

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas  
State Claims Commission

MAR 12 2015

C1.

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

- ☐ Mr.  
☐ Mrs.  
☐ Ms.  
☐ Miss

APAC-Tennessee, Inc.

Claimant

vs.

State of Arkansas, Respondent

AR Highway and Transportation Dept.

RECEIVED

Do Not Write in These Spaces

Claim No. 15-0610-CC

Date Filed March 12, 2015  
(Month) (Day) (Year)

Amount of Claim \$4,396,742.00

Fund AHTD

Breach of contract

Loss of profit

COMPLAINT

APAC-Tennessee, Inc. the above named Claimant, of P.O. Box 13427 Memphis  
(Name) (Street or R.F.D. & No.) (City)  
TN 38113 901-947-5600 Shelby County of represented by Jack East III  
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)  
of 2725 Cantrell Rd., Ste 202 LR AR 72202 501-372-3278 501-376-0949 says:  
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)  
State agency involved: Hwy Comm & Hwy Dept Amount sought: \$4,396,742.00

Month, day, year and place of incident or service: May 23, 2013 and through August 23, 2014

Explanation: See Complaint 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? Various ; to whom? AHTD Chief Engineer  
(Yes or No) (Month) (Day) (Year) (Department)  
and that the following action was taken thereon: Claim Denied

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: : and was acquired on 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  
(Print Claimant/Representative Name)

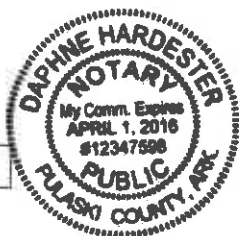
Jack East III  
(Signature of Claimant/Representative)

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

on this 10th day of March 2015  
(Date) (Month) (Year)

Daphne Hardester  
(Notary Public)  
My Commission Expires: April 1 2016  
(Month) (Day) (Year)

(SEAL)



SF1- R7/99

**JACK EAST III, P.A.**  
**Attorney at Law**

Telephone: (501) 372-3278  
Facsimile: (501) 376-0949  
[jack@jackeastlaw.com](mailto:jack@jackeastlaw.com)

Triangle Insurance Plaza  
2725 Cantrell Road, Suite 202  
Little Rock, AR 72202

March 12, 2015

Arkansas State Claims Commission  
101 East Capitol Ave., Ste. 410  
Little Rock, AR 72201

(Hand-Deliver)

RE: APAC-Tennessee, Inc. v. Arkansas State Highway Commission and Arkansas State  
Highway & Transportation Department

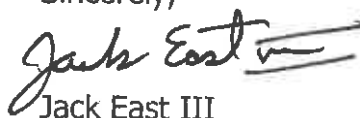
Dear Sirs/Madames:

Here are:

- 1) Original and one printed copy of claim;
- 2) Three CDs with copy of claim on each;
- 3) Extra copy to mark filed, and return to me.

Thank you.

Sincerely,

  
Jack East III

CC: APAC-Tennessee, Inc.

## **COMPLAINT**

Comes now Claimant, APAC-Tennessee, Inc. (APAC), and for its claims against the Arkansas State Highway Commission (ASHC) and Arkansas Highway and Transportation (AHTD) states:

### **Parties and Jurisdiction**

1. APAC is a corporation organized and existing under laws of Delaware. APAC is authorized to do business in Arkansas.
2. ASHC and AHTD (Respondents) are agencies of the State of Arkansas.
3. The Claims Commission has jurisdiction to hear and decide this claim for damages against the Respondents agencies.

### **Factual Background**

4. On February 8, 2012 the ASHC and AHTD opened bids for a construction project (Job 110543) described as follows:

THE PURPOSE OF THIS PROJECT IS TO REPLACE THREE BRIDGES OVER INTERSTATE 40 NEAR FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT CONSISTS OF GRADING, AGGREGATE BASE COURSE, PORTLAND CEMENT CONCRETE BASE, ACHM BASE, BINDER AND SURFACE COURSES, MINOR DRAINAGE STRUTURES, THREE CONTINUOUS COMPOSITE W-BEAM UNIT BRIDGES (TOTAL SPAN 993.20'), EROSION CONTROL ITEMS AND MISC. ITEMS.

One of the three bridges to be replaced under the proposal was the Arkansas Highway 38 Bridge for traffic to Widener and Hughes, Arkansas.

5. Job 110543's bid specifications required bidders to bid the time of performance on an "A+C" basis, authorizing the AHTD to withhold from sums otherwise due the contractor the sum of \$9,500.00 per day based upon the "daily road user cost" analysis as calculated by the Department, allegedly based upon traffic counts. The bid specifications also included a provision for liquidated damages.

6. After bid opening for Job 110543 the AHTD and ASHC rejected all bids. Job 110543 was readvertised for bids, and bids were received in April, 2012, however, all bids were again rejected. It was then determined by AHTD that the Highway 38 Bridge work would be included in another upcoming project.

7. On or about May 23, 2013 the ASHC and APAC entered into a contract (Contract) for the Project known as Job BB0105. The scope of work of Job BB0105 was described by the ASHC and AHTD as follows:

THE PURPOSE OF THIS PROJECT IS TO RECONSTRUCT THE MAIN LANES FOR 7.876 MILES ON I-40 AT FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT CONSISTS OF TWO PAVING ALTERNATES: ALTERNATE NO. 1-ASPHALT PAVEMENT LANES WITH ASPHALT SHOULDERS AND ALTERNATE NO. 2-PCC PAVEMENT LANES WITH PCC SHOULDERS, AGGREGATE BASE COURSE, MINOR DRAINAGE STRUCTURES, GUARDRAIL, MAINTENANCE OF TRAFFIC ITEMS, WIRE FENCE, WIRE ROPE SAFETY FENCE, EROSION CONTROL AND MISC. ITEMS.

Job BB0105 was awarded to APAC per sealed bid procedures on an "A + C" basis requiring bidders to bid on time of performance. APAC bid 140 days. The Contract included a provision that authorized the Department to withhold from amounts otherwise due APAC the sum of \$100,000.00 per day and another \$2,500.00 per day as liquidated damages should APAC not finish the work within 140 days as extended by AHTD. Attached as Exhibit A, and incorporated herein by reference, are the Contract, the Schedule of Values, and the Special Provisions regarding Progress and Prosecution, site use penalties and the Liquidated Damages Clause. The "disincentive" of \$100,000.00 per day was based upon an alleged "daily road user cost" for traffic on I-40 as calculated by AHTD. While not mentioned in the above scope of work, the Highway 38 Bridge replacement work was included in the Contract. (That Highway 38 Bridge replacement work was part of the work included in the Job 110543 proposal.) The remainder of the Contract documents are not attached because they are voluminous but they will be made available on request.

8. APAC commenced work on Job BB0105 in timely fashion. APAC substantially completed all Job BB0105 work on August 23, 2014, some 185 days after time began to run per Contract conditions.

9. During performance of the work APAC encountered conditions and weather entitling it to time extensions for main lane work as follows:

a) During construction of the I-40 main lanes APAC encountered a Portland Cement base course averaging 9 inches full depth rather than the Plan indicated six inch depth at I-40 bridge ends. This required additional work, materials and time to complete. AHTD increased the quantities of pay items per Change Order 18, attached hereto as Exhibit B, but denied APAC's time extension request of nine days. Attached as Exhibit C is correspondence between APAC, the Resident Engineer and the Chief Engineer indicating APAC's request for extension and the denial of that request.

b) During construction APAC was required to cold mill existing asphalt pavement to expose existing concrete pavement. Plans indicated APAC would then replace the asphalt pavement in uniform lifts to reach finish pavement, however, when the concrete pavement was exposed it was unexpectedly and extremely uneven, requiring additional "lifts", materials, labor, and especially time, to resolve this unknown condition. APAC requested, and was entitled to receive, a time extension of 13 days due to this unforeseen condition. Attached as Exhibit D are true copies of APAC's request and AHTD's repeated denial of the time extension.

c) In January, 2014 APAC encountered four days it intended to work, but could not due to weather conditions. APAC requested a time extension of 4 days but that request was denied as reflected by Exhibit E.

d) In October, 2013 APAC requested, but was denied, an 11 day extension. Such extension should have been granted due to weather conditions

preventing work on items critical to the timely completion of the work. Attached as Exhibit F are true copies of correspondence reflecting APAC's request and AHTD's refusal of them.

- e) In July, 2014 APAC requested, but was denied, a 3 day extension. Such extension should have been granted due to weather conditions preventing work on items critical to the timely completion of the work. Attached as Exhibit G are true copies of correspondence reflecting APAC's request, and AHTD's refusal.

10. APAC has fully completed all Project work. APAC substantially completed all main lane and Hwy. 38 bridge work on August 23, 2014. The AHTD has extended the time of performance of seven days and another five day request is pending. AHTD has wrongfully charged APAC with thirty-eight days of site use penalties and liquidated damages. Time extensions of forty days should have been allowed by the AHTD per Contract Standard Specifications and Special Provisions.

11. "Site use charges" are a penalty under the law of Arkansas because they enrich the AHTD by penalizing APAC without representing any recovery of costs incurred by the AHTD. Thus, the assessment of these penalties for 38 days at \$100,000.00 per day should be declared void as against public policy.

12. In the alternative, the \$100,000.00 per day "site use charge" and \$2,500.00 per day liquidated damages should only apply to the I-40 main lane work, for which APAC should have received time extensions of at least 40 days.

13. APAC incurred additional job site direct costs of \$ 501,742.00 due to unanticipated delays as reflected in paragraph 9 herein. Such costs are described in detail on Exhibit H attached.

14. APAC requested the aforementioned time extensions and Exhibit I compensation as required by AHTD specifications.

**Relief Requested**

15. APAC requests it be awarded the sum of not less than from AHTD as follows:

a) 38 days wrongfully charged at \$ 102,500.00 per day -	\$ 3,895,000.00
b) Extended Job Direct Costs for Delay Period	- \$ 501,742.00
Total	\$ 4,396,742.00

16. APAC reserves the right to amend this complaint as allowed by the ARCP.

WHEREFORE, APAC requests the Commission recommend that APAC be awarded the sum of \$ 4,396,742.00 and all other appropriate relief.

Jack East III  
2725 Cantrell Rd Suite 202  
Little Rock, AR 72202  
(501)372-3278  
Bar ID No. 75-036

# ARKANSAS STATE HIGHWAY COMMISSION

## CONTRACT

THIS CONTRACT AND AGREEMENT, made and entered into this date MAY 23 2013  
by and between **APAC-TENNESSEE, INC.**

hereinafter referred to as the Contractor, and the Arkansas State Highway Commission, hereinafter referred to as the Commission, Witnesseth:

That for and in consideration of the payment to be made as set forth in the Contract Schedule of Prices, the Contractor hereby agrees to furnish all tools, labor, equipment, and materials, and to build and construct that certain project in **ST. FRANCIS** County, designated as

**Job BB0105                      FEDERAL AID PROJECT NHPP-STPR-40-5(153)240 & 9050**

**Job Name: FORREST CITY-EAST (F)**

consisting of an improvement of **State Highway 40, Section 51**, more specifically described in the Contract Schedule of Prices attached hereto, all in exact accord with the Construction Plans on file in the Office of the Commission at Little Rock, Arkansas; and with the Arkansas Standard Specifications for Highway Construction, Edition of 2003; and with the Proposal filed with the Commission on **April 17, 2013**; and with the Supplemental Specifications and Special Provisions accompanying said Proposal, copy of said Plans, Specifications, Supplemental Specifications, and Special Provisions being attached hereto and made a part hereof as fully as though copied in full herein; under the direct supervision of the Engineer, and to the entire satisfaction of the Commission, and in accordance with the laws of the State of Arkansas; and in case the United States Government is participating in any portion of the cost of the work, the work shall also be subject to inspection and approval at all times by the appropriate Federal agency.

The Contractor agrees, for the consideration set forth in the Contract Schedule of Prices, to begin work within ten days after a Work Order is issued by the Engineer and to complete the work **within one hundred forty (140) working days**. If the Contractor shall fail to complete the work within the time limit herein specified, he shall pay to the Commission, as liquidated damages, and not in the nature of a penalty, the sum of **two thousand five hundred dollars (\$2,500.00)** for each day delayed, it being understood and agreed between the parties hereto that the said sum fixed as liquidated damages is a reasonable sum, considering the damages that the Commission will sustain in the event of any such delay, and said amount is herein agreed upon and fixed as liquidated damages, because of the difficulty of ascertaining the exact amount of damages that may be sustained by such delay. The said sum shall be deducted from the final amount of estimate due the Contractor.





It is agreed and understood between the parties hereto that the Contractor agrees to accept and the Commission agrees to pay for the work at the prices stipulated in the Contract Schedule of Prices, such payment to be in lawful money of the United States, and the payment shall be made at the time and in the manner set forth in the Specifications.

WITNESS OUR HANDS, this date MAY 23 2013

**CONTRACTOR**

**APAC-TENNESSEE, INC.**

BY: \_\_\_\_\_

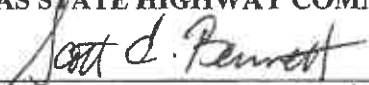
  
**Nickolas R. Haynes**  
**President**

PRINTED NAME: \_\_\_\_\_

(Must Be Legible)

**ARKANSAS STATE HIGHWAY COMMISSION**

BY: \_\_\_\_\_

  
**Director of Highways and Transportation**

## CONTRACT SCHEDULE OF PRICES

LETTING DATE: April 17, 2013

STATE JOB NO: BB0105

FEDERAL AID PROJECT NHPP-STER-40-5(153)240 &amp; 9050

JOB NAME: FORREST CITY-EAST (F)

ROUTES: 40

SECTIONS: 51

COUNTY: ST. FRANCIS

## DESCRIPTION:

THE PURPOSE OF THIS PROJECT IS TO RECONSTRUCT THE MAIN LANES FOR 7.876 MILES ON I-40 AT FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT CONSISTS OF TWO PAVING ALTERNATES: ALTERNATE NO. 1-ASPHALT PAVEMENT LANES WITH ASPHALT SHOULDERS AND ALTERNATE NO. 2-PCC PAVEMENT LANES WITH PCC SHOULDERS, AGGREGATE BASE COURSE, MINOR DRAINAGE STRUCTURES, GUARDRAIL, MAINTENANCE OF TRAFFIC ITEMS, WIRE FENCE, WIRE ROPE SAFETY FENCE, EROSION CONTROL AND MISC. ITEMS.

LENGTH: 7.876000 MILES

CONTRACT WORK DAYS: 140

CONTRACTOR: APAC-TENNESSEE, INC.

ADDRESS: P. O. BOX 13427

MEMPHIS,

TN

38113-0427

CONTRACT AMOUNT: \$ 51,946,709.12

AMOUNT FOR AWARD CONSIDERATION: \$ 65,946,709.12

LIQUIDATED DAMAGES: \$ 2,500 PER DAY

ROAD USER COST: \$ 100,000 PER DAY

TYPE OF PROJECT: NHS

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
SECTION 0009 PROPOSAL ITEMS -PAVING ALT. NO. 2 (CONC. LNS./CONC. SHLDRS):							
BID ALL ITEMS IF PAVING ALT. NO. 2 CHOSEN.							
ALT GROUP OP2							
0174	201 CLEARING		14.000	900.00000		12,600.00	
		STA					
0175	201 GRUBBING		14.000	900.00000		12,600.00	
		STA					
0176	202 REMOVAL AND DISPOSAL OF CURE		923.000	7.00000		6,461.00	
		LF					
0177	202 REMOVAL AND DISPOSAL OF FENCE		67,399.000	0.93000		62,681.07	
		LF					
0178	202 REMOVAL AND DISPOSAL OF POSTS		1.000	410.00000		410.00	
		EACH					
0179	202 REMOVAL AND DISPOSAL OF APPROACH GUTTERS		32.000	1,800.00000		57,600.00	
		EACH					
0180	202 REMOVAL AND DISPOSAL OF SIGN FOUNDATIONS		7.000	1,500.00000		10,500.00	
		EACH					
0181	202 REMOVAL AND DISPOSAL OF JUNCTION BOXES		1.000	1,000.00000		1,000.00	
		EACH					
0182	202 REMOVAL AND DISPOSAL OF PIPE CULVERTS		7.000	970.00000		6,790.00	
		EACH					
0183	SP REMOVAL OF RUMBLE STRIP		42,227.000	4.00000		168,908.00	
		LF					
0184	202 REMOVAL AND DISPOSAL OF CONCRETE PIER PROTECTION		116.000	100.00000		11,600.00	
		LF					

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0185	SP REMOVAL AND DISPOSAL OF OVERHEAD SIGN STRUCTURE	EACH	2.000	2,575.00000		5,150.00	
0186	202 REMOVAL AND DISPOSAL OF SIGNS	EACH	2.000	1,030.00000		2,060.00	
0187	SP REMOVAL AND DISPOSAL OF GUARDRAIL	LF	7,300.000	4.00000		29,200.00	
0188	SP REMOVAL AND DISPOSAL OF IMPACT ATTENUATION BARRIER	EACH	8.000	927.00000		7,416.00	
0189	SP&202 REMOVAL OF EXISTING PORTLAND CEMENT CONCRETE PAVEMENT	SQYD	46,890.000	20.55000		963,589.50	
0190	205 REMOVAL OF EXISTING BRIDGE STRUCTURE (SITE NO. 1)	L.S.	1.000	153,000.00000		153,000.00	
0191	210 UNCLASSIFIED EXCAVATION	CUYD	72,374.000	9.15000		662,222.10	
0192	210 COMPACTED EMBANKMENT	CUYD	18,932.000	19.75000		373,907.00	
0193	SP&210 COMPACTED EMBANKMENT (SPECIAL)	CUYD	47,438.000	19.85000		941,644.30	
0194	SP&210 SOIL STABILIZATION	TON	3,550.000	10.00000		35,500.00	
0195	SS&303 AGGREGATE BASE COURSE (CLASS 1)	TON	169,928.000	12.00000		2,039,136.00	
0196	SS&303 AGGREGATE BASE COURSE (CLASS 7)	TON	13,190.000	34.65000		457,033.50	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0197	308	AGGREGATE IN CEMENT STABILIZED CRUSHED STONE BASE COURSE	25,264.000 TON	24.10000		608,862.40	
0198	308	CEMENT IN CEMENT STABILIZED CRUSHED STONE BASE COURSE	1,614.000 TON	111.00000		179,154.00	
0199	308	PROCESSING CEMENT STABILIZED CRUSHED STONE BASE COURSE	76,791.000 SQYD	5.35000		410,831.85	
0200	309	PORTLAND CEMENT CONCRETE BASE (9" UNIFORM THICKNESS)	857.000 SQYD	41.00000		35,137.00	
0201	401	TACK COAT	42,126.000 GAL	2.55000		107,421.30	
0202	SPSS405	MINERAL AGGREGATE IN ACHM BASE COURSE (1 1/2")	41,524.000 TON	71.85000		2,983,499.40	
0203	SPSS405	ASPHALT BINDER (PG 76-22) IN ACHM BASE COURSE (1 1/2") (MINIMUM BID \$120.00)	1,685.000 TON	946.70000		1,595,189.50	
0204	SPSS406	MINERAL AGGREGATE IN ACHM BINDER COURSE (1")	8,982.000 TON	64.60000		580,237.20	
0205	SPSS406	ASPHALT BINDER (PG 76-22) IN ACHM BINDER COURSE (1") (MINIMUM BID \$120.00)	404.000 TON	946.70000		382,466.80	
0206	SPSS407	MINERAL AGGREGATE IN ACHM SURFACE COURSE (3/8")	49,060.000 TON	46.57000		2,284,724.20	
0207	SPSS407	MINERAL AGGREGATE IN ACHM SURFACE COURSE (1/2")	13,706.000 TON	63.40000		868,960.40	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0208	SPSS407	ASPHALT BINDER (PG 64-22) IN ACHM SURFACE COURSE (3/8") (MINIMUM BID \$120.00)	2,965.000 TON	750.90000		2,226,418.50	
0209	SPSS407	ASPHALT BINDER (PG 64-22) IN ACHM SURFACE COURSE (1/2") (MINIMUM BID \$120.00)	57.000 TON	750.90000		42,801.30	
0210	SPSS407	ASPHALT BINDER (PG 76-22) IN ACHM SURFACE COURSE (1/2") (MINIMUM BID \$120.00)	695.000 TON	946.70000		657,956.50	
0211	412	COLD MILLING ASPHALT PAVEMENT	8,001.000 SQYD	4.59000		36,724.59	
0212	SPSS414	ASPHALT CONCRETE PATCHING FOR MAINTENANCE OF TRAFFIC	200.000 TON	150.00000		30,000.00	
0213	SPSS415	ACHM PATCHING OF EXISTING ROADWAY	250.000 TON	150.00000		37,500.00	
0214	SP	ACHM PATCHING OF EXISTING SHOULDERS	200.000 TON	150.00000		30,000.00	
0215	SS&501	PORTLAND CEMENT CONCRETE PAVEMENT (12" UNIFORM THICKNESS)	282,501.000 SQYD	41.32000		11,672,941.32	
0216	SS&501	PORTLAND CEMENT CONCRETE PAVEMENT (13" UNIFORM THICKNESS)	72,948.000 SQYD	44.90000		3,275,365.20	
0217	504	APPROACH SLABS (TYPE SPECIAL 1)	121.000 CUYD	613.00000		74,173.00	
0218	504	APPROACH GUTTERS (TYPE C)	59.160 CUYD	713.00000		42,181.08	
0219	504	APPROACH GUTTERS (TYPE PT)	534.560 CUYD	600.00000		320,736.00	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0220	506	PORTLAND CEMENT CONCRETE CORRUGATIONS	575.000 SQYD	11.00000		6,325.00	
0221	507	REMOVAL AND DISPOSAL OF CONCRETE PAVEMENT FOR PATCHING	6,000.000 SQYD	8.60000		51,600.00	
0222	SS&507	PORTLAND CEMENT CONCRETE PAVEMENT PATCHING (10" UNIFORM THICKNESS)	6,000.000 SQYD	74.00000		444,000.00	
0223	SP	SCARIFYING CONCRETE PAVEMENT	3,667.000 SQYD	2.75000		10,084.25	
0224	513	REMOVAL OF EXISTING ASPHALT OVERLAY	354,828.000 SQYD	2.50000		887,070.00	
0225	SP&602	FURNISHING FIELD OFFICE	1.000 EACH	35,200.00000		35,200.00	
0226	SPSS603	MAINTENANCE OF TRAFFIC	1.000 L.S.	487,000.00000		487,000.00	
0227	SP&603	TRAFFIC CONTROL SUPERVISOR	1.000 L.S.	151,000.00000		151,000.00	
0228	603	18" TEMPORARY CULVERT	1,220.000 LF	49.00000		59,780.00	
0229	SS&604	SIGNS	2,745.000 SQFT	9.27000		25,446.15	
0230	SS&604	BARRICADES	592.000 LF	18.54000		10,975.68	
0231	SS&604	TRAFFIC DRUMS	2,035.000 EACH	46.35000		94,322.25	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0232	SS&604	FURNISHING AND INSTALLING PRECAST CONCRETE BARRIER	53,085.000 LF	27.95000		1,483,725.75	
0233	SP	MOBILE SPEED NOTIFICATION SYSTEM	2.000 EACH	8,240.00000		16,480.00	
0234	SS&604	RELOCATING PRECAST CONCRETE BARRIER (MAX. BID 25% OF ITEM NUMBER 0232)	48,026.000 LF	6.98000		335,221.48	
0235	SS&604	CONSTRUCTION PAVEMENT MARKINGS	236,343.000 LF	0.26000		61,449.18	
0236	604	REMOVABLE CONSTRUCTION PAVEMENT MARKINGS	453,025.000 LF	1.81000		819,975.25	
0237	604	REMOVAL OF CONSTRUCTION PAVEMENT MARKINGS	44,130.000 LF	0.67000		29,567.10	
0238	604	REMOVAL OF PERMANENT PAVEMENT MARKINGS	60,975.000 LF	0.72000		43,902.00	
0239	SPSS604	ADVANCE WARNING ARROW PANEL	600.000 DAY	15.45000		9,270.00	
0240	SPSS604	PORTABLE CHANGEABLE MESSAGE SIGN	120.000 WEEK	257.50000		30,900.00	
0241	SS&604	VERTICAL PANELS	239.000 EACH	20.60000		4,923.40	
0242	SP	MODULAR GLARE SHIELD	600.000 LF	15.45000		9,270.00	
0243	SP	MOTORIST ASSISTANCE PATROL	1.000 L.S.	75,000.00000		75,000.00	



## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0244	SP PORTABLE CONSTRUCTION LIGHTING		4,212.000 DAY	83.85000		353,176.20	
0245	SP PORTABLE CAMERA ASSEMBLY		12.000 EACH	42,230.00000		506,760.00	
0246	SP WRECKER SERVICE		1.000 L.S.	67,000.00000		67,000.00	
0247	SP&605 CONCRETE DITCH PAVING (TYPE B)		15,205.000 SQYD	29.95000		455,389.75	
0248	SPSS606 18" REINFORCED CONCRETE PIPE CULVERTS (CLASS III)		100.000 LF	57.00000		5,700.00	
0249	SPSS606 24" REINFORCED CONCRETE PIPE CULVERTS (CLASS III)		8.000 LF	124.00000		992.00	
0250	SS&606 36" REINFORCED CONCRETE PIPE CULVERTS (CLASS III)		62.000 LF	84.00000		5,208.00	
0251	606 12" ZINC COATED (GALVANIZED) CORRUGATED STEEL PIPE CULVERTS (16 GAUGE)		1,046.000 LF	44.00000		46,024.00	
0252	SPSS606 18" SIDE DRAIN		112.000 LF	51.00000		5,712.00	
0253	SPSS606 24" SIDE DRAIN		202.000 LF	60.00000		12,120.00	
0254	606 18" FLARED END SECTIONS FOR REINFORCED CONCRETE PIPE CULVERTS		2.000 EACH	1,550.00000		3,100.00	
0255	606 24" FLARED END SECTIONS FOR REINFORCED CONCRETE PIPE CULVERTS		2.000 EACH	1,900.00000		3,800.00	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0256	606 36" FLARED END SECTIONS FOR REINFORCED CONCRETE PIPE CULVERTS	EACH	2.000	3,000.00000		6,000.00	
0257	606 SELECTED PIPE BEDDING	CUYD	25.000	11.00000		275.00	
0258	609 DROP INLETS (TYPE N1)	EACH	9.000	3,100.00000		27,900.00	
0259	609 DROP INLETS (TYPE N2)	EACH	4.000	3,600.00000		14,400.00	
0260	611 UNDERDRAIN OUTLET PROTECTORS	EACH	10.000	350.00000		3,500.00	
0261	611 4" PIPE UNDERDRAINS	LF	1,000.000	9.30000		9,300.00	
0262	614 CONCRETE SPILLWAY (TYPE A)	EACH	11.000	1,700.00000		18,700.00	
0263	615 PAVEMENT REPAIR OVER CULVERTS (ASPHALT)	TON	27.000	275.00000		7,425.00	
0264	SS&617 GUARDRAIL (TYPE A)	LF	11,775.000	19.06000		224,431.50	
0265	SS&617 TERMINAL ANCHOR POSTS (TYPE 1)	EACH	12.000	669.50000		8,034.00	
0266	SS&617 GUARDRAIL TERMINAL (TYPE 2)	EACH	42.000	2,060.00000		86,520.00	
0267	SS&617 THREE BEAM GUARDRAIL TERMINAL	EACH	30.000	1,236.00000		37,080.00	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0268	SP WIRE ROPE SAFETY FENCE		34,585.000 LF	10.00000		345,850.00	
0269	SP WIRE ROPE SAFETY FENCE MAINTENANCE MATERIALS		1.000 L.S.	11,330.00000		11,330.00	
0270	SP&619 WIRE FENCE (TYPE A)		67,643.000 LF	5.56000		376,095.08	
0271	620 LIME		12.000 TON	103.00000		1,236.00	
0272	620 SEEDING		6.170 ACRE	875.50000		5,401.84	
0273	620 MULCH COVER		12.670 ACRE	824.00000		10,440.08	
0274	SS&620 WATER		765.200 MGAL	6.18000		4,728.94	
0275	621 TEMPORARY SEEDING		6.500 ACRE	669.50000		4,351.75	
0276	621 SILT FENCE		27,322.000 LF	2.58000		70,490.76	
0277	621 SAND BAG DITCH CHECKS		342.000 BAG	8.24000		2,818.08	
0278	621 DIVERSION DITCH		1,070.000 LF	0.86000		920.20	
0279	621 DROP INLET SILT FENCE		1,304.000 LF	10.30000		13,431.20	
0280	621 SEDIMENT BASIN		444.000 CUYD	24.00000		10,656.00	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0281	621	OBLITERATION OF SEDIMENT BASIN	444.000 CUYD	24.00000		10,656.00	
0282	621	SEDIMENT REMOVAL AND DISPOSAL	933.000 CUYD	34.00000		31,722.00	
0283	621	PIPE FOR SLOPE DRAINS	72.000 LF	60.00000		4,320.00	
0284	621	ROCK DITCH CHECKS	74.000 CUYD	90.00000		6,660.00	
0285	623	SECOND SEEDING APPLICATION	6.170 ACRE	412.00000		2,542.04	
0286	624	SOLID SODDING	261.000 SQYD	7.21000		1,881.81	
0287	626	EROSION CONTROL MATTING (CLASS 3)	311.000 SQYD	7.21000		2,242.31	
0288	632	CONCRETE ISLAND	391.000 SQYD	68.00000		26,588.00	
0289	SP	ASPHALT CURB	1,978.000 LF	22.30000		44,109.40	
0290	SP&635	ROADWAY CONSTRUCTION CONTROL	1.000 L.S.	762,000.00000		762,000.00	
0291	636	BRIDGE CONSTRUCTION CONTROL	1.000 L.S.	72,300.00000		72,300.00	
0292	637	MAILBOXES	2.000 EACH	100.00000		200.00	
0293	637	MAILBOX SUPPORTS (SINGLE)	2.000 EACH	145.00000		290.00	

## CONTRACT SCHEDULE OF PRICES

STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0294	642 RUMBLE STRIPS IN PORTLAND CEMENT CONCRETE SHOULDERS	LF	171,284.000	0.18000		30,831.12	
0295	SS&718 REFLECTORIZED PAINT PAVEMENT MARKING WHITE (10")	LF	450.000	3.35000		1,507.50	
0296	SS&719 THERMOPLASTIC PAVEMENT MARKING WHITE (4")	LF	6,489.000	0.62000		4,023.18	
0297	SS&719 THERMOPLASTIC PAVEMENT MARKING WHITE (8")	LF	1,190.000	2.32000		2,760.80	
0298	SS&719 THERMOPLASTIC PAVEMENT MARKING YELLOW (4")	LF	5,620.000	0.62000		3,484.40	
0299	721 RAISED PAVEMENT MARKERS (TYPE II)	EACH	2,822.000	8.24000		23,253.28	
0300	SP STEEL OVERHEAD SIGN STRUCTURE (OH-040-68-01)	EACH	1.000	66,950.00000		66,950.00	
0301	SP STEEL OVERHEAD SIGN STRUCTURE (OH-040-68-02)	EACH	1.000	66,950.00000		66,950.00	
0302	SP STEEL OVERHEAD SIGN STRUCTURE (OH-040-68-04)	EACH	1.000	76,735.00000		76,735.00	
0303	SP STEEL OVERHEAD SIGN STRUCTURE (OH-040-68-05)	EACH	1.000	76,735.00000		76,735.00	
0304	SS&725 GUIDE SIGN-ROADSIDE MOUNTED (DEMOUNTABLE LEGEND)	SQFT	4,413.000	23.69000		104,543.97	
0305	SS&725 GUIDE SIGN-OVERHEAD MOUNTED (DEMOUNTABLE LEGEND)	SQFT	1,270.000	23.69000		30,086.30	
0306	SS&726 STANDARD SIGN	SQFT	825.000	16.48000		13,596.00	

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JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0307	SS&727	EXIT NUMBER PANEL (TYPE A)	214.000 SQFT	30.90000		6,612.60	
0308	SS&727	EXIT NUMBER PANEL (TYPE B)	158.000 SQFT	30.90000		4,882.20	
0309	SS&727	EXIT NUMBER PANEL (TYPE C)	70.000 SQFT	30.90000		2,163.00	
0310	730	BREAKAWAY SIGN SUPPORT (TYPE G-1)	1,007.000 LB	6.59000		6,636.13	
0311	730	BREAKAWAY SIGN SUPPORT (TYPE G-2)	28,111.000 LB	6.59000		185,251.49	
0312	730	BREAKAWAY SIGN SUPPORT (TYPE G-3)	5,651.000 LB	6.59000		37,240.09	
0313	SP	TEMPORARY IMPACT ATTENUATION BARRIER	1.000 EACH	7,210.00000		7,210.00	
0314	SP	TEMPORARY IMPACT ATTENUATION BARRIER (REPAIR)	1.000 EACH	2,060.00000		2,060.00	
0315	801	UNCLASSIFIED EXCAVATION FOR STRUCTURES-BRIDGE	585.000 CUYD	92.00000		53,820.00	
0316	801	UNCLASSIFIED EXCAVATION FOR STRUCTURES-ROADWAY	13.000 CUYD	151.00000		1,963.00	
0317	802	CLASS S CONCRETE-ROADWAY	161.080 CUYD	651.00000		104,863.08	
0318	SP&802	CLASS S CONCRETE-BRIDGE	413.200 CUYD	751.41000		310,482.61	
0319	802	CLASS S(AE) CONCRETE-BRIDGE	397.200 CUYD	751.41000		298,460.05	

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STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0320	803 CLASS 1 PROTECTIVE SURFACE TREATMENT		30.300 GAL	79.25000		2,401.28	
0321	SS&804 REINFORCING STEEL-ROADWAY (GRADE 60)		70,121.000 LB	1.24000		86,950.04	
0322	SS&804 REINFORCING STEEL-BRIDGE (GRADE 60)		63,830.000 LB	1.45000		92,553.50	
0323	SS&804 EPOXY COATED REINFORCING STEEL (GRADE 60)		100,480.000 LB	1.45000		145,696.00	
0324	SP&805 STEEL SHELL PILING (18" DIAMETER)		6,750.000 LF	132.10000		891,675.00	
0325	807 STRUCTURAL STEEL IN BEAM SPANS (M270-GR50)		420,160.000 LB	2.12000		890,739.20	
0326	807 PAINTING STRUCTURAL STEEL		210.000 TON	497.00000		104,370.00	
0327	808 ELASTOMERIC BEARINGS		10,732.000 CUIN	2.44000		26,186.08	
0328	SP SILICONE JOINT SEALANT		81.000 LF	75.00000		6,075.00	
0329	812 BRIDGE NAME PLATE (TYPE D)		1.000 EACH	1,050.00000		1,050.00	
0330	816 FILTER BLANKET		48.000 SQYD	5.10000		244.80	
0331	816 DUMPED RIPRAP		4.000 CUYD	230.00000		920.00	
0332	816 DUMPED RIPRAP (GROUTED)		24.000 CUYD	270.00000		6,480.00	

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STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0333	816	CONCRETE RIPRAP	238.000	600.00000		142,800.00	
		CUYD					
0334	SP	SHORING (SITE NO. 1)	1.000	1,461,655.51000		1,461,655.51	
		L.S.					
0335	SP	TEMPORARY RELOCATION OF EXISTING SIGNS	12.000	3,090.00000		37,080.00	
		EACH					

SECTION 0010 HIGH PERF. PAVEMENT MARKING WHITE (4") ALTERNATES:  
 BID ONE ITEM ONLY. (BID WITH PAVING ALT. NO. 2)  
 ALT GROUP OP2

0336	SP&719	INVERTED PROFILE THERMOPLASTIC PAVEMENT MARKING WHITE (4")	94,494.000	2.58000		243,794.52	
		LF					

SECTION 0011 HIGH PERF. PAVEMENT MARKING YELLOW (4") ALTERNATES:  
 BID ONE ITEM ONLY. (BID WITH PAVING ALT. NO. 2)  
 ALT GROUP OP2

0338	SP&719	INVERTED PROFILE THERMOPLASTIC PAVEMENT MARKING YELLOW (4")	97,859.000	2.58000		252,476.22	
		LF					

SECTION 0012 HIGH PERF. CONTRAST PAVEMENT MARKING WHITE (4") ALTERNATES:  
 BID ONE ITEM ONLY. (BID WITH PAVING ALT. NO. 2)  
 ALT GROUP OP2

0341	SP	HIGH PERFORMANCE CONTRAST MARKING TAPE WHITE (4")	11,616.000	7.21000		83,751.36	
		LF					

SECTION 0013 HIGH PERF. PAVMENT MARKING WHITE (8") ALTERNATES:  
 BID ONE ITEM ONLY. (BID WITH PAVING ALT. NO. 2)  
 ALT GROUP OP2

0343	SP	HIGH PERFORMANCE MARKING TAPE WHITE (8")	10,581.000	6.44000		68,141.64	
		LF					

SECTION 0014 HIGH PERF. CONTRAST PAVEMENT MARKING YELLOW (4") ALTERNATES:  
 BID ONE ITEM ONLY. (BID WITH PAVING ALT. NO. 2)  
 ALT GROUP OP2



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STATE JOB NO: BB0105

JOB NAME: FORREST CITY-EAST (F)

FEDERAL AID PROJECT: NHPP-STPR-40-5(153)240 &amp; 9050

LINE NO	ITEM CODE	ITEM DESCRIPTION	ESTIMATED QUANTITY AND UNITS	UNIT BID PRICE		BID AMOUNT	
				DOLLARS	CTS	DOLLARS	CTS
0345	SP HIGH PERFORMANCE CONTRAST MARKING TAPE YELLOW (4")	LF	726.000	7.21000		5,234.46	

SECTION 0015 12' GATE ALTERNATES: BID ONE ITEM ONLY. (BID WITH PAVING  
ALT. NO. 2)  
ALT GROUP OP2

0347	619 12' STEEL GATES	EACH	11.000	431.57000		4,747.27	
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SECTION 0016 MOBILIZATION: BID ITEM WITH PAVING ALT. NO. 2.  
ALT GROUP OP2

0348	601 MOBILIZATION (UNIT BID AMOUNT MAY NOT EXCEED 5% OF SUBTOTAL)	L.S.	1.000	2,450,000.00000		2,450,000.00	
	TOTAL BID					51,946,709.12	

**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**

**SPECIAL PROVISION**

**JOB NO. BB0105**

**PROSECUTION AND PROGRESS**

For this project, Section 108, Prosecution and Progress, is hereby amended to include the following:

**108.02(c) Project Scheduling.** The Contractor shall be responsible for planning, scheduling, and reporting work progress to ensure timely completion of the work as required by the Contract.

The Contractor shall create and maintain a Critical Path Method (CPM) Project Schedule showing the manner of prosecution of work that he intends to follow in order to complete the Contract within the allotted time. The project schedule shall employ computerized CPM for the planning, scheduling and reporting of the work as described in this specification. The CPM project schedule shall be prepared using the Precedence Diagram Method (PDM). The Contractor shall create and maintain the schedule utilizing software capable of meeting all the requirements of this Special Provision. The observance of the requirements herein is an essential part of the work to be done under the Contract. No direct compensation will be allowed for fulfilling these requirements, as such work is considered subsidiary to the various bid items of the contract.

**(1) Personnel.** The Contractor shall provide an individual, referred to hereafter as the Scheduler, to create and maintain the CPM schedule. He shall be proficient in CPM analysis and shall be able to perform required tasks utilizing scheduling software. The Scheduler shall be made available for discussion or meetings when requested by the Engineer.

**(2) Schedule.** The purpose of the Department requiring the project schedule shall be to:

1. Ensure adequate planning during the prosecution and progress of the work in accordance with the allowable number of working days and all milestones;
2. Assure coordination of the efforts of the Contractor, Department, Utilities and others that may be involved in the project;
3. Assist the Contractor and Department in monitoring the progress of the work and evaluating proposed changes to the contract; and
4. Assist the Department in administering the contract time requirements.

The project schedule shall show the sequence and interdependence of activities required for complete performance of the work. The Contractor shall be responsible for assuring all work sequences are logical and show a coordinated plan of the work.

Each activity on the schedule shall be described by: An activity number utilizing an alphanumeric designation system tied to the traffic control plans, and that is agreeable to the Engineer; concise description of the work represented by the activity; and activity durations in whole working days with a maximum of twenty (20) working days. Durations greater than twenty (20) working days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities

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### PROSECUTION AND PROGRESS

mutually agreeable between the Engineer and Contractor. The Contractor shall provide to the Engineer a legend for all abbreviations. The activities shall be coded so that organized plots of the schedule may be produced. Typical activity coding includes: Traffic control phase, location and work type.

The activity durations shall be based on the quantity for the individual work activity divided by a production rate.

The Contractor shall plan and incorporate major resources into the schedule. Major resources are defined as crews and equipment that constrain the Contractor from pursuing available work. The resources shall accurately represent the Contractor's planned equipment and manpower to achieve the productivity rates specified above.

Seasonal weather conditions shall be considered and included in the CPM schedule for all work influenced by temperature and/or precipitation. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions. Average historical weather data is available through the National Oceanic and Atmospheric Administration (NOAA). These effects will be simulated through the use of work calendars for each major work type (i.e., earthwork, concrete paving, structures, asphalt, drainage, etc.). Project and work calendars should be updated each month to show days actually able to work on the various work activities.

Total float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every activity in the schedule. Float time in the schedule is a shared commodity between the Department and the Contractor.

Only Department responsible delays in activities that affect milestone dates or the contract completion date, as determined by CPM analysis, will be considered for a time extension.

**(3) Preliminary Schedule.** At least seven days prior to the pre-construction conference, the Contractor shall provide a Preliminary Schedule, which shall be used to monitor the progress of the work during the first sixty (60) calendar days of the contract while the Detailed Schedule is being developed and accepted. The Engineer will review the Preliminary Schedule within seven (7) days for compliance with the specifications and notify the Contractor at the conference of its acceptability. No work shall begin until the preliminary Schedule has been accepted by the Engineer.

The purpose of the preliminary schedule is to provide the Contractor with adequate time to prepare the detailed schedule.

The Preliminary Schedule shall be prepared and maintained in accordance with the scheduling requirements stated in subsection 108.02(c)(2) and 108.02(c)(6) for all activities planned for the first ninety (90) calendar days of the contract and shall contain summary activities representing the work required to complete the contract. The Preliminary Schedule shall be submitted to the Engineer in the same format as that specified for the Detailed Schedule in subsection 108.02(c)(2).

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**PROSECUTION AND PROGRESS**

**(4) Detailed Schedule.** The Contractor shall provide a Detailed Schedule, which shall show the sequence and interdependence of activities required for complete performance of the work. The Detailed Schedule shall be prepared and maintained in accordance with the scheduling requirements stated in subsection 108.02(c)(2) and 108.02(c)(6).

Within thirty-five (35) calendar days after the start of contract time, the Contractor shall submit two (2) organized plots with the activities logically grouped using the activity coding and one (1) 3-1/2 inch computer disk or CD-ROM backup of the proposed Detailed Schedule to the Engineer. **Failure to provide the Detailed Schedule within thirty-five (35) calendar days may result in future estimate payments being withheld until the Detailed Schedule is received.**

The schedule shall encompass the time from the start of the contract time to the project completion date and shall incorporate in detail the first ninety (90) calendar days for the Preliminary Schedule including all updates and required revisions. The longest path through the schedule shall be readily discernable on the plot of the schedule.

**(5) Joint Review, Revision and Acceptance.** Within twenty (20) calendar days of receipt of the Contractor's proposed detailed schedule, the Engineer shall evaluate the schedule for compliance with this specification, and notify the Contractor of his findings. If the Engineer requests a revision or justification, the Contractor shall provide a satisfactory revision or adequate justification to the satisfaction of the Engineer within seven (7) calendar days. **Failure to provide revisions or justification within seven (7) calendar days may result in future estimate payments being withheld until a satisfactory response is received.**

If the Contractor submits a CPM schedule for acceptance which is based on a sequence of work not in the plans, then the Contractor shall notify AHTD in writing, separate from the schedule submittal.

The Engineer's review and acceptance of the Contractor's project schedule is for conformance to the requirements of the contract documents only. Review and acceptance by the Engineer of the Contractor's project schedule does not relieve the Contractor of any of its responsibility for the project schedule, or of the Contractor's ability to meet interim milestone dates (if specified) and the contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the Contractor's project schedule. In the event the Contractor fails to define any element of work, activity or logic and the Engineer review does not detect this omission or error, such omission or error, when discovered by the Contractor or Engineer, shall be corrected by the Contractor at the next monthly schedule update and shall not affect the project completion date.

**(6) Updates.** The Project Schedule shall be updated on a monthly basis. The Project Schedule update shall be submitted on the first working day of each month. The Contractor shall meet with the Engineer each month at a scheduled update meeting to review actual progress made through the data date of the schedule update. The review of progress will include dates activities actually started and/or completed,

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and the percentage of work completed or remaining duration on each activity started and/or completed. The percentage of work complete shall be calculated by utilizing the quantity and productivity rate information. The Project Schedule update shall include one (1) copy of the following information:

- 1) One (1) complete 3-1/2 inch computer disk or CD-ROM backup of the project post update changes and reschedule calculations.
- 2) One (1) logically organized plot of the schedule update if requested by the Engineer.

**Failure to submit the monthly schedule update and/or not attending the scheduled monthly update meeting may result in future estimate payments being withheld until the monthly schedule update is reviewed and accepted.**

**(7) Project Schedule Revisions.** If the Contractor desires to make major changes in the project schedule, the Contractor shall notify the Engineer in writing. The written notification shall include the reason for the proposed revision, what the revision is comprised of, and how the revision was incorporated into the schedule. In addition to the written notification of the revision, the Contractor shall include a 3-1/2 inch computer disk or CD-ROM backup of the schedule that includes the revision and one logically organized plot of the schedule if requested by the Engineer. Major changes are hereby defined as those that may affect compliance with the contract requirements or those that change the critical path. All other changes may be accomplished through the monthly updating process without written notification.

**(8) Time Impact Analysis.** The Contractor shall notify the Engineer when an impact may justify an extension of contract time or adjustment of milestone dates. This notice shall be made in writing as soon as possible, but no later than the end of the next estimate period after the commencement of an impact or the notice for a change is given to the Contractor. Not providing notice to the Engineer by the end of the next estimate period will indicate the Contractor's approval of the time charges as shown on that time statement. Future consideration of that statement will not be permitted and the Contractor forfeits his right to subsequently request a time extension or time suspension unless the circumstances are such that the Contractor could not reasonably have knowledge of the impact by the end of the next estimate period.

When changes are initiated or impacts are experienced, the Contractor shall submit to the Engineer a written time impact analysis describing the influence of each change or impact.

A time impact analysis is an evaluation of the effects of changes in the construction sequence, contract, plans, or site conditions on the Contractor's plan for constructing the project, as represented by the schedule. The purpose of the time impact analysis is to determine if the overall project has been delayed, and if necessary, to provide the Contractor and the Department a basis for making adjustments to the contract.

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**PROSECUTION AND PROGRESS**

A time impact analysis shall consist of one or all of the steps listed below:

- Step 1. Establish the status of the project before the impact using the most recent project schedule update prior to the impact occurrence.
- Step 2. Predict the effect of the impact on the most recent project schedule update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. The Contractor shall demonstrate how the impact was inserted into the schedule using a fragment. This is the presentation of a fragmentary portion of the schedule network showing the added or modified activities and the added or modified relationships. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.
- Step 3. Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing, and mitigation efforts.
- Step 4. Compare the status of the work prior to the impact (Step 1) to the prediction of the effect of the impact (Step 2), and to the status of the work during and after the effects of the impact are over (Step 3). Note that if an impact causes a lack of access to a portion of the project, the effects of the impact may extend to include a reasonable period for remobilization.

The time impact analysis shall include a 3-1/2 inch computer disk or CD-ROM backup of the complete schedule prepared in Step 2 that includes the fragment. If the project schedule is revised after the submittal of a time impact analysis but prior to its approval, the Contractor shall promptly indicate in writing to the Engineer the need for any modification to its time impact analysis.

Only one (1) copy of each time impact analysis shall be submitted within fourteen (14) calendar days after the completion of an impact. The Engineer may require Step 1 and Step 2 of the time impact analysis be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of contract time.

Approval or rejection of each time impact analysis by the Engineer shall be made within fourteen (14) calendar days after receipt unless subsequent meetings and negotiations are necessary.

The time impact analysis shall be incorporated into and attached to any relevant change order(s) and/or supplemental agreement(s).

**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**

**SPECIAL PROVISION**

**JOB NO. BB0105**

**SITE USE (A+C METHOD)**

**1. General.** The process for bidding will take into account not only the contract amount bid but also the bidder's stated delivery time in which the Specified Site Use Work will be substantially complete. This method shall be used to determine the successful bidder and to establish the contract time (working days). It shall not be used to determine the award amount nor final payment to the Contractor when the project is completed.

**2. Definition of Terms. (a) Specified Site Use Work.** The specified site use work, referred to herein as Part C, shall consist of all items of work in the Contract.

**(b) Contract Amount.** The summation of the products of the quantities shown in the bid schedule multiplied by the unit bid price.

**(c) Working Day.** As defined in Subsection 101.01 of the Standard Specifications. Working days will be assessed in accordance with Subsection 108.06 of the Standard Specifications.

**(d) Contract Time.** The number of working days established by the bidder to complete the project.

**(e) Substantially Complete.** The date at which time charges cease due to the completion of all pay items. The Engineer will be the sole authority in determining when the work is substantially complete. Part C Site Use Work will be considered complete on this date.

**(f) Daily Road User Cost.** The amount which represents the average daily cost of interference and inconvenience to the road user. The daily road user cost for Part C is \$100000.

**(g) Bid Site Use Time.** The number of working days specified in the bid by the bidder as the time required to substantially complete the Specified Site Use Work for Part C.

**(h) Punch List.** A list of items and/or areas of the project requiring correction, replacement, repair, or general cleanup which is furnished by the Engineer following the declaration of the project as Substantially Complete.

**3. Preparation of Proposal.** The bidder shall establish the number of working days to be used to substantially complete the Specified Site Use Work for Part C.

The total number of working days established by the bidder to substantially complete the Specified Site Use Work for Part C shall not exceed 150 days.

Bids showing time for completion in excess of this amount will be considered non-responsive and will be rejected.

**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**

**SPECIAL PROVISION**

**JOB NO. BB0105**

**SITE USE (A+C METHOD)**

The product of the number of working days established by the bidder for Part C multiplied by the daily road user cost of \$100000 per working day will be added to the contract amount bid. The sum of the two amounts will be the amount used for consideration of bids for award.

**4. Consideration of Bids.** Each bid submitted shall consist of two parts:

(A) The Contract amount.

(C) Total number of working days proposed by the bidder to substantially complete the Specified Site Use Work for Part C.

The successful bid will then be determined by the Department as the lowest combination of (A) and (C) according to the following formula:

$$\begin{aligned} & (A) \\ & + [(C) \times (\text{daily road user cost of } \$100000)] \\ & = \text{Bid amount for award consideration.} \end{aligned}$$

The preceding formula shall be used only to determine the successful bidder and shall not be used to determine the contract award amount nor final payment to the Contractor, except as may be adjusted under sections 6 and 7 below.

**5. Assessment of Site Use Time.** No Site Use Time will be assessed for any work performed during the 10 calendar day period following the effective date of the Work Order. Site Use Time will be assessed on all working days for each working day or portion thereof beginning on the eleventh calendar day following the effective date of the Work Order, and continue until the Specified Site Use Work is substantially completed.

Unless an emergency is declared, the Contractor shall not perform work that requires inspection on Sundays, legal holidays designated in Subsection 101.01 of the Standard Specifications, Edition of 2003, and Monday following a holiday on Sunday or Friday preceding a holiday on Saturday. If the Commission declares Friday following Thanksgiving Day as a Departmental holiday, the Contractor shall not perform work that requires inspection on this day.

Extensions of the Bid Site Use Time for Part C will be granted ONLY for the following reasons:

(a) The work has been delayed by any act or omission of the Commission. This includes suspension of the work when the suspension is not the fault of the Contractor.



**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**

**SPECIAL PROVISION**

**JOB NO. BB0105**

**SITE USE (A+C METHOD)**

(b) If the dollar value of the Specified Site Use Work, exclusive of incentives and disincentives, exceeds the dollar value for the bid Site Use Work, the time will be extended in the same proportion.

(c) Change Orders affecting the work that results in additional time being required to complete the Specified Site Use Work.

Requests for extension of the Bid Site Use Time shall be made in writing and shall state the reasons for the request and identify the specific days for which extension is requested.

**6. Early Completion of Specified Site Use Work.** The Contractor will be paid \$100000 for each working day the Specified Site Use Work is substantially complete before the number of working days stated by the Contractor in the bid, including extensions granted in accordance with paragraph 5 above. The maximum number of working days for which this payment will be made is 15 days. Payment for early completion will be made after all items identified on the punch list have been completed to the satisfaction of the Engineer.

**7. Failure to Substantially Complete the Specified Site Use Work in the Time Bid.** Failure to substantially complete the Specified Site Use Work within the number of working days stated by the Contractor in the bid, including extensions granted in accordance with paragraph 5 above, will result in the Daily Road User Cost of \$100000 being assessed for every working day in excess of the stated number, up to the time in which the Specified Site Use Work is substantially complete.

This assessment will be deducted from any compensation due the Contractor or recovered if sufficient compensation is not due.

The Engineer will be the sole authority in determining when the Specified Site Use Work is substantially complete.

**8. Contract Time and Liquidated Damages.** Determination of working days charged, extensions of Contract Time, and assessment of liquidated damages for failure to complete all work within the Contract Time limit will be made in accordance with the Section 108 of the Standard Specifications. Liquidated damages under Section 108 of the Standard Specification are *separate and in addition* to the Daily Road User Costs assessed under this Special Provision.

**ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT**

**SPECIAL PROVISION**

**LIQUIDATED DAMAGES**

As specified in the Contract, liquidated damages for this project will be as shown in the following table:

**WORKING DAY PROJECTS**

ORIGINAL CONTRACT AMOUNT		RATE
FROM MORE THAN	TO AND INCLUDING	-----
\$ 0	\$ 50,000	\$ 400
50,000	100,000	700
100,000	500,000	800
500,000	1,000,000	1,100
1,000,000	2,000,000	1,300
2,000,000	5,000,000	1,500
5,000,000	10,000,000	1,900
10,000,000	15,000,000	2,000
15,000,000	20,000,000	2,100
20,000,000	-----	2,500

**FIXED DATE PROJECTS**

ORIGINAL CONTRACT AMOUNT		RATE
FROM MORE THAN	TO AND INCLUDING	-----
\$ 0	\$ 50,000	\$ 90
50,000	100,000	100
100,000	500,000	200
500,000	1,000,000	250
1,000,000	2,000,000	320
2,000,000	5,000,000	400
5,000,000	10,000,000	600
10,000,000	-----	750

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NOV 20 2013

# ARKANSAS STATE HIGHWAY COMMISSION

## CHANGE ORDER

APAC TENNESSEE, INC.

Job Name Forrest City-East (F)

Route &amp; Section 40, Section 51

Job No. BB0105 FAP No NHPP-STPR-40-5(153)240 &amp; 9050

County St. Francis

Changes located Station 4050+70.40 to Station 4352+82.59

Change Order No. 18

DESCRIPTION OF CHANGE: Increase the quantity of the items Unclassified Excavation, Compacted Embankment, Aggregate in Cement Stabilized Crushed Stone Base Course, Cement in Cement Stabilized Crushed Stone Base Course, and Processing Cement Stabilized Crushed Stone Base Course.

REASON FOR CHANGE: 1. The plans do not provide for any compacted embankment to fill the void left between the removed existing P. C. stabilized base course (PCSBC) and the planned Cement Stabilized Crushed Stone Base Course (CSCSBC) within the full depth reconstruction sections. Also the average thickness of existing PCSBC is 9" and not the 6" indicated on the plans. Both of these result in the need for additional unclassified excavation and compacted embankment. The quantities for these items will be calculated using field X-Y-Z measurements.

2. The plan typical section for the full depth reconstruction calls for the CSCSBC to be 42' wide but the plan quantities are calculated using 40'. Quantities are being added for the additional 2'.

ATTACHMENT: Summary Sheet for Compacted Embankment/Unclassified Excavation  
Summary Sheet for Cement Stabilized Crushed Stone Base Course

## SUMMARY

Item No.	Item	Unit	Unit Price	PRESENT		REVISED	
				Quantity	Amount	Quantity	Amount
210	Unclassified Excavation	CUYD	9.15	72,374.00	662,222.10	76,107.00	696,379.05
210	Compacted Embankment	CUYD	19.75	18,932.00	373,907.00	30,365.00	599,708.75
308	Aggregate In Cement Stabilized Crushed Stone Base Course	TON	24.10	25,264.00	608,862.40	26,407.00	636,408.70
308	Cement In Cement Stabilized Crushed Stone Base Course	TON	111.00	1,614.00	179,154.00	1,655.00	183,705.00
308	Processing Cement Stabilized Crushed Stone Base Course	SQYD	5.35	76,791.00	410,831.85	80,524.33	430,805.17
				2,234,977.35		2,547,006.67	

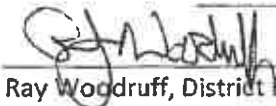
Overrun

\$312,029.32

Recommended 10-25-13

Date

Initials




Ray Woodruff, District Engineer

FHWA concurrence 10/22/2013

CL

Via Email

APPROVED 10-25-13



Mike Sebrén, Construction Engineer

Redwy Concur 10/25/13 C. Martin via email

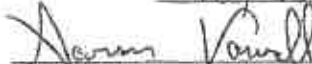
10/25/13

Authorized 10-28-13



M. E. Banks, Assistant Chief Engineer

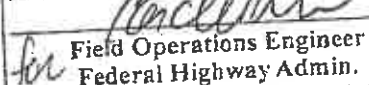
Requested 10/25/2013



Aaron Vowell, Resident Engineer

for

APPROVED 11/1/13



Field Operations Engineer  
Federal Highway Admin.  
Federal participation in excess of funds provided under the current Project Agreement is contingent upon funds being available and the execution of a Modified Project Agreement prior to or at the final voucher stage.



35

**Sheet To Accompany C.O. No. 18**  
**JOB BB0105**  
**FORREST CITY - EAST (F)**  
**F.A.P. NO. NHPP-STPR-40-5(153)240 & 9050**  
**ST. FRANCIS COUNTY**

**SUMMARY:**

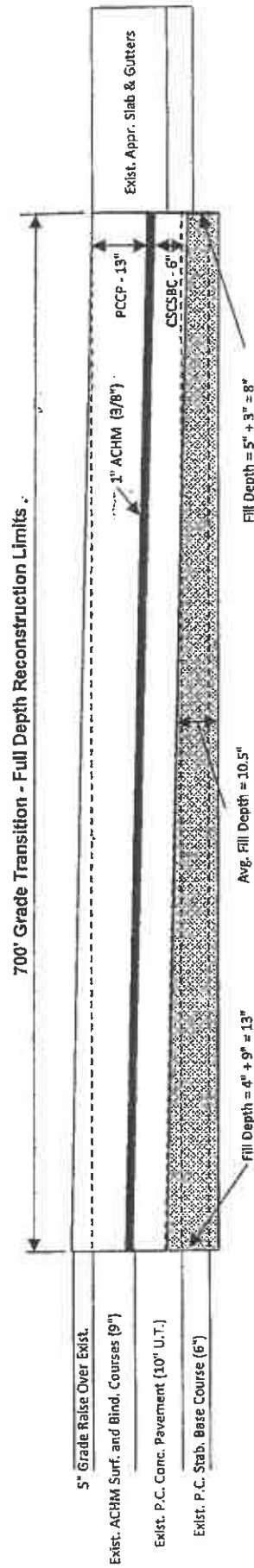
**Additional 2' of Cement Stabilized Crushed Stone Base Course for all 700' Transtions:**

2' x 700' x 0.5' x 24 bridge ends = 16,800 cf  
x Actual Proctor = 141.00 pcf  
1184 tons  
Additional Processed Area = 3733.33 sy

Item	Quantity	Unit
Aggregate in Cement Stabilized Crushed Stone Base Course	1143	tons
Cement in Cement Stabilized Crushed Stone Base Course	41	tons
Processing Cement Stabilized Crushed Stone Base Course	3733.33	sy

*\* Based on Project Mix Design of 3.5% Cement, 96.5% Aggregate*

Sheet To Accompany Change Order # 18  
 Job # BB0105  
 Forrest City - East (F)  
 FAP # NHPP-STPR-40-5(153)240 & 9050  
 St. Francis County



Earthwork required for removal of existing P.C. Stabilized Base Course:

Compacted Embankment:  $700' \times 24' \times 10.5" = 14,700\text{cf} = 544\text{cy} \times (21^* \text{ remaining bridge ends}) =$

Unclassified Excavation:  $700' \times 24' \times 3" = 4,200\text{cf} = 156\text{cy} \times (24 \text{ bridge ends}) =$

11433 cy

3733 cy

Notes: Plans indicate that existing P.C. Base is 6", however, the average thickness adjacent to bridge ends within full depth reconstruction limits is 9".  
 An additional 3" unclassified excavation is required at all bridge ends beneath the limits of the P.C. Stabilized Base Course.

\*Contractor elected to proceed with compacted embankment for 3 transitions at no cost to the department



APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

December 7, 2014

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

In review of the December 2013 monthly CPM Schedule Update for the project the controlling activities for determination of the project completion date has now shifted from the Bridge activities to the I-40 Roadway activities.

During the month of October Change Order #18 was approved to increase Unclassified Excavation and Compacted Embankment within the 700' full depth transition sections for main lane construction. This overrun was addressed in the October Impact schedule resulting in the extension of the completion date for the roadway activities from May 29, 2014 to June 11, 2014 which accounts for nine (9) Working Days during this period. However, during this same period the Hwy 38 bridge activities were critical on the CPM and controlled the completion date on June 20, 2011. Additional time was not considered during the October Impact until if and when the controlling activities were shifted from the Bridge items of work to the Roadway activities.

Due to the shift in critical activities on the project during the December 2013 Update the Impact of Change Order #18 is now apparent and driving the activities which determine the overall completion date of the project. APAC requests that the nine (9) additional work days as documented by the October CPM Impact schedule be added to the total days allowed on the project as a result of the approved Change Order #18. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: M. Carden - APAC  
B. Jones - APAC  
APAC #3328 -110 file



**Safety First** *Always*

# AHTD Job BB0105

## CPM Schedule Impact Log

Schedule#	Description	Impact Begin	Impact Ended	Project Data Date	Finish Constraint Date	Schedule New Finish Date	Impact Net Effect # Days	Working Days Changed Thru Data Date	Working Days Remaining In Contract	Estimated Working Days To Completion	Over/Under Contract Time (140)	140 Rate Completion	May 30 Br Completion
0	Baseline			6/7/2013	4/23/2014	4/23/2014	0	0	140	140	0		
1	Add Pipe Culvert Impact			6/7/2013	4/23/2014	4/23/2014	0	0	140	140	0		
2	Modify Exlat Appr Slab Impact			6/7/2013	4/23/2014	4/23/2014	0	0	140	140	0		
3	June 2013 Update			6/30/2013	5/2/2014	5/2/2014	5	5	135	129	-6		
4	July 2013 Update			8/1/2013	5/2/2014	5/18/2014	20	20	120	116	-4		
5	August 2013 Update			9/1/2013	5/18/2014	6/1/2014	30	30	110	110	0		
6	September 2013 Update			10/1/2013	6/1/2014	6/18/2014	50	50	90	95	5		
7	October 8th 2013 Update			10/8/2013	6/19/2013	6/20/2013	55	55	85	93	8		
8	October 9th 2013 Impact	10/8/2013	10/31/2013	10/8/2013	6/20/2013	6/27/2013	9	55	85	93	8		
9	October 2013 Update			10/31/2013	6/27/2013	6/27/2013	70	70	70	82	12		
10	November 21st 2013 Update			11/21/2013	6/27/2013	6/27/2013	80	80	60	72	12		
11	November 22st 2013 Impact	11/21/2013		11/22/2013	6/27/2013	6/27/2013	80	80	60	72	12		
12	November 2013 Update			12/1/2013	6/27/2013	7/1/2013	80	80	60	69	9		
13	December 2013 Update			1/1/2014	7/1/2013	7/18/2014	88	88	52	69	17		
14	January 2014 Update												
15	February 2014 Update												
16	March 2014 Update												
17	April 2014 Update												
18	May 2014 Update												
19	June 2014 Update												

Additional Days requested Due to Impacts 9  
Total Working Days Extended Due to Impacts 0

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JAN 29 2014

APAC TENNESSEE, INC.

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

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

P.O. Box 410  
Wynne, AR 72396  
January 24, 2014

APAC-Tennessee, Inc.  
Attn: Mr. Jim Smith  
P.O. Box 13427  
Memphis, TN 38113-0427

RE: Additional Days due to CO 18 Impact  
Job No. BB0105  
FAP No. NHPP-STPR-40-5(153)240 & 9050  
Forrest City – East (F)  
St. Francis

Dear Mr. Smith,

Please reference your letter dated January 7, 2014 requesting nine (9) additional working days be added to the contract due to the Change Order 18 impact.

The Department has conducted a review of APAC's schedules, actual work completed, and construction activities. Per the "Prosecution and Progress" Special Provision, "The purpose of the time impact analysis is to determine if the overall project has been delayed." At the time of the impact the project as a whole was not delayed as a result of Change Order 18. Therefore, additional time is not warranted for the impact of Change Order 18.

Please call if you have any questions or concerns.

Sincerely,

Matt Emberton  
Resident Engineer #13

c: Construction  
District 1 Engineer  
File  
Field





APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

January 30, 2014

Mr. Ralph Hall, Chief Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 2261  
Little Rock, AR. 72203-2261

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Ralph,

APAC is in receipt of the attached correspondence from the Resident Engineer dated January 24, 2014 indicating that additional time on the project due to Change Order #18 would not be granted due to the project not being delayed at the time of the impact. APAC Tennessee disagrees with the Department's assessment of the time impact analysis and appeals this decision to the Chief Engineer.

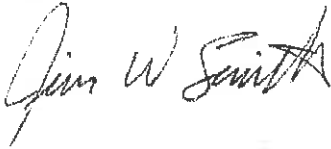
On or about October 2, 2013 APAC advised the RE that there was a potential issue with the Unclassified Excavation and Compacted Embankment quantities for the 700' full depth reconstruction sections for main lane construction due to the underlying soil cement base. During the next three weeks and after several emails and quantity calculations performed by APAC and the Department, an action plan and method of payment for additional quantities was developed. Change Order #18 was processed and verbal approval provided in order to proceed with the work which was completed on November 3<sup>rd</sup> on the West Bound Main Lanes. However, 50% of the additional quantities remain to be performed on the East Bound Main Lanes during Stage 4. APAC received a copy of approved Change Order on November 20, 2013, and on November 21 met with RE and District personnel to review the impact that Change Order #18 had on the project CPM Schedule.

This quantity overrun was addressed in the October impact schedule resulting in the extension of the completion date for the roadway activities from May 29, 2014 to June 11, 2014 which accounts for nine (9) Working Days during this period. However, during this same period the Hwy 38 bridge activities were shown as critical on the CPM and controlled the completion date of June 20, 2011. Additional time was not considered during the October Impact until if and when the controlling activities were shifted from the Bridge items of work to the Roadway activities. Subsequent review of the December 2013 monthly CPM Schedule Update for the project indicated that the controlling activities for determination of the project completion date had indeed shifted from the Bridge activities to the I-40 Roadway activities. This Change Order affected both Stage 2 and Stage 4 construction even though work is currently being performed only in the West Bound lanes in Stage 2. The statement that "at the time of the impact the project as a whole was not delayed" is correct, however this statement and analysis is flawed in that Stage 4 work has not yet begun and Change Order #18 did force the roadway activities to extend the completion of the project and once those activities returned to the Critical Path the resulting extension of time will not be reduced.

**Safety First** *Always*

APAC promptly notified the Department of the error in quantities, requested that the time issue be addressed in the CPM schedule and promptly notified the Department when the impact became critical to the final completion date of the project. Due to the shift in critical activities on the project during the December 2013 Update the impact of Change Order #18 is now apparent and driving the activities which determine the overall completion date of the project. That portion of work in the East Bound main lanes remains to be constructed during Stage 4 and directly impacts the completion date of the project. APAC requests that the Department reconsider the nine (9) additional working days as documented by the October CPM Impact Schedule and increase the total days allowed on the project as a result of Change Order #18. Thank you for your consideration of this request and should you have any questions or need additional information please contact this office.

Sincerely,

A handwritten signature in cursive script, reading "Jim W. Smith".

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: M. Carden - APAC  
B. Jones - APAC  
APAC #3328 -116 file

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

RECEIVED  
FEB 26 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](http://www.arkansashighways.com)

February 21, 2014

Mr. Jim W. Smith, P.E.  
APAC-Tennessee, Inc.  
P. O. Box 13427  
Memphis, Tennessee 38113-0427

Re: Job No. BB0105  
FAP: NHPP-STPR-40-5(153)240 & 9050  
Forrest City-East (F)  
St. Francis County

Dear Mr. Smith:

Reference is made to your recent letter appealing the Resident Engineer's assessment of a time impact analysis due to Change Order 18.

A review of the contract documents indicate that the Resident Engineer's decision is in accordance with the "Prosecution and Progress" Special Provision. On the basis of having a reasonable knowledge of the impact, the time impact analysis was evaluated due to the changed work at the time in which the event occurred. The determination was made at that time, and from the analysis, that the overall project completion would not be delayed. Documentation on subsequent schedule updates indicates your production on road activities was below your planned rates and thus forced the roadway activities on to the critical path. Based on these findings, your request to reconsider the time impact is not warranted.

Sincerely,

Ralph J. Hall  
Deputy Director and  
Chief Engineer

c: Director  
Assistant Chief Engineer - Operations  
Construction Engineer  
District 1 Engineer  
Resident Engineer 13

**JACK EAST III, P.A.**  
Attorney at Law

**FILE COPY**

Telephone: (501) 372-3278  
Facsimile: (501) 376-0949  
jack@jackeastlaw.com

Triangle Insurance Plaza  
2725 Cantrell Road, Suite 202  
Little Rock, AR 72202

November 11, 2014

Ralph Hall, Chief Engineer  
Arkansa Highway & Transporation Dept.  
P.O. Box 2261  
Little Rock, AR 72203

Re: Job No. BB0105  
FAP No. NHPP-STPR-40-5 (153) 240 & 950  
Forrest City-East (F)  
St. Francis

Dear Mr. Hall:

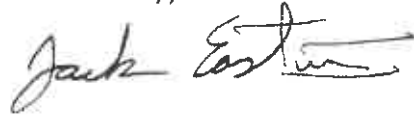
I represent APAC-Tennessee, Inc. (APAC) in connection with the referenced project. As you know, APAC and the Department have a disagreement about time charged by the Department, liquidated damages, disincentives and extended jobsite overhead.

I write today on behalf of APAC to suggest the AHTD and APAC agree that the time for APAC to file any claim at the Claims Commission regarding the disagreement be extended to March 15, 2015.

This request is made in order to allow all time related issues to have the same deadline, rather than several deadlines regarding different issues. Setting March 15, 2015 as the deadline will also allow the parties to fully analyze all issues as presented by APAC to the R.E. and to you.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack East III". The signature is written in dark ink and is positioned above the printed name.

Jack East III

cc: Office of Chief Counsel  
ATTN: Rita Looney

APAC-Tennessee  
ATTN: Jim Smith

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

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

November 25, 2014

Mr. Jack East III, P.A.  
Attorney at Law  
2725 Cantrell Road, Suite 202  
Little Rock, Arkansas 72202

Re: Job No. BB0105  
FAP: NHPP-STPR-40-5(153)240 & 9050  
Forrest City-East (S)  
St. Francis County

Dear Mr. East:

Reference is made to your letter on behalf of the Contractor, APAC-Tennessee, Inc. (APAC) requesting that the time for filing a claim at the Arkansas State Claims Commission on this project for any disputed issues that have occurred earlier this year be extended to March 15, 2015.

In accordance with the requirements of the Specifications, the Contractor must appeal the Resident Engineer's decision to the Chief Engineer within 60 calendar days. Thereafter, the Contractor may appeal the Chief Engineer's decision to the Arkansas State Claims Commission within 180 calendar days. Currently, the Chief Engineer's decisions that have been rendered are as follows:

- Chief Engineer's letter dated February 21, 2014 - the Contractor's request for additional time due to work associated with Change Order 18 was denied. This work was evaluated in the Contractor's CPM schedule updates, and no delay was indicated.
- Chief Engineer's letter dated July 7, 2014 - the Contractor's request for 26 days was denied. Again, the Contractor's CPM schedule updates did not indicate a 26 day delay.
- Chief Engineer's letter dated August 8, 2014 - the Contractor's request to waive Road User charges for the Highway 38 overpass was granted.

Mr. Jack East III, P.E.  
November 25, 2014

Page Two

Without regards to the 180 calendar day timeframe, we would have no objection to a consolidated appeal for all the disputed issues, and therefore, your request to extend the time of filing a claim with the Arkansas State Claims Commission to March 15, 2015 is hereby granted.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph J. Hall", with a long horizontal flourish extending to the right.

Ralph J. Hall  
Deputy Director and  
Chief Engineer

c: Director  
Assistant Chief Engineer - Operations  
Construction Engineer  
District 1 Engineer  
Resident Engineer 13  
Chief Legal Counsel  
APAC-Tennessee, Inc.



APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

February 3, 2014

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

In review of the Contract quantities paid through Estimate 18, the ACHM Surface course for leveling and Bond Breaker has overrun the estimated plan quantity by 4762.7 tons for the WBML. Projecting this rate for the entire project would result in a 9525 ton overrun or 18.3%.

It has been determined that this quantity was necessary and utilized to adjust the cross slope on the existing PCC Pavement from the 0.015'/' to the 0.02'/' as shown in the typical section, for correction of areas of defined settlement / grade adjustment and leveling shoulders in areas where the grade adjustments occurred. This additional thickness which was up to 18" in some locations required multiple lifts of the 9.5mm surface in order to achieve the desired profile grade. Placement of multiple lifts directly impacted the production rate of this critical activity requiring additional days to perform the work prior to placement of the PCC Pavement. As a result of the multiple lifts the average actual production was reduced to 835 tons per shift which is 56% of the planned production of 1500 tons per shift.

The attached spreadsheet summarizes the excessive fills which were provided on the grade sheets that were developed and approved for construction of the WB main lanes and includes the maximum fill thickness in addition to the 110 #/sy as bond breaker and the 192#/sy for leveling. This thickness determines the number of additional lifts required for leveling specific areas of the WBML and the additional days required to place this material. APAC requests that an additional thirteen (13) days be added to the Contract Time limit due to the overrun in plan quantity and the reduced production from multiple lifts of ACHM leveling placed on the West Bound Main Lanes during Stage 2 construction. It is anticipated that there will similar occurrence on the East Bound Main Lanes which will be addressed upon the completion of Stage 4. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: M.Carden - APAC  
B. Jones - APAC  
APAC #3328 -115 file



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# AHTD Job BB0105 WBML Bond Breaker Lift Thickness Analysis

Station	Station	LF	Lt Lane Fills		Amt > 0.23		Addl # Lifts =Amt /0.18		Rt Lane Fills		Amt > 0.23		Addl # Lifts =Amt /0.18		Max lifts Lt/Rt
			Avg	Max					Avg	Max					
4069	4086	1700	0.26	0.87	0.64	3.6	0.51	1.11	0.68	4.9	4.9	4.9	4.9	4.9	4.9
4137	4139	200	0.37	0.42	0.19	1.1	0.39	0.47	0.24	1.3	1.3	1.3	1.3	1.3	1.3
4166	4178	1200	0.44	0.67	0.44	2.4	0.44	0.67	0.44	2.4	2.4	2.4	2.4	2.4	2.4
4183	4187	400	0.42	0.68	0.45	2.5	0.52	0.79	0.53	3.1	3.1	3.1	3.1	3.1	3.1
4189	4195	600	0.37	0.52	0.29	1.6	0.43	0.56	0.33	1.8	1.8	1.8	1.8	1.8	1.8
4198	4209	1100	0.51	0.95	0.72	4.0	0.35	0.61	0.33	2.1	2.1	2.1	2.1	2.1	2.1
4236	4238	200	0.38	0.65	0.42	2.3	0.32	0.54	0.31	1.7	1.7	1.7	1.7	1.7	1.7
4257	4304	4700	0.56	1.73	1.50	8.3	0.29	1.38	1.15	6.4	6.4	6.4	6.4	6.4	6.4
4325	4328	300	0.44	0.51	0.29	1.6	0.29	0.37	0.14	0.8	0.8	0.8	0.8	0.8	0.8
4353	4362	900	0.39	0.55	0.32	1.8	0.32	0.42	0.19	1.1	1.1	1.1	1.1	1.1	1.1
4373	4376	300	0.39	0.48	0.25	1.4	0.25	0.31	0.08	0.4	0.4	0.4	0.4	0.4	0.4
4383	4388	500	0.52	0.67	0.44	2.4	0.24	0.29	0.09	0.5	0.5	0.5	0.5	0.5	0.5
4394	4400	600	0.34	0.41	0.18	1.0	0.41	0.5	0.27	1.5	1.5	1.5	1.5	1.5	1.5

Total Addl Lifts  
@ 3 Lifts / shift  
= Addl Days

36.9  
12.3  
13

RECEIVED

MAR 04 2014

APAC TENNESSEE, INC.

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

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



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

P.O. Box 410  
Wynne, AR 72396  
February 28, 2014

APAC-Tennessee, Inc.  
Attn: Mr. Jim Smith  
P.O. Box 13427  
Memphis, TN 38113-0427

RE: Additional Days due to Additional Leveling  
Job No. BB0105  
FAP No. NHPP-STPR-40-5(153)240 & 9050  
Forrest City – East (F)  
St. Francis

Dear Mr. Smith,

Please reference your letter dated February 3, 2014 requesting thirteen (13) additional working days be added to the contract due to the overrun in plan quantity of ACHM Surface Course (9.5mm). Due to the following reasons, this request has been denied:

- Your request did not provide any evidence to indicate that the additional leveling had any impact on the critical path of the work or the placement of PCCP, which is the activity directly affected by the placement of ACHMSC. During the time that the majority of the leveling was placed, the bridge construction activities were critical to the completion of the project.
- The Special Provision "Site-Use (A+C Method)" states, "If the dollar value of the Specified Site Use Work, exclusive of incentives and disincentives, exceeds the dollar value for the bid Site Use Work, the time will be extended in the same proportion." Additionally Subsection 108.06(d)(2)(e) of the Standard Specifications, Edition of 2003, allows for a time extension due to overruns.
- Subsection (8) of the Special Provision, "Prosecution and Progress", states that "The Contractor shall notify the Engineer when an impact may justify an extension of contract time or adjustment of milestone dates. This notice shall be made in writing as soon as possible, but no later than the end of the next estimate period after the commencement of an impact or the notice for a change is given to the Contractor. Not providing notice to the Engineer by the end of the next estimate period will indicate that Contractor's approval of the time charges as shown on that time statement".
- You determined the grades that resulted in the additional lifts of ACHMSC and at the time you submitted them for approval no request was made for additional time.

Mr. Jim Smith  
Page 2  
February 28, 2012  
Job No. BB0105

Based on the contract requirements noted above, your request for additional time cannot be granted. A time extension due to quantity overruns will be granted as appropriate. However, at this time the work items associated ACHM Surface Course (9.5mm) have not exceeded plan quantity and therefore no overrun exists. Therefore an extension of time due to overruns is not currently acceptable in accordance with the Contract.

Please call if you have any questions or concerns.

Sincerely,



Matt Emberton  
Resident Engineer #13

c: Construction  
District 1 Engineer  
File  
Field

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MAY 21 2014

APAC TENNESSEE, INC.

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Scott E. Bennett  
Director  
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P.O. Box 410  
Wynne, AR 72396  
May 20, 2014

APAC-Tennessee, Inc.  
Attn: Mr. Jim Smith  
P.O. Box 13427  
Memphis, TN 38113-0427

RE: Project Progression  
Job No. BB0105  
FAP No. NHPP-STPR-40-5(153)240 & 9050  
Forrest City – East (F)  
St. Francis

Dear Mr. Smith,

As you are aware, the above referenced project has been forecasted to exceed the 140 working days associated with the Contract. Each monthly schedule update since October 9, 2013, has indicated at least 8 working days beyond contract time with the latest update on May 16, 2014 indicating the project will finish 32 working days beyond contract time. You are reminded the road user cost is \$100,000 per day with liquidated damage accruing at \$2,500 daily for every working day in excess of the specified contract time. Currently a projected \$3,280,000.00 will be deducted through estimates or any other form of compensation due.

You are further reminded that timely prosecution of the work is an essential element of the Contract, and it is imperative that the work be pressed vigorously to completion. Please advise in writing regarding what action you plan to take to assure the Department that this project can be completed in a timely manner.

Your reply is expected no later than Monday, June 2, 2014.

Sincerely,

Matt Emberton  
Resident Engineer #13

c: Assistant Chief Engineer – Operations  
State Construction Engineer  
District I Engineer  
Surety  
Surety's Resident Agent  
File  
Field



APAC-Tennessee, Inc.

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May 27, 2014

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

APAC Tennessee is in receipt of the attached letter dated May 20, 2014 concerning our construction progress on the noted project. We are fully aware of the projected completion date and of the contractual requirements for completing this project within the 140 Working Days established in the Contract. We have also made the Department aware of the potential that the construction could exceed the Contract completion date through monthly CPM schedule updates since the October 2013 update as you referenced.

The Department is also aware of the problems which were encountered during construction of the WBML on the project and that APAC has been denied all requests for additional time documented by the CPM schedule for overruns and impacts beyond our control. To date the Department has failed to accept any responsibility for the construction delays created by those issues. APAC does not agree with the Departments response to those initial requests and a separate appeal of those items is being addressed to the Chief Engineer for consideration.

We would take exception to the comment, or to the perception within the Department, that APAC is not prosecuting the work in an expeditious manner. For the past several months APAC has held bi-monthly schedule update reviews to increase awareness of the construction progress and any deviations from the critical activities are addressed during each of these reviews. Our action plan has included several modifications to our construction operations on the EBML given the lessons learned by both APAC and the Department during the WBML construction. APAC has made considerable investments in technology and resources to help expedite the construction in the EBML and this has been evident in our increased productivity to-date over that achieved in the WBML phases. Additionally, we are continuing to consolidate as many unrelated CPM activities, where feasible, to compress the overall duration of construction and reduce the time required for the project to be considered substantially complete. A copy of the most recent CPM schedule update is attached for your review. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: B. Boulden - APAC  
M. Carden - APAC  
B. Jones - APAC  
APAC #3328 -139 file

**Safety First** *Always*

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MAY 21 2014

APAC TENNESSEE, INC.

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

Scott E. Bennett  
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P.O. Box 410  
Wynne, AR 72396  
May 20, 2014

APAC-Tennessee, Inc.  
Attn: Mr. Jim Smith  
P.O. Box 13427  
Memphis, TN 38113-0427

RE: Project Progression  
Job No. BB0105  
FAP No. NHPP-STPR-40-5(153)240 & 9050  
Forrest City – East (F)  
St. Francis

Dear Mr. Smith,

As you are aware, the above referenced project has been forecasted to exceed the 140 working days associated with the Contract. Each monthly schedule update since October 9, 2013, has indicated at least 8 working days beyond contract time with the latest update on May 16, 2014 indicating the project will finish 32 working days beyond contract time. You are reminded the road user cost is \$100,000 per day with liquidated damage accruing at \$2,500 daily for every working day in excess of the specified contract time. Currently a projected \$3,280,000.00 will be deducted through estimates or any other form of compensation due.

You are further reminded that timely prosecution of the work is an essential element of the Contract, and it is imperative that the work be pressed vigorously to completion. Please advise in writing regarding what action you plan to take to assure the Department that this project can be completed in a timely manner.

Your reply is expected no later than Monday, June 2, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Emberton', is written over a horizontal line.

Matt Emberton  
Resident Engineer #13

c: Assistant Chief Engineer – Operations  
State Construction Engineer  
District 1 Engineer  
Surety  
Surety's Resident Agent  
File  
Field

# AHTD Job BB0105

## CPM Schedule Impact Log

Schedule#	Description	Impact Began	Impact Ended	Project Data Date	Finish Constraint Date	Schedule New Finish Date	Impact Net Effect # Days	Working Days Charged Thru Data Date	Working Days Remaining In Contract	Estimated Working Days To Completion	Over / (-Under) Contract Time (140)	I-40 Rwy Completion	Hwy 38 Br Completion
0	Baseline			6/7/2013	4/23/2014	4/23/2014		0	140	140	0		
1	Add Pipe Culvert Impact			6/7/2013	4/23/2014	4/23/2014	0	0	140	140	0		
2	Modify Exist Apr Slab Impact			6/7/2013	4/23/2014	4/23/2014	0	0	140	140	0		
3	June 2013 Update			8/30/2013	5/2/2014	5/2/2014		5	135	129	-6		
4	July 2013 Update			8/1/2013	5/2/2014	5/16/2014		20	120	116	-4		
5	August 2013 Update			9/1/2013	5/16/2014	6/11/2014		30	110	110	0		
6	September 2013 Update			10/1/2013	6/11/2014	6/19/2014		50	90	95	5		
7	October 8th 2013 Update			10/8/2013	6/19/2013	6/20/2013		55	85	93	8	5/29/2014	6/20/2014
8	October 9th 2013 Impact	10/9/2013	10/31/2013	10/9/2013	6/20/2013	6/27/2013	9	55	85	93	8	6/11/2014	6/20/2014
9	October 2013 Update			10/31/2013	6/27/2013	6/27/2013		70	70	82	12	6/13/2014	6/27/2014
10	November 21st 2013 Update			11/21/2013	6/27/2013	6/27/2013		80	60	72	12	6/19/2014	6/27/2014
11	November 22nd 2013 Impact	11/21/2013		11/22/2013	6/27/2013	6/27/2013		80	60	72	12	6/19/2014	6/27/2014
12	November 2013 Update			12/1/2013	6/27/2013	7/1/2013		80	60	69	9	7/1/2013	7/1/2013
13	December 2013 Update			1/1/2014	7/1/2013	7/1/2014		88	52	63	11	7/11/2014	7/1/2014
14	January 2014 Update			2/1/2014	7/1/2013	7/1/2014	17	88	52	63	11	7/11/2014	7/1/2014
15	February 2014 Update			3/1/2014	7/1/2014	7/17/2014		88	52	67	15	7/10/2014	7/17/2014
16	March 2014 Update			4/1/2014	7/17/2014	7/30/2014		95	45	72	27	7/11/2014	7/30/2014
17	April 2014 Update			5/1/2014	7/23/2014	7/23/2014		111	29	54	25	7/14/2014	7/23/2014
18	May 17, 2014 Update			5/17/2014	7/23/2014	8/5/2014		120	20	52	32	7/15/2014	8/5/2014
19	June 2014 Update												
20	July 2014 Update												

**Impact Description**

Change Order #18	Impact Days
January 2014 Weather Impact	9
Additional lifts ACHM Leveling WBML	4
	13

Total Additional Days requested Due to Impacts 26  
Total Working Days Extended Due to Impacts 0

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APAC-Tennessee, Inc.

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May 29, 2014

Mr. Ralph Hall, Chief Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 2261  
Little Rock, AR. 72203-2261

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Ralph,

APAC is in receipt of your correspondence dated February 21<sup>st</sup> indicating that additional time would not be allowed as an impact on Change Order #18 due to the project not being delayed at the time of the impact and production rates were lower than shown in the CPM schedule forcing the roadway activities onto the critical path. Also the correspondence from the Resident Engineer dated February 28, 2014 indicating that additional time on the project due to additional leveling would not be granted based that evidence was not provided that leveling had any impact to other project activities critical to completion and the February 13 letter indicating that no time would be allowed due to time not being assessed during the December 21st through March 15<sup>th</sup> period. APAC Tennessee disagrees with the Department's assessment of the time impact analysis and appeals this decision to the Chief Engineer.

APAC accepts the statement provided that production rates were lower than shown in the CPM Schedule but only as a direct indicator of an underlying cause. The following supporting facts will be presented in detail such that the Chief may understand the problems encountered during Stages 1 & 2 on the project and considers this additional information in review of our request for the additional time on the project.

- > After two weeks of obtaining preliminary survey data, APAC advised the Department on May 7<sup>th</sup> of discrepancies in the project survey controls, bench marks and roadway alignments contained in the plans which could not be verified by APAC or the District survey personnel. Resolution of these control discrepancies forced preliminary control and development of grades further into the construction sequence than anticipated, placing the roadway construction control on the critical path. APAC received final verification of these controls on June 6<sup>th</sup> to complete preliminary layout for temporary ramps which was one day before work began on the project.
- > Cold milling of the existing asphalt roadway to expose the existing concrete revealed significant variability in cross slope and grade which required additional ACHM leveling exceeding the quantity allowed for the WBML. Additional depth of asphalt, exceeding 12" in some locations, required additional layout for grade control to construct the multiple lifts of leveling. The Department was aware of the overrun in asphalt which was occurring and the additional effort necessary by APAC to construct multiple lifts and remained firm that no more than two lifts could be placed within a specific area until sufficient cooling had occurred requiring the paving operation to move ahead to another deep location in order to continue paving each day. This type of hopscotch operation did not allow for the anticipated production rates detailed in the CPM schedule to be met.
- > Grading multiple lifts of asphalt pavement further stretched the survey crews to check the areas of finished ACHM surface bond breaker prior to basket layout. In order to allow basket assemblies to be placed ahead of the concrete paving several areas were accepted below grade in order to provide a location for those crews to continue working affecting the yield in the concrete paving. In cases where asphalt was high, milling crews were relocated to fine grade mill the asphalt to allow concrete paving crew a section to continue paving. Another indicator that asphalt leveling and bond breaker production rates was impacting other critical project activities.

**Safety First** *Always*

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- > To obtain the grade within the 700' full depth transition sections APAC was required to remove the existing asphalt to expose and remove the concrete pavement. In order to achieve subgrade grade removing the soil cement was an all or none option, and to construct the typical section required removal. This resulted in excess excavation material being removed and requiring import of considerable embankment to return to subgrade elevation. The overrun in these plan items was documented by Change Order #18, however again pulled resources from survey crew to perform additional grading which could have been utilized for the asphalt grading and checking or for the joint layout critical for the concrete paving operation. This additional operation further compounding the reduced productivity in these activities.
- > Delay in completing earthwork and subsequent cement treated crushed stone base course in the 700' transitions forced the asphalt paving to bypass these sections to move ahead to continue paving only to remobilize back to these areas as they were completed adding to segmented construction and reducing productivity.
- > The concrete paving operations were directly impacted by the availability of completed asphalt sections which could be prepared for joint layout and basket assembly placement ahead of the paving operation.
- > Delay by each of the driving activities pushed the operations into a season where less available daylight hours and working temperatures further limited and reduced productivity as documented during the monthly CPM schedule update.

APAC was committed not to repeat the same offending operations during Stage 4 construction and the entire process of Stage 2 construction was reviewed to improve upon the successful activities and change the operations which were lessons learned. It was agreed by both APAC and the Department to profile mill the existing asphalt pavement on the EBML to minimize the cost overrun from additional leveling and reduce the additional lifts of leveling which directly impacted the time to finish sections of the roadway with bond breaker to allow for joint layout and basket placement ahead of the PCCP. To accomplish this survey controls were well established and verified during the end of Stage 2 and during Stage 3 prior to the Start of Stage 4 construction. APAC proposed to retain and pulverize the existing soil cement after removal of the existing concrete pavement in order to minimize the removal of excess material and the need for additional borrow to make subgrade. This resulted in completion of 700' transition sections and CSCSBC without disruptions to or remobilization of the asphalt operations.

APAC purchased 3D equipment for the asphalt paver to minimize any survey impact and delay in operations which might occur should areas require multiple lifts of asphalt to make grade. This purchase also provided a bond breaker within +/- 0.02' minimizing any yield issues in the PCC Pavement. APAC also purchased a 4' shoulder attachment for the concrete paver to allow the inside shoulder to be placed with the 24' main lanes to reduce the construction and cure time required for final grading in the median. This activity alone would allow subsequent median operations to begin ahead of schedule.

By contrasting the progress in Stage 4 to that of Stage 2 construction

- > The grades and 3D models were completed within 1 week of completion of the milling
- > The leveling and Bond Breaker has been completed on May 23<sup>rd</sup>
- > The joint layout will be completed by May 23<sup>rd</sup>
- > Basket layout is currently 6000' (3 paving days) ahead of PCCP paving operation
- > Class 1 aggregate base began in median 3 days after PCCP paving operations began

During the April CPM monthly update meeting APAC adjusted the schedule production rates to match the actual production achieved to date on the remaining critical activities as requested by the Department. This was performed to better predict the expected completion date of the project and resulted in no change to the predicted project end date. Previous monthly updates which impacts were reflected in the CPM schedule were presented timely to the Department but were not recognized or considered for additional time added to the Contract at that time. Prior to the February 21st response from the Chief Engineer, the Department had not indicated to APAC that failing to meet the production rates provided in the baseline CPM schedule was reason to deny additional time justified by Change Order items or overruns in critical activities.

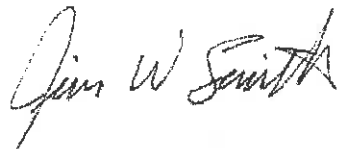
The successor relationships as shown in the CPM schedule and attached reports indicate the direct impact to activities in the longest path which increased the total duration of those activities on the project. The bridge activities have at various times been critical to the overall completion and any early completion of those activities will not reduce the additional time for roadway construction attributed to the impact by Change Order #18 and the overrun in ACHMSC for leveling.

The work calendars assigned to various activities were approved by the Department on the Baseline CPM Schedule which anticipated working on some activities during the Seasonal Limitation period from December 21st through March 15<sup>th</sup>. Activities which were scheduled for construction during that period but were prevented progress due to weather extremes did impact the schedule completion of intermediate Stage 2 construction from February 26, 2014 to March 5, 2014 which was directly attributed to the lack of available working days due to the weather during the month of January. The weather impact only became an issue on the schedule when the impact by Change Order #18 and the overrun in ACHMSC for leveling pushed critical activities into a season which conditions would not allow full production to be achieved.

The statement that additional time was not allowed due to APAC's failure to meet production rates appears on the surface to be true, however the underlying reasons why rates were not achieved can be attributed to many activities which collectively had an impact to the schedule. Delay in establishment of verified project control, the overrun in asphalt leveling, the additional earthwork in the 700' full depth transitions, all requiring additional surveying, and cumulating delays on successor activities pushing Stage 2 construction into seasonal conditions which further hindered production rates. It took pushing through Stage 2 construction for APAC to refine the process and schedule. For the Department to simply place all responsibility on the Contractor's production rate indicates a lack of understanding of what occurred on the project and interconnection of activities that drives the critical activities in the CPM schedule.

APAC requests a reconsideration of the facts presented and the request for an additional 26 days added to the Contract Completion Date on the project. Thank you for your consideration of this request and should you have any questions or need additional information please contact this office.

Sincerely,



Jim W. Smith P.E.  
Engineering / QC Manager

Cc: B. Boulden - APAC  
APAC #3328 -136 file

ARKANSAS STATE HIGHWAY  
AND  
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July 7, 2014

Mr. Jim W. Smith, P.E.  
APAC-Tennessee, Inc.  
P. O. Box 13427  
Memphis, Tennessee 38113-0427

Re: Job No. BB0105  
FAP: NHPP-STPR-40-5(153)240 & 9050  
Forrest City-East (F)  
St. Francis County

Dear Mr. Smith:

Reference is made to your letter requesting reconsideration of the facts for adding 26 days to complete the work on this project.

As you are aware, the Prosecution and Progress Special Provision requires a project schedule which serves a purpose of assisting the Department in administering the contract time requirements. When actions occur that influence changes in the construction sequence, contract, plans, or site conditions for completing the work, a time impact analysis is used by way of the CPM to determine if the overall project has been delayed and is used as a basis for adding days to the contract.

It is my understanding that no impact analysis has resulted in the determination that the 26 days requested should be added to this contract. However, time will be granted for any item overruns as specified by the contract.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ralph J. Hall".

Ralph J. Hall  
Deputy Director and  
Chief Engineer

c: Director  
Assistant Chief Engineer - Operations  
Construction Engineer  
District 1 Engineer  
Resident Engineer 13

RECEIVED  
JUL 11 2014  
APAC TENNESSEE, INC.



APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

January 31, 2014

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

In review of the December 2013 CPM Schedule Update and the anticipated work activities to be performed on the project, it is apparent that the approved schedule calendars anticipated some work to be performed during the period from December 21 through March 15 when no time charges would be assessed to the project. The entire mid- south region has experienced much colder than anticipated temperatures preventing critical work activities from being accomplished and extending the intermediate Phase changes and ultimate completion date of the project.

APAC Tennessee normally anticipates seasonal layoff of hourly crews due to the reduced demand during the winter season, however due to the time demands placed upon this project, crews were retained on standby for days which could potentially allow work to be performed. This additional labor cost was built into the project cost, however the lost production and lost time due to extreme temperatures was not anticipated. Shorter daily work hours were experienced as startup times were delayed waiting for colder temperature to rise above the limit. NOAA reports indicate that January 2014 was an average of -4.5° colder than the normal temperature. The attached weather calendar indicates the dates in which work was performed and production which was accomplished. These actual production rates fell below that which was used to develop the schedule activity durations and should not be considered a full working days in the schedule analysis.

APAC requests that an additional four (4) days be added to the Contract Time limit due to the lost work days during the month of January 2014. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: M. Carden - APAC  
B. Jones - APAC  
APAC #3328 -114 file



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60

**JOB BB0105  
Schedule Calendars**

	1	2	3	4	5	6	8
	Earthwork	Conc. Paving	Asph Paving	Conc Str	Traffic Cont	PWD	Base
January	<b>2013</b> Earthwork = 175 Days/year	Concrete Paving = 197 Days/year	Asphalt Paving = 199 Days/year	Conc Structures = 240 Days/year	Traffic Control = 247 Days/year	Probable WD Charged = 170 Days/year	APAC Base = 182 Days/year
February							
March							
April							
May							
June							
July							
August							
September							
October							
November							
December							
January	0	4	5	15	15	0	5
February	0	4	5	15	15	0	5
March	5	10	10	18	18	5	10
April	12	17	17	20	20	16	15
May	17	19	19	22	22	19	17
June	22	22	22	24	23	20	20
July							
August							
<b>TOTALS</b>	<b>182</b>	<b>203</b>	<b>205</b>	<b>247</b>	<b>253</b>	<b>174</b>	<b>188</b>

ATHD Job BE0105



Project Working Conditions by Schedule Calendars

Month	Year	Temp	Weather	Pressure	Time	Good / Poor Working Conditions by Calendar	Charged	Total to date	Previous Total	Holiday - No Work performed	Plan Prod	Actual Prod	%	Plan Prod	Actual Prod	%	Plan Prod	Actual Prod	%	Plan Prod	Actual Prod	%
Date	Day	Hi / Lo	Conditions	Am.	am/pm	1. Low	2. PCCP	3. ACHM	4. Base	5. T.C.	6. Base	7. Base	8. Base	9. Base	10. Base	11. Base	12. Base	13. Base	14. Base	15. Base	16. Base	17. Base
1	Wed	52/28	Sunny			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
2	Thu	50/27	Sunny			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
3	Fri	34/21	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
4	Sat	50/27	Partly cloudy			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
5	Sun	52/19	Cloudy	0.25	pm	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
6	Mon	21/12	Partly cloudy			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
7	Tue	30/9	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
8	Wed	41/18	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
9	Thu	41/32	Cloudy	1.0	am/pm	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
10	Fri	59/37	Cloudy	0.85	am/pm	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
11	Sat	57/41	Partly cloudy			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
12	Sun	59/34	Partly cloudy			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
13	Mon	55/34	Cloudy	0.2	am	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
14	Tue	59/34	Partly cloudy			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
15	Wed	37/27	Clear			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
16	Thu	54/28	Partly cloudy			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
17	Fri	36/23	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
18	Sat	54/25	Sunny			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
19	Sun	50/32	Sunny			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
20	Mon	64/32	Sunny			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
21	Tue	50/32	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
22	Wed	41/18	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
23	Thu	32/16	Partly cloudy			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
24	Fri	30/23	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
25	Sat	52/27	Partly cloudy			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
26	Sun	64/28	Sunny			Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good	Good
27	Mon	45/23	Partly cloudy			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
28	Tue	27/12	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
29	Wed	33/19	Sunny			Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
30	Thu					Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
31	Fri					Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor	Poor
TOTAL DAYS CHARGED											88											
5000 6587.51 1.43 3000 2022.86 3.04 12 24.75 2.54 6000 1060 4.82																						
January Calendar PCCP 4 5 Base 5 ACHM 5																						
Additional Weather Days 2.57 4.33 2.84 4.82																						

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

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

**RECEIVED**

**FEB 17 2014**

**APAC TENNESSEE, INC.**

P.O. Box 410  
Wynne, AR 72396  
February 13, 2014

APAC-Tennessee, Inc.  
Attn: Mr. Jim Smith  
P.O. Box 13427  
Memphis, TN 38113-0427

RE: Additional Days due to Cold Weather  
Job No. BB0105  
FAP No. NHPP-STPR-40-5(153)240 & 9050  
Forrest City – East (F)  
St. Francis

Dear Mr. Smith,

Please reference your letter dated January 31, 2014 requesting four (4) additional working days be added to the contract due to lost work days during the month of January 2014.

As per the "Prosecution and Progress" Special Provision, "Only Department responsible delays in activities that affect milestone dates or the contract completion date, as determined by CPM analysis, will be considered for a time extension." In addition, this request does not meet the requirements as stated in Subsection (5) of the Special Provision, "Site-Use (A+C Method)" for consideration of extensions of the bid site-use time. Furthermore, subsection 108.06(c) of the Standard Specifications, edition of 2003, states that no time is assessed against the Contract from December 21 through March 15. It should also be noted that the January 2014 schedule update did not indicate a delay was experienced, as the project's completion date was not altered from the December 2013 schedule update and therefore no delay exists.

Based on the contract requirements noted above, your request for additional time cannot be granted.

Please call if you have any questions or concerns.

Sincerely,

Matt Emberton  
Resident Engineer #13

c: Construction  
District 1 Engineer  
File  
Field



APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

November 1, 2013

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

APAC Tennessee is in receipt of the attached Statement of Time Charged for the Estimate period ending October 11<sup>th</sup>, 2013 on the noted project. During this period 10 days were charged to the project. APAC does not agree with the assessment of time during this period for the following reasons.

Time Charges in accordance with Section 108.06 are subject to specific limitations when the conditions allow the Contractor to effectively utilize 60% of normal forces and equipment to prosecute the work required at the time for at least 60% of normal work hours. The Contract Special Provision "Prosecution and Progress" indicates that one of the purposes for the CPM schedule is to assist in the administering the Contract Time on the project. The September and October 2013 CPM Schedule Updates indicate that the critical activities on the project shifted from the I-40 roadway activities to the Hwy 38 bridge and approach construction. During the month of October, 17 of the 31 days (55%) were considered poor for earthwork activities due to rainfall during the month. These wet conditions prevented unclassified excavation and embankment operations on Hwy 38 from being performed which created the slippage of the CPM schedule and pushing the bridge onto the critical path. In recognition of this project impact APAC has accelerated the embankment operations by chemically drying the material to allow embankment operations on Hwy. 38 to proceed without participation from the Department.

APAC has continued to pursue the I-40 WBML construction in Stage 2 such that these activities are on schedule for completion by the Contract time limit. The CPM Schedule now projects the completion to be at 151 working days and APAC contends that the intent of the assessment of Site Use Charges are directly associated with timely completion of the I-40 portion of work which directly impacts the traveling public. Due to these reasons the conditions did not allow the work to progress the available work within the criteria for assessing time on the project. APAC requests that consideration be given for 55% non-chargeable work days (6) on the project during this period. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: N. Haynes - APAC  
B. Jones - APAC  
APAC #3328 -091 file



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ARKANSAS STATE HIGHWAY  
AND  
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OCT 17 2013

APAC TENNESSEE, INC.



Scott E. Bennett  
Director

Phone (501) 569-2000 Fax (501) 569-2400

P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
WWW.ARKANSASHIGHWAYS.COM

October 15, 2013

Jim Smith  
Apac-Tennessee, Inc.  
P. O. Box 13427  
Memphis, TN 38113-0427

RE: Statement of Time Charged  
Project Number: BB0105  
Project Name: Forrest City-East (F)  
FAP Number: NHPP-STPR-40-5(153)240 & 9050  
County: St. Francis

Dear Mr. Smith:

During the Estimate Period ending October 13, 2013, time was charged on the above project on the following dates:

Monday September 30, 2013  
Tuesday October 1, 2013  
Wednesday October 2, 2013  
Thursday October 3, 2013  
Friday October 4, 2013  
Monday October 7, 2013  
Tuesday October 8, 2013  
Wednesday October 9, 2013  
Thursday October 10, 2013  
Friday October 11, 2013

Days Charged This Period:	10
Days Charged Through The End Of This Period:	59
Total Contract Time:	140
Percent of Time Used:	42.14%

Please review these time charges. In accordance with subsection 108.06(c) of the Standard Specifications, if you do not file a written notice of disagreement and the reason therefor within ten (10) calendar days from your receipt of this letter, you will be deemed to have accepted the time charged for this period as correct, and no subsequent request for review will be considered.

Sincerely,

Aaron Vowell, Resident Engineer #13  
for

File

65



APAC-T:

Post Office  
1210 Harbo  
Memphis, T  
Tel: (901) 9  
Fax: (901) 5

*5 days  
weather re  
Hwy 38  
No decision*

November 12, 2013

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

APAC Tennessee is in receipt of the attached Statement of Time Charged for the Estimate period ending October 27<sup>th</sup>, 2013 on the noted project. During this period 8 days were charged to the project. APAC does not agree with the assessment of time during this period for the following reasons.

Time Charges in accordance with Section 108.06 are subject to specific limitations when the conditions allow the Contractor to effectively utilize 60% of normal forces and equipment to prosecute the work required at the time for at least 60% of normal work hours. The Contract Special Provision "Prosecution and Progress" indicates that one of the purposes for the CPM schedule is to assist in the administering the Contract Time on the project. The September and October 2013 CPM Schedule Updates indicate that the critical activities on the project shifted from the I-40 roadway activities to the Hwy 38 bridge and approach construction. During the month of October, 17 of the 31 days (55%) were considered poor for earthwork activities due to rainfall during the month. These wet conditions prevented unclassified excavation and embankment operations on Hwy 38 from being performed which created the slippage of the CPM schedule and pushing the bridge construction onto the critical path. In recognition of this project impact APAC has accelerated the embankment operations by chemically drying the material to allow embankment operations on Hwy. 38 to proceed without participation from the Department.

APAC has continued to pursue the I-40 WBML construction in Stage 2 such that these activities are on schedule for completion within the Contract time limit. The CPM Schedule now projects the completion to be at 151 working days and APAC contends that the intent of the assessment of Site Use Charges are directly associated with timely completion of the I-40 portion of work which directly impacts the traveling public. Due to these reasons the conditions did not allow the work to progress the available work within the criteria for assessing time on the project. APAC requests that consideration be given for 55% non-chargeable work days (5) on the project during this period. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: N. Haynes - APAC  
B. Jones - APAC  
APAC #3328 -092 file

**Safety First** *Always*

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ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT



Scott E. Bennett  
Director  
Phone (501) 569-2000 Fax (501) 569-2400

P. O. Box 2261  
Little Rock, Arkansas 72203-2261  
WWW.ARKANSASHIGHWAYS.COM

October 31, 2013

Jim Smith  
Apac-Tennessee, Inc.  
P. O. Box 13427  
Memphis, TN 38113-0427

RE: Statement of Time Charged  
Project Number: BB0105  
Project Name: Forrest City-East (F)  
FAP Number: NHPP-STPR-40-5(153)240 & 9050  
County: St. Francis

Dear Mr. Smith:

During the Estimate Period ending October 27, 2013, time was charged on the above project on the following dates:

Monday October 14, 2013  
Thursday October 17, 2013  
Friday October 18, 2013  
Monday October 21, 2013  
Tuesday October 22, 2013  
Wednesday October 23, 2013  
Thursday October 24, 2013  
Friday October 25, 2013

Days Charged This Period:	8
Days Charged Through The End Of This Period:	67
Total Contract Time:	140
Percent of Time Used:	47.86%

Please review these time charges. In accordance with subsection 108.06(c) of the Standard Specifications, if you do not file a written notice of disagreement and the reason therefor within ten (10) calendar days from your receipt of this letter, you will be deemed to have accepted the time charged for this period as correct, and no subsequent request for review will be considered.

Sincerely,

Matthew R. Emberton, Resident Engineer  
#13

File

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NOV 04 2013

APAC TENNESSEE, INC.



APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

July 24, 2013

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

APAC Tennessee is in receipt of the attached Statement of Time Charged for the Estimate period ending July 6th, 2014 on the noted project. During this period 8 days were charged to the project. APAC does not agree with the assessment of time on July 2 during this period for the following reasons.

Time Charges in accordance with Section 108.06 are subject to specific limitations when the conditions allow the Contractor to effectively utilize 60% of normal forces and equipment to prosecute the work required at the time for at least 60% of normal work hours. During this period the slope preparation and placement of Class 1 aggregate base course were the controlling activities on the CPM schedule for the project. These activities as well as other activities were limited due to the intermittent showers which occurred on the project during the morning hours which prevented critical activities from being performed for 60% of the day. APAC requests that consideration be given for one (1) non-chargeable work day on the project during this period. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: N. Haynes - APAC  
M. Carden - APAC  
APAC #3328 -091 file



**Safety First** *Always*

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ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

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



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

July 8, 2014

Mr. Jim Smith  
Apac-Tennessee, Inc.  
P. O. Box 13427  
Memphis, TN 38113-0427

RE: Statement of Time Charged  
Project Number: BB0105  
Project Name: Forrest City-East (S)  
FAP Number: NHPP-STPR-40-5(153)240 & 9050  
County: St. Francis

Dear Mr. Smith:

During the Estimate Period ending July 6, 2014, time was charged on the above project on the following dates:

Monday June 23, 2014  
Tuesday June 24, 2014  
Wednesday June 25, 2014  
Thursday June 26, 2014  
Friday June 27, 2014  
Tuesday July 1, 2014  
Wednesday July 2, 2014  
Thursday July 3, 2014

Days Charged This Period:	8
Days Charged Through The End Of This Period:	143
Total Contract Time:	140
Percent of Time Used:	102.14%

Please review these time charges. In accordance with subsection 108.06(c) of the Standard Specifications, if you do not file a written notice of disagreement and the reason therefor within ten (10) calendar days from your receipt of this letter, you will be deemed to have accepted the time charged for this period as correct, and no subsequent request for review will be considered.

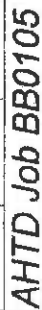
Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew R. Emberton', is written over a horizontal line.

Matthew R. Emberton, Resident Engineer  
#13

File

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JUL 10 2014  
APAC TENNESSEE, INC.



## Project Working Conditions by Schedule Calendars

Month		July		2014		Previous total	
Date	Day	Temp. HI / Lo	Weather Conditions	Precip Amt.	Time	Good / Poor Working Conditions by Calendar	
						1-Ewk	2-PCCP
1	Tue	90/73	Cloudy			Good	Good
2	Wed	88/68	Cloudy	0.25	am/pm	Poor	Poor
3	Thu	79/64	Partly cloudy			Poor	Good
4	Fri	81/61	Partly cloudy			Good	Good
5	Sat	82/61	Clear			Good	Good
6	Sun	86/63	Clear			Good	Good
7	Mon	90/72	Partly cloudy			Good	Good
8	Tue	90/72	Cloudy	0.31	pm	Good	Good
9	Wed	82/72	Cloudy	0.04	am	Poor	Poor
10	Thu	88/70	Partly cloudy			Poor	Good
11	Fri	86/73	Partly cloudy			Good	Good
12	Sat	91/70	Cloudy			Good	Good
13	Sun	93/72	Partly cloudy			Good	Good
14	Mon	95/72	Cloudy	0.55	pm	Good	Good
15	Tue	79/63	Cloudy	0.03	am	Poor	Poor
16	Wed	79/59	Partly cloudy			Poor	Good
17	Thu	75/64	Cloudy	0.15	pm	Good	Good
18	Fri	70/63	Cloudy	0.81	am	Poor	Poor
19	Sat		Cloudy			Poor	Poor
20	Sun						
21	Mon						
22	Tue						
23	Wed						
24	Thu						
25	Fri						
26	Sat						
27	Sun						
28	Mon						
29	Tue						
30	Wed						
31	Thu						
						TOTAL DAYS Charged	



APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

July 30, 2013

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

APAC Tennessee is in receipt of the attached Statement of Time Charged for the Estimate period ending July 20th, 2014 on the noted project. During this period 9 days were charged to the project. APAC does not agree with the assessment of time on July 9<sup>th</sup> and 15th during this period for the following reasons.

Time Charges in accordance with Section 108.06 are subject to specific limitations when the conditions allow the Contractor to effectively utilize 60% of normal forces and equipment to prosecute the work required at the time for at least 60% of normal work hours. During this period the slope preparation and placement of Class 1 aggregate base course were the controlling activities on the CPM schedule for the project. These activities as well as other activities were limited due to the intermittent showers which occurred on the project during normal working hours which prevented critical activities from being performed for 60% of the day. APAC requests that consideration be given for two (2) non-chargeable work day on the project during this period. Should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: B. Boulden - APAC  
M. Carden - APAC  
APAC #3328 -163 file

**Safety First** *Always*

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JUL 23 2014

APAC TENNESSEE, INC.

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

ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT



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

July 21, 2014

Mr. Jim Smith  
Apac-Tennessee, Inc.  
P. O. Box 13427  
Memphis, TN 38113-0427

RE: Statement of Time Charged  
Project Number: BB0105  
Project Name: Forrest City-East (S)  
FAP Number: NHPP-STPR-40-5(153)240 & 9050  
County: St. Francis

Dear Mr. Smith:

During the Estimate Period ending July 20, 2014, time was charged on the above project on the following dates:

Monday July 7, 2014  
Tuesday July 8, 2014  
Wednesday July 9, 2014  
Thursday July 10, 2014  
Friday July 11, 2014  
Monday July 14, 2014  
Tuesday July 15, 2014  
Wednesday July 16, 2014  
Thursday July 17, 2014

Days Charged This Period:	9
Days Charged Through The End Of This Period:	152
Total Contract Time:	140
Percent of Time Used:	108.57%

Please review these time charges. In accordance with subsection 108.06(c) of the Standard Specifications, if you do not file a written notice of disagreement and the reason therefor within ten (10) calendar days from your receipt of this letter, you will be deemed to have accepted the time charged for this period as correct, and no subsequent request for review will be considered.

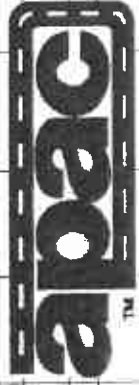
Sincerely,

Matthew R. Emberton, Resident Engineer  
#13

File

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AHTD Job BB0105

# Project Working Conditions by Schedule Calendars

Month	Year	July	2014	Previous total									
				140									
Date	Day	Temp. HI / LO	Weather Conditions	Precip AmL	Time am/pm	Good / Poor Working Conditions by Calendar					Charged Work Days	Total to date Work Days	
						1-Ewk	2-PCCP	3-ACHM	4-Struc	5-T.C.	8-Base		
1	Tue	90/73	Cloudy			Good	Good	Good	Good	Good	Good	1	141
2	Wed	88/68	Cloudy	0.25	am/pm	Poor	Poor	Poor	Poor	Poor	Poor	1	142
3	Thu	79/64	Partly cloudy			Poor	Good	Good	Good	Good	Poor	1	143
4	Fri	81/61	Partly cloudy			Good	Good	Good	Good	Good	Good	0	143
5	Sat	82/61	Clear			Good	Good	Good	Good	Good	Good	0	143
6	Sun	86/63	Clear			Good	Good	Good	Good	Good	Good	0	143
7	Mon	90/72	Partly cloudy			Good	Good	Good	Good	Good	Good	1	144
8	Tue	90/72	Cloudy	0.31	pm	Good	Good	Good	Good	Good	Good	1	145
9	Wed	82/72	Cloudy	0.04	am	Poor	Poor	Poor	Poor	Poor	Poor	1	146
10	Thu	88/70	Partly cloudy			Poor	Good	Good	Good	Good	Poor	1	147
11	Fri	86/73	Partly cloudy			Good	Good	Good	Good	Good	Good	1	148
12	Sat	91/70	Cloudy			Good	Good	Good	Good	Good	Good	0	148
13	Sun	93/72	Partly cloudy			Good	Good	Good	Good	Good	Good	0	148
14	Mon	95/72	Cloudy	0.55	pm	Good	Good	Good	Good	Good	Good	1	149
15	Tue	79/63	Cloudy	0.03	am	Poor	Poor	Poor	Poor	Poor	Poor	1	150
16	Wed	79/59	Partly cloudy			Poor	Good	Good	Good	Good	Poor	1	151
17	Thu	75/64	Cloudy	0.15	pm	Good	Good	Good	Good	Good	Good	1	152
18	Fri	70/63	Cloudy	0.81	am	Poor	Poor	Poor	Poor	Poor	Poor	0	152
19	Sat	77/64	Cloudy			Poor	Poor	Poor	Poor	Poor	Poor	0	152
20	Sun	82/68	Partly cloudy			Good	Good	Good	Good	Good	Good	0	152
21	Mon	86/64	Partly cloudy			Good	Good	Good	Good	Good	Good	1	153
22	Tue	88/66	Clear			Good	Good	Good	Good	Good	Good	1	154
23	Wed	90/70	Clear			Good	Good	Good	Good	Good	Good	1	155
24	Thu	81/64	Clear			Good	Good	Good	Good	Good	Good	1	156
25	Fri	87/66	Clear			Good	Good	Good	Good	Good	Good	1	157
26	Sat											0	157
27	Sun											0	157
28	Mon											0	157
29	Tue											0	157
30	Wed											0	157
31	Thu											0	157
TOTAL DAYS CHARGED												157	

# **BB0105 Direct Project Costs**

		Monthly	Daily	Claim Total for 45 days
<b>Assigned Project Personnel</b>				
John McDonald	Superintendent	\$ 13,958.43	\$ 465.28	\$ 20,937.65
Wayne Nelson	Office Administrator	\$ 10,844.00	\$ 361.47	\$ 16,266.00
John Alford	Lead Forman	\$ 10,410.00	\$ 347.00	\$ 15,615.00
Jeff Payne	Lead Forman	\$ 6,075.00	\$ 202.50	\$ 9,112.50
Charlie Patton	Surveyor	\$ 9,474.00	\$ 315.80	\$ 14,211.00
Chris Wilkins	Surveyor	\$ 9,450.00	\$ 315.00	\$ 14,175.00
Traffic Control Supervisors	2 QTY	\$ 17,520.51	\$ 584.02	\$ 26,280.77
				\$ 116,597.91

<b>Assigned Project Equipment</b>				
Backhoe		\$ 7,500.00	\$ 250.00	\$ 11,250.00
Broom		\$ 7,500.00	\$ 250.00	\$ 11,250.00
Dozer		\$ 10,800.00	\$ 360.00	\$ 16,200.00
Pickup	8 Each @ \$3000 /mo	\$ 24,000.00	\$ 800.00	\$ 36,000.00
Water Truck		\$ 12,000.00	\$ 400.00	\$ 18,000.00
Skid Steer		\$ 9,000.00	\$ 300.00	\$ 13,500.00
Cat Telehandler		\$ 9,000.00	\$ 300.00	\$ 13,500.00
				\$ 119,700.00

<b>MG12-05095 Plant Site Monthly Rent</b>	\$ 2,000.00	\$ 66.67	\$ 3,000.00
<b>Sanyo Plant Site Monthly Rent</b>	\$ 2,000.00	\$ 66.67	\$ 3,000.00
<b>Widner Plant Site Montly Rent</b>	\$ 1,000.00	\$ 33.33	\$ 1,500.00
<b>Hinkle Waste Site Monthly Rent</b>	\$ 2,090.00	\$ 69.67	\$ 3,135.00
<b>Sanyo Office Site Montly Rent</b>	\$ 2,000.00	\$ 66.67	\$ 3,000.00
Utilities	\$ 17,420.68	\$ 580.69	\$ 26,131.02
Internet	\$ 1,948.50	\$ 64.95	\$ 2,922.75
Phone	\$ 1,948.50	\$ 64.95	\$ 2,922.75
			\$ 45,611.52

<b>Contract Bid Items which payment ceased at LD</b>				
Advance Warning Arrow Panel ( 2 Each)		\$ 15.45	\$ 695.25	\$ 1,390.50
Portable Changeable Message Boards (6 Each)	\$ 257.00	\$ 36.71	\$ 1,652.14	\$ 9,912.86
Motorist Assistance Patrol	\$ 75,000.00	\$ 535.71	\$ 24,107.14	\$ 24,107.14
Wrecker Service	\$ 67,000.00	\$ 478.57	\$ 21,535.71	\$ 21,535.71
Portable Camera Assembly (12 Each)	\$ 42,230.00	\$ 301.64	\$ 13,573.93	\$ 162,887.14

**TOTAL Additional Direct Project Costs Due to Extended Project Duration** **\$ 501,742.79**





APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

September 26, 2014

Mr. Matt Emberton, Resident Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 410  
Wynne, AR. 72396

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Matt,

APAC Tennessee requests consideration for payment of direct project costs associated with construction of the noted project due to the additional time required for completion. The attached summary details the costs which APAC incurred on the project and is requesting consideration for payment by the Department.

Thank you for your consideration of this request and should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: B. Boulden - APAC  
M. Carden - APAC  
APAC #3328 -171 file



Safety First Always

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**BB0105 Direct Project Costs**

		Monthly	Daily	Claim Total for 45 days
<b>Assigned Project Personnell</b>				
John McDonald	Superintendent	\$ 13,958.43	\$ 465.28	\$ 20,937.65
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Portable Camera Assembly (12 Each)	\$ 42,230.00	\$ 301.64	\$ 13,573.93	\$ 162,887.14

**TOTAL Additional Direct Project Costs Due to Extended Project Duration** **\$ 501,742.79**

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ARKANSAS STATE HIGHWAY  
AND  
TRANSPORTATION DEPARTMENT

RECEIVED  
OCT 15 2014

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



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

P.O. Box 410  
Wynne, AR 72396  
October 13, 2014

APAC-Tennessee, Inc.  
Attn: Mr. Jim Smith  
P.O. Box 13427  
Memphis, TN 38113-0427

RE: Direct Project Cost  
Job No. BB0105  
FAP No. NHPP-STPR-40-5(153)240 & 9050  
Forrest City -- East (F)  
St. Francis

Dear Mr. Smith,

Please reference your request dated September 26, 2014 requesting consideration for payment of direct project costs associated with the above referenced project.

As noted in your request, the Department has reviewed and denied 40 of the 45 days disputed, with the remaining 5 days associated with the overrun of Portland Cement Concrete Paving (PCCP) currently under review. Per Subsection 109.03 of the Standard Specifications, "the Contractor shall accept payment in full at contract unit prices, for actual quantities of work accomplished, except as provided in Subsection 104.02 or 104.03, and no allowances will be made for anticipated profits, organization, or overhead expense, or interest".

Therefore, as the fore mentioned days have been denied and the overrun of PCCP has been paid, no additional compensation is warranted. Please call if you have any questions or concerns.

Sincerely,

Matt Emberton  
Resident Engineer #13

c: Construction  
District 1 Engineer  
File  
Field



APAC-Tennessee, Inc.

Post Office Box 13427  
1210 Harbor Avenue  
Memphis, TN 38113-0427  
Tel: (901) 947-5600  
Fax: (901) 947-5699

November 13, 2014

Mr. Ralph Hall, Chief Engineer  
Arkansas Highway & Trans. Dept.  
P. O. Box 2261  
Little Rock, AR. 72203-2261

Re: AHTD Job BB0105  
Forrest City - East (F)  
F.A.P. NHPP-STPR-40-5(153)240 & 9050  
St. Francis, County

Dear Ralph,

In accordance with the requirements of the Standard Specifications, APAC Tennessee appeals to the Chief Engineer for payment of direct project costs associated with construction of the noted project due to the additional time required for completion. This request has been addressed to the Resident Engineer on September 26<sup>th</sup> and denied by the attached letter dated October 13<sup>th</sup>, 2014. The attached summary details the costs which APAC incurred on the project and is requesting consideration for payment by the Department. These costs do not include anticipated profits, organization, overhead expense or interest but are costs attributed directly to the project as a result of the additional time required for construction.

Thank you for your consideration of this request and should you have any questions or need additional information please contact this office.

Sincerely,

Jim W. Smith P.E.  
Engineering / QC Manager

Cc: B. Boulden - APAC  
M. Carden - APAC  
APAC #3328 -176 file

Safety First *Always*

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MAY 22 2015

**BEFORE THE ARKANSAS CLAIMS COMMISSION**

RECEIVED

**APAC-TENNESSEE, INC.**

**CLAIMANT**

**V.**

**NO. 15-0610-CC**

**ARKANSAS STATE HIGHWAY COMMISSION  
AND ARKANSAS HIGHWAY AND TRANSPORTATION  
DEPARTMENT**

**RESPONDENTS**

**CLAIMANT'S FIRST SET OF INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS  
TO RESPONDENTS**

Claimant, APAC-Tennessee, Inc. pursuant to the Arkansas Rules of Civil Procedure, propounds the following First Set of Interrogatories and Requests for Production of Documents to Respondents, to be answered in writing, under oath, within the time allowed by the ARCP. McMurry also requests the production of the documents requested within the time allowed by the ARCP.

**INTERROGATORY NO. 1:** State the names, positions and business addresses of all individuals who contributed information, opinions or both to the responses to these Interrogatories and Request for Production of Documents. For each individual so identified state the response or responses to which they contributed.

**INTERROGATORY NO. 2:** Please list the name, address, and telephone number of each and every individual whom you intend to call as a witness at the trial of this matter. For each such individual listed, please state the nature and substance of that person's information, knowledge, and/or belief.

**INTERROGATORY NO. 3:** Please list and describe each and every chart, graph, documents,

- i) Their educational background and degrees;
- ii) Their employment history at the AHTD;
- iii) Their role in the decision to require substantial completion in not more than 150 working days;
- iv) The documents, records, data and methodology they consulted, utilized or relied upon in establishing the maximum number of working days allowed on Job BB0105.

**REQUEST FOR PRODUCTION NO. 3:** Produce the documents, records, data and methodology descriptions (if any) identified in response to Interrogatory 7 (b) (iv).

**INTERROGATORY NO. 8:** (a) State the names, addresses, phone numbers and job descriptions of each individual who participated in the decision and process of calculating the daily road user cost for Job BB0105. (b) For each individual identified in your response to subsection (a) state or identify:

- i) Their educational background and degrees;
- ii) Their employment history at the AHTD;
- iii) Their role in the calculation of daily road user costs;
- iv) The documents, records, data and methodology they consulted, utilized or relied upon in establishing the maximum number of working days allowed on Job BB0105.

**REQUEST FOR PRODUCTION NO. 4:** Produce the documents, records, data and methodology descriptions (if and) identified in response to Interrogatory 8 (b) (iv).

**REQUEST FOR PRODUCTION NO. 5:** (a) Produce all written and electronic communications between APAC and the AHTD concerning Job BB0105. (b) Produce all written and electronic communication between or among any two or more AHTD employees or representatives concerning Job BB0105.

**INTERROGATORY NO. 9:** (a) Identify each AHTD employee who conducted or participated in a schedule impact analysis of Change Order 18. (b) Produce all notes or analyses of the Change Order 18 impact prepared at the time by the employees identified in response to this



Interrogatory.

**INTERROGATORY NO. 10:** (a) Identify each AHTD employee who conducted or participated in a schedule impact analysis of the time extension request attached as Exhibit D, pages one and two, to the Complaint. (b) Produce all notes or analyses of the impact prepared at that time by the employees identified in response to this Interrogatory.

**INTERROGATORY NO. 11:** (a) AHTD has withheld over \$ 3,000,000.00 in alleged road user costs from funds otherwise payable to APAC. State how this \$ 3,000,000.00 would be accounted for in AHTD's accounting records if Claimant had not filed a claim in this case. (b) State how this \$ 3,000,000.00 would have then been utilized by the AHTD.

**INTERROGATORY NO. 12:** (a) Identify each AHTD employee who participated in the analysis and decision to deny APAC's request for a four day extension of time due to weather conditions in January, 2014. (b) Produce all notes and analyses by the AHTD of the APAC request for 4 days in January, 2014 due to weather prepared by the employees identified in response to this Interrogatory.

**INTERROGATORY NO. 13:** (a) Identify each AHTD employee participated in the analysis and decision to deny APAC's request for a time extension due to weather conditions in October, 2013. (b) Produce all notes and analyses by the AHTD of the APAC request for weather days in October, 2013.

**INTERROGATORY NO. 14:** (a) Identify each AHTD employee participated in the analysis and decision to deny APAC's request for a time extension due to weather conditions in June and July, 2014. (b) Produce all notes and analyses by the AHTD of the APAC request for weather days in June and July, 2014.


**INTERROGATORY NO. 15:** (a) Identify each AHTD employee who participated in the review and approval of the baseline schedule and schedule updates. (b) Describe the role of each AHTD participant so identified. (b) Produce all notes or analyses of each participant prepared during the process of analyzing the baseline and updates for approval or rejection purposes.

  
Jack East III  
2725 Cantrell Road, Suite 202  
Little Rock, AR 72202  
(501) 372-3278  
Bar ID No. 75-036  
[jack@jackeastlaw.com](mailto:jack@jackeastlaw.com)

**Certificate of Service**

I, Jack East III, Attorney at Law, do hereby certify that a true and correct copy of the foregoing has been served upon by U.S. Mail, postage prepaid this 20th day of May, 2015, addressed to:

Rita Looney, Chief Counsel  
Arkansas Highway & Transportation Dept.  
P.O. Box 2261  
Little Rock, AR 72203-2261

  
Jack East III

JUN 12 2015

ARKANSAS STATE CLAIMS COMMISSION

RECEIVED

APAC- TENNESSEE, INC

CLAIMANT

VS.

CLAIM NO. 15-0610-CC

ARKANSAS STATE HIGHWAY  
COMMISSION &  
ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT

RESPONDENTS

ANSWER

**COME THE RESPONDENTS**, and for their Answer to the Complaint herein state:

1. Respondents admit that on or about May 23, 2013, the Arkansas State Highway Commission ("ASHC") and APAC entered into a contract for the Project known as Job BB0105.
2. Respondents specifically deny that the Claimant is entitled to the requested amount of \$4,396,742.00 in its Complaint.
3. In Claimant's Response to Respondent's Motion to Dismiss, Claimant withdrew its request of "Extended Job Direct Costs for Delay Period" in the amount of \$501,742.00.
4. Respondents further deny that Claimant is entitled to its present Claim in the amount of \$3,895,000.00.
5. Respondents deny that Claimant was wrongfully charged working days and further deny that Claimant is entitled to any time adjustments under the facts of this case and terms of the Contract.

6. Respondents deny APAC's claim for overhead expenses as contrary to the terms of the contract.

7. Claimant failed to adhere to the Contract provisions it willingly accepted when it entered into this contract and Respondents deny APAC's attempt to rewrite the contract terms and conditions.

**WHEREFORE**, Respondents specifically deny APAC's claim on this contract in its entirety. Claimant's claim should be denied and dismissed.

By 

Rita S. Looney, Chief Legal Counsel  
Ark. Bar No. 85091  
Attorney for Respondent  
Post Office Box 2261  
Little Rock, AR 72203-2261  
(501) 569-2276

**CERTIFICATE OF SERVICE**

I, Rita Looney, Attorney for Respondents, certify that I have placed a true and correct copy of the foregoing 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 12th day of June 2015.

  
Rita S. Looney

ARKANSAS STATE CLAIMS COMMISSION

JUN 26 2015

APAC- TENNESSEE, INC

CLAIMANT  
RECEIVED

VS

CLAIM NO. 15-0610-CC

ARKANSAS STATE HIGHWAY  
COMMISSION &  
ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT

RESPONDENTS

**RESPONDENT'S ANSWERS TO CLAIMANT'S INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

**INTERROGATORY NO. 1:** State the names, positions and business addresses for all individuals who contributed information, opinions or both to the responses to these Interrogatories and Requests for Production of Documents. For each individual so identified state the response or responses to which they contributed.

**ANSWER:** Rex Vines, District One Engineer, 2701 U.S. Highway 64, Wynne, Arkansas 72396. Mr. Vines contributed to all the responses herein. William Cheatham, District One Maintenance Engineer, 2701 U.S. Highway 64, Wynne, Arkansas 72396. Mr. Cheatham contributed to all the responses herein. Matthew Emberton, Resident Engineer, 2320 W. Union Avenue, Wynne, Arkansas 72396. Mr. Emberton contributed to all the responses herein. Rita S. Looney, Chief Legal Counsel, 10324 Interstate 30, Little Rock, Arkansas 72203. Ms. Looney contributed to all the responses herein. Mark Umeda, Staff Attorney, 10324 Interstate 30, Little Rock, AR 72203. Mr. Umeda contributed to all the responses herein. Kevin Thorton, Assistant Chief Engineer – Planning, 10324 Interstate 30, Little Rock, AR 72203. Mr. Thornton helped answer Interrogatory Number 11.

**INTERROGATORY NO. 2:** Please list the name, address, and telephone number of each and every individual who you intend to call as a witness at the trial of this matter. For each individual listed, please state the nature and substance of that person's information, knowledge, and/or belief.

**ANSWER:** Matt Emberton, 2320 W. Union Avenue, Wynne, Arkansas 72396. Mr. Emberton was the Resident Engineer overseeing the project. He has knowledge of Job BB0105 and the facts surrounding the claim filed herein. Aaron Vowell, 1169 South Highway 119, Osceola, AR 72370. Mr. Vowell was the Assistant Resident Engineer overseeing the project. He has knowledge of Job BB0105 and the facts surrounding the claim filed herein.

**INTERROGATORY NO. 3:** Please list and describe each and every chart, graph, documents (sic)

- i) Their educational background and degrees;
- ii) Their employment history at the AHTD;
- iii) Their role in the decision to require substantial completion is not more than 150 working days;
- iv) The documents, records, data and methodology they consulted, utilized or relied upon in establishing the maximum number of working days allowed on Job BB0105. (sic)

**ANSWER:** Respondent objects to Interrogatory No. 3 on the basis that it is overly broad, ambiguous, and vague in that it requests "each and every chart, graph, document."

**REQUEST FOR PRODUCTION NO. 3:** Produce the documents, records, data and methodology descriptions (if any) identified in response to Interrogatory 7(b)(iv).

**ANSWER:** Respondent's physical and electronic copy of Claimant's Interrogatories and Requests for Production does not contain Interrogatory 7(b)(iv), and therefore, Respondent cannot answer this request.

**INTERROGATORY NO. 8:** (a) State the names, addresses, phone numbers and job descriptions of each individual who participated in the decision and process of calculating the daily road user cost for Job BB0105. (b) For each individual identified in your response to subsection (a) state or identify:

- i) Their educational background and degrees;
- ii) Their employment history at the AHTD;
- iii) Their role in the calculation of daily road user costs;
- iv) The documents, records, data and methodology they consulted, utilized or relied upon in establishing the maximum number of working days allowed on Job BB0105.

**ANSWER:** (a) David Siskowski, 10324 Interstate 30, Little Rock, AR 72203. (b) (i) Mr. Siskowski has a bachelor's degree in civil engineering from the University of Arkansas in Fayetteville. He is a Registered Professional Engineer. (ii) Mr. Siskowski was hired as a Civil Engineer in Planning and Research in April 2009. In April 2010, he was promoted to Engineer I and then Engineer II a year later. In January 2012, he was promoted to the position of Transportation Engineer and then to Project Development Engineer in Program and Contracts in April 2013. He was then promoted to Programs and Contracts Engineer II in February 2014. He is currently a Staff Program Support Engineer in Program Management. (iv) Respondent objects to this interrogatory as it calls for the production of privileged information. Releasing this information may give Claimant an

unfair bidding advantage. Further, Mr. Siskowski did not establish the maximum working days for the contract at issue.

**REQUEST FOR PRODUCTION NO. 4:** Produce the documents, records, data and methodology descriptions (if and) identified in response to Interrogatory 8(b)(iv).

**ANSWER:** Plaintiff objects to this Interrogatory to the extent that it calls for production privileged information. Releasing this information would give an unfair bidding advantage to Claimant.

**REQUEST FOR PRODUCTION NO. 5:** Produce all written and electronic communications between APAC and the AHTD concerning Job BB0105. (b) Produce all written and electronic communication between or among any two or more AHTD employees or representatives concerning Job BB0105.

**ANSWER:** Respondent objects to section (a) of this Request for Production to the extent it seeks documents or information that are readily or more accessible to Claimant from Claimant's own files or from documents or information in Defendant's possession. Responding to this request would be oppressive, unduly burdensome, and unnecessarily expensive. (b) This information is contained in the work file which is quite voluminous. This information can be made available for inspection and copying at the request of Claimant.

**INTERROGATORY NO. 9:** (a) Identify each AHTD employee who conducted or participated in a schedule impact analysis of Change Order 18. (b) Produce all notes or analyses of the Change Order 18 impact prepared at the time by the employees identified in response to this Interrogatory.



**ANSWER:** (a) Ray Woodruff, Will Cheatham, Jerry Trotter, Matt Emberton, and Aaron Vowell. (b) Attached is a spreadsheet that shows the impact of Change Order 18. More information is contained in the voluminous work file which can be made available for inspection and copying.

**INTERROGATORY NO. 10:** (a) Identify each AHTD employee who conducted or participated in a schedule impact analysis of the time extension request attached as Exhibit D, pages one and two, of the Complaint. (b) Produce all notes or analyses of the impact prepared at that time by the employees identified in response to this Interrogatory.

**ANSWER:** (a) Ray Woodruff, Will Cheatham, Jerry Trotter, Matt Emberton, and Aaron Vowell. (b) Attached is a spreadsheet that shows the impact of Change Order 18. All additional information is contained in the work file which can be made available for inspection and copying.

**INTERROGATORY NO. 11:** (a) AHTD has withheld over \$3,000,000.00 in alleged road user costs from funds otherwise payable to APAC. State how this \$3,000,000.00 would be accounted for in AHTD's accounting records if Claimant had not filed a claim in this case. (b) State how this \$3,000,000.00 would have been utilized by the AHTD.

**ANSWER:** (a) The \$3,000,000.00 in road user costs reduces the contract cost by the same amount. (b) The money is withheld from payment to APAC, and the Arkansas State Highway and Transportation Department does not seek reimbursement for these funds from the Federal government. Therefore, the \$3,000,000.00 in road user costs reduces the contract cost by the same amount.

**INTERROGATORY NO. 12:** (a) Identify each AHTD employee who participated in the analysis and decision to deny APAC's request for a four day extension of time due to

weather conditions in January, 2014. (b) Produce all notes and analyses by the AHTD of the APAC request for 4 days in January, 2014 due to weather prepared by the employees identified in the response to this Interrogatory.

**ANSWER:** (a) Ray Woodruff, Will Cheatham, Jerry Trotter, Matt Emberton, and Aaron Vowell. (b) This information is contained in the work file which can be made available for inspection and copying.

**INTERROGATORY NO. 13:** (a) Identify each AHTD employee who participated in the analysis and decision to deny APAC's request for a time extension due to weather conditions in October, 2013. (b) Produce all notes and analyses by the AHTD of the APAC request for weather days in October, 2013.

**ANSWER:** (a) Ray Woodruff, Will Cheatham, Jerry Trotter, Matt Emberton, and Aaron Vowell. (b) This information is contained in the work file which can be made available for inspection and copying.

**INTERROGATORY NO. 14:** (a) Identify each AHTD employee who participated in the analysis and decision to deny APAC's request for a time extension due to weather conditions in June and July, 2014. (b) Produce all notes and analyses by the AHTD of the APAC request for weather days in June and July, 2014.

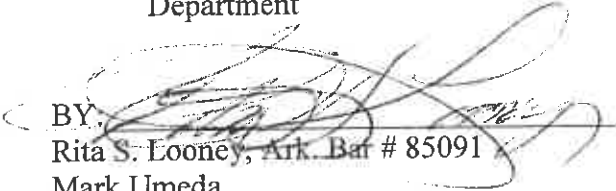
**ANSWER:** (a) Ray Woodruff, Will Cheatham, Jerry Trotter, Matt Emberton, and Aaron Vowell. (b) This information is contained in the work file which can be made available for inspection and copying.

**INTERROGATORY NO. 15:** (a) Identify each AHTD employee who participated in the review and approval of the baseline schedule and schedule updates. (b) Describe the role each AHTD participate (sic) so identified. (b)(sic) Produce all notes or analyses of

each participant prepared during the process of analyzing the baseline and updates for approval or rejection purposes.

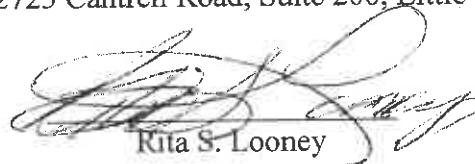
**ANSWER:** (a) Danny Harris, Steve Frisbee, Ray Woodruff, and Jerry Trotter. (b) All the individuals reviewed the schedule in accordance with the contract terms and specifications. (b) Any analysis performed on the schedule will be in the work file which can be made available for inspection and copying.

Respectfully submitted,  
Arkansas State Highway Commission &  
Arkansas State Highway and Transportation  
Department

BY:   
Rita S. Looney, Ark. Bar # 85091  
Mark Umeda  
Chief Legal Counsel  
Arkansas State Highway and Transportation Department  
P.O. 2261  
Little Rock, AR 72203

**CERTIFICATE OF SERVICE**

I, Rita Looney, 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 June 2015.

  
Rita S. Looney

JUN 30 2015

**BEFORE THE ARKANSAS CLAIMS COMMISSION**

RECEIVED

**APAC-TENNESSEE, INC.**

**CLAIMANT**

**V.**

**NO. 15-0610-CC**

**ARKANSAS STATE HIGHWAY COMMISSION  
AND ARKANSAS HIGHWAY AND TRANSPORTATION  
DEPARTMENT**

**RESPONDENTS**

**CLAIMANT'S SECOND SET OF INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS  
TO RESPONDENTS**

Claimant, APAC-Tennessee, Inc. pursuant to the Arkansas Rules of Civil Procedure, propounds the following Second Set of Interrogatories and Requests for Production of Documents to Respondents, to be answered in writing, under oath, within the time allowed by the ARCP. APAC also requests the production of the documents requested within the time allowed by the ARCP.

**INTERROGATORY NO. 1:** Please list and describe each and every chart, graph, documents, exhibit, and/or any type of physical or real evidence/exhibit to be displayed and/or introduced at trial. For such item listed, please state the name and address of the custodian of that item.

**REQUEST FOR PRODUCTION NO. 1:** Attach to your response a copy of each and every document identified in Answer to Interrogatory No. 1.

**INTERROGATORY NO. 2:** Do you intend to call any individual as an expert witness? If so, please state that person's name, phone number, and address. Additionally, please provide all information necessary to comply with the disclosure requirements of Rule 26(b) (4) of the Arkansas Rules of Civil Procedure, including:

- a. Expert qualifications (CV or resume may be attached);
- b. All treatises, texts, or resource materials to be relied on by the expert;
- c. Identification of all reports or written work of the expert in connection with this case;
- d. A summary of the facts or opinion to which the expert is expected to testify, and;
- e. A summary of the grounds for each opinion to be offered.

**INTERROGATORY NO. 3:** State the names, addresses and phone numbers of every Arkansas Highway and Transportation Department inspector on AHTD Job No. BB0105. Describe the primary duties of each inspector, and the dates each was present at the job site during construction.

**INTERROGATORY NO. 4:** Identify each diary or daily record made or kept by the AHTD concerning Job BB0105 and the custodians of these diaries and daily records.

**REQUEST FOR PRODUCTION NO. 2:** Produce the diaries and daily records in electronic format.

**INTERROGATORY NO. 5:** (a) State the names, addresses, phone numbers and job descriptions of each individual who participated in the process and decision to require completion of Job BB0105 in 150 working days as specified in the Special Provisions. (b) For each individual identified in your response to subsection (a) state or identify:

- i) Their educational background and degrees;
- ii) Their employment history at the AHTD;
- iii) Their role in the decision to require substantial completion in not more than 150 working days;
- iv) The documents, records, data and methodology they consulted, utilized or relied upon in establishing the maximum number of working days allowed on Job BB0105.

**REQUEST FOR PRODUCTION NO. 3:** Produce the documents, records, data and methodology descriptions (if any) identified in response to Interrogatory 5 (b) (iv).

  
Jack East III  
2725 Cantrell Road, Suite 202  
Little Rock, AR 72202  
(501) 372-3278  
Bar ID No. 75-036  
[jack@jackeastlaw.com](mailto:jack@jackeastlaw.com)

**Certificate of Service**

I, Jack East III, Attorney at Law, do hereby certify that a true and correct copy of the foregoing has been served upon the following by hand delivery this 30th day of June, 2015, addressed to:

Rita Looney, Chief Counsel  
Arkansas Highway & Transportation Dept.  
P.O. Box 2261  
Little Rock, AR 72203-2261

  
Jack East III

ARKANSAS STATE CLAIMS COMMISSION

APAC- TENNESSEE, INC

RECEIVED  
CLAIMANT

VS

CLAIM NO. 15-0610-CC

ARKANSAS STATE HIGHWAY  
COMMISSION &  
ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT

RESPONDENTS

**RESPONDENT'S ANSWERS TO CLAIMANT'S 2<sup>ND</sup> SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

**INTERROGATORY NO. 1:** Please list and describe each and every chart, graph, documents, exhibit, and/or any type of physical or real evidence/exhibit to be displayed and/or introduced at trial. For such item listed, please state the name and address of the custodian of that item.

**ANSWER:** These items have not yet been identified.

**REQUEST FOR PRODUCTION NO. 1:** Attach to your response a copy of each and every document identified in Answer to Interrogatory No. 1.

**ANSWER:** Not applicable.

**INTERROGATORY NO. 2:** Do you intend to call any individual as an expert witness?

If so, please state that person's name, phone number, and address. Additionally, please provide all information necessary to comply with the disclosure requirements of Rule 26(b)(4) of the Arkansas Rules of Civil Procedure, including:

- a. Expert qualifications (CV or resume may be attached);
- b. All treatises, texts, or resource materials to be relied on by the expert;
- c. Identification of all reports or written work of the expert in connection with this case;

d. A summary of the facts or opinions to which the expert is expected to testify, and;

e. A summary of the grounds for each opinion to be offered.

**ANSWER:** Respondent does not anticipate calling any expert witnesses at this time.

**INTERROGATORY NO. 3:** State the names, addresses and phone numbers of every Arkansas Highway and Transportation Department inspector on AHTD Job No. BB0105. Describe the primary duties of each inspector, and the dates each was present at the job site during construction.

**ANSWER:** Please see attached spreadsheet labeled, BB0105 Int 3.

**INTERROGATORY NO. 4:** Identify each diary or daily record made or kept by AHTD concerning Job BB0105 and the custodian of these dairies and daily records.

**ANSWER:** The daily work reports are created by the Resident Engineer, Matt Emberton, for Job BB0105 and are stored by the Arkansas State Highway and Transportation Department.

**REQUEST FOR PRODUCTION NO. 2:** Produce the diaries and daily records in electronic format.

**ANSWER:** Please see attached.

**INTERROGATORY NO. 5:** (a) State the names, addresses, phone numbers and job descriptions of each individual who participated in the process and decisions to require completion of Job BB0105 in 150 working days as specified in the Special Provisions.

(b) For each individual identified in your response to subsection (a) state or identify:

i) Their education background and degrees;

ii) Their employment history at the AHTD;



iii) Their role in the decision to require substantial completion in not more than 150 working days;

iv) The documents, records, data and methodology they consulted, utilized or relied upon in establishing the maximum number of working days allowed on Job BB0105.

**ANSWER:** (a) Linda S. Gunn, P.E., P.O. Box 2261, Little Rock, AR 72203, (501) 569-2533, Staff Design Engineer.

(b)(i) Bachelor of Science (1970) and Bachelor of Science (1990) from the University of Arkansas at Little Rock.

b(ii) Ms. Gunn started working for the Arkansas State in January 1992 as a Civil Engineering Technician in the Construction Division. In 1994, Ms. Gunn was promoted to Civil Engineer I and transferred to Roadway Design and worked on general design. Ms. Gunn was then promoted to Design Engineer in February 1995 and then to Advanced Design Engineer in April 1999. In March 2003, Ms. Gunn was promoted to Senior Design Engineer and became the Assistant Section Head of Urban Design. She was then promoted to Staff Design Engineer and became Section Head of Urban Design in June 2011. In 2014, Ms. Gunn became the Section Head of Estimates.

b(iii) Ms. Gunn was responsible for the development of the contract time maximum show in the project documents. She also created the A+C Method Special Provision for the contract.

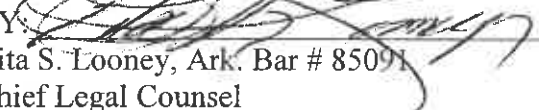
b(iv) Respondent objects to this Interrogatory as it seeks information that is confidential and calls for the production of privileged information. Releasing this information may give Claimant an unfair bidding advantage. Further, Claimant bid less

than the maximum days allowed in the contract. Thus, the information sought is not reasonably calculated to lead to discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 3:** Produce the documents, records, data and methodology descriptions (if any) identified in response to Interrogatory 5(b)(iv).

**ANSWER:** Please see Respondent's objection to their answer to Interrogatory 5(b)(iv).

Respectfully submitted,  
Arkansas State Highway Commission &  
Arkansas State Highway and Transportation  
Department

BY:   
Rita S. Looney, Ark. Bar # 85091  
Chief Legal Counsel  
Mark Umeda, Ark. Bar #2007-285  
Staff Attorney  
Arkansas State Highway and Transportation Department  
P.O. 2261  
Little Rock, AR 72203

**CERTIFICATE OF SERVICE**

I, Rita Looney, 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 30<sup>th</sup> day of July 2015.

  
Rita S. Looney

**ARKANSAS STATE CLAIMS COMMISSION**

Arkansas  
State Claims Commission  
AUG 18 2015

RECEIVED

**APAC-TENNESSEE, INC**

**CLAIMANT**

**VS.**

**CLAIM NO. 15-0610-CC**

**ARKANSAS STATE HIGHWAY  
COMMISSION & ARKANSAS  
STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT**

**RESPONDENTS**

**FIRST AMENDMENT TO COMPLAINT**

Comes now Claimant, APAC-Tennessee, Inc. (APAC), and for its First Amendment to Complaint against the Arkansas State Highway Commission (ASHC) and Arkansas Highway and Transportation (AHTD) states:

**Parties and Jurisdiction**

1. APAC is a corporation organized and existing under laws of Delaware. APAC is authorized to do business in Arkansas.
2. ASHC and AHTD (Respondents) are agencies of the State of Arkansas.
3. The Claims Commission has jurisdiction to hear and decide this claim for damages against the Respondents agencies.

**Factual Background**

4. On February 8, 2012 the ASHC and AHTD opened bids for a construction project (Job 110543) described as follows:

THE PURPOSE OF THIS PROJECT IS TO REPLACE THREE BRIDGES OVER INTERSTATE 40 NEAR FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT

CONSISTS OF GRADING, AGGREGATE BASE COURSE, PORTLAND CEMENT CONCRETE BASE, ACHM BASE, BINDER AND SURFACE COURSES, MINOR DRAINAGE STRUCTURES, THREE CONTINUOUS COMPOSITE W-BEAM UNIT BRIDGES (TOTAL SPAN 993.20'), EROSION CONTROL ITEMS AND MISC. ITEMS.

One of the three bridges to be replaced under the proposal was the Arkansas Highway 38 Bridge for traffic to Widener and Hughes, Arkansas.

5. Job 110543's bid specifications required bidders to bid the time of performance on an "A+C" basis, authorizing the AHTD to withhold from sums otherwise due the contractor the sum of \$9,500.00 per day based upon the "daily road user cost" analysis as calculated by the Department, allegedly based upon traffic counts. The bid specifications also included a provision for liquidated damages.

6. After bid opening for Job 110543 the AHTD and ASHC rejected all bids. Job 110543 was readvertised for bids, and bids were received in April, 2012, however, all bids were again rejected. It was then determined by AHTD that the Highway 38 Bridge work would be included in another upcoming project.

7. On or about May 23, 2013 the ASHC and APAC entered into a contract (Contract) for the Project known as Job BB0105. The scope of work of Job BB0105 was described by the ASHC and AHTD as follows:

THE PURPOSE OF THIS PROJECT IS TO RECONSTRUCT THE MAIN LANES FOR 7.876 MILES ON I-40 AT FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT CONSISTS OF TWO PAVING ALTERNATES: ALTERNATE NO. 1-ASPHALT PAVEMENT LANES WITH ASPHALT SHOULDERS AND ALTERNATE NO. 2-PCC PAVEMENT LANES WITH PCC SHOULDERS, AGGREGATE BASE COURSE, MINOR DRAINAGE STRUCTURES, GUARDRAIL, MAINTENANCE OF TRAFFIC ITEMS, WIRE FENCE, WIRE ROPE SAFETY FENCE, EROSION CONTROL AND MISC. ITEMS.

Job BB0105 was awarded to APAC per sealed bid procedures on an "A + C" basis requiring bidders to bid on time of performance. APAC bid 140 days. The Contract included a provision that authorized the Department to withhold from amounts otherwise due APAC the sum of \$100,000.00 per day and another \$2,500.00 per day as liquidated damages should APAC not finish the work within 140 days as extended by

AHTD. Attached to the Complaint as Exhibit A, and incorporated herein by reference, are the Contract, the Schedule of Values, and the Special Provisions regarding Progress and Prosecution, site use penalties and the Liquidated Damages Clause. The "disincentive" of \$100,000.00 per day was based upon an alleged "daily road user cost" for traffic on I-40 as calculated by AHTD. While not mentioned in the above scope of work, the Highway 38 Bridge replacement work was included in the Contract. (That Highway 38 Bridge replacement work was part of the work included in the Job 110543 proposal.) The remainder of the Contract documents are not attached because they are voluminous but they will be made available on request.

8. APAC commenced work on Job BB0105 in timely fashion. APAC substantially completed all Job BB0105 work on August 23, 2014, some 185 days after time began to run per Contract conditions.

9. During performance of the work APAC encountered conditions and weather entitling it to time extensions for main lane work as follows:

- a) During construction of the I-40 main lanes APAC encountered a Portland Cement base course averaging 9 inches full depth rather than the Plan indicated six inch depth at I-40 bridge ends. This required additional work, materials and time to complete. AHTD increased the quantities of pay items per Change Order 18, attached to the Complaint as Exhibit B, and incorporated by reference, but denied APAC's time extension request of nine days. Attached to the Complaint and incorporated by reference as Exhibit C is correspondence between APAC, the Resident Engineer and the Chief Engineer indicating APAC's request for extension and the denial of that request.
- b) During construction APAC was required to cold mill existing asphalt pavement to expose existing concrete pavement. Plans indicated APAC would then replace the asphalt pavement in uniform lifts to reach finish pavement, however, when the concrete pavement was exposed it was unexpectedly and extremely uneven, requiring additional "lifts", materials,

labor, and especially time, to resolve this unknown condition. APAC requested, and was entitled to receive, a time extension of 13 days due to this unforeseen condition. Attached to the Complaint as Exhibit D, and incorporated by reference, are true copies of APAC's request and AHTD's repeated denial of the time extension.

- c) In January, 2014 APAC encountered four days it intended to work, but could not due to weather conditions. APAC requested a time extension of 4 days but that request was denied as reflected by Complaint Exhibit E, incorporated herein by reference.
- d) In October, 2013 APAC requested, but was denied, an 11 day extension. Such extension should have been granted due to weather conditions preventing work on items critical to the timely completion of the work. Attached as Complaint Exhibit F, and incorporated by reference, are true copies of correspondence reflecting APAC's request and AHTD's refusal of them.
- e) In July, 2014 APAC requested, but was denied, a 3 day extension. Such extension should have been granted due to weather conditions preventing work on items critical to the timely completion of the work. Attached as Complaint Exhibit G, and incorporated by reference, are true copies of correspondence reflecting APAC's request, and AHTD's refusal.

10. APAC has fully completed all Project work. APAC substantially completed all main lane and Hwy. 38 bridge work on August 23, 2014. The time of performance was not extended at all. Another five day extension request is pending. AHTD has wrongfully charged APAC with thirty-eight days of site use penalties and liquidated damages. Time extensions of forty days should have been allowed by the AHTD per Contract Standard Specifications and Special Provisions.

11. "Site use charges" are a penalty under the law of Arkansas because they enrich the AHTD by penalizing APAC without representing any recovery of costs incurred by

the AHTD. Thus, the assessment of these penalties for 38 days at \$100,000.00 per day should be declared void as against public policy.

12. In the alternative, the \$100,000.00 per day "site use charge" and \$2,500.00 per day liquidated damages should only apply to the I-40 main lane work, for which APAC should have received time extensions of at least 40 days.

### **Relief Requested**

13. APAC requests it be awarded 38 days wrongfully charged at \$ 102,500.00 per day - \$ 3,895,000.00.

14. The \$ 3,895,000.00 in funds withheld by the AHTD represent money earned by APAC for work and labor performed by APAC and materials furnished by APAC. Such withheld funds are, and have been, capable of exact computation since AHTD wrongfully appropriated said earned funds instead of paying APAC for its work. Under these circumstances APAC is entitled to interest at the rate of 5.75% from September 6, 2014 until entry of award. Arkansas Constitution, Art. 2, §22; *Love v. H.F. Construction Co., Inc.*, 261 Ark. 831, 552 S.W. 2d 15 (1977- claims of contractor capable of ascertainment with reasonable degree of certainty subject to prejudgment interest); *City of Mow v. Cline-Frazier, Inc.*, 26 Ark. App. 138, 761 S.W. 2d 615 (Ark. App. 1988); *Wilson V. City of Fayetteville*, 310 Ark. 154, 835 S.W. 2d 837, modified on reh'g, 310 Ark. 164-A, 838 S.W. 2d 366 (1992).

15. APAC reserves the right to amend this complaint as allowed by the ARCP.

WHEREFORE, APAC requests the Commission recommend that APAC be awarded the sum of \$ 3,895,000.00 , interest as allowed by law and all other appropriate relief.

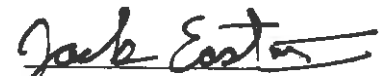
  
\_\_\_\_\_  
Jack East III

2725 Cantrell Rd Suite 202  
Little Rock, AR 72202  
(501)372-3278  
Bar ID No. 75-036

**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 18 day of August, 2015, addressed to:

Rita Looney, Chief Counsel  
Arkansas Highway & Transportation Dept.  
P.O. Box 2261  
Little Rock, AR 72203-2261

  
\_\_\_\_\_  
Jack East III



## Jack East

---

**From:** Looney, Rita S. <Rita.Looney@ahtd.ar.gov>  
**Sent:** Wednesday, November 4, 2015 2:13 PM  
**To:** Jack East  
**Cc:** Umeda, Mark C.; Blakley, Sharon  
**Subject:** FW: APAC Claim Documents needed  
**Attachments:** BB0105CPM signed consult agrmnt.pdf

Jack:

See information you requested, attached and below.

Item 1 Attached.

Item 2 Information below.

RITA S. LOONEY, CHIEF LEGAL COUNSEL  
ARKANSAS HIGHWAY AND TRANSPORTATION DEPARTMENT P.O. BOX 2261 LITTLE ROCK,  
ARKANSAS 72203-2261 Direct Line: 501.569-2276

-----Original Message-----

**From:** Looney, Rita S.  
**Sent:** Wednesday, November 04, 2015 11:07 AM  
**To:** Trotter, Jerry W. - Construction  
**Cc:** Umeda, Mark C.; Blakley, Sharon  
**Subject:** APAC Claim Documents needed

We need to provide ASAP (TODAY) to Jack East:

1. a copy of AHTD contract for Schwartz's expert review and testimony: this should include \$\$

Attached.

2. The value of the GARVER contract with AHTD for the CAP program management.

*claimant's  
x 22  
105*

Job CA1102 Master Agreement

Original Contract Ceiling - \$67,616,000

Current Contract Ceiling - \$76,911,950

Paid to date - approx. \$20,400,000.00

# ARKANSAS STATE HIGHWAY COMMISSION

## CHANGE ORDER

Job Name Forrest City-East (S) Route & Section 40, Section 51  
 Job No. BB0105 FAP No NHPP-STPR-40-5(153)240 & 9050 County St. Francis  
 Changes located Entire Project Change Order No. 40

DESCRIPTION OF CHANGE: Additional quantities of ACHM Surface Course (1/2") are needed due to grade raise and thick leveling.

REASON FOR CHANGE: 1. Due to thick leveling along I-40 Westbound between station 4296+23 and 4302+00, ACHM Surface Course (1/2") was used in lieu of ACHM Surface Course (3/8") and then capped with ACHM Surface Course (3/8") Bond Breaker. 2. General grade raise throughout the project at Ramp transitions and thick leveling required an additional increase in ACHM Surface Course (1/2").

ATTACHMENTS: Asphalt Quantity Summary Sheet, I-40 WB Leveling Quantity Sheet, Ramp Transitions Quantity Sheet

### SUMMARY

Item No.	Item	Unit	Unit Price	PRESENT		REVISED	
				Quantity	Amount	Quantity	Amount
SPSS407	Mineral Aggregate in ACHM Surface Course (1/2")	TON	63.40	13,782.48	873,809.23	16,281.10	1,032,221.74
SPSS407	Asphalt Binder (PG 76-22) in ACHM Surface Course (1/2")	TON	946.70	695.00	657,956.50	837.63	792,984.32
				1,531,765.73		1,825,206.06	
				Overrun		\$293,440.33	

Recommended 7-28-14

  
 Ray Woodruff, District Engineer

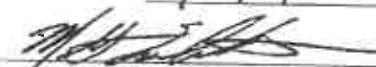
APPROVED 8-6-14

  
 Mike Sebren, Construction Engineer

Authorized 8-7-14

  
 M. E. Banks, Assistant Chief Engineer

Requested 7/26/14

  
 Matthew R. Emberton, Resident Engineer

**Sheet To Accompany Change Order # 40**  
**Job # BB0105**  
**Forrest City - East (F)**  
**FAP # NHPP-STPR-40-5(153)240 & 9050**  
**St. Francis County**

**Asphalt Quantity Summary Sheet**

	Plan QTY	Actual QTY	Difference
1. I-40 Westbound Main Lane/Shoulder Leveling	0	800.36	800.36
2. Ramp Transitions			
I-40 Westbound Ramp Transitions	1247.5	2059.14	811.64
I-40 Eastbound Ramp Transitions	1199.8	2229.05	1029.25
<b>Total =</b>			<b>2641.25</b>

**Summary of Quantities**

Item Description	Tons
Asphalt Binder (PG 76-22) In ACHM Surface Course (1/2")	142.63
Mineral Aggregate in ACHM Surface Course (1/2")	2498.62

NOTE: AB = 5.4%, MA = 94.6%

Sheet To Accompany Change Order # 40

Job # BB0105

Forrest City - East (F)

FAP # NHPP-STPR-40-5(153)240 & 9050

St. Francis County

I-40 Westbound Main Lane/Shoulder Leveling

Stations	Left Asphalt Fill	Right Asphalt Fill	Ave. Fill	Lbs / SY	SY	Tons	Bond Breaker Plan QTY Lbs/ SY	Leveling Plan QTY Lbs/SY	Total Plan QTY Lbs/SY	Plan QTY Tons
4296+23	0.57	0.36	0.46	612.48	211.11	54.90	456.5	110	566.5	59.80
4296+73	0.37	0.28	0.32	427.68	211.11	45.00	456.5	110	566.5	59.80
4297+23	0.47	0.17	0.32	425.04	211.11	50.44	456.5	110	566.5	59.80
4297+73	0.61	0.19	0.40	530.64	211.11	76.63	456.5	110	566.5	59.80
4298+23	0.89	0.51	0.70	921.36	211.11	118.71	456.5	110	566.5	59.80
4298+73	1.12	0.89	1.01	1327.92	211.11	156.05	456.5	110	566.5	59.80
4299+23	1.40	1.07	1.23	1628.88	211.11	191.58	456.5	110	566.5	59.80
4299+73	1.69	1.34	1.52	2001.12	211.11	214.01	456.5	110	566.5	59.80
4300+23	1.73	1.38	1.56	2053.92	211.11	188.94	456.5	110	566.5	59.80
4300+73	1.33	0.98	1.16	1525.92	211.11	134.73	456.5	110	566.5	59.80
4301+23	0.97	0.59	0.78	1026.96	211.11	80.81	456.5	110	566.5	59.80
4301+73	0.53	0.23	0.38	504.24			456.5	110	566.5	59.80
Actual Qty =						1311.82	Plan Qty=		657.77	

Sheet To Accompany Change Order # 40  
 Job # BB0105  
 Forrest City - East (F)  
 FAP # NHPP-STPR-40-5(153)240 & 9050  
 St. Francis County

**Base and Surfacing - Ramp Transitions**

**I-40 Eastbound  
 Hwy 1 Exit Ramp**

2" asphalt joint  
↓  
Tie to PCCP Decel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	15.58
1+00	0.17	0.17	0.17	224.40	138.90	17.88
1+50	0.17	0.27	0.22	290.40	138.90	29.11
2+00	0.37	0.46	0.41	547.80	138.90	44.00
2+50	0.55	0.54	0.55	719.40	138.90	57.75
3+00	0.67	0.76	0.72	943.80	138.90	67.38
3+50	0.72	0.79	0.76	996.60		0.00
Actual Qty =						<b>247.29</b>

**I-40 Eastbound  
 Hwy 1 Entrance Ramp**

2" asphalt joint  
↓  
Tie to PCCP Accel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	16.96
1+00	0.17	0.23	0.20	264.00	138.90	24.75
1+50	0.28	0.40	0.34	448.80	138.90	40.57
2+00	0.51	0.58	0.55	719.40	138.90	53.86
2+50	0.58	0.68	0.63	831.60	138.90	61.65
3+00	0.65	0.78	0.72	943.80	138.90	67.61
3+50	0.75	0.77	0.76	1003.20		0.00
Actual Qty =						<b>280.98</b>

**Sheet To Accompany Change Order # 40**  
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**Forrest City - East (F)**  
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**St. Francis County**

**Base and Surfacing - Ramp Transitions**

**I-40 Eastbound**  
**Hwy 1 Loop Exit Ramp**

2" asphalt joint  
↓  
Tie to PCCP Decel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	18.79
0+50	0.25	0.23	0.24	316.80	138.90	25.67
1+00	0.26	0.38	0.32	422.40	138.90	39.19
1+50	0.51	0.56	0.54	706.20	138.90	54.09
2+00	0.63	0.66	0.65	851.40	138.90	58.67
2+50	0.63	0.64	0.64	838.20	138.90	58.21
3+00	0.58	0.69	0.64	838.20	138.90	57.98
3+50	0.58	0.68	0.63	831.60		0.00
<b>Actual Qty =</b>						<b>312.61</b>

**I-40 Eastbound**  
**Hwy 1 Loop Entrance Ramp**

2" asphalt joint  
↓  
Tie to PCCP Accel Lane


Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	15.58
1+00	0.17	0.17	0.17	224.40	138.90	20.63
1+50	0.27	0.29	0.28	369.60	138.90	31.40
2+00	0.34	0.47	0.41	534.60	138.90	44.46
2+50	0.48	0.65	0.57	745.80	138.90	60.05
3+00	0.61	0.88	0.75	983.40	138.90	67.84
3+50	0.62	0.85	0.74	970.20		0.00
<b>Actual Qty =</b>						<b>255.54</b>

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**Sheet To Accompany Change Order # 40**  
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**Forrest City - East (F)**  
**FAP # NHPP-STPR-40-5(153)240 & 9050**  
**St. Francis County**

**Base and Surfacing - Ramp Transitions**


**I-40 Eastbound**  
**Hwy 284 Exit Ramp**

2" asphalt joint  
  
 Tie to PCCP Decel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	17.88
1+00	0.27	0.17	0.22	290.40	138.90	28.19
1+50	0.33	0.46	0.40	521.40	138.90	46.75
2+00	0.62	0.63	0.63	825.00	138.90	66.01
2+50	0.81	0.82	0.82	1075.80	138.90	84.11
3+00	0.96	1.08	1.02	1346.40	138.90	95.57
3+50	0.99	1.14	1.07	1405.80		0.00

Actual Qty = **354.09**

**I-40 Eastbound**  
**Hwy 284 Entrance Ramp**

2" asphalt joint  
  
 Tie to PCCP Accel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	15.58
1+00	0.17	0.17	0.17	224.40	138.90	15.58
1+50	0.17	0.17	0.17	224.40	138.90	17.65
2+00	0.17	0.26	0.22	283.80	138.90	25.90
2+50	0.32	0.38	0.35	462.00	138.90	32.54
3+00	0.40	0.32	0.36	475.20	138.90	33.23
3+50	0.36	0.37	0.37	481.80		0.00

Actual Qty = **156.07**



**Sheet To Accompany Change Order # 40**  
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**St. Francis County**

**Base and Surfacing - Ramp Transitions**

**I-40 Eastbound**  
**Hwy 38 Exit Ramp**

2" asphalt joint  
↓  
Tie to PCCP Decel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	15.58
1+00	0.17	0.17	0.17	224.40	138.90	17.42
1+50	0.17	0.25	0.21	277.20	138.90	32.32
2+00	0.45	0.54	0.50	653.40	138.90	51.80
2+50	0.58	0.69	0.64	838.20	138.90	57.53
3+00	0.61	0.63	0.62	818.40	138.90	58.44
3+50	0.63	0.68	0.66	864.60		0.00

Actual Qty = **248.67**

**I-40 Eastbound**  
**Hwy 38 Entrance Ramp**

2" asphalt joint  
↓  
Tie to PCCP Accel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	17.88
0+50	0.22	0.22	0.22	290.40	138.90	28.19
1+00	0.37	0.42	0.40	521.40	138.90	44.69
1+50	0.58	0.58	0.58	765.60	138.90	63.26
2+00	0.78	0.82	0.80	1056.00	138.90	72.88
2+50	0.70	0.88	0.79	1042.80	138.90	73.57
3+00	0.67	0.96	0.82	1075.80	138.90	73.34
3+50	0.66	0.91	0.79	1036.20		0.00

Actual Qty = **373.80**

**Sheet To Accompany Change Order # 40**  
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**Forrest City - East (F)**  
**FAP # NHPP-STPR-40-5(153)240 & 9050**  
**St. Francis County**

**Base and Surfacing - Ramp Transitions**

**I-40 Westbound**  
**Hwy 1 Exit Ramp**

	Left	Right	Average			
Stations	Asphalt Fill	Asphalt Fill	Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	16.50
1+00	0.19	0.19	0.19	250.80	138.90	20.17
1+50	0.25	0.25	0.25	330.00	138.90	24.06
2+00	0.27	0.28	0.28	363.00	138.90	27.50
2+50	0.34	0.31	0.33	429.00	138.90	35.29
3+00	0.45	0.44	0.45	587.40	138.90	42.63
3+50	0.49	0.48	0.49	640.20		0.00
					Actual Qty =	181.74

2" asphalt joint



Tie to PCCP Decel Lane

**I-40 Westbound**  
**Hwy 1 Entrance Ramp**

	Left	Right	Average			
Stations	Asphalt Fill	Asphalt Fill	Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.81
0+50	0.18	0.17	0.18	231.00	138.90	16.27
1+00	0.18	0.18	0.18	237.60	138.90	19.25
1+50	0.24	0.24	0.24	316.80	138.90	23.84
2+00	0.29	0.27	0.28	369.60	138.90	28.88
2+50	0.35	0.35	0.35	462.00	138.90	36.67
3+00	0.43	0.47	0.45	594.00	138.90	45.61
3+50	0.54	0.55	0.55	719.40		0.00
					Actual Qty =	186.33

2" asphalt joint



Tie to PCCP Accel Lane

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**Forrest City - East (F)**  
**FAP # NHPP-STPR-40-5(153)240 & 9050**  
**St. Francis County**

**Base and Surfacing - Ramp Transitions**

**I-40 Westbound**  
**Hwy 1 Exit Loop Ramp**

Stations	Left	Right	Average	Lbs / SY	SY	Tons
	Asphalt Fill	Asphalt Fill	Fill			
0+00	0.17	0.17	0.17	224.40	138.90	20.40
0+50	0.27	0.28	0.28	363.00	138.90	22.00
1+00	0.22	0.19	0.21	270.60	138.90	18.33
1+50	0.22	0.17	0.20	257.40	138.90	26.13
2+00	0.36	0.39	0.38	495.00	138.90	33.46
2+50	0.37	0.34	0.36	468.60	138.90	36.44
3+00	0.43	0.45	0.44	580.80	138.90	40.79
3+50	0.45	0.45	0.45	594.00		0.00
Actual Qty =						197.56

2" asphalt joint

Tie to PCCP Decel Lane

**I-40 Westbound**  
**Hwy 1 Entrance Loop Ramp**

Stations	Left	Right	Average	Lbs / SY	SY	Tons
	Asphalt Fill	Asphalt Fill	Fill			
0+00	0.17	0.17	0.17	224.40	138.90	19.71
0+50	0.23	0.29	0.26	343.20	138.90	22.92
1+00	0.19	0.29	0.24	316.80	138.90	27.73
1+50	0.40	0.33	0.37	481.80	138.90	39.65
2+00	0.51	0.49	0.50	660.00	138.90	51.11
2+50	0.67	0.56	0.62	811.80	138.90	49.73
3+00	0.36	0.58	0.47	620.40	138.90	44.46
3+50	0.40	0.60	0.50	660.00		0.00
Actual Qty =						255.31

2" asphalt joint

Tie to PCCP Accel Lane

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**Sheet To Accompany Change Order # 40**  
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**Forrest City - East (F)**  
**FAP # NHPP-STPR-40-5(153)240 & 9050**  
**St. Francis County**

**Base and Surfacing - Ramp Transitions**

**I-40 Westbound**  
**Hwy 284 Exit Ramp**

2" asphalt joint  
↓  
Tie to PCCP Decel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	17.65
1+00	0.21	0.22	0.22	283.80	138.90	21.77
1+50	0.26	0.26	0.26	343.20	138.90	26.59
2+00	0.32	0.32	0.32	422.40	138.90	32.54
2+50	0.40	0.38	0.39	514.80	138.90	38.27
3+00	0.45	0.44	0.45	587.40	138.90	43.32
3+50	0.51	0.49	0.50	660.00		0.00

Actual Qty = **195.72**

**I-40 Westbound**  
**Hwy 284 Entrance Ramp**

2" asphalt joint  
↓  
Tie to PCCP Accel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	18.11
0+50	0.21	0.24	0.23	297.00	138.90	22.23
1+00	0.26	0.26	0.26	343.20	138.90	27.04
1+50	0.33	0.33	0.33	435.60	138.90	35.75
2+00	0.45	0.45	0.45	594.00	138.90	41.71
2+50	0.47	0.45	0.46	607.20	138.90	44.46
3+00	0.52	0.50	0.51	673.20	138.90	48.59
3+50	0.55	0.55	0.55	726.00		0.00


Actual Qty = **237.89**

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**Sheet To Accompany Change Order # 40**  
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**Forrest City - East (F)**  
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**St. Francis County**

**Base and Surfacing - Ramp Transitions**

**I-40 Westbound**  
**Rest Area Exit Ramp**

	Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
2" asphalt joint  Tie to PCCP Decel Lane	0+00	0.17	0.17	0.17	224.40	138.90	15.58
	0+50	0.17	0.17	0.17	224.40	138.90	15.58
	1+00	0.17	0.17	0.17	224.40	138.90	18.56
	1+50	0.24	0.23	0.24	310.20	138.90	25.90
	2+00	0.34	0.32	0.33	435.60	138.90	33.46
	2+50	0.42	0.38	0.40	528.00	138.90	43.77
	3+00	0.57	0.54	0.56	732.60	138.90	57.75
	3+50	0.76	0.65	0.71	930.60		0.00
	Actual Qty =						210.62

**I-40 Westbound**  
**Rest Area Entrance Ramp**

	Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
2" asphalt joint  Tie to PCCP Accel Lane	0+00	0.17	0.17	0.17	224.40	138.90	15.58
	0+50	0.17	0.17	0.17	224.40	138.90	15.58
	1+00	0.17	0.17	0.17	224.40	138.90	19.25
	1+50	0.24	0.26	0.25	330.00	138.90	26.81
	2+00	0.33	0.34	0.34	442.20	138.90	33.00
	2+50	0.38	0.39	0.39	508.20	138.90	36.44
	3+00	0.41	0.41	0.41	541.20	138.90	40.57
	3+50	0.48	0.47	0.48	627.00		0.00
	Actual Qty =						187.24

Sheet To Accompany Change Order # 40  
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 St. Francis County

Base and Surfacing - Ramp Transitions

I-40 Westbound  
 Hwy 38 Exit Ramp

2" asphalt joint  
 ↓  
 Tie to PCCP Decel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.58
0+50	0.17	0.17	0.17	224.40	138.90	15.58
1+00	0.17	0.17	0.17	224.40	138.90	19.71
1+50	0.25	0.27	0.26	343.20	138.90	28.42
2+00	0.34	0.38	0.36	475.20	138.90	38.50
2+50	0.48	0.48	0.48	633.60	138.90	49.05
3+00	0.59	0.59	0.59	778.80	138.90	55.92
3+50	0.63	0.63	0.63	831.60		0.00

Actual Qty = 222.77

I-40 Westbound  
 Hwy 38 Entrance Ramp

2" asphalt joint  
 ↓  
 Tie to PCCP Accel Lane

Stations	Left Asphalt Fill	Right Asphalt Fill	Average Fill	Lbs / SY	SY	Tons
0+00	0.17	0.17	0.17	224.40	138.90	15.65
0+50	0.17	0.17	0.17	226.38	138.90	18.17
1+00	0.23	0.22	0.23	297.00	138.90	21.77
1+50	0.25	0.25	0.25	330.00	138.90	22.69
2+00	0.24	0.25	0.25	323.40	138.90	27.27
2+50	0.34	0.36	0.35	462.00	138.90	35.07
3+00	0.42	0.41	0.42	547.80	138.90	43.32
3+50	0.55	0.51	0.53	699.60		0.00

Actual Qty = 183.94

# ARKANSAS STATE CLAIMS COMMISSION

APAC – TENNESSEE, INC.

CLAIMANT

VS

CLAIM NO. 15-0610-CC

ARKANSAS STATE HIGHWAY COMMISSION &  
ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT

RESPONDENTS

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

On this day this case comes on for decision, findings of fact and conclusions of law. Based upon the pleadings, evidence presented at the hearing, arguments of counsel and other matters properly before the Commission it is hereby found and determined as follows:

### FINDINGS OF FACT

1. On or about May 23, 2013 the ASHC and APAC entered into a contract (Contract) for the Project known as Job BB0105. The scope of work of Job BB0105 was described by the ASHC and AHTD as follows:

THE PURPOSE OF THIS PROJECT IS TO RECONSTRUCT THE MAIN LANES FOR 7.876 MILES ON I-40 AT FORREST CITY IN ST. FRANCIS COUNTY. THIS PROJECT CONSISTS OF TWO PAVING ALTERNATES: ALTERNATE NO. 1-ASPHALT PAVEMENT LANES WITH ASPHALT SHOULDERS AND ALTERNATE NO. 2-PCC PAVEMENT LANES WITH PCC SHOULDERS, AGGREGATE BASE COURSE, MINOR DRAINAGE STRUCTURES, GUARDRAIL, MAINTENANCE OF TRAFFIC ITEMS, WIRE FENCE, WIRE ROPE SAFETY FENCE, EROSION CONTROL AND MISC. ITEMS.

Job BB0105 was awarded to APAC per sealed bid procedures on an "A + C" basis requiring bidders to bid on time of performance. APAC bid 140 days. The maximum number of days allowed by the AHTD to be bid was 150 days. The Contract included a provision that authorized the Department to withhold from amounts otherwise due APAC the sum of \$100,000.00 per day "disincentive" and another \$2,500.00 per day as liquidated damages should APAC not finish the work within 140 days as extended by AHTD. The "disincentive" of \$100,000.00 per day was based upon an alleged "daily road user cost" for traffic on I-40 as calculated by AHTD. While not mentioned in the above scope of work, Highway 38 Bridge replacement work was included in the Contract.

2. The Contract also included a Special Provision requiring APAC and the AHTD to use the Critical Path Method of analyzing time utilization and delays throughout the Project. One of the Contract's stated purposes for using CPM is to assist the Department in administering contract time requirements.

3. APAC was issued a work order effective June 7, 2013. The AHTD started charging time on June 21, 2013. APAC substantially completed the work on August 23, 2014, some 178 working days following start time, taking into consideration weather days allowed by the AHTD.

4. AHTD charged APAC with going 38 days past the time bid for completion of 140 days. AHTD imposed and withheld \$3,800,000.00 in "daily road user costs" from payments otherwise due APAC for its work. Also withheld from APAC was \$95,000.00 in liquidated damages.

5. The Contract specifically allows for time extensions. Standard Specification 108.06 authorizes time extensions to the 140 day time frame if APAC is delayed due to: (1) an act or omission of the AHTD; (2) change order work requiring additional time; (3) weather or ground conditions which are significantly abnormal and these conditions



significantly delay the work; and (4) other delays beyond the control and without the fault of the Contractor.

6. Construction Plans prepared by the AHTD and furnished to APAC indicated an existing six inch thick Portland Cement Base Course to be removed at bridge ends and replaced per Contract requirements. When APAC started work at bridge ends it was discovered that the Portland Cement Base Course was nine inches thick. This discovery resulted in Change Order 18 to the Contract increasing the Contract amount by \$312,029.32, however, no time was allowed by AHTD for this additional work. APAC presented a claim for additional time. It was denied by the AHTD. The evidence presented at the hearing indicates this change order work increased the time necessary to complete the I-40 main lane work by ten days. The AHTD should have granted this ten day extension.

7. Plans furnished by the AHTD to APAC also required APAC to replace existing asphalt pavement in uniform "lifts", or courses, to reach finished pavement, however, when subsurface concrete pavement was exposed it was found that the concrete was extremely uneven which prevented uniform lifts. This required additional "lifts", or courses, costing additional money and time, and it slowed production. APAC did not request additional money for this uneven condition, however, it did request additional time of thirteen days. AHTD denied this request. The evidence show the AHTD should have granted a time extension of thirteen days due to the additional time it took APAC to perform this critical work.

8. In September and October, 2013 the Project experienced significantly abnormal, rainy weather conditions. This rainy weather particularly impacted the Highway 38 Bridge reconstruction work. APAC did not timely object to the days charged as time by the AHTD in September, 2013. In October, 2013 APAC objected to eleven days charged by AHTD. (AHTD apparently charged days in September and October, 2013 because APAC could work on items other than the Highway 38 Bridge, however, at the time the Highway 38 Bridge was on the critical path.) The AHTD also objects to allowing any extension for weather delays in September and October, 2013 on the

grounds that APAC did not timely object to the Resident Engineer charging those days. AHTD is partially correct. APAC's objection letters were transmitted to AHTD a few days late for the month of October, 2013, however, the AHTD still responded to APAC's claims on the merits, and the evidence shows the AHTD sometimes allows submission of such letters if they are only a few days late. Further Commission analysis of this dispute over bad weather and ground conditions is contained in the Conclusions of Law.

9. The AHTD also charged three weather days in July, 2014 to which APAC objected on a timely basis. Based upon the evidence the Commission finds the weather in July, 2014 prevented substantial completion by three days.

10. APAC's work on the Highway 38 Bridge delayed substantial completion due to misalignment of bridge ends. The disincentive value of \$100,000.00 per day is completely out of proportion to the Highway 38 Bridge delay inconvenience to the traveling public. In prior bid documents concerning the Highway 38 Bridge reconstruction in 2012 the AHTD itself calculated this inconvenience at \$9,500.00 per day - not \$100,000.00 per day. The effect of this APAC caused delay is discussed in the Conclusions of Law.

11. An additional five days requested by APAC for PCCP Pavement work in July, 2014. This request has not been acted upon by the AHTD despite AHTD's request for continuance to resolve this issue. Based upon the evidence it is found that the AHTD should allow this five day extension.

12. AHTD methodology for calculating the disincentive reflects factors for delay in traveling through the construction zone by the general public. This method does not seek to establish any damages suffered by the AHTD. Further, rather than follow the methodology the AHTD simply chose to include the \$100,000.00 per day "disincentive". This \$100,000.00 per day charge bears no relationship to any inconvenience suffered by the traveling public.

## **CONCLUSIONS OF LAW**

The Commission finds for APAC and awards it the sum of \$3,895,000.00. It is found that both parties to the Contract caused delays in substantial completion for which they are responsible. APAC is chargeable with delays to the completion of the Highway 38 Bridge due to surveyor errors and bridge end misalignment. This delay caused substantial completion of the Highway 38 Bridge work to be 38 days late. The AHTD caused delays to the I-40 main lane work due to Plan errors. Further, the AHTD should have allowed time extensions due to weather and ground conditions, and should have granted an extension due to PCCP work delays in July, 2014.

The Commission notes it is the law of Arkansas that when both parties cause delays in substantial completion neither party may charge the other for the delays caused. *S.O.G. San Ore-Gardner v. Missouri Pacific Railroad Company et al.*, 658 F. 2d 562 (8<sup>th</sup> Cir.-Arkansas case, 1981); *City of Whitehall v. Southern Mechanical Contracting, Inc.*, 269 Ark. 563, 599 S.W. 2d 430 (Ark. App. 1980). Since AHTD is chargeable with delays due to Plan errors - one of which is shown by change order 18 and the other change order 40 - the AHTD may not withhold liquidated damages and disincentives from APAC. (The Commission also notes that the "disincentive" rate of \$100,000.00 per day represents a disincentive for delays to I-40 main lane work. The APAC caused delays regarding the Highway 38 Bridge should be "valued" at only \$9,500.00 per day disincentive as shown by previous bid documents issued by the AHTD and a letter from the AHTD Chief Engineer recognizing the Bridge related delay should be charged at a lesser rate.)

Further, the Commission also finds that the testimony of APAC's expert witness is persuasive, and that APAC should be allowed time extensions at least equal to the 38 day overrun. Entitlement to at least 12 weather days requested by APAC during and after construction has been established. The AHTD denied these days on the grounds that the weather was not so bad as to prevent APAC from working on certain tasks on the days in question. As noted by APAC and APAC's expert, however, the weather and ground conditions delayed work on critical path items - which extended time of

performance. Since the Contract required the AHTD to analyze delay requests using CPM, the AHTD should have allowed at least twelve weather days since the weather impacted critical path work on the days in question. (The Commission further finds that proper application of the CPM by the AHTD would have resulted in an additional 8 weather days in September, 2013.) Based upon Standard Specification 108.06 (d) (2) (d) and the Special Provision requiring CPM analysis the Commission finds the Contract time should have been extended by at least 20 days due to weather conditions affecting critical path work.

The Commission further states that the disincentive appears penal in nature because it has no relationship to any monetary damages suffered by the AHTD. Arkansas law and public policy clearly prohibit an award of penalties due to a breach of contract. If an amount is charged which bears no relationship to damages suffered by the non - breaching party the charge is a penalty and is not enforceable. The \$100,000.00 per day charge by the AHTD does not bear any relationship to damages suffered by the AHTD.

Further, AHTD has failed to pay APAC money APAC earned under the Contract in question. Since the money rightfully belonged to APAC; should have been paid no later than September 14, 2014; and was capable of exact calculation as of September 14, 2014 the Commission awards interest to APAC at the rate of 5.75 % *per annum*, or \$613.60 per day, from September 14, 2014 to date on the principal sum of \$3,895,000.00.

NOV 06 2015

**ARKANSAS STATE CLAIMS COMMISSION**

**APAC- TENNESSEE, INC**

**RECEIVED  
CLAIMANT**

**VS**

**CLAIM NO. 15-0610-CC**

**ARKANSAS STATE HIGHWAY  
COMMISSION &  
ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT**

**RESPONDENTS**

**RESPONDENT'S PREHEARING BRIEF**

**I. FACTS**

APAC-Tennessee, Inc. ("APAC") entered into a contract with the Arkansas State Highway Commission ("Commission") to reconstruct 7.876 miles of Interstate I-40 in Forrest City, Arkansas, in St. Francis County.

Traditionally, the Commission has focused on acquiring construction services through low-bid contracts. In order to recover the costs of administering a project that is not completed in accordance with the contract time, the Commission used a liquidated damages contract term. Liquidated damages are imposed to help recover the costs of construction oversight and administration by the Arkansas State Highway and Transportation Department ("AHTD"). The Commission is now more focused on shortening road construction delays for the citizens of Arkansas and the traveling public. The benefit of shorter construction times are obvious: minimize inconvenience and disruption of the traveling public, improves safety of both the public and construction crews, minimizes the economic impacts on local businesses and freight companies, and minimizes the social costs of traffic delays. The Commission is determined to

finish construction projects as quickly as possible, and it has focused on schedule and time based contracting methods to shorten construction time.

This contract was an A+C contract. In an A+C contract, each bid is evaluated based on two parts. The "A" component is the cost, which includes labor and material, and here, APAC bid approximately \$52,000,000.00 for the "A" component. The "C" component is time. "C" is calculated by multiplying the number of days each contractor bids by the daily user costs, costs borne by the public such as the time sitting in traffic, increased operating costs, and the increased likelihood of accidents during construction. The contractor is rewarded with bonus payments, or incentive, for completing the project ahead of its time bid, and the contractor is charged a disincentive for late completion. The disincentive charge helps compensate the additional expenses incurred by road users such as lost time, safety, noise, impact to local businesses, increased vehicle maintenance, additional fuel costs, and other items that occur when construction zones delay the public traveling through the work zone. This method has been approved by the Federal Highway Administration since 1995 and is used in many states.

Here, the Department determined that the road user costs would be \$100,000.00 per day by using a formula developed from the Federal Highway Administration. The formula incorporates various functions and components in order to determine the cost to the traveling public for the delays caused by road construction. AHTD considers the speed reduction, the stop time, operation costs, safety, and delays in order to develop the road user costs. After examining these components, AHTD determined the road user costs would be \$100,000 for this contract. This cost includes the time sitting in traffic, increased operating costs, and the increased likelihood of accidents, among other items discussed above. More than 32,000 vehicles pass

through this project daily. The AHTD's estimate was conservative because it did not account for large portion of tractor trailer trucks this corridor sees. When the actual road user costs were calculated using the aforementioned components, the cost exceeded \$700,000.00 per day.

AHTD determined that the maximum duration of the project would be 150 days. (Contractors could bid below that threshold, but the contract would not be awarded to a contractor who bid more than 150 days to complete the job.) As the successful bidder, APAC bid approximately \$52 million for the work, the "A" component, and it said it could complete the work in 140 days, the "C" component, or ten less days than the maximum allowed in the contract. If APAC could complete the job in less than 140 working days, it would be awarded a \$100,000.00 a day incentive. If, however, APAC did not complete the project in the allotted time, like it did here, it would be charged the same amount for every day it was late. The parties agreed to these terms, and a contract was signed on May 23, 2013.

The contract required APAC to create and maintain a Critical Path Method ("CPM") Project Schedule. The Critical Path Method is a management technique by which a project can be broken down into a number of identifiable tasks or activities. These tasks are then sequentially interconnected, reflecting various interdependence of activities to provide an overall schedule to complete the project. Essentially, the Critical Path Method is a way to organize and schedule a project which consists of interrelated separate small projects. Each subproject is identified and classified as to the duration and precedence of work.

The data is then analyzed by a computer program, Primavera, to determine the most efficient schedule for the project. Many activities can be performed at any time within a given

time period without an effect in the overall completion date. However, some items of work must be performed on schedule with no leeway. These items of work are on the "critical path." A delay or acceleration of work along the critical path will affect the entire project. So, a critical path activity, if delayed or slowed at all, will cause the overall time required to complete the project to increase. In contrast, an activity that will not adversely impact the time required is not on the critical path.

To illustrate the Critical Path Method, a contractor who contracts with a landowner to build a home in a year must complete the foundation work first. Any delay in pouring the foundation will cause increase the time to build the home, and thus, the pouring of the foundation is on the critical path because any delay in the foundation completion will cause an increase in the amount of time needed to complete the house. The contractor could not wait until the 9th month to start the foundation work. Work on the walls, roof, flooring, and utilities cannot begin until the foundation is complete, and any delay in the foundation work will adversely affect the overall completion of the project.

As set forth in the contract, the purpose of the CPM schedule is to: (1) ensure adequate planning during the prosecution and progress of the work in accordance with the allowable number of working days and all milestones; (2) assure coordination of the efforts of APAC, AHTD, Utilities, and others that may be involved in the project; (3) assist APAC and AHTD in monitoring the progress of work and evaluating proposed changes to the contract; and (4) assist AHTD in administering the contract time requirements. Special Provision - Prosecution and Progress.

APAC failed to complete the job on time. It took APAC 178 work days to complete the job, some 38 days late. As a result, APAC was charged a disincentive of \$100,000 per day and a



\$2,500 in liquidated damages per day. APAC contends that it was incorrectly charged 38 work days.

## II. DISCUSSION

It is the duty of courts to enforce contracts as written and in accordance with the ordinary meaning of the language used and the overall intent and purpose of the parties. *Magic Touch Corp. v. Hick*, 99 Ark. App. 334260 S.W.3d 322 (2007). In other words, clear meaning of a contract must be enforced. *Stilley v. James*, 345 Ark. 362, 48 S.W.3d 521 (2001).

APAC's Complaint lists five instances where it believes that it is entitled to additional working days under the Contract. Working days, as defined by the contract, are charged when, "in the judgment of the Engineer . . . , conditions allow the Contractor to effectively utilize 60% of normal forces and equipment to prosecute work required at that time, for at least 60% of the Contractor's normal work hours, regardless of whether the Contractor actually works." Standard Specifications for Highway Construction, Edition of 2003, 108.06(c). This method of charging working days is reiterated in a Special Provision, which reads, "Working days will be assessed in accordance with Subsection 108.06 of the Standard Specifications." When the conditions of the day meet the requirements of the contract, the contractor is "charged" a working day. However, there is a dead period built into the contract where no working days are charged. "Time from December 21 through March 15, inclusive, will not be assessed against contract time." *Id.*

According to the contract, at the end of each estimate period, the Engineer will furnish the Contractor a written statement showing each working day charges during the preceding period and the total number of working days charged by the Engineer. *Id.* If there is a dispute between the days charged by the Department and the contractor, "then the Contractor shall, within 10 calendar days after receipt of the statement, give the Engineer written notice of such

disagreement and the reasons thereof.” *Id.* The contract explains that “if the Contractor fails to protest the Engineer’s determination of working days charges within the 10 calendar day period, the Contractor shall be deemed to have accepted the time charged for that period as correct, and no subsequent request for review will be considered.” *Id.* Consequently, any challenges to the working day charges that occur after ten calendar days should be precluded from this claim as it was argued in Respondent's Motion to Dismiss.

**a. Change Order 18**

In its Complaint, APAC contends that it is entitled to nine days for additional work for Change Order 18. Change Order 18 increased the quantity of compacted embankment and unclassified excavation throughout the Job. However, at the time Change Order 18 was entered into the CPM, the Highway 38 Bridge was the critical path. As explained below, activities that are not on the critical path cannot be compensated if they are increased.

Throughout the project at the monthly scheduling meetings, time analyses were performed pursuant to the specifications to determine if the overall project had been delayed. If delays were discovered, they were quantified and the contract days would be adjusted by change order. As the job progressed, time charge letters were provided to APAC every two weeks with an opportunity to object to the time charged. These letters also included a notification that if a written notice of disagreement was not filed, the contractor will be deemed to have accepted the time charged for this period as correct and no subsequent request for review will be considered.

When a contractor is seeking extensions of contract time for changes and excusable delay, it has the burden of establishing not only the existence of an excusable cause of delay, but also the extent to which completion of the contract work as a whole was delayed thereby *R.P. Wallace, Inc. v. U.S.*, 63 Fed.Cl. 402 (2004). To establish excusable delay, a contractor must

prove that the excusable event proximately caused a delay to the overall completion of the contract, i.e., that the delay affected activities on the critical path. *Id.* The contractor must also establish the extent to which completion of the work was delayed - it "is entitled to only so much time extension as the excusable cause actually delayed performance." *Id.*

APAC is not entitled to these nine days under the contract terms. Specifically, Change Order 18 did not impact the critical path, which was the Highway 38 Bridge. In order to determine whether the work detailed above delayed the completion of the job, a time impact analysis must be completed. The AHTD will only award time when an impact affects the overall completion date of the project. Since the CPM is computerized, information is entered into the computer program, and the program then determines if the project's completion date has changed. If it has not changed, no time will be given for the impact. If the completion date changed, work days would be given to APAC. The contract explains the steps:

Step 1. Establish the status of the project before the impact using the most recent project schedule update prior to the impact occurrence.

Step 2. Predict the effect of the impact on the most recent project schedule update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. The Contractor shall demonstrate how the impact was inserted into the schedule using a fragment. This is the presentation of a fragmentary portion of the schedule network showing the added or modified activities and the added or modified relationships. Any other changes made to the schedule including modification to the calendars or constraints shall be noted.

Step 3. Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.

Step 4. Compare the status of the work prior to the impact (Step 1) to the prediction of the effect of the impact (Step 2), and to the status of the work during and after the effects of the impacts are over (Step 3). Note that if an impact causes a lack of access to a portion of the project, the effects of the impact may extend to include a reasonable period of remobilization.

*Id.*

The United States Courts of Federal Claims states, for a contractor to recover for delay damages, there must be delay of activity on critical path; interruption in one phase of work does not always result in time necessary for total performance. *Mega Const. Co. v. U.S.*, 29 Fed.Cl.

396 (1993). It reasoned that it is not enough that an activity is delayed: there must be a delay of an activity on the critical path for there to be compensable delay. *Id.*

Determining the critical path is essential to determining damages. “The reason that the determination of the critical path is crucial to the calculation of delay damages is that only construction work on the critical path ha[s] an impact upon the time in which the project [i]s completed. If work on the critical path [i]s delayed, then the eventual completion date of the [i]s delayed. Delay involving work not on the critical path generally ha[s] no impact on the eventual completion date of the project.” *G.M. Schupe Inc. v. United States*, 5 Cl.Ct. 662 (1984). In other words, “only delay on the critical path which affects a project’s completion date is compensable.” *Mega Const. Co.*, 29 Fed.Cl. at 425.

When Change Order 18 was entered into the CPM schedule under the terms of the contract as discussed above, the project’s completion date did not change. Although APAC performed additional work for which it was compensated, no additional time was given because the extra work did not affect the job’s completion date. Since the work did not affect the project’s completion date, it is not compensable under the law or contract. As such, APAC’s request for additional time should be dismissed under the terms of the contract.

**b. Lifts**

Next, APAC argues that it is entitled to additional thirteen work days because it had to provide additional “lifts” on the westbound lanes on Interstate 40. APAC failed to provide the AHTD the necessary information to determine if the additional work actually changed the finish date on the project. The contract requires that a schedule analysis be run in order to determine whether the work affected the project’s completion date. APAC never provided the AHTD an impact analysis.

In order for the Commission to be able to award damages to APAC, the Commission must have before it evidence that establishes the critical path of the project. *Wilner v. U.S.*, 26 Cl.Ct. 260 (1992), *rev'd on other grounds*, 994 F.2d 783 (1993). APAC did not provide the AHTD with any CPM impacts or analysis when it requested the 13 additional work days. In *Mega Construction Co. v. United States*, the United States Court of Federal Claims examined a similar issue where a contractor failed to provide a CPM impact analysis on alleged delays. There, the contractor simply listed instances of delay allegedly attributable to the government in the form of a bar chart. It did not, the court noted, address the significance of those allegations in the context of the critical path analysis. The court ruled that it cannot rely on assertions of a contractor, not supported by a critical path analysis of the project, to award critical path delay costs and denied the contractor's claim. *Mega Const. Co.*, 29 Fed.Cl. at 435.

Here, APAC failed to provide the AHTD with any critical path analysis showing if the project was delayed due to these additional lifts. The AHTD, like the United States Court of Federal Claims, cannot rely on the allegations and assertions by APAC claiming delays on the critical path without a critical path analysis. Thus, APAC's claim that the additional lifts should be dismissed.

**c. January Time Chargers**

In its Complaint, APAC alleges that "In January, 2014 APAC encountered four days it intended to work, but could not due to weather conditions. APAC requested a time extension of 4 days but that request was denied . . .". See Paragraph 9(c) of the Complaint. APAC's time request was denied by AHTD because it was not charged time in January. The contract clearly states that no time is charged from December 21 through March 15. **The Department cannot return working days that it did not charge to the contractor.** In addition, APAC's Expert

Witness, Mr. William Connole, found that “APAC’s request for work days for January is unsupported and I find no additional time for January 2014.” Connole Report at Exhibit B, Page 7. When a CPM schedule was completed in January, the completion date of the project did not change. If APAC did experience any delays, it should have been seen in the CPM schedule. Accordingly, APAC’s request for four days charged in January should be denied.

**d. October Time Charges**

APAC alleges that time charges in October were incorrectly assessed. It contends that weather conditions prevented work on items critical to the timely completion of the work.

First, APAC failed to notify the Department of its disagreement of the time charges within the period defined in the contract, i.e., 10 days from receipt of the time charge. Standard Specifications at 108.06(c). When APAC failed to protest the time charges within 10 days, the contract demands that APAC “shall be deemed to have accepted the time charged for that period as correct and no subsequent review will be considered.” *Id.*

AHTD sent APAC the time charges for the estimate period ending on October 13, 2013, in a letter dated October 15, 2013. See Exhibit F of the Complaint. This letter was received by APAC on October 17, 2013. *Id.* APAC disagreed with AHTD’s determinations, and it sent a letter dated November 1, 2013, to AHTD asking that six days be given back. *Id.* Under the contract, APAC was required to send this letter by October 27, 2013, and since APAC failed to notify the Department in the time required by the contract, APAC accepted the time charges and waives any right to challenge them.

Looking at its claim on the merits (as opposed to its waiver of time charged), APAC is not entitled to any days under the contract. APAC did not specify any particular day it disagreed with the time charges. In its letter, APAC wrote that “During the month of October, 17 of 31

days (55%) were considered poor for earthwork activities due to rainfall during the month.” It then requested to have 55% of the charged working days back or nine working days. This argument fails to consider that the wet weather occurred on the weekends or at night when no work was done, and this is not how time charges are determined. In addition, time was charged on October 1 - 11th, 14th, 17th, 18th, and 21th-25th. A review of the daily work reports shows that work on the critical path activities were being performed on those days. DAILY WORK REPORTS. Therefore, APAC’s request for the nine days described in Exhibit F and in Paragraph 9(d) of its Complaint should be denied.

**e. July Time Charges**

APAC claims that it was incorrectly charged three working days - July 2nd, 9th, and 15th. Again, APAC was too late contesting the time charges under the contract terms. AHTD sent the time charges to APAC in a letter dated July 8, 2014, which it received on July 10, 2014. See Exhibit G of the Complaint. APAC sent a letter dated July 24, 2014, contesting these time charges. Once again, APAC failed to follow the contract terms and procedures. APAC had until July 20, 2014, to object to the time charges by AHTD. It failed to do so, and according to the Contract, APAC waived its right to challenge the time charges. Allowing APAC to recover of these claims for these days would be directly contrary to the clear contract terms.

Moreover, according to the daily work reports, APAC was working on critical activities on the critical path and was not impeded by the weather from performing the work. APAC’s claims for additional working days also fails on the merits.

**f. APAC’s Errors in the Performance of the Project**

APAC made several errors that delayed the project completion. The bridge work had to be stopped on May 5, 2014, because work was done improperly and the bridge was misaligned

by several inches. Work resumed on the bridge on July 3, 2014, when the deck was finally poured, two months and 29 work days later. The bridge work was on the critical path when this error occurred. Because it was on the critical path, any delay in the bridge work delayed the overall completion of the project. Here, it cost APAC 29 work days.

APAC was also slow in progressing their work according the schedule it provided to AHTD. For example, APAC anticipated completing the placement of bond breaker, which is a material that helps bond concrete to the base material in the roadway, in 6 days. It actually took them 44 days to complete. In another instance, APAC planned to complete the embankment at the Highway 38 overpass in two days. It took them 23 days to complete this work. Corrective shoring needed to be completed and plates on the bridge piles needed to be removed and replaced. APAC had to remove bond breaker due to poor finish and tack, and it had to correct a bent on the bridge. APAC planned on producing and placing approximately 11,000 square yards of concrete per day according to their baseline schedule. It never reached that production rate. These are just some examples illustrating APAC's difficulties in progressing the Job and having to redo work.

**g. AHTD Tried to Help APAC Complete the Job on Time**

When Jim Smith, APAC's project supervisor, was asked in his deposition if the AHTD helped APAC to complete the job on time, Mr. Smith testified, "I'm going to say, in the general scope, yes, they did." Jim Smith Deposition, Page 38, Line 17-18. The AHTD allowed APAC to "profile mill" the eastbound lane. That is, APAC only had to remove a couple of inches of the existing road before placing the new road surface on it. The contract required APAC to remove all the existing road before placing the new road surface on it; however, the profile mill process saved APAC time completing the eastbound lanes by reducing the amount of milling it had to



complete. The AHTD also allowed APAC to use the millings on the project. If the AHTD had not allowed APAC to use the millings from the road, APAC would have been forced to remove the millings from the job site and replace it with different material.

Mr. Smith testified that there was a time savings in using the millings. This was not in accordance with the contract, but it was allowed at APAC's request in order to help APAC progress the job. The AHTD also allowed APAC to leave in place faulty material in the temporary crossovers. AHTD could have required APAC to remove the material and replace it; however, the AHTD tried to help APAC progress the job as quickly as possible and allowed the material to stay in place. APAC was allowed to use a different type of material to remain in place on the bridgework. This, too, Mr. Smith conceded "saved time." When Mr. Smith was asked if the AHTD did anything to help progress the job, Mr. Smith responded, "Absolutely." Jim Smith Deposition, Page 37, Line 5.

**g. Daily Road Use Charges**

APAC asserts in its Complaint that daily road user chargers are a penalty, and thus, unenforceable. As discussed above, the daily road user costs represent the cost to the traveling public. Road construction presents delays, loss business revenue, and increased expenses like fuel and maintenance for the citizens of Arkansas and traveling public. While the liquidated damages clause of the Standard Specifications details the additional costs incurred by the Department, the daily site use charges are damages and costs to the public.

Liquidated damages are an amount that a party agrees to pay if that party fails to keep a promise. When the damages for breach of contract are by their nature uncertain and difficult to determine, the parties may stipulate in the contract to the amount to be paid as substitute for

actual damages in the event a breach of contract occurs. *Phillips v. Ben M. Hogan Co.*, 267 Ark. 1104, 594 S.W.2d 39 (Ark. App. 180). The Arkansas Supreme Court has determined that a liquidated damages provision will be valid if three conditions are satisfied: (1) the parties contemplated that damages would flow from a failure to perform the contract; (2) such damages would be indeterminate or difficult to determine; and (3) the stipulated sum bears some reasonable proportion to the damages that the parties contemplated might flow from a failure to perform the contract. *Alley v. Rodgers*, 269 Ark. 262, 599 S.W.2d 739 (1980). This contract provision meets these requirements. **The parties agreed to the liquidated damages and daily site use charges**; the costs to AHTD and the public are hard to determine; and the charges were calculated using a formula provided by the Federal Highway Administration.

The purpose of the daily site use charges was to secure performance of the contract within the time bid by APAC. The contract defined daily road user costs as “[t]he amount which represents the average daily cost of interference and inconvenience to the road user.” The contract stated that this cost would be \$100,000.00. If APAC-Tennessee completed the contract before its time bid, it would have received an incentive. Likewise, if APAC, like it did here, failed to complete the job in the amount of time it bid, it would be charged the daily road user costs.

Litigation over site use charges or daily road charges has been minimal. However, it appears that in states that have litigated this matter, courts have held that these charges are permissible under the law. In *James Construction Group, LLC v. State of Louisiana*, 977 So.2d

989 (2007), the contractor agreed to a \$10,000.00 per day stipulated damages clause for each day of the contractor was late completing the project. The \$10,000.00 figure was based upon the daily user costs and was implemented in order “to minimize construction duration and construction operations impact on roadway users.” *Id.* The daily user costs were calculated using a formula provided by the Federal Highway Administration like the present case. *Id.* In *James Construction Group*, a reduction in speed from 70 mph to 45 mph showed a daily user cost of \$21,135.00. *Id.* The Louisiana Court of Appeal held that this disincentive was appropriate. It reasoned that **the contractor was free to enter into the contract, and it cannot complain about the measure of damages in order to avoid its end of the bargain after it did not complete the work on time.** *Id.* (emphasis added).

APAC may rely on an Alabama case which found that a disincentive for failing to complete the work on time is void as a penalty. *Milton Construction Co., Inc. v. State Highway Dept.*, 568 So.2d 784 (1990). In *Milton*, the Alabama Department of Transportation included a disincentive clause in the contract. The disincentive provision would reduce payment owed to the contractor \$5,000.00 per day it was late, and there was a maximum disincentive amount of \$300,000.00. The project was not completed on time and the contractor received the maximum disincentive of \$300,000.00. The Alabama Supreme Court noted that the disincentive clause’s purpose was to encourage early completion of the project and not as compensation for delays and costs to the Alabama Department of Transportation or the public. In other words, there was no

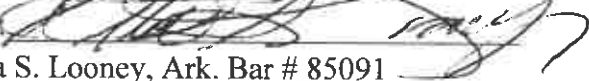
nexus between the \$300,000.00 amount and any sort of damages suffered by the public or the Alabama Department of Transportation.

The *James Construction Group* case is more analogous to the present case. Like Louisiana, AHTD calculated the road user costs and applied it to the disincentive clause. Like Louisiana, AHTD chose a reduced charge for its disincentive and there is a nexus between the amount charged and the disincentive/incentive. Accordingly, the road user costs are not a penalty and should be upheld as lawful.

#### IV. CONCLUSION

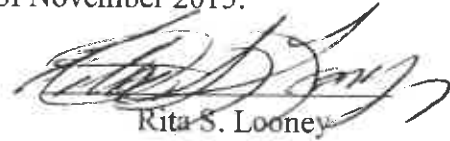
APAC contends that it was wrongfully charged thirty-eight working days. An analysis of the CPM schedule shows that APAC was correctly charged in accordance with the contract and law. The AHTD helped APAC try to complete the job on time. However, the errors and slow production prevented APAC from completing the job in the time it bid. APAC should not be allowed to rewrite or disregard the contract terms and conditions after the project is complete. It should be bound by the contract that it entered with the Commission. Accordingly, APAC's claim should be denied and dismissed.

Respectfully submitted,  
Arkansas State Highway Commission &  
Arkansas State Highway and Transportation  
Department

BY   
Rita S. Looney, Ark. Bar # 85091  
Chief Legal Counsel  
Mark Umeda, Ark. Bar #2007-285  
Staff Attorney  
Arkansas State Highway and Transportation Department

**CERTIFICATE OF SERVICE**

I, Rita Looney, Attorney for Respondents, certify that I have placed a true and correct copy of the forgoing via hand delivery to the attorney for Claimant, Jack East, III, 2725 Cantrell Road, Suite 200, Little Rock, AR 72202 on this 6th day of November 2015.



Rita S. Looney

Arkansas  
State Claims Commission  
NOV 10 2015

RECEIVED

**ARKANSAS STATE CLAIMS COMMISSION**

**APAC-TENNESSEE, INC.**

**CLAIMANT**

**VS**

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**ARKANSAS STATE HIGHWAY COMMISSION AND  
ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT**

**RESPONDENT**

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

On this day comes for hearing, findings of facts, and conclusions of law. Based upon the pleadings, evidence presented at the hearing, arguments of counsel and other matters properly before the Arkansas State Claims Commission, it is hereby found and determined as follows:

**I. FINDINGS OF FACT**

1. On or about May 23, 2013, the Arkansas State Highway Commission ("Commission") and APAC-Tennessee, Inc. ("APAC") entered into a contract to reconstruct 7.876 miles of Interstate I-40 in Forrest City, Arkansas, in St. Francis County.
2. This contract was an A+C contract. In an A+C contract, each bid is evaluated based on two parts. The "A" component is the cost, which includes labor and material, and here, APAC bid approximately \$52,000,000.00 for the "A" component. The "C" component is time. "C" is calculated by multiplying the number of days each contractor bids by the daily user costs.
3. APAC bid 140 days, and the daily road user costs were calculated at \$100,000 per day. This amount represents the costs borne by the public such as the time sitting in traffic, increased operating costs, and the increased likelihood of accidents during construction.

4. If APAC could complete the job in less than 140 working days, it would be awarded a \$100,000.00 a day incentive. If, however, APAC did not complete the project in the allotted time, it would be charged the same amount for every day it was late.

5. The contract required APAC to create and maintain a Critical Path Method ("CPM") Project Schedule. The purpose of the CPM schedule is to: (1) ensure adequate planning during the prosecution and progress of the work in accordance with the allowable number of working days and all milestones; (2) assure coordination of the efforts of APAC, AHTD, Utilities, and others that may be involved in the project; (3) assist APAC and AHTD in monitoring the progress of work and evaluating proposed changes to the contract; and (4) assist AHTD in administering the contract time requirements.

6. APAC failed to complete the job on time. It took APAC 178 work days to complete the job, some 38 days late. As a result, APAC was charged a disincentive of \$100,000 per day and a \$2,500 in liquidated damages per day for a total of 3,895,000.00, in accordance with the terms of the contract.

7. APAC claimed that it was entitled to 38 days that were allegedly charged incorrectly by AHTD.

8. APAC was not entitled to nine days it claimed in connection with Change Order

18. Although Change Order 18 increased the quantity of compacted embankment and unclassified excavation throughout the Job, when it was entered into the CPM schedule,

the Highway 38 Bridge was the critical path, and the completion date for the project did not change.

9. APAC also requested 13 additional work days for "lifts." Lifts are needed when the exposed concrete is uneven. At the time of the request, AHTD could not determine if the lifts caused any delays to the overall completion of the project and APAC did not provide the AHTD an impact analysis in accordance with the contract.

10. APAC also requested four days in January. In accordance with the contract, APAC was not assessed any work days in January, and the AHTD cannot return days it did not charge to APAC.

11. APAC requested 11 days in October because of poor weather. Again, APAC failed to follow contract procedure required to challenge the working days under the terms of the contract. A review of the Daily Work Reports shows that APAC was correctly assessed working days in accordance with the Contract, and APAC was working on critical activities on the days it claims it was unable to work.

12. Finally, APAC requested 3 days in July. The Daily Work Reports show that APAC was working on activities in the critical path and was correctly charged working days in accordance with the Contract.

13. APAC made several errors that delayed the project completion. The bridge work had to be stopped on May 5, 2014, because work was done improperly and the bridge was misaligned by several inches. Work resumed on the bridge on July 3, 2014, when



the deck was finally poured, two months and 29 work days later. The bridge work was on the critical path when this error occurred. Per the contract and applicable law, contractor caused delays are not compensable.

14. APAC planned to complete the embankment at the Highway 38 overpass in two days, but it took them 23 days to complete this work. Corrective shoring needed to be completed and plates on the bridge piles needed to be removed and replaced. APAC had to remove bond breaker due to poor finish and tack, and it had to correct a bent on the bridge. APAC planned on producing and placing approximately 11,000 square yards of concrete per day according to their baseline schedule.

15. The daily road user costs are not a penalty, and represent the cost of interference and inconvenience to the traveling public. Road construction presents delays, loss business revenue, and increased expenses like fuel and maintenance for the citizens of Arkansas and traveling public.

16. The parties agreed to the liquidated damages and daily site use charges when they entered into the contract.

## **II. CONCLUSIONS OF LAW**

The Commission finds in favor of the AHTD and Arkansas State Highway Commission and dismisses and denies APAC's claim. It is found that APAC's errors and slow progression of work caused the project to fall behind schedule. APAC failed to show by a preponderance of evidence that it was incorrectly charged working days.

The Commission finds that the testimony of AHTD's expert witness is credible and supports the finding that the AHTD properly applied the terms of the contract in accordance with the requirement to charge work days to the project.

It is further found that the disincentive as provided in the contract is permissible under the law and represents the cost to the traveling public. APAC was free to enter into the contract, and it cannot complain about the measure of damages in order to avoid its end of the bargain after it did not complete the work on time.

Finally, APAC is not entitled to any pre-judgment interest under the facts of this case and under the law. Since APAC's claim was denied and dismissed, its claims for prejudgment interest is moot. However, the Commission further finds that prejudgment interest cannot be awarded against a sovereign entity like the AHTD or Arkansas State Highway Commission absent a statute or contract providing payment of interest under sovereign immunity. Here, the contract entered into by the parties strictly prohibits interest on a claim, and there is no statute that allows APAC to collect interest against the AHTD or Arkansas State Highway Commission.

STATE CLAIMS COMMISSION DOCKET  
OPINION

15-0610-CC

Amount of Claim \$

Claim No.

APAC Tennessee, Inc.

Attorneys

Jack East, II, Attorney

Claimant

Claimant

vs.

AR Highway Department

Rita Looney, Attorney

Respondent

Respondent

State of Arkansas

March 12, 2015

Breach of Contract, Loss of Profit

Date Filed

Type of Claim

FINDING OF FACTS

The claim was filed for breach of contract /loss of profit in an unspecified amount against the Arkansas Highway Department and transportation. Present at hearing November 12, 2015 was the Claimant, represented by Jack East III, Attorney, and the Respondent, represented by Rita Looney.

After considerable consideration of the facts presented, the Claims Commission unanimously awards this claim in the amount of \$1,300,000.00.

1. On or about May 23, 2013, the Arkansas State Highway Commission ("Commission") and APAC-Tennessee, Inc. ("APAC") entered into a contract to reconstruct 7.876 miles of Interstate I-40 in Forrest City, Arkansas, in St. Francis County.

2. This contract was an A+C contract. In an A+C contract, each bid is evaluated based on two parts. The "A" component is the cost, which includes labor and material, and here, APAC bid approximately \$52,000,000.00 for the "A" component. The "C" component is time. "C" is calculated by multiplying the number of days each contractor bids by the daily user costs.

3. APAC bid 140 days, and the daily road user costs were calculated at \$100,000 per day. This amount represents the costs borne by the public such as the time sitting in traffic, increased operating costs, and the increased likelihood of accidents during construction.

4. If APAC could complete the job in less than 140 working days, it would be awarded a \$100,000.00 a day incentive. If, however, APAC did not complete the project in the allotted time, it would be charged the same amount for every day it was late.

5. The contract required APAC to create and maintain a Critical Path Method ("CPM") Project Schedule. The purpose of the CPM schedule is to: (1) ensure adequate planning during the prosecution and progress of the work in accordance with the allowable number of working days and all milestones; (2) assure coordination of the efforts of APAC, AHTD, Utilities, and others that may be involved in the project; (3) assist APAC and AHTD in monitoring the progress of work and evaluating proposed changes to the contract; and (4) assist AHTD in administering the contract time requirements.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby awards this claims in the amount of \$1,300,000.00 and will be included in the claims bill to be submitted to the 91<sup>st</sup> General Assembly, Arkansas State Legislature 2016 Fiscal Session, for subsequent approval and payment.

Date of Hearing

November 12, 2015

Date of Disposition

December 8, 2015

Chairman

Commissioner

Commissioner

6. APAC failed to complete the job on time. It took APAC 178 work days to complete the job, some 38 days late. As a result, APAC was charged a disincentive of \$100,000 per day and a \$2,500 in liquidated damages per day for a total of 3,895,000.00, in accordance with the terms of the contract.

7. APAC claimed that it was entitled to 38 days that were allegedly charged incorrectly by AHTD.

8. APAC was not entitled to nine days it claimed in connection with Change Order 18. Although Change Order 18 increased the quantity of compacted embankment and unclassified excavation throughout the Job, when it was entered into the CPM schedule, the Highway 38 Bridge was the critical path, and the completion date for the project did not change.

9. Plans furnished by AHTD to APA also required APAC to replace existing asphalt pavement in uniform "lifts", or courses, to reach finished pavement, however, when subsurface concrete pavement was exposed it was found that the concrete was extremely uneven which prevented uniform lifts. This required additional "lifts", or courses, costing additional money and time, and it slowed production. APAC did not request additional money for this uneven condition, however, it did request additional time of thirteen days. AHTD denied this request. The evidence shows the AHTD should have granted a time extension of thirteen days due to the additional time it took APAC to perform this critical work.

10. APAC also requested four days in January. In accordance with the contract, APAC was not assessed any work days in January, and the AHTD cannot return days it did not charge to APAC.

11. APAC requested 11 days in October because of poor weather. Again, APAC failed to follow contract procedure required to challenge the working days under the terms of the contract. A review of the Daily Work Reports shows that APAC was correctly assessed working days in accordance with the Contract, and APAC was working on critical activities on the days it claims it was unable to work.

12. Finally, APAC requested 3 days in July. The Daily Work Reports show that APAC was working on activities in the critical path and was correctly charged working days in accordance with the Contract.

13. APAC made several errors that delayed the project completion. The bridge work had to be stopped on May 5, 2014, because work was done improperly and the bridge was misaligned by several inches. Work resumed on the bridge on July 3, 2014, when the deck was finally poured, two months and 29 work days later. The bridge work was on the critical path when this error occurred. Per the contract and applicable law, contractor caused delays are not compensable.

14. APAC planned to complete the embankment at the Highway 38 overpass in two days, but it took them 23 days to complete this work. Corrective shoring needed to be completed and plates on the bridge piles needed to be removed and replaced. APAC had to remove bond breaker due to poor finish and tack, and it had to correct a bent on the bridge. APAC planned on producing and placing approximately 11,000 square yards of concrete per day according to their baseline schedule.

15. The daily road user costs are not a penalty, and represent the cost of interference and inconvenience to the traveling public. Road construction presents delays, loss business revenue, and increased expenses like fuel and maintenance for the citizens of Arkansas and traveling public.

16. The parties agreed to the liquidated damages and daily site use charges when they entered into the contract.

## II. CONCLUSIONS OF LAW

The Commission finds in favor of APAC and awards it the sum of \$1,300,000.00 for the additional days that it requested for lifts needed as a result of uneven concrete. Otherwise, the Commission finds that APAC failed to show by a preponderance of evidence that it was incorrectly charged working days.

It is further found that the disincentive as provided in the contract is permissible under the law and represents the cost to the traveling public. APAC was free to enter into the contract, and it cannot complain about the measure of damages in order to avoid its end of the bargain after it did not complete the work on time.

Finally, APAC is not entitled to any pre-judgment interest under the facts of this case and under the law. The Commission finds that prejudgment interest cannot be awarded against a sovereign entity like the AHTD or Arkansas State Highway Commission absent a statute or contract providing payment of interest under sovereign immunity. Here, the contract entered into by the parties strictly prohibits interest on a claim, and there is no statute that allows APAC to collect interest against the AHTD or Arkansas State Highway Commission.

**IT IS SO ORDERED.**