephone (501) 569-2000
Voice/TTY 711



P.O. Box 2261
Little Rock, Arkansas 72203-2261
Telefax (501) 569-2400
www.arkansashighways.com

March 5, 2014

Mr. Jim W. Smith, P.E.
Engineering/QC Manager
APAC-Tennessee, Inc.
1210 Harbor Avenue
Memphis, Tennessee 38113-0427

Re: Job BB0109
FAP: BIM-B55-0(201)
I-40-Jericho (S)
I-55, Section 11
Crittenden County

Dear Mr. Smith:

Reference is made to your letter appealing the decision of Resident Engineer Jeff Adams regarding your request for payment for work under the item "Bridge Deck Repair" on this project.

The Contract clearly details the limits of hydrodemolition shall extend $\frac{3}{4}$ " below the reinforcing steel, as directed by the Engineer. Areas requiring removal below this $\frac{3}{4}$ " depth is considered additional and should be paid for as "Bridge Deck Repair" as detailed on Plan Sheet 57.

Based on the work performed and the contract documents, the Resident Engineer has paid the various items appropriately, and therefore your request cannot be granted.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ralph J. Hall', written over a horizontal line.

Ralph J. Hall
Deputy Director
and Chief Engineer

c: Director
Assistant Chief Engineer – Operations
Construction Engineer
District 1 Engineer
Resident Engineer 14



ARKANSAS STATE CLAIMS COMMISSION

Arkansas
State Claims Commission
MAR 26 2014

APAC- TENNESSEE, INC

RECEIVED
CLAIMANT

VS

CLAIM NO. 14-0651-CC

ARKANSAS STATE HIGHWAY
COMMISSION &
ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT

RESPONDENTS

ANSWER

Comes the Arkansas State Highway Commission and Arkansas State Highway and Transportation Department (together as "Respondents"), through their undersigned attorney, state:

1. Respondents admit the allegations contained in Paragraph 1.
2. Respondents admit the allegations contained in Paragraph 2.
3. Respondents admit that APAC-Tennessee submitted a sealed bid for Job BB0109; that the specifications required bidders to include a bid time and price for the performance of work; that APAC-Tennessee was awarded the contract; that APAC-Tennessee bid 67 working days at \$30,000.00. Respondents, however, do not have sufficient knowledge about the other allegations contained in Paragraph 3 of the Complaint, and therefore, deny these allegations.
4. Respondents do not have sufficient information to admit or deny the allegations set forth in Paragraph 4, and thus, Respondents deny the allegations in Paragraph 4.
5. Respondents deny the allegations in Paragraph 5. Exhibit C of Claimant's Complaint states that APAC-Tennessee submitted the "Very Early Strength Latex

Modified Overlay” (VESLMC) on April 1, 2013, not March 15, 2013, as it is alleged in Paragraph 5.

6. Respondents deny the allegations in Paragraph 6.

7. Respondents deny the allegations in Paragraph 7.

8. Respondents admit that AHTD’s Resident Engineer denied APAC’s request for additional time; that APAC-Tennessee appealed the denial to AHTD Chief Engineer, whom also denied APAC-Tennessee’s request, but Respondents deny that APAC-Tennessee was wrongly charged time.

9. Respondents deny the allegations in Paragraph 9.

10. Respondents are without sufficient knowledge to admit or deny the allegations contained in Paragraph 10. However, Respondents specifically state that Item 2 is incorrect. Claimant alleges that it is due \$30,000.00 a day for 22 days for a total sum of \$750,000.00. However, \$30,000.00 a day for 22 days does not equal \$750,000.00. Rather, 22 days at \$30,000.00 equals \$640,000.00, and thus Respondents deny the allegations set forth in Paragraph 10 and state that the amount of damages are incorrect. Claimant should amend its claim to reflect the correct amount or its claim should be dismissed. Further, the Contract specifically prohibits Items 3 and 4 of Paragraph 10.

11. Respondents deny the allegations contained in Paragraph 11.

12. Respondents deny the allegations contained in Paragraph 12.

WHEREFORE, Respondents pray that the Arkansas State Claims Commission deny and dismiss Claimant’s Complaint and for all other relief to which it is entitled.

Respectfully submitted,

Arkansas State Highway Commission &
Arkansas State Highway and Transportation
Department

BY: 

Mark C. Umeda, Ark. Bar # 2007-2285

Staff Attorney

Arkansas State Highway and Transportation
Department

P.O. 2261

Little Rock, AR 72203

501.569.2165

Mark.Umeda@ahtd.ar.gov

CERTIFICATE OF SERVICE

I, Mark Umeda, Attorney for Respondents, certify that I have placed a true and correct copy of the forgoing in the U.S. Mail, first class, postage prepaid and via email to the attorney for Claimant, Jack East, III, 2725 Cantrell Road, Suite 200, Little Rock, AR 72202 on this 26th day of March 2014.



Mark Umeda

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 745,770.98

Claim No. 14-0651-CC

APAC-Tennessee Claimant
vs.

Attorneys
Jack East III, Attorney Claimant

AR Highway & Transportation Department
AR State Highway Commission Respondent
State of Arkansas

Mark Umeda, Attorney Respondent

Date Filed February 24, 2014

Type of Claim Breach of Contract

FINDING OF FACTS

This claim was filed for breach of contract in the amount of \$745,770.98 against the Arkansas Highway and Transportation Department. Present at a hearing September 12, 2014, was the Claimant, represented by Jack East III, Attorney and the Respondent, represented by Mark Umeda, Attorney.

The Arkansas State Claims Commission unanimously finds liability on the part of the Respondent. The Respondent breached the contract it had with the Claimant and caused the Claimant to incur unexpected and unnecessary expenses. The Respondent's original written contract specifications for a required concrete mix were totally incorrect and, if used, would not have allowed a successful completion of the contract by the Claimant.

The Respondent unreasonably delayed the approval of the Claimant's proposed changes to the mix. It should be noted that the new mix designed by the Claimant is now in regular use by the Respondent.

Having unanimously found liability on the part of the Respondent the Arkansas State Claims Commission hereby unanimously awards the Claimant the amount of \$745,770.98 and will include the claim in a claims bill to be submitted to the 90th General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.

IT IS SO ORDERED

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously awards this claim in the amount of \$745,770.98 and will include the claim in a claims bill to be submitted to the 90th General Assembly, Arkansas State Legislature 2015 for subsequent approval and payment.

Date of Hearing September 12, 2014

Date of Disposition September 12, 2014

[Signature] Chairman

[Signature] Commissioner

[Signature] Commissioner

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 893,254.26

Claim No. 14-0651-CC

APAC Tennessee
vs. Claimant

Attorneys Jack East, Attorney
Claimant

Arkansas Highway and Transportation Dept.
State of Arkansas Respondent

Mark Umeda, Attorney Respondent

Date Filed February 24, 2014

Type of Claim Breach of Contract

FINDING OF FACTS

This claim was filed for "Breach of Contract" in the amount of \$893,254.26, was referred back to the Claims Commission by the Claims Review Subcommittee on March 2, 2015.

Present at a hearing March 12, 2015, was the Claimant, represented by Jack East, and the Respondent, represented by Mark Umeda.

The Claims Commission unanimously allowed the claim in the amount of \$362,970.00 after the presentation of a "negotiated agreement" by the parties and a recommendation of payment by the Respondent.

The Claims Commission hereby unanimously allows this claim in the amount of \$362,970.00 and will include the claim in a claims bill to the 90th General Assembly, Arkansas State Legislature 2015, for subsequent approval and payment.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously allows this claim in the amount of \$362,970.00 and will include the claim in a claims bill to the 90th General Assembly, Arkansas State Legislature 2015, for subsequent approval and payment.

Date of Hearing March 12, 2015

Date of Disposition March 12, 2015

J. H. Moore Chairman
Paul Bezyak Commissioner
M. H. O'Brien Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.