February 25, 2013

Colorado Department of Transportation

2500 S. Main Street

Lamar, CO 81052

A&S Construction

839 Mackenzie Avenue

Canon City, CO 81212

The following is the unanimous advisory opinion of the Dispute Review Board for the project known as US 50 Hasty to McClave Jct, CDOT Project Number NH 0505-046, based on a meeting held today at the offices of Sherman & Howard, 90 So. Cascade, Colorado Springs CO at the request of both parties. The parties further requested that the advisory opinion be in writing.

The DRB was tasked to resolve questions about the time count method and amount for this working day contract. The opinion of the DRB is as follows:

The specification and CDOT manual are reasonably interpreted to provide that the “controlling item of work” generally relates to the item being on the critical path. Based on the information before us, including the November 1st, 2012 schedule update and statements from both parties that asphalt paving was on the critical path throughout the time in question, paving was the “controlling item of work”. A&S’ prosecution of the paving should determine the working day time count.

Further, based on facts presented by A&S about the hot plant operating hours, which were not materially disputed by CDOT, the 5.5 days considered by A&S as “overcharged days” were inaccurately charged. These 5.5 days should be removed from the time count and should not count against the 10 days earlier agreed to by the parties.

The DRB recommends that the parties confer and agree on the best way for the working day time count to be administered in order to reverse the charge of 5.5 days to A&S.

The DRB further suggests that CDOT and A&S begin to resolve outstanding issues of design quantities versus field calculations to allow accurate scheduling of remaining work and to prevent the escalation of issues to be resolved upon project completion.

Respectfully submitted,

Richard Fullerton

DRB Chair