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July 15, 2021

Supreme Court of Appeals of West Virginia
Office of the Clerk
Edythe Nash Gaiser, Clerk of Court
1900 Kanawha Blvd. East, #1
Charleston, WV 25305

Re: ***Triton Construction, Inc. v. Gannett Fleming, Inc. and Monongahela Conservation District***
Circuit Court of Preston County, West Virginia Civil Action No. 21-C-7

Triton Construction, Inc. v. State Conservation Committee, West Virginia Conservation Agency, Monongahela Conservation District and West Virginia Department Of Agriculture
Legislative Claims Commission Claim No. CC-21-0030

Dear Clerk Gaiser:

Please find enclosed for filing the parties' ***Motion To Refer Case To The Business Court Division*** regarding the above-referenced matters.

Should you have any questions, concerns or comments, please do not hesitate to contact me.

Sincerely,

DANIELS LAW FIRM, PLLC

Norman T. Daniels, Jr.

NTD/kdk
Enclosure
cc: Hilary M. Bright, Esquire
Matthew A. Nelson, Esquire
James A. Kirby III, Esquire
Triton Construction, Inc.
Preston County Circuit Clerk
Business Court Division Central Office

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

TRITON CONSTRUCTION, INC.
a West Virginia Corporation,

Plaintiff,

v. **Preston County Circuit Court Case No. 21-C-7**

GANNET FLEMING, INC.
A Delaware Corporation, and

MONONGAHELA CONSERVATION DISTRICT,
a West Virginia Conservation District,

Defendants.

TO: THE HONORABLE CHIEF JUSTICE

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the parties, by their undersigned counsel, respectfully request that the above-styled case be referred to the Business Court Division. The parties state as follows in support of this motion:

1. This action involves the following issues:

(a) Breach of contract;

(b) Professional liability claims in connection with the rendering of professional engineering and design services to public and commercial entities;

2. This matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described in the First Amended Complaint attached hereto as **Exhibit A**.

3. In regard to additional related actions, the following related action could be the subject of consolidation, and are now pending:

TRITON CONSTRUCTION, INC.
a West Virginia Corporation,

Claimant,

v. **Legislative Claims Commission Claim No. CC-21-0030**

STATE CONSERVATION COMMITTEE,
an agency of the State of West Virginia, and
WEST VIRGINIA CONSERVATION AGENCY,
an agency of the State of West Virginia, and
MONONGAHELA CONSERVATION DISTRICT,
a West Virginia Conservation District, and
WEST VIRGINIA DEPARTMENT OF AGRICULTURE,
an agency of the State of West Virginia,

Respondents.

4. Plaintiff filed the related action in the West Virginia Legislative Claims Commission as the defendants therein are the ultimate funding and supervisory agencies for the project and as agencies and subdivisions of the state of West Virginia and enjoy sovereign immunity from suit in the Circuit Court.

5. The action in the West Virginia Legislative Claims Commission has been stayed pending the outcome of the action in the Preston County Circuit Court. See *Order* attached hereto as **Exhibit B**.

6. The undersigned parties hereby REQUEST that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the nature of the action constitutes good cause to do so.

WHEREFORE, the undersigned hereby requests, pursuant to *W. Va. Trial Court Rule 29.06* and other applicable law that the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 15th day of July, 2021.

TRITON CONSTRUCTION, INC.,

By Counsel

Norman T. Daniels, Jr. (WVSB # 937)
Thomas E. G. Spears (WVSB #13773)
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normdaniels@danielslawfirm.com
thomas.spears@danielslawfirm.com

CERTIFICATE OF SERVICE

I, Norman T. Daniels, Jr., do hereby certify that on this 15th day of July, 2021, I have served a true and correct copy of the foregoing "**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**," with attachments by depositing the same in the United States mail, postage prepaid, addressed as follows:

Hillary M. Bright, Esquire
The Bright Law Firm, PLLC
200 W. Main Street
P. O. Box 37
Kingwood, WV 26537
Counsel for Defendant,
Monongahela Conservation District

Matthew A. Nelson, Esquire
James A. Kirby III, Esquire
Lewis Brisbois Bisgaard & Smith LLP
707 Virginia Street, East, Suite 1400
Charleston, WV 25301
Counsel for Defendant,
Gannet Fleming, Inc.

Lisa Leishman
Preston County Circuit Clerk
101 West Main Street, Room 301
Kingwood, WV 26537

Business Court Division Central Office
Berkeley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, WV 25401

Norman T. Daniels, Jr. (WVSB # 937)

EXHIBIT A

OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 65356

PRESTON
101 West Main Street RM 301
Kingwood

DATE RECEIVED: 02/05/2021

TOTAL: $25.00

RECEIVED FROM: DANIELS LAW FIRM PLL

STYLE OF CASE
TRITON CONSTRUCTION, INC.
VS.
GANNETT FLEMING, INC.

CASE #: 21-C-7

IN PAYMENT OF SERVICE
BY Check 34054

Lisa Leishman
CLERK OF THE CIRCUIT COURT

BY _____

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES
(Other than Domestic Relations)

In the Circuit Court, County, PRESTON **West Virginia**

I. CASE STYLE:

Plaintiff(s) **Case #** 21-C-7

TRITON CONSTRUCTION, INC. **Judge:** _____

a West Virginia Corporation,

_____

vs.

Defendant(s)	**Days to Answer**	**Type of Service**
GANNETT FLEMING, INC.	30	Secretary of State
207 Senate Avenue Street Camp Hill, PA 17011-2316 City, State, Zip		
MONONGAHELA CONSERVATION DISTRICT Street c/o Donald Headley	30	Secretary of State
75 Pike View Drive Street Farview, WV 26570 City, State, Zip		

Original and 4 **copies of complaint enclosed/attached.**

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

PLAINTIFF: TRITON CONSTRUCTION, INC.

Civil Action No. 21-C-7

DEFENDANTS: GANNETT FLEMING, INC. and MONONGAHELA CONSERVATION DISTRICT

II. TYPE OF CASE:

☐ ASBESTOS	☐ ADOPTION	☐ APPEAL FROM MAGISTRATE COURT
■ PROFESSIONAL MALPRACTICE	■ CONTRACT	☐ PETITION FOR MODIFICATION OF MAGISTRATE SENTENCE
☐ PERSONAL INJURY	☐ REAL PROPERTY	☐ MISCELLANEOUS CIVIL
☐ PRODUCT LIABILITY	☐ MENTAL HEALTH	☐ OTHER Enforcement of Mechanic's Lien
■ OTHER TORT	☐ APPEAL OF ADMINISTRATIVE AGENCY	

III. JURY DEMAND ■ YES ☐ NO
CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): April, 2022

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?
☐ YES ■ NO
IF YES, PLEASE SPECIFY:
☐ Wheelchair accessible hearing room and other facilities.
☐ Interpreter or other auxiliary aid for the hearing impaired.
☐ Reader or other auxiliary aid for the visually impaired.
☐ Spokesperson or other auxiliary aid for the speech impaired.
☐ Other: _____

Attorney Name: Norman T. Daniels, Jr., (WVSB # 937)
Firm: Daniels Law Firm, PLLC
Address: P.O. Box 1433, Charleston, WV 25325
Telephone: (304) 342-6666 FAX: (304) 342-6677

Representing:
■ Triton Construction, Inc.
■ Plaintiff

Dated: February 5, 2021

Norman T. Daniels Jr.
Signature

☐ Pro Se

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

TRITON CONSTRUCTION, INC.
a West Virginia Corporation,

Plaintiff,

v. **CIVIL ACTION NO. 21-C-7**

GANNETT FLEMING, INC.,
a Delaware Corporation, and
MONONGAHELA CONSERVATION DISTRICT,
a subdivision of the State of West Virginia,

Defendant.

FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff, Triton Construction, Inc., (hereinafter "TCI") by and through counsel Norman T. Daniels, Jr., Thomas E. G. Spears and the Daniels Law Firm, PLLC and for its First Amended Complaint against Defendants, hereby alleges and avers as follows:

1. TCI is and at all times relevant herein was a West Virginia corporation maintaining its home office and principal business location at 1944 Winfield Road, St. Albans, Putnam County, West Virginia. TCI is and at all times relevant herein was authorized to and does conduct business in the State of West Virginia.

2. Defendant, Gannett Fleming, Inc. (hereinafter "GFI"), is and at all times relevant herein was a Delaware Corporation maintaining its principal place of business at 207 Senate Avenue, Camp Hill, PA 17011-2316. GFI was MCD's design professional and acted as MCD's authorized agent on the project.

3. Defendant, Monongahela Conservation District (hereinafter "MCD") is and at all times relevant herein was a conservation district that is a subdivision of the State of West Virginia (see W. Va. Code §19-21A-3(3)) formed pursuant to W. Va. Code §19-21A-5 maintaining its principal place of business at 201 Scott Avenue, Morgantown, Monongalia County, West Virginia 25305. Pursuant to W. Va. Code §19-21A-8 (10), conservation districts are granted the power to sue and be sued in the name of the district.

JURISDICTION AND VENUE

4. Pursuant to West Virginia Code §51-2-02 and §56-3-33, this Honorable Court has jurisdiction over the parties and the subject matter of this civil action as the events which give rise to this action occurred in Preston County, West Virginia.

5. Pursuant to West Virginia Code §56-1-1 venue is proper in this Honorable Court because Defendant GFI engaged in business in West Virginia by providing professional engineering services under purchase orders with the West Virginia Conservation Agency ("WVCA") and the events which give rise to this action occurred in Preston County, West Virginia.

6. Preston County, West Virginia is the location of a dam rehabilitation project designed by GFI, where TCI prepared a competitive bid for construction of the Upper Deckers Creek Project Site I Dam Rehabilitation Project, and where TCI contracted with MCD to perform and did perform work identified in the Upper Deckers Creek Plans and Specifications prepared by GFI.

FACTS

7. The West Virginia State Conservation Committee ("SCC"), WVCA, MCD and the West Virginia Department of Agriculture ("WVDOA") (hereinafter referred to as "Owners") planned to rehabilitate the Upper Deckers Creek Site 1 Dam in a multi-year project beginning in 2010. MCD used funding available through the United States Department of Agriculture, Natural Resources Conservation Service (hereinafter "NRCS") and the State of West Virginia to improve and strengthen the existing Upper Deckers Creek earthen dam and the adjacent primary outlet works and auxiliary spillway. An aerial photograph of the Upper Deckers Creek dam taken before construction of the rehabilitation project is attached hereto as Exhibit A. After many delays which were not caused by TCI, the project contract work was substantially completed by TCI on May 20, 2020. Rather than the work being completed "as bid" in fourteen (14) months, due to defective specifications causing delays, the project took thirty-two (32) months to complete "as built." Aerial photographs of the Upper Deckers Creek dam after TCI's construction work was completed are attached as Exhibit B hereto.

8. The project generally consisted of improving the primary spillway riser structure and replacing an existing unprotected auxiliary spillway with a new roller compacted concrete weir-type shell over the crest of the main dam. Roller compacted concrete was to be installed on the downstream face of the earthen dam for additional strength. Roller compacted concrete is a type of concrete installed using a method similar to the method of installing asphalt paving whereby a dry concrete mix is spread with a loader and then compacted using a roller to bind the concrete mix to the underlying aggregate material. The roller compacted concrete was to be laid in many layers one on top of the other along the downstream face of the earthen dam.

9. GFI was a professional engineering firm employed by Owners, including MCD, and NRCS to plan, design, prepare bidding documents for, and oversee the construction of the Upper Deckers Creek Site I Rehabilitation Project (hereinafter "Project"). GFI had performed extensive geotechnical investigations and had designed the Project during the period beginning in 2010 and ending in 2015.

10. The GFI design of the Project was submitted to and reviewed by the West Virginia Division of Environmental Protection (hereinafter "WVDEP"), Dam Safety Branch, NRCS and Owners, including MCD.

11. On January 15, 2015, the WVCA issued a public bidding solicitation for Expression of Interest from firms to provide professional engineering and technical services to the Owners, including MCD, for planning and/or construction oversight tasks related to the rehabilitation of flood control structures located in multiple watersheds in West Virginia. This work included preparing the bid package and providing construction oversight for the Project.

12. GFI submitted an Expression of Interest and was then shortlisted by Owners, including MCD, along with two (2) other engineering firms, O'Brien & Gere and Schnabel Engineering. This governmental procurement was administered by the West Virginia Division of Purchasing and an evaluation committee of representatives of the Owners, including MCD, gave GFI's proposal the highest score. Thereafter on February 25, 2016, the West Virginia Purchasing Division issued a governmental procurement purchase order on behalf of SCC and WVCA to GFI in the amount of $3,007,690.00. The purchase order was for professional engineering services for several Conservation Districts in West Virginia and included

construction phase services for the Upper Deckers Creek Site 1 Rehabilitation Dam Project for a time and material fee with a not-to-exceed limit of $990,690.00.

2017

13. Upon authorization by the Owners, including MCD, GFI prepared the "as bid" plans, specifications and a Notice to Prospective Bidders/Contractors for the public procurement of the Upper Deckers Creek Site 1 Rehabilitation Project. The Notice to Prospective Bidders/Contractors was issued by GFI and MCD on April 14, 2017. The notice was also coordinated with a mandatory job showing on the same day, April 14, 2017. Bidders' questions or queries were to be submitted on May 5, 2017. GFI and MCD subsequently issued responses to bidders' queries by way of five (5) bid package addenda. The final sealed competitive bids were submitted by contractors bidding the project on May 26, 2017. In all, bidders had just over one month (April 14th to May 26th) to review the plans and specifications, develop a work plan, develop a work schedule and prepare a competitive sealed bid for submission on May 26, 2017.

14. The following competitive sealed bids were submitted to the SCC, WVCA, MCD and WVDOA on July 6, 2017:

Bidder	Amount of Bid
Triton Construction, Inc., St. Albans, West Virginia	$7,970,000.00
Heeter Construction, Inc., Spencer, West Virginia	$8,219,808.00
Sunesis Construction Co., West Chester, Ohio	$8,360,000.00
Kanawha Stone Company, Poca, West Virginia	$8,483,108.70

15. TCI was the successful bidder and was awarded the contract to construct the Project on July 6, 2017 (hereinafter "Contract") in the amount of $7,970,000.00. MCD issued a

formal Notice to Proceed with the work on August 23, 2017. TCI began work by preparing submittals for various work items but TCI was unable to begin work on site in 2017 due to the failure of GFI and MCD to obtain all permits before the Notice to Proceed was issued.

16. TCI discovered that GFI and MCD had failed to obtain a NPDES permit from the WVDEP. TCI promptly applied for a NPDES permit with the WVDEP that was required to be issued before TCI or any other contractor could commence work at the dam site. Although the application was filed in September, 2017, WVDEP did not issue its permit Approval until December 29, 2017. Consequently, all TCI's "as bid" work planned for 2017 was delayed and could not be performed because MCD and GFI failed to obtain the necessary NPDES permit from the WVDEP before issuing the Notice to Proceed. Additionally, the Construction Specifications provided for a winter shutdown and prohibited the contractor from working from December 1, 2017 to March 31, 2018 and the NPDES permit was not issued before the 2017/2018 winter shutdown.

17. Pursuant to the Contract specifications, TCI engaged Moretrench as a subcontractor to design, install and operate the dewatering systems to remove shallow groundwater in advance of TCI's excavation in the following two areas (hereinafter collectively referred to as the "Fill Area"): (1) excavation of existing material at the downstream face of the dam that was to be replaced with roller compacted concrete fill and (2) excavation of existing material at the toe of the downstream face of the existing dam, an area generally known as the stilling basin, that was to be replaced with concrete reinforced with rebar. Importantly, the Contract plans and specifications prepared and administered by GFI prohibited dewatering systems, including sumps and well point dewatering systems, in this Fill Area.

2018

18. On September 29, 2017, Moretrench submitted the initial version of the downstream dewatering plans. Moretrench's dewatering plans proposed ten (10) deep wells to be drilled just outside of the downstream limits of the stilling basin at the toe of the downstream face of the dam. Moretrench's dewatering design was prepared in accordance with the dewatering specifications provided to TCI by MCD and prepared by GFI that prohibited the use of any dewatering systems within the Fill Area. After multiple review cycles, GFI approved the Moretrench dewatering plans on May 1, 2018, seven (7) months after Moretrench's initial submission. Moretrench then began installing the ten (10) deep dewatering wells on May 15, 2018. The Contract specifications prohibited any excavation in the Fill Area located on the downstream side of the dam until that area was dewatered. Dewatering is the process of draining or pumping ground water from existing ground.

19. The Contract plans and specifications required that groundwater be removed to a depth of three (3) feet below the bottom of the deepest stilling basin elevation before TCI could begin excavating in the Fill Area.[1] This corresponds to dewatering to an approximate depth of 64 +/- feet below the existing ground surface at the top of the dam. After excavation, concrete reinforced with rebar was to be installed in the stilling basin upon which an armor of roller compacted concrete was to be laid in layers along the downstream face of the dam. The ten (10) deep wells located outside the stilling basin (per the specifications) were operated continuously once installed. By mid-July 2018, TCI notified GFI and MCD that the ten (10) approved wells located downstream of the stilling basin that had been removing water were not effective in

[1] Section 8(b)(4) of Construction Specification CS-11; Specifications dated February 2017.

lowering the groundwater to the minimum required elevation. Delay in dewatering the site to the depth of three (3) feet below the stilling basin brought the planned and "as bid" work of TCI to a standstill. TCI was not able to begin the excavation in the Fill Area until the Fill Area was dewatered. Without excavation, the reinforced concrete and the roller compacted concrete could not be installed.

20. TCI requested permission to install up to seven (7) supplemental deep wells upstream of the stilling basin on the existing dam embankment. The original GFI plans and specifications initially prevented TCI from installing deep wells upstream of the stilling basin.[2] However, the supplemental deep dewatering wells were approved on August 25, 2018. Through the fall of 2018, the supplemental wells were only partially effective. Though water levels were reduced, the minimum groundwater elevation required to begin excavation had still not been achieved. Consequently, no excavation in the Fill Area could proceed due to the inability to dewater.

21. The Contract required the Project to be shut down during winter weather from December 1, 2018 through March 31, 2019. Because of the delays, TCI was forced to work through the winter shutdown period and to continue its efforts to remove water from the Fill Area.

22. Because it was not able to dewater the site before the winter shutdown on December 1, 2018, TCI submitted a request for equitable adjustment increasing the Contract time and amount to account for increased costs and delays caused by differing site conditions encountered at the site in 2018.

[2] Section 8(b)(7) of Construction Specification CS-11; Specifications dated February 2017.

23. GFI also requested increased compensation from the Owners by letter dated February 12, 2019 (*see* Exhibit D attached hereto), Paul G. Schweiger, P.E., Vice President and Manager for GFI, Inc. sent a letter to Brian Farkas, Executive Director of WVCA requesting an increase in the Construction Management Fee to be paid by WVCA to GFI from $990,690.00 to $1,982,290.00, an increase of $991,600.00, stating as follows:

> This shortfall is a result of a number of factors beyond the control of Gannett Fleming and/or the WVCA. Several of these factors were identified in direct communication to your technical staff and legal representative in the past months and included (1) delays in bidding the project which were not captured in our original labor rates and direct expenses, and (2) pre-construction services which were provided at the request of the WVCA which were not anticipated or included in our original estimate. However, the fact that the project will continue for an additional construction season is the primary reason for most of the requested funds.
>
> We would also like to take this opportunity to request an extension of the effective end date for the PO. Based on Triton's construction schedule, we are hopeful that the Upper Deckers project is completed by the end of 2019. Allowing time for project closeout activities, we recommend a project end date of July 31, 2020. This represents a time extension of 510 days for a total PO timeframe of 1,605 days (1095 + 510).
>
> In summary, we are requesting our CM Fee for the Upper Deckers Creek Site 1 Rehabilitation Project be increased to $1,982,290 and we are requesting our contract time be increased to 1,605 days with an effective end date of July 31, 2020.

24. During the winter shutdown between December 1, 2018 and March 31, 2019, the Owners, including MCD, and TCI met to review TCI's request for an equitable adjustment for delays in 2018. MCD agreed to issue "Modification Number 7 to increase the Contract time to November 1, 2019 and increase the Contract amount by $600,000.00 to $8,558,825.00." Modification Number 7 stated this adjustment was "for claims of equitable adjustment pertaining to alleged damages incurred or created from the date of the Notice to Proceed up and to the date

this change order is accepted by all parties." Modification Number 7 was prepared by MCD and executed by Chris Apperson, Vice President of TCI, on March 12, 2019 during the winter shutdown.

25. Modification Number 7 included an equitable adjustment only for the period beginning on August 23, 2017, the date the Notice to Proceed was issued, and ending on March 12, 2019, the date the modification was signed. The Contract time was extended to November 1, 2019.

26. As of March 12, 2019, dewatering was in process and TCI was ready to commence excavation and construction of the roller compacted concrete fill beginning at the end of the winter shutdown on March 31, 2019. On March 12, 2019, both TCI and Owners believed that the Project would be dewatered so that substantial completion of the Project could occur on November 1, 2019.

27. To date, MCD has failed to remit payment to TCI for the $600,000 increase in the Contract amount that is due to TCI pursuant to Modification Number 7.

2019

28. The actions and inactions of Owners' professional engineer, GFI, were found to be negligent during 2019 when it was discovered that the Project could not be dewatered using GFI's specifications. The negligence of GFI caused harm to TCI by increasing cost for labor, equipment, materials, overhead and subcontractors. The negligent actions and inactions of GFI are identified in the Report of Chris Spandau, Principal, HKA Global, Inc., attached as Exhibit C hereto. (*See Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

29. TCI was not able to dewater the Fill Area in 2018, so on February 19, 2019, TCI submitted a plan to install a series of closely spaced shallow wells and thirty-one (31) well points within the Fill Area. This plan was not approved by GFI and MCD until June 5, 2019, more than three (3) months after TCI initially submitted it. Following the approval on June 5, 2019, TCI promptly completed the installation of the thirty-one (31) well points on June 10, 2019.

30. On March 8, 2019, TCI submitted an Amended Excavation Plan in an effort to accelerate the construction schedule. GFI approved TCI's Amended Excavation Plan, with revisions, at 11:00 a.m. on May 7, 2019.

31. On May 7, 2019 at 12:10 p.m., TCI was, for the first time, allowed to commence excavation within the Fill Area. This approval was granted even though dewatering to a depth of three (3) feet below the Fill Area had not been achieved. The dewatering of the Fill Area per the specifications was not possible and was never achieved.

32. Pursuant to Modification Number 7, the Project had to be completed by November 1, 2019, but TCI was prohibited by GFI from beginning the critical path work of excavation in the Fill Area until May 7, 2019.

33. GFI and its onsite representative allowed TCI to proceed with excavation in the Fill Area even though it had not been dewatered to a depth of three (3) feet below the deepest point of excavation located in the stilling basin as required by Construction Specification CS-11, effectively waiving said requirement. No written modifications, specification changes or letters were received by TCI waiving the dewatering requirement in Construction Specification CS-11. The Owners' representatives were present and inspecting the work every day and acknowledged that the site could not be dewatered as required by Construction Specification CS-11.

34. Dewatering of the Fill Area to a depth of three (3) feet below the deepest point of excavation in the stilling basin as required by Construction Specification CS-11 was never achieved by TCI and was impossible to achieve.

35. Because the requirement that the Fill Area be dewatered to a depth of three (3) feet below the deepest point of excavation in Construction Specification CS-11 was impossible to achieve, Construction Specification CS-11 was a defective specification. By waiving the dewatering requirement in CS-11, GFI and MCD admitted the dewatering requirement was a defective specification and that the Project was un-constructible as designed.

36. After modification Number 7 dated March 12, 2019 and until June 5, 2019, GFI prohibited TCI from constructing any dewatering systems, including sumps and well point dewatering systems, within the Fill Area. Despite all installed dewatering wells pumping around the clock, the site could not be dewatered as provided in the specifications. This brought the Project to a standstill because excavation in the Fill Area could not begin.

37. On May 7, 2019, GFI allowed TCI to begin the critical path work of excavation in the Fill Area, and completely waived the specification requiring that no excavation could occur until the Project was dewatered three (3) feet below the lowest excavated elevation.

38. Despite many oral and written requests, and many written submittals, GFI and MCD refused to allow TCI to place dewatering systems, including sumps, within the Fill Area as a primary means of accomplishing dewatering until June 20, 2019. A sump is a hole excavated and supported by structures in which a pump is placed for the purpose of accumulating water for pumping out of the surrounding area.

39. On June 20, 2019, GFI approved TCI's dewatering plans that included the use of sumps within the Fill Area.[3] GFI thereby waived the provision of Construction Specification CS-11 prohibiting the use of sump dewatering systems within the Fill Area and acknowledged that said provision of Construction Specification CS-11 was defective.

40. In July 2019 TCI proceeded to install a series of sumps during its excavation within the Fill Area and abandoned the ten (10) well points installed on June 15, 2019. The sumps were ultimately the only dewatering method that was effective to lower the water level to a sufficient depth to allow the work and excavation within the Fill Area including the construction of the roller compacted concrete and reinforced concrete fill.

41. The purpose of the excavation within the stilling basin was to allow construction of a reinforced concrete toe upon which the roller compacted concrete could be constructed along the downstream face of the dam. The shallow groundwater was noted as being at about 10 feet below the existing grade at an elevation of approximately 1721 feet. Dewatering was required to lower the groundwater to an elevation of approximately 1700 feet where claystone rock was identified. By using sumps within the Fill Area, TCI was able to complete excavation to an elevation of 1700 feet.

42. TCI discovered that the claystone rock upon which the reinforced concrete fill for the toe was to be constructed was located at an elevation of approximately 1696 feet as opposed to 1700 feet and that additional excavation was required. TCI was then directed by GFI and MCD to excavate to an elevation of 1696 feet. On September 6, 2019, TCI sent a letter to MCD and WVCA notifying them of the differing site condition and TCI's intention to request

[3] Submittal #CS21-004-001 Plan of Excavation (Approach to Downstream Phase II Left Side) dated June 20, 2019

additional compensation and an increase in Contract Time. TCI submitted a request for additional Contract time on June 10, 2020 (*see* Exhibit E) requesting a $91,303.11 increase in the Contract amount and seeks an additional seven (7) days in Contract time for the delay caused by the location of the claystone rock material at a deeper elevation than anticipated. GFI and MCD denied TCI's request on July 22, 2020.

43. On July 19, 2019, TCI completed its excavation work within the Fill Area.

44. On July 20, 2019, TCI began constructing the reinforced concrete fill in the stilling basin at the toe of the downstream face of the dam. Construction Specification CS-31.13 provided as follows with respect to the required curing time between concrete pours:

> Construction joints shall be covered and wet cured for 7 days or until concrete placement resumes unless otherwise specified.
>
> Before new concrete is deposited on or against concrete that has hardened, the forms shall be retightened. New concrete shall not be placed until the hardened concrete has cured at least 12 hours. (Emphasis added).

GFI, however, misinterpreted this specification and changed TCI's method and manner of construction by directing TCI to implement a minimum curing time of seven (7) days between **all** pours delaying TCI's completion of the reinforced concrete fill by twenty-four (24) days. TCI had no choice but comply with this limitation of its planned work.

45. On August 30, 2019, TCI sent a letter to GFI, MCD and WVCA notifying them of the delay caused by GFI's misinterpretation of Construction Specification CS 31.13 and that TCI intended to submit a request for additional compensation and increase in Contract time. TCI submitted a request for additional Contract time on April 29, 2020 (*see* Exhibit F) requesting a $271,241.62 increase in the Contract amount and twenty-four (24) additional days in Contract time for the delay caused by GFI's misinterpretation and extension of the minimum curing time

between concrete pours from twelve (12) hours in the Construction Specifications to seven (7) days. GFI and MCD denied TCI's request on July 22, 2020.

46. Construction of the roller compacted concrete on the downstream face of the dam proceeded from October 18, 2019 to February 2020, rather than in the late summer and fall as planned and "as bid" by TCI. Because the roller compacted concrete work was performed during the winter months, TCI was required to use concrete blankets and heating devices to heat the roller compacted concrete material to a temperature of at least thirty-five-degrees Fahrenheit during the curing period pursuant to Construction Specification CS 36.16. TCI incurred additional costs for labor, materials, equipment, overhead and subcontractors to cure the roller compacted concrete material during winter weather and requested a $481,461.89 increase in the Contract amount in a letter to GFI, MCD and WVCA dated June 11, 2020 (*see* Exhibit G – Item 11 on page 2) to compensate TCI for these additional and increased costs. MCD denied TCI's request for a change order increasing the Contract time and price.

47. The additional costs for heating and protecting the roller compacted concrete were incurred as a result of delays caused by the defective specifications and GFI's misinterpretation of Construction Specifications that had delayed TCI's construction of the roller compacted concrete fill until the winter months. But for said delays, TCI would have constructed the roller compacted concrete fill in the late summer and fall of 2019 when ambient temperatures were above thirty-five degrees Fahrenheit and additional heating procedures would not have been required.

48. GFI and MCD determined that substantial completion of the Contract work was achieved by TCI on May 20, 2020.

49. The Contract plans and design specifications were the "how to" for TCI to perform the Contract work under the Contract between MCD and TCI.

50. The Construction Specifications prepared by GFI and issued by MCD to prospective bidders described and identified the manner in which the dewatering for the Project was to be accomplished. Contractors were prohibited from deviating from those Construction Specifications during construction.

51. As the design professional for the Project, GFI gave the contractor, TCI, an implied warranty that the information in the Contract plans and specifications was sufficient and adequate enough for the contractor to complete the project appropriately. By preparing and issuing those specifications, GFI assured the contractor, TCI, that the design plans and specifications, when completed as instructed, would not produce inadequate work or un-constructible conditions.

52. Because the contractor, TCI, was bound to build according to the Owners' design plans and specifications prepared by GFI, TCI is not responsible for the consequences of defects in the plans and specifications. *See United States v. Spearin*, 248 U.S. 132 (1918). GFI is liable to TCI for damages caused by defective plans and specifications. *See Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

53. Section 8(b)(4) of Construction Specification CS-11 required TCI to dewater locations of excavation within the Fill Area so that water levels were three (3) feet below the proposed foundation grades shown on the Project plans. Section 8(b)(4) of Construction Specification CS-11 states as follows:

> Dewatering systems shall dewater to a minimum depth of 3 feet below the proposed foundation grades at every location where excavation is required and

where earthfill material; drainfill material; reinforced, dental or backfill concrete; Roller Compacted Concrete or any other materials are to be placed.

Pursuant to this Section of CS-11, TCI was prohibited from excavating in the footprint of the stilling basin and from installing roller compacted concrete until June 20, 2019 because the Project could not be dewatered to a minimum depth of three (3) feet below the proposed foundation grades. Section 8(b)(7) of Construction Specification CS-11 further states:

> "Dewatering systems shall be constructed outside the limits of excavations so they do not interfere with fill material or Roller Compacted Concrete placement. The general use of sumps within the limits of the "footprint" of the fill material as a primary means of accomplishing dewatering is prohibited." (Emphasis added).

54. Subsurface geotechnical information provided to contractors in the bid documents was very limited and was inadequate. Two geotechnical data reports that had been prepared by GFI in 2011 and 2016 were provided to contractors during the bidding process. The data reports provided no guidance or analysis of the characteristics of the underlying soils, bedrock or groundwater conditions.

55. GFI developed the final plans and specifications for bidding and construction purposes. GFI presumably relied on its own knowledge of the subsurface geotechnical conditions when it prepared the written specification for dewatering at the downstream toe. Section 8(b) of the Construction Specifications titled "Bid Item 17, Dewatering the Construction Site" lists requirements for the dewatering system including deep wells, minimum drawdown depths and limitations on the location of water extraction points.

56. GFI provided detailed calculations for NRCS's, WVCA's and MCD's review and comment. The design report that GFI provided to Owners did not study the feasibility and manner to accomplish the dewatering required at the downstream toe of the dam. However, each

specification written by the engineer must be feasible and achievable in the field. In fact, during the design, NRCS commented that GFI's analysis and design did not address whether dewatering was even achievable.

57. During the design, NRCS pointed out to GFI this critical omission in Review Comment No. 24 dated November 4, 2014, as shown below.[4]

58. NRCS reiterated their concerns regarding the risk created by the high groundwater conditions to GFI in their comments on April 23, 2015. However, GFI does not appear to have addressed this critical concern raised by NRCS.[5]

59. Section 8(b)(4) of Construction Specification CS-11 prepared by GFI placed specific requirements on the dewatering system. Key among them is the requirement to lower water levels to a minimum depth of 3 feet below all foundation grades.

> It is the intent and Contract requirement that the Contractor shall design, furnish and install dewatering facilities and perform specified dewatering prior to initiating any excavation. Dewatering systems shall dewater to a minimum depth of 3 feet below the proposed foundation grades at every location where excavation is required and where earth fill material; drain fill material; reinforced, dental or backfill concrete; [...] (Emphasis added).

60. Section 8(b)(7) of Construction Specification CS-11 prepared by GFI stated that the dewatering system had to be installed outside of the limits of the excavations and no dewatering systems or sumps were allowed in the excavation area.

> Dewatering systems shall be constructed outside the limits of excavations so they do not interfere with the fill material or Roller Compacted Concrete placement. The general use of sumps within the limits of the "footprint" of the fill material as a primary means of accomplishing dewatering is prohibited. The Drawings identify the special circumstances, terms, and conditions for use of dewatering

[4] Review Comments for: Geotechnical Exploration Plan, Upper Deckers Creek Site 1 dated October 16, 2014. Comments from NRCS dated November 4, 2014.
[5] Review Comments for: Draft Phase II Preliminary Geotechnical Field Investigation Report, Upper Deckers Creek Site 1 Dam; comment resolution from February 11, 2015 to January 2016.

> sumps within the areas of open excavation, i.e. only for isolated seeps in rock. Dewatering systems located within areas where fill materials will be placed shall be designed to accommodate the fill placement while maintaining dewatering or shall be staged design to allow removal of a first stage system prior to fill placement with a second stage system to dewater fill placement areas. (Emphasis added).

61. On June 20, 2019, GFI and MCD for the first time approved using the sumps method of dewatering within Fill Area in order to accomplish dewatering. The use of the sumps method was successful. Thereafter, the site was promptly dewatered and construction of the reinforced concrete toe and roller compacted concrete began October 18, 2019.

62. Excavation of the Fill Area by TCI was delayed due to defective specifications and GFI prohibiting the timely performance of this critical path work.

63. TCI had men, equipment, a batch plant for manufacturing concrete, and other materials standing idle ready to perform the critical path work of excavating the Fill Area and to install the reinforced concrete toe and roller compacted concrete in the Fill Area.

64. Because of delays in 2019 and 2020 caused by additional excavation, improperly extended concrete cure time, the necessity of work in winter weather, and delays caused by defective specifications, it took TCI #1,007 days to substantially complete its work on the project rather than the #518 days originally specified in the Contract. The Project took thirty-two (32) months to complete "as-built" rather than the fourteen (14) months "as-bid." These delays caused TCI to incur increased costs for labor, equipment and materials and changed TCI's as bid manner, method and procedures of construction causing damage to TCI.

65. On June 11, 2020, TCI submitted to MCD and its representative, GFI, a request for increases in the Contract price and Contract time due to the delays caused by the defective specifications in 2019 and 2020. *See* Exhibit G. The increased costs were limited to periods

after Modification Number 7 and were for the period of April 1, 2019, to the Project completion in 2020. This claim included the increased cost for installing roller compacted concrete in winter weather in the amount of $481,461.89. TCI requested a Contract price modification of $2,970,133.61 for these increased costs and an increase in the Contract time of 203 days caused by the defective specifications.

66. MCD and GFI rejected TCI's proposed change order increasing the Contract price and time for defective specifications.

67. Rather than approving the proposed change order increasing the Contract price and extending the date for substantial completion, on July 2, 2020, GFI and MCD asserted a claim for liquidated damages against TCI in the amount of $1,045,450.00 (203 days at $5,150.00 per day representing the period of November 1, 2019 to May 21, 2020).

68. TCI has completed the Project work; however, MCD and GFI have refused to make a payment to TCI in the amount of $1,055,776.85 for undisputed work completed ($936,326.85 from Pay Application Number 26 dated June 6, 2020, plus retainage held by MCD for work previously completed in the amount of $119,450.00). *See* Exhibit H. These funds that are due include the $600,000.00 TCI is due pursuant to Modification No. 7 for delays in 2017 and 2018 only.

69. TCI has been damaged by MCD's and GFI's refusal to approve payment to TCI in the amount of $1,055,776.85 for undisputed work performed plus $2,970,133.61 for the defective specifications request for Contract modifications dated June 11, 2020 (which includes the claim for working in winter weather), plus $91,303.11 for additional excavation at the toe of the Fill, and $271,241.62 for delays by the extension of minimum concrete curing. TCI has been

damaged in the amount of $4,388,455.19 by the failure of GFI and MCD to approve these change orders and by the negligence of GFI. Additionally, GFI and MCD should have approved the contract time being extended by at least 203 days from November 1, 2019 to the date of substantial completion.

70. GFI and MCD have failed to approve payment to TCI in the amount of $1,055,776.85 for work completed as follows:

Original Contract Amount	$7,970,000.00
Contract Modification #3 (Deduct)	(11,175.00)
Contract Modification #7	600,000.00
Total Contract Amount	$8,518,859.60
Amount Paid by MCD	(7,463,082.75)
Amount Due TCI Under Original Contract as Modified (*See* Exhibit H) (Without Unapproved Change Order)	$1,055,776.85

71. Additionally, GFI and MCD have failed to approve payment to TCI for the following unapproved change orders.

Change Order for Additional Excavation at the Toe or Fill Area (*See* Exhibit E)	$91,303.11
Change Order for Misinterpretation of Curing Times (*See* Exhibit F)	$271,241.62
Change Order for Defective Specifications (*See* Exhibit G) (Includes Change Order for Installing Roller Compacted Concrete in Winter Weather of $481,461.89)	$2,970,133.61
Amount Due TCI for Unapproved Change Orders:	$3,332,678.34

72. The total amount due to TCI for work completed is as follows:

Amount Due TCI Under Original Contract (See ¶70 above):	$1,055,776.85

Amount Due TCI for Unapproved Change Orders (See ¶71): $3,332,678.34

Total Amount Due TCI for Work Completed: $4,388,488.19

73. TCI has additional damages for labor, materials, rental equipment, the rental value of owned equipment, overhead expenses and a loss of anticipated profit for the delays and changes in TCI's as bid manner, method and sequence of construction required due to actions and inactions of GFI and MCD.

74. Contractors bidding public work projects have the right to use the contractors' own "as bid" manner, method and sequence of construction. TCI bid the Project planning to utilize TCI's specific manner, method and sequence of construction. This made TCI the most efficient contractor with the lower competitive bid for performing the contract work. During construction "as built," TCI was prohibited by GFI and MCD from utilizing TCI's planned manner, method and sequence of construction which caused significant delay and adversely affected the cost, time and difficulty in performing the work completed by TCI.

75. The actions and inactions of GFI and MCD caused TCI to be less efficient in performing the contract work in 2019 and 2020 causing TCI additional damages for lost productivity, delay and disruption due to the following:

i. TCI was delayed in beginning the critical path work of excavating the Fill Area on the downstream side of the dam until May 7, 2019;

ii. TCI was required to accelerate the work of excavating the Fill Area in order to try to timely complete the Project from May 7, 2019 to July 19, 2019;

iii. After excavation was completed on July 19, 2019, TCI was delayed in installing roller compacted concrete by GFI and MCD requiring additional curing times.

iv. The work of TCI was pushed into the winter months which made the performance of contract work less efficient and more costly in cold weather.

v. Other delays and disruptions caused by GFI and MCD caused TCI's productivity "as built" to vary significantly from its "as bid" production.

76. Additionally, "[w]hen the government provides a contractor with defective specifications, the government is deemed to have breached the implied warranty that satisfactory contract performance will result from adherence to the specifications, and the contractor is entitled to recover all of the costs proximately flowing from the breach." *Essex Electro Engineers, Inc. v. Danzig*, 224 F.3d 1283, 1289 (Fed. Cir. 2000) (citing *United States v. Spearin*, 248 U.S. 132, 136, 39 S. Ct. 59, 63 L. Ed. 166, 54 Ct. Cl. 187 (1918); *USA Petroleum Corp. v. United States*, 821 F.2d 622, 624 (Fed. Cir. 1987); *Ordnance Research, Inc. v. United States*, 609 F.2d 462, 479-80, 221 Ct. Cl. 641 (Ct. Cl. 1979)). "The compensable costs include those attributable to any period of delay that results from the defective specifications." *Essex Electro*, 224 F.3d at 1289 (citing *La Crosse Garment Mfg. Co. v. United States*, 432 F.2d 1377, 1385, 193 Ct. Cl. 168 (Ct. Cl. 1970)). "Unlike some situations in which the government has a reasonable time to make changes before it becomes liable for delay, 'all delays due to defective or erroneous Government specifications are *per se* unreasonable and hence compensable.'" *Essex Electro*, 224 F.3d at 1289 (quoting *Chaney & James Constr. Co. v. United States*, 421 F.2d 728, 732, 190 Ct. Cl. 699 (Ct. Cl. 1970) and citing *Daly Constr., Inc. v. Garrett*, 5 F.3d 520, 522 (Fed. Cir. 1993)). MCD's claim for liquidated damages is without merit because TCI's failure to substantially complete the project within the Contract time was due to excusable compensable delays caused by GFI and MCD. The liquidated damages claim of MCD has the retroactive effect of being a

penalty and is therefore unenforceable. TCI was delayed by the extra work and defective specifications which made the Project un-constructible and caused excusable compensable delays. Delays caused by GFI and MCD make the liquidated damages claim unenforceable. *See Gateway Towne Center LLC v. First United Bank & Trust*, 2011 U.S. District Court, Lexis 99005 (Judge Kelley). *See West Va. Pub. Employees Bd. V. Blue Cross Hosp. Serv.*, 174 W.Va. 605, 328 S.E.2d 356 (1985).

77. MCD and GFI failed to timely acknowledge that the Project work of TCI was delayed by the failure of MCD and GFI to timely relax or waive the provisions in Construction Specification CS-11 regarding dewatering and excavation. MCD and GFI failed to timely acknowledge that the construction specifications were defective and that the Project was un-constructible "as-bid."

COUNT I

Professional Negligence Against GFI

78. Plaintiff restates, re-alleges and incorporates each and every allegation set forth in Paragraphs 1 through 77 of Plaintiff's Complaint as if fully set forth verbatim herein.

79. Design professionals like GFI owe a duty of care to contractors like TCI, who have been employed by the same project owner, notwithstanding the absence of privity between the design professional and contractor. *Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

80. GFI served as the design professional which performed geotechnical investigations, designed improvements, prepared bidding documents, performed construction inspections and administered construction work for the State of West Virginia for the Upper

Deckers Creek Dam Site I Rehabilitation Project. The plans and specifications prepared by GFI were defective. During construction by TCI, the Project was not constructible as designed due to defective specifications. *Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001). *See* Exhibit C – Report of Chris Spandau.

81. Due to the special relationship that exists between a design professional (GFI) and the contractor (TCI), GFI impliedly warranted the sufficiency of the plans and specifications and that they would be free from defect. *Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

82. GFI had a duty to TCI to prepare the plans and specifications with the ordinary skill, care and diligence commensurate with that rendered by members of his or her profession. *Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

83. On March 8, 2019, TCI submitted an Amended Excavation Plan in an effort to accelerate the construction schedule. GFI failed to timely approve TCI's Amended Excavation Plan, and did not approve the Plan with revisions until 11:00 a.m. on May 7, 2019. This delayed the Project excavation which had to be completed before work on the roller compacted concrete could begin. These delays caused TCI delay and delay damages.

84. The actions and inactions of GFI in designing, bidding and administering construction constituted a breach of the duty of care it owed to TCI and the breach of that duty caused economic harm to TCI. The professional negligence of GFI caused delays and damages to TCI for the cost of labor, materials, rented equipment, the rental value of owned equipment, overhead, the costs of subcontractors and a loss of anticipated profits. *Miller v. County Court,* 116 W.Va. 380, 180 S.E. 440 (1935).

COUNT II

Breach of Warranty Against GFI

85. Plaintiff restates, re-alleges and incorporates each and every allegation set forth in Paragraphs 1 through 84 of Plaintiff's Complaint as if fully set forth verbatim herein.

86. GFI warranted the sufficiency, accuracy, adequacy and completeness of the plans and specifications it prepared for the Project. *Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

87. TCI reasonably relied on the sufficiency, accuracy, adequacy and completeness of the Defendant' plans and specifications in bidding and undertaking construction or directed by the plans and specifications. During construction, it was discovered that the Project could not be dewatered using the GFI specifications. The Project plans and specifications were found to be defective, insufficient, inaccurate, inadequate and incomplete, as more fully detailed above.

88. The Defendant therefore materially breached its warranty that the plans and specifications for the Project would be sufficient, adequate, accurate and free from defect.

89. The breach of implied warranty by GFI caused delays and damage to TCI for the cost of labor, materials, rental equipment, the rental value of owned equipment, overhead, the cost of subcontractors and a loss of anticipated profits. *Miller v. County Court*, 116 W.Va. 380, 180 S.E.2d 440 (1935).

90. As a direct and proximate result of GFI's breaches of warranty, TCI has been damaged in the amount stated in the prayer for relief below.

COUNT III

Breach of Warranty Claim Against MCD

91. Plaintiff restates, re-alleges and incorporates each and every allegation set forth in Paragraphs 1 through 90 of Plaintiff's Complaint as if fully set forth verbatim herein.

92. MCD warranted the sufficiency, accuracy, adequacy and completeness of the plans and specifications for the Project. *See Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

93. TCI reasonably relied on the sufficiency, accuracy, adequacy and completeness of the MCD's plans and specifications in bidding and undertaking construction as directed by the plans and specifications. The Project plans and specifications were defective, insufficient, inaccurate, inadequate and incomplete, as more fully detailed above. *See* Exhibit C – Report of Chris Spandau.

94. MCD therefore materially breached its warranty to TCI that the plans and specifications for the Project would be sufficient, adequate, accurate and free from defect.

95. TCI is due damages caused by the delay in 2019 and 2020 including the cost of labor, materials, rental equipment cost, the rental value of owned equipment, overhead expenses, the cost of subcontractors and lost anticipated profits. *Miller v. County Court*, 116 W.Va. 380, 180 S.E. 440 (1935).

96. As a direct and proximate result of MCD's breaches of warranty, TCI has been damaged in the amount stated in the prayer for relief below.

COUNT IV

Breach of Contract Against MCD

97. Plaintiff restates, re-alleges and incorporates each and every allegation set forth in Paragraphs 1 through 96 of Plaintiff's Complaint as if fully set forth verbatim herein.

98. MCD entered into a written Contract with TCI dated on or about May 19, 2017, for the Upper Deckers Creek Site I Rehabilitation Project wherein the work to be performed by TCI was identified in the plans and specifications. The specifications were defective and the Contract plans and specifications did not accurately communicate the work to be performed. The Project was not constructible as designed due to defective specifications. The Project could not be adequately dewatered until MCD and GFI relaxed or waived the requirements in Section 8(b)(7) of Construction Specification CS-11 on June 20, 2019 to allow TCI to construct dewatering systems and sumps inside the limits of the excavation for the fill for the roller compacted concrete. In addition, excavation required to construct the reinforced concrete fill and roller compacted concrete fill could not begin until MCD and GFI relaxed or waived the requirements in Section 8(b)(4) of Construction Specification on May 7, 2019 to allow TCI to proceed with said excavation without the Fill Area being dewatered to the depth of three (3) feet below the deepest excavation of the stilling basin as specified, which was impossible to achieve.

99. Section 31(d) of the Contract provisions for the Project provides that in the case of defective specifications for which MCD or its agents are responsible, the contractor (TCI) shall receive an equitable adjustment to the Contract time and price which shall include only increased costs reasonably incurred in attempting to comply with the defective conditions. Section 31(d) states as follows:

> "If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (c) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Conservation District and its agents are responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications. (Emphasis added).

100. The actions and inactions of MCD's professional engineer, GFI, were negligent and caused harm to TCI by increasing cost for labor, equipment, materials and subcontractors. The negligent actions and inactions of GFI are identified in the Report of Chris Spandau attached hereto as Exhibit C. *See Eastern Steel Contractors v. City of Salem,* 209 W.Va. 392, 549 S.E.2d 266 (2001).

101. Section 25 of the Contract provisions for the Project provides that Liquidated Damages are only imposed if the contractor (TCI) fails to work within the time specified in the Contract:

> Liquidated damages are not punitive and are not negative performance incentives. Liquidated Damages are used to compensate the Monongahela Conservation District for calculable damages. Therefore, the liquidated damages rate will be based upon Actual Damages. Actual Damages are those cost that the Conservation District and its agents acquire as a result of the Awarded Contractor's failure to work within the time specified in the contract, and have been calculated at a rate of $5,150.00 per day. (Emphasis added).

102. Pursuant to the plain meaning of Section 25 of the Contract provisions, only in the event that the contractor "fails to work within the time specified in the contract" can liquidated damages be assessed by the owner, MCD. TCI in fact worked every day that it was allowed to work within the time specified in the Contract and therefore there is no factual basis for MCD to

impose liquidated damages upon TCI. Furthermore, TCI is entitled to an increase in the Contract time of at least 203 days (November 1, 2019 to May 20, 2020) due to defective specifications which prevented TCI from performing its excavation work until the site was dewatered.

103. Section 30 of the Contract provisions for the Project provides that MCD shall pay TCI within forty-five (45) days upon receipt of the contractor's application for payment as follows:

> The Monongahela Conservation District shall pay the Contractor the Contract price as provided in this contract. The contractor will make a claim for payment through an invoice to the Conservation District. Such payment shall be made by the Conservation District to the contractor within 45 calendar days, upon receipt and acceptance of proper invoice and confirmation that the work associated with that claim is complete. The Contracting Officer's Representative or Engineer will provide confirmation of work completion.

Throughout the Project, payments were made beyond the forty-five (45) day period in breach of the Contract, and, in fact, payments were made, on average, 97 days after submission in breach of the Contract.

104. Section 30(B)3 of the Contract provides that MCD shall pay TCI for all retainage upon completion of the work:

> If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Monongahela Conservation District and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage. (Emphasis added).

Despite the work being substantially completed on May 20, 2020 and now finally complete, MCD has failed to pay TCI for retainage in breach of the Contract.

105. MCD breached the Contract with TCI as follows:

a. Failing to recognize "defective specifications" and to issue an equitable adjustment increasing the Contract time and price for increased costs and time reasonably incurred in attempting to comply with the defective specifications pursuant to Section 31(d) of the Contract provisions. MCD is responsible for the actions and inactions of its professional engineer, GFI, that were negligent and caused damages to TCI as identified in the Report of Chris Spandau attached hereto as Exhibit C;

b. Failing to pay TCI $1,055,776.85 due for Pay Application Number 26 and retainage;

c. Wrongfully asserting a claim for liquidated damages in the amount of $1,045,450.00 when the delays in achieving substantial completion by November 1, 2019 were due to excusable delay arising from defective specifications and the failure of MCD and GFI to timely relax or waive the requirements of Sections 8(b)(4) and 8(b)(7) of Construction Specification CS-11 as well as other actions and inactions of MCD and GFI. Additionally, TCI worked every day within the time specified in the Contract and there is no factual basis for MCD to assess liquidated damages. The liquidated damages are an unenforceable penalty;

d. MCD has failed to pay TCI pursuant to Section 30 and Section 30(B)3 for work completed and for retainage within forty-five (45) days of its receipt of pay applications from TCI;

e. Failing to impliedly warrant the sufficiency of the plans and specifications which were defective and caused the Project to be un-constructible without a relaxation or waiver of Sections 8(b)(4) and 8(b)(7) of Construction Specification CS-11. *See* Report of Chris Spandau attached hereto as Exhibit C;

f. MCD, the owner, is responsible for the consequences of the defects in the plans and specifications which caused delay and increased cost of labor, equipment and material to TCI;

g. Failing to approve TCI's request for Contract modification increasing the Contract price by $2,970,133.61 and increasing the Contract time due to defective specifications;

h. Failing to approve TCI's request for Contract modifications increasing the Contract price by $91,303.11 for excavation to an elevation below that shown on the plans;

i. Failing to approve TCI's request for a Contract modification increasing the Contract price by $271,241.62 for GFI's improper extension of the time required for concrete curing;

j. The actions and inactions of MCD and GFI changed TCI's "as bid" manner, method and sequence of performing the work causing additional damages to TCI; and

k. MCD's failure to pay TCI amounts due for work completed and placed in service that is currently being used and enjoyed by MCD.

106. There are no just set-offs for MCD to withhold payment to TCI; and

107. MCD first breached the Contract, excusing TCI from further Contract performance.

108. TCI is due damages caused by the delay in 2019 and 2020 including the cost of labor, materials, rental equipment cost, the rental value of owned equipment, overhead expenses, the cost of subcontractors and lost anticipated profits. *Miller v. County Court*, 116 W.Va. 380, 180 S.E. 440 (1935).

109. MCD has materially breached the Contract with TCI, by which TCI has been damaged, and for which TCI demands judgment as set forth below.

COUNT V

Promissory/Equitable Estoppel

110. Plaintiff restates, re-alleges and incorporates each and every allegation set forth in Paragraphs 1 through 109 of Plaintiff's Complaint as if fully set forth verbatim herein.

111. By agreeing to relax or waive Section (8)(b)(7) of Contract Specification CS-11 that prohibited using sumps as dewatering systems within the Fill Area and by allowing sumps to be used within the Fill Area on or about June 20, 2020, MCD and GFI recognized and acknowledged that it was responsible for the extra costs and delays associated with this defective specification.

112. By agreeing to relax or waive Section (8)(b)(4) of Contract Specification CS-11 that prohibited excavation within the Fill Area until it had been dewatered to a depth of three (3)

feet below the deepest stilling basin excavation and by allowing excavation to proceed on or about May 7, 2020 without said dewatering having been achieved, MCD and GFI recognized and acknowledged that they were responsible for the extra costs and delays associated with this defective specification.

113. TCI reasonably relied upon the MCD and GFI implied warranty of the sufficiency, accuracy, adequacy, and completeness of the plans and specifications and incurred increased cost as a result of defective specifications.

114. As a result of MCD's and GFI's statements and actions in allowing the relaxation or waiving of the dewatering specifications, on or about June 20, 2020 and May 7, 2020, MCD and GFI are estopped from claiming that TCI is not entitled to the costs it reasonably incurred as a result of the defective specifications.

115. TCI is due damages caused by the delay in 2019 and 2020 including the cost of labor, materials, rental equipment cost, the rental value of owned equipment, overhead expenses, the cost of subcontractors and lost anticipated profits. *Miller v. County Court*, 116 W.Va. 380, 180 S.E. 440 (1935).

COUNT VI

Quantum Meruit Claim Against MCD

116. Plaintiff restates, re-alleges and incorporates each and every allegation set forth in Paragraphs 1 through 115 of Plaintiff's Complaint as if fully set forth verbatim herein.

117. TCI submitted Contractor's Application for Payment Number 26 requesting payment of $1,055,776.85 for work completed and retainage. By letter dated June 11, 2020, TCI submitted a request for Contract modification in the additional amount of $2,970,133.61. By

letter dated June 10, 2020 TCI submitted a request for Contract modification increasing the Contract price by $91,303.11 for additional excavation. By letter dated April 29, 2020, TCI submitted a request for Contract modification increasing the Contract price by $271,241.62 for delay caused by the extension of minimum concrete curing time. TCI is owed $4,388,455.19 for work completed and being enjoyed by MCD.

118. The unpaid Pay Application Number 26 and requests for Contract modification reflect the value of work performed as mutually agreed upon between MCD and TCI, or alternatively, the fair and reasonable value of the work performed by TCI for MCD.

119. The actions and inactions of MCD and GFI changed TCI's "as bill" manner, method and sequence of performing the work causing additional damages to TCI.

120. There are no just set-offs or credits to the claim of TCI.

121. The work performed by TCI has been completed and is in service being enjoyed by MCD. MCD has been unjustly enriched at the expense of TCI for which TCI demands a judgment as itemized below.

122. TCI is due damages caused by the delay in 2019 and 2020 including the cost of labor, materials, rental equipment cost, the rental value of owned equipment, overhead expenses, the cost of subcontractors and lost anticipated profits. *Miller v. County Court*, 116 W.Va. 380, 180 S.E. 440 (1935).

WHEREFORE, Plaintiff, TCI, demands judgment against Defendants, GFI and MCD, in an amount which is proven at trial, plus pre-judgment and post-judgment interest at the full legal rate, punitive damages, costs, attorney fees and all other relief this Court deems just and responsible.

TCI hereby demands a jury trial on all triable issues.

Respectfully submitted,

TRITON CONSTRUCTION, INC.,

By Counsel

Norman T. Daniels, Jr. (WVSB #937)
Thomas E. G. Spears (WVSB #13773)
DANIELS LAW FIRM, PLLC
BB&T Square, Suite 1270
300 Summers Street (Zip 25301)
P.O. Box 1433
Charleston, WV 25325
304-342-6666
304-342-6677 *(facsimile)*
normdaniels@danielslawfirm.com
thomas.spears@danielslawfirm.com

Exhibit A

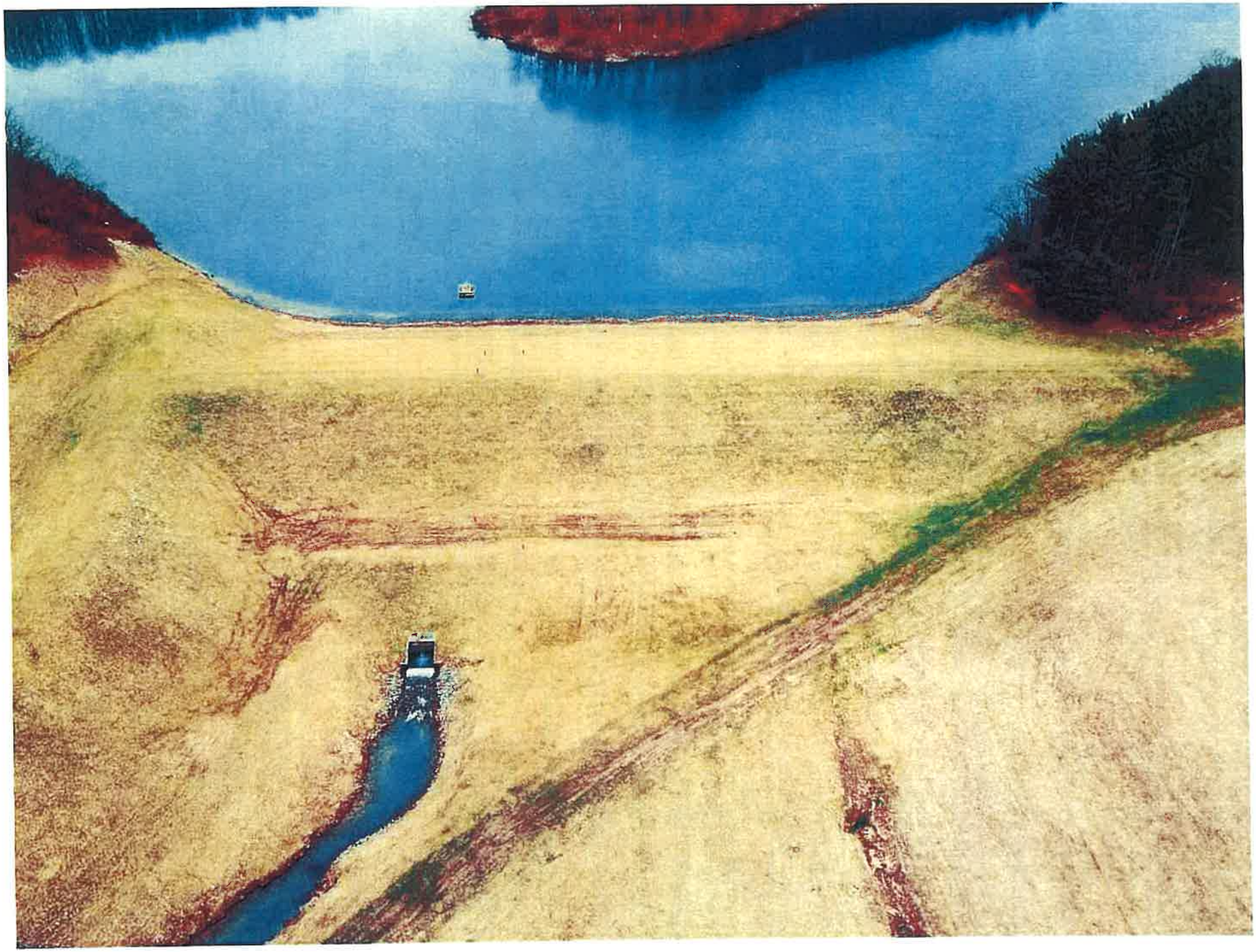


Exhibit B

Exhibit C

Professional Opinions
Defective Specifications
Upper Deckers Creek Site 1 Dam
Triton Construction Inc.
September 3, 2020

I. Introduction

a. Triton Construction Inc. (TCI) has engaged HKA to evaluate the adverse impacts to TCI's work at the Upper Deckers Creek Site 1 Dam project site. The primary focus of our assessment has been the dewatering operations necessary to complete the roller compacted concrete shell constructed on the downstream dam face. HKA's work has consisted of reviewing pre-construction geotechnical and design studies, final plans and specifications, dewatering plans, dewatering monitoring reports, dewatering system modifications and project correspondence.

b. From our study, we have concluded that TCI's dewatering works were impacted by groundwater dewatering specifications that were defective. The fatally flawed specifications resulted in delay of the dewatering and major work items including the placement of the roller compacted concrete shell. These professional opinions were prepared as part of initial assessment and reflect our analysis completed to date. We reserve the right to rescind and/or modify our opinions in the future as additional information becomes available.

c. More specific opinions and supporting evidence addressing the defective dewatering specifications are laid out in more detail below.

II. *Background and Chronology*

a. The Monongahela Conservation District (MCD) rehabilitated the Upper Deckers Creek Site 1 Dam in a multi-year project starting in 2010. The District used funding available through the Department of Agriculture, Natural Resources Conservation Service (NRCS) to improve the primary outlet works and auxiliary spillway at the site.

b. The project generally consisted of improving the primary spillway riser structure and replacing an existing unprotected auxiliary spillway with a new roller compacted concrete weir-type shell over the crest of the main dam. The District engaged the services of Gannett Fleming Inc. (GF) to plan, design and oversee the rehabilitation project.

c. GF advanced the design of the improvements from 2010 through 2016. The GF design was submitted and reviewed by both the West Virginia, Department of Environmental Protection (WVDEP), Dam Safety Section and the NRCS.

d. MCD issued a Notice to Prospective Bidders/Contractors for the rehabilitation of the Upper Deckers Creek Site 1 work on April 14, 2017. The notice was also coordinated with a mandatory job showing on the same day. Bidders' questions or queries were submitted on May 5, 2017. MCD subsequently issued responses to bidders' queries by way of five bid package addenda. The final bids were submitted on May 26, 2017. In all, bidders had just over one month to review the bid package, develop a work plan and schedule and prepare a competitive bid.

e. TCI was the successful bidder and was awarded the contract on July 6, 2017. MCD issued a formal notice to proceed on August 23, 2017. TCI began work by preparing submittals for various work items and obtaining requisite state and local permits.

f. TCI selected Moretrench to design, install and operate the dewatering systems to remove shallow groundwater in advance of the excavation at the toe of the downstream face of the existing dam. This area was generally referred to as the stilling basin.

g. Moretrench submitted the initial version of the downstream dewatering plans in September 2017. The plans proposed ten deep wells to be drilled

just outside of the downstream limits of the stilling basin. Moretrench's dewatering design was prepared following the dewatering specifications provided by the owner. After multiple review cycles, GF approved the Moretrench dewatering plans on May 1, 2018. Moretrench began installation of the ten deep dewatering wells on May 15, 2018.

h. The contract required that groundwater be removed to a depth of three feet below the bottom of the stilling basin excavation[1]. This corresponds to an approximate depth of 20 +/- feet below the existing ground surface. The ten deep wells were operated continuously once installed. By mid-July 2018, TCI notified MCD that the ten approved wells located downstream of the stilling basin were not effective in lowering the groundwater to the minimum required elevation.

i. TCI requested permission to install up to 7 supplemental deep wells upstream of the stilling basin working on the existing dam embankment. The original GF plans and specifications initially prevented TCI from installing wells upstream of the stilling basin[2]. The supplemental deep dewatering wells were approved on August 25, 2018. Through the fall of 2018, the supplemental wells were only partially effective. Though water levels were reduced, the minimum groundwater elevation was not achieved. No excavation and Roller Compacted Concrete (RCC) placement could proceed prior to shutting down the work due to winter restrictions in late 2018.

j. In spring of 2019, TCI submitted a plan to install a series of closely spaced shallow wells and thirty-one well points within the footprint of the stilling basin. The well points were ultimately abandoned in mid-July of 2019 as they produced very little water and were also ineffective in achieving the target groundwater elevation.

k. Despite the contract prohibiting installation of sumps within the footprint of the stilling basin, TCI proceeded to abandon the well points and install a series of sumps within the stilling basin footprint[3]. The sumps were ultimately the only dewatering method that was effective to lower the water level to a sufficient depth to allow placement of the roller compacted concrete to proceed. GF approved the sump method in June 20, 2019[4].

---

[1] Section 4, Bid Item 17, Dewatering the Construction Site; Specifications dated February 2017
[2] Section 7, Bid Item 17, Dewatering the Construction Site; Specifications dated February 2017
[3] Section 7, Bid Item 17, Dewatering the Construction Site; Specifications dated February 2017
[4] Submittal #CS21-004-001 Plan of Excavation (Approach to Downstream Phase II Left Side) dated June 20, 2019

l. The contract required the project to be shut down during winter weather from December 1 through March 31. Because of the delays caused by the defective specifications, Triton was forced to proceed by working through the winter.

m. Construction of the RCC shell proceeded from October 2019 to February 2020.

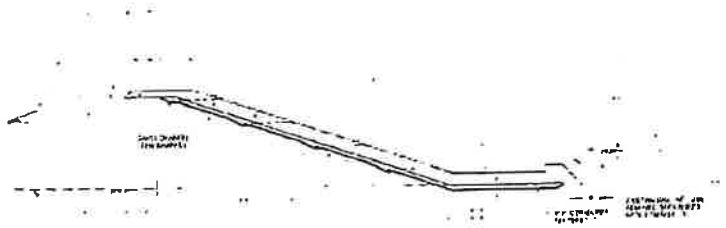
n. Substantial completion was obtained at the end of May 2020.

III. *Design Errors and Omissions Which Affected TCI's Work*

a. Subsurface geotechnical information provided in the bid documents was very limited. Two geotechnical data reports were provided in 2011 and 2016. The data reports provided no guidance or analysis of the characteristics of the underlying soils, bedrock or groundwater conditions.

Opinion-The contract provided no useful characterization of the geotechnical and groundwater conditions. This lack of useful information required the contractor to bid, design and install the dewatering system based on limited data.

b. The contract required TCI to lower the groundwater to at least 3 feet below the deepest excavation elevation prior to starting the RCC construction. This is shown in the figure below[5]



SECTION AT STA 7+50 D

c. The purpose of the excavation was to anchor the RCC stilling basin to the underlying bedrock. The shallow groundwater was noted as being at about 10 feet below the existing grade (roughly Elevation 1721 feet). Dewatering was required to lower the groundwater to approximately Elevation 1700 feet where a claystone rock was identified.

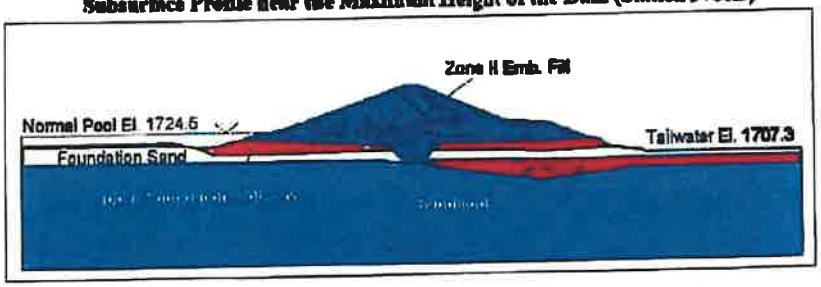
Opinion-The adequate, timely and effective dewatering at the downstream toe area was necessary to begin the construction of the

[5] Section at Sta 7+50 D; Sheet 13 of 86, Embankment Sections: plans by Gannett Fleming, sealed February 6, 2017.

RCC shell. Any delays to successfully dewatering this critical area would impact the RCC construction as well as the overall project completion. Given the potential adverse impact to the construction schedule, the designer should have confirmed that dewatering the area was feasible at all prior to issuing the contract documents.

d. The data reports provided in the bid package indicated that artesian groundwater conditions were encountered in deeper borings at the downstream toe[6]. This lower confined artesian aquifer was created by the presence of the relatively impermeable claystone layer over a very permeable sandstone layer. This is shown in the figure below[7].

Exhibit 1
Subsurface Profile near the Maximum Height of the Dam (Station 9+00D)



e. The profile also indicated the downstream toe would encounter granular "Foundation Sand" material over the claystone. This is shown in an expanded view from the same Exhibit 1 above.

[6] Exhibit 1 is an illustration from the Final Geotechnical Report by Gannett Fleming dated January 2016. This report was not provided as part of the contract documents. It is included in this memorandum for purposes of describing the underlying soils, bedrock and groundwater conditions.
[7] Exhibit 1, Final Geotechnical Report by Gannett Fleming dated January 2016.

f. The two geotechnical data reports indicated groundwater was present in the "Foundation Sands" above the claystone layer as well as in the "Sandstone" rock below. The two geotechnical data reports provided to TCI did not indicate whether the two groundwater aquifers were independent or hydraulically connected. This is an important point as the purpose of the dewatering was to lower the water table within the upper "Foundation Sands". If the two aquifers were independent, removing water from the underlying sandstone using deep wells would have no effect at all. Any dewatering efforts would have to be focused only on the water within the "Foundation Sands". If they were hydraulically connected via fractures or upward seepage in the claystone, deeper wells could be useful though less effective than direct dewatering of the "Foundation Sands".

Opinion-The designer provided no information as to the true nature of the groundwater conditions at the toe of the downstream face. The designer appears to have transferred this responsibility to the contractor. However, the contractor does not have the training, tools or the years of site-specific insight accrued by the designer to prepare a independent characterization of the actual site conditions.

g. The two geotechnical data reports provided only basic aquifer characteristics such as permeability values for the rock materials below

the embankment. No permeability data was provided for the "Foundation Sands"; the very material that was to be dewatered. GF chose to perform downhole Packer pump-in tests within rock only. The Packer pump-in tests are reported as Lugeon values which are an indirect measure of permeability of the claystone and sandstone. Lugeon values were reported as ranging from zero (impermeable) to over 1000 (exceptionally permeable). Again, there was no discussion or interpretation of the Packer test data. The contractor was left simply with the data alone. This is shown in the report excerpt below[8].

4.2.4 Bedrock Permeability Test Results

Bedrock permeability testing was conducted at most borings where rock coring was performed and was typically performed in ten feet intervals. Pressure testing results indicated rock permeability ranged from 0 to 1,050 Lugeons. Relatively permeable bedrock beneath the dam was indicated by high flow rates (>10 gpm) during pressure testing of several stages in borings GF-5, GF-7, and GF-14 and all stages tested in GF-6 and GF-301. Estimated permeabilities in these stages ranged from 100 to 1,050 Lugeons. Pressure testing could not be performed for most stages in borings located downstream of the dam (GF-201, GF-202, and GF-203) due to connections to the surface or artesian conditions. Pressure testing results are included in Appendix G.

Opinion-The Packer pump-in test data was insufficient to characterize the actual aquifer conditions that the contractor would encounter. The designer should have performed pumping tests to better characterize the aquifer characteristics.

h. **Examination of the Packer test data indicates that none of the tests were run to completion for borings at the downstream toe of the existing dam. Therefore, the reported data is not valid and not useful for the design of the dewatering system design for the downstream toe area. Therefore, the design of the system was based on flawed or questionable data.**

Opinion-The Packer pump-in test data was flawed and unreliable. The contractor unknowingly based the design of the dewatering system on flawed information.

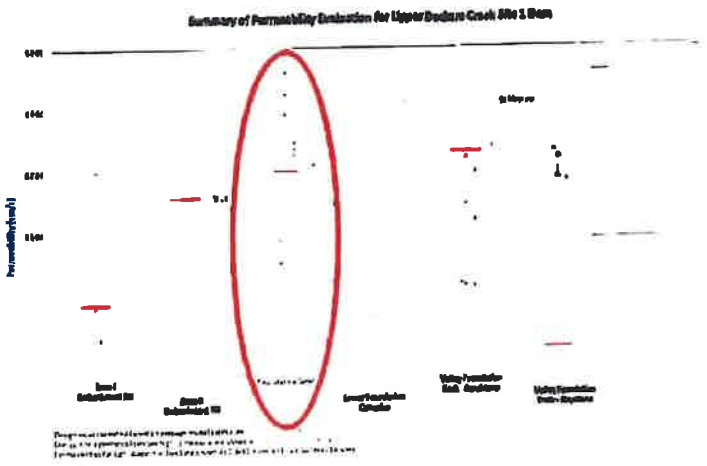
[8] Final Phase II Geotechnical Investigation Report with Rock and Soil Mechanics Testing Program Plan; by Gannett Fleming, Revised Final dated September 2016.

i. Separate from the two geotechnical data reports provided by the contract documents, GF prepared a detailed geotechnical engineering report for design purposes. This report was provided to WVDEP and NRCS for review and approval of the final design and contract package. The report contains in-depth analyses, calculations and models detailing the final design of the project. The draft report was submitted to the NRCS in August 2015. GF responded to NRCS design review comments and issued a final version in January 2016[9]. This report included pertinent information that would have been useful for the design of the downstream dewatering system. We understand that this report was excluded from the information provided to bidders in the contract documents. Further, this report was not provided to TCI subsequent to the award of the contract.

Opinion-GF did not include key information from the bid documents that the contractor could have used to evaluate and design the downstream dewatering system.

j Close examination of the January 2016 Final Geotechnical Report revealed critical information that was withheld from the contractor. One key parameter used in the design of the dewatering system is the permeability or hydraulic conductivity of the soils. As discussed above, the Packer pump-in test data is of limited value. GF did a more detailed analysis of hydraulic conductivity for the various materials in and under the existing dam. This analysis was used to justify their numerical groundwater modeling of the newly rehabilitated dam. This analysis is shown below for the permeability of the "Foundation Sands". The data indicates that the calculated permeability values could range upward and downward by a factor of 1000 or more. The required pumping rate for dewatering wells is directly related to permeability. Therefore, the required flows from the dewatering system could be off by a factor of 1000 or more. This information was not available to the bidders nor TCI after award of the contract.

[9] Final Geotechnical Report, by Gannett Fleming, dated January 2016.



Opinion-GF knew that the permeability of the "Foundation Sands" could vary by a factor of 1000 or more. This information was not provided to the contractor.

IV. Evidence Supporting the Defective Specification Claim by TCI

a. GF developed the final plans and specifications for bidding and construction purposes. GF presumably relied on its own knowledge of the subsurface geotechnical conditions when it prepared the written specification for dewatering at the downstream toe. The cited specification is Bid Item 17, Dewatering the Construction Site. The specification lists requirements for the dewatering system including deep wells, minimum drawdown depths and limitations on the location of water extraction points. The general intent of the Bid Item 17 specification was to transfer the responsibility for the design, installation and operation of the dewatering system to the contractor,

> **b. Bid Item 17, Dewatering the Construction Site**
>
> (1) This Bid Item shall consist of all costs associated with planning, designing, furnishing, installing, operating, maintaining, monitoring and removing all foundation dewatering systems necessary for the removal of surface water and ground water to permit construction of the following:
>
> (a) New riser structure, including any modifications of existing riser structure.
>
> (b) Roller Compacted Concrete armoring system, including removal of existing drainage system, placement of approved fill and drainfill, stilling basin, and principal spillway conduit extension.
>
> (c) Stilling basin drain pipe cleanouts.
>
> (d) Right abutment auxiliary spillway closure fill.
>
> (e) Water supply pipe relocation.

GF provided detailed calculations for NRCS review and comment. I have reviewed the design report and noted that GF does not appear to have studied the feasibility and manner to accomplish the dewatering required at the downstream toe. Each specification written by the designer must be feasible and achievable in the field. In fact, NRCS commented that the GF analysis and design did not address whether dewatering was even achievable.

NRCS pointed out this critical omission in Review Comment No. 24 dated November 4, 2014 as shown below[10].

> 24. The text discusses seepage analysis, but not dewatering for excavation and construction of the embankment and of the stilling basin. Both the initial construction investigation and rehabilitation planning investigations found high ground water elevations compared to the proposed excavation. The geotechnical investigation plan should directly consider construction dewatering, and note that the proposed investigations will provide adequate information to characterize dewatering requirements in the specifications.

NRCS reiterated their concerns regarding the risk created by the high groundwater conditions in their comments on April 23, 2015. However, GF does not appear to have addressed this critical concern raised by NRCS[11].

Opinion-GF does not appear to have critically evaluated how the dewatering of the downstream toe could be accomplished. GF did not establish the feasibility to design, install and operate of any dewatering systems that could meet the performance requirements of the Bid Item 17 specification. GF appears to have ignored NRCS concerns that the analysis and information developed by GF was not adequate to characterize the nature and the scope of the dewatering necessary to build the project. GF's errors and omissions resulted in the issuance of a defective dewatering specification.

b. Bid Item 17 specification placed specific requirements on the dewatering system. Key among them is the requirement to lower water levels to a minimum depth of 3 feet below all foundation grades.

[10] Review Comments for: Geotechnical Exploration Plan, Upper Deckers Creek Site 1 dated October 16, 2014. Comments from NRCS dated November 4, 2014.
[11] Review Comments for: Draft Phase II Preliminary Geotechnical Field Investigation Report, Upper Deckers Creek Site 1 Dam; comment resolution from February 11, 2015 to January 2016.

It is the intent and contract requirement that the Contractor shall design, furnish and install dewatering facilities and perform specified dewatering prior to initiating any excavation. Dewatering systems shall dewater to a minimum depth of 3 feet below the proposed foundation grades at every location where excavation is required and where earthfill material; drainfill material; reinforced, dental or backfill concrete; Roller Compacted Concrete or any other materials are to be placed. Dewatering will be monitored by the

Opinion-GF imposed a minimum performance standard in the Bid Item 17 specification for dewatering depth. GF does not appear to have analyzed whether such performance was achievable. Placing unachievable performance standards is the very definition of a defective specification.

c. Bid Item 17 identified that artesian groundwater conditions were present in the underlying sandstone (below the claystone layer). Artesian conditions occur when a highly pressurized aquifer is trapped or confined below an impermeable layer. The claystone layer acts as the confining layer in this case. Bid Item 17 directs the contractor to install deep wells into the sandstone layer as part of the dewatering system.

Artesian conditions have been observed in the area of the bottom of claystone / top of sandstone interface at the downstream toe of the dam. Artesian conditions were also observed during the original construction of the dam, prior to reservoir filling. Therefore, artesian head in the sandstone layer can be expected during construction. The Contractor's dewatering plan shall include deep wells, and the design shall incorporate the anticipated sandstone phreatic conditions and indicate how the conditions will be controlled

Opinion-GF required the installation of deep wells into the underlying sandstone as a mandatory element of the dewatering system. GF does not appear to have assessed whether such deep wells would effectively dewater the shallow "Foundation Sands" aquifer which was present above the claystone layer. GF knew or should have known that the deep dewatering wells would not be adequate to lower the shallow groundwater to the specified three feet below the excavation grade.

d. Bid Item 17 stated that the dewatering system had to be installed outside of the limits of the excavation and that the use of sumps within the limits of the excavations was prohibited.

Dewatering systems shall be constructed outside the limits of excavations **so they do not** interfere with fill material or Roller Compacted Concrete placement. The **general use of** sumps within the limits of the "footprint" of the fill material as a primary means of accomplishing dewatering is prohibited. The Drawings identify the special circumstances, terms, and conditions for use of dewatering **sumps within the areas of open excavation, i.e. only for isolated seeps in rock. Dewatering systems located within areas where fill materials will be placed shall be designed to accommodate the fill placement while maintaining dewatering or shall be staged design to allow removal of a first stage system prior to fill placement with a second stage system to dewater fill placement areas.**

Opinion-GF required all dewatering systems to be located outside of the excavation footprint. GF does not appear to have analyzed whether the minimum dewatering depth in the "Foundation Sands" layer was even achievable for the conditions present on the site. Further, GF does not appear to have assessed whether dewatering could be achieved in the context of the Bid Item 17 specification as written. Rather, GF transferred the risk to the contractor through the Bid Item 17 specification. This restriction was ultimately relaxed when dewatering using deep wells proved unfeasible. The use of sumps specifically prohibited by GF proved to be the only effective means to achieve the dewatering requirements.

V. *General Conclusions*

a. GF prepared plans and specifications for the rehabilitation of the Upper Deckers Creek Site 1 dam working under the criteria and oversight of the NRCS. Successful completion of the project required early and effective dewatering of the downstream toe area for the future stilling basin. Excavation and RCC placement could not begin until this area was adequately dewatered per the contract. Despite this critical issue, GF did not evaluate the feasibility and the likely extent of the necessary dewatering systems to achieve the specified work. GF appears to have ignored NRCS admonitions to more closely assess the construction dewatering program in the context of its proposed dewatering specifications. GF attempted to sidestep its own responsibility as the designer of the project by transferring the risk for the design, installation, operation and performance of the dewatering to the contractor, TCI.

b. GF was responsible to adequately characterize the subsurface soils, rock and groundwater conditions on the site. GF chose to provide only part of the data created as part of its design process to the contractor. Specifically, GF only provided Packer pump-in test data which only provide an indirect measure of soil permeability; a key parameter necessary for the design of the dewatering system.

c. GF performed detailed analysis of the soil permeability values to support its own design needs for the project. These permeability values were analyzed in depth and subjected to intensive review by NRCS and WVDEP. Despite their own internal assessment, GF failed to provide this very same information to prospective bidders and the prime contractor, TCI.

d. GF reviewed the initial dewatering proposal by TCI's subcontractor, Moretrench, through five separate submittal cycles over a period of many months. GF failed to note that the Moretrench dewatering design was based on parameters for an unconfined aquifer. GF knew or should have known that the proposed deep wells would be installed into a confined aquifer with artesian conditions. This key difference could have led to a gross under-estimation of the pumping rates necessary to achieve the required groundwater drawdown.

e. GF failed to identify that the groundwater within the shallow "Foundation Sands" would not be captured by the deep dewatering wells. GF's failure to understand the two aquifers were separate and distinct caused TCI to waste months installing and modifying dewatering systems that were ineffective.

f. GF prepared the Bid Item 17 specification without knowledge that the required dewatering was both feasible and achievable as written. Most of the dewatering methods contemplated by GF including deep wells, shallow wells, well points and sumps outside of the limits of the stilling basin excavation proved ineffective. The Bid Item 17 specification as prepared by GF is defective, unachievable and fatally flawed.

g. By virtue of GF's errors and/or omissions as described in V-a through V-f described above, the GF geotechnical investigations, analyses, plans and specifications fell below the standard of care. GF's failure to meet the standard of care materially impacted TCI's ability to perform its work in a logical and efficient manner and is the proximate cause for TCI's difficulties to deliver the completed works in a contractually timely manner TCI suffered adverse cost and schedule impacts as a result of the defective specifications.

VI. *Chris Spandau Qualifications and Expertise*

a. I am Chris Spandau, a principal and subject matter expert working with HKA Global. I have been practicing in the civil and geotechnical engineering field continuously since 1976, I hold both a BS and MS in Civil Engineering.

b. My career has been entirely in the private practice arena. I have worked on numerous large-scale public works projects involving dams, highways, bridges, storm drainage facilities and related projects. I have developed, executed and overseen design and construction of dam projects built to both State as well as NRCS standards.

c. I have performed geotechnical studies and investigations to support dam design. I am familiar with the requirements entailed with dam design.

d. I have also overseen and served as the Engineer in Charge of commercial materials testing laboratories. This includes the characterization and analysis of soils and rock materials.

e. My knowledge, experience and expertise qualifies me to opine on the impacts suffered by TCI as a result of the defective dewatering specifications used on the Upper Deckers Creek Site 1 Dam project.

f. I have attached my CV to this document.

Exhibit D

Gannett Fleming

Excellence Delivered As Promised

February 12, 2019

Mr. Brian Farkas
Executive Director
West Virginia Conservation Agency
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Mr. Farkas:

Re: Purchase Order Number: CPO 1400 4902 AGR1600000009
WVCA Dam Rehabilitation EOI
Construction Management Services for Upper Deckers Creek Site1 Dam

Gannett Fleming is currently providing engineering services to the West Virginia Conservation Agency (WVCA) under Purchase Order (PO) Number CPO 1400 4902 AGR1600000009. Included as part of this PO is an authorized amount of $990,690.00 for construction management (CM) services associated with the Upper Deckers Creek Site 1 Rehabilitation Project. The PO has an effective start date of March 7, 2016 and an effective end date of March 7, 2019 (total of 1,095 days).

As you know, construction of Upper Deckers Site 1 will extend into next year due to the Contractor's inability to dewater the site and advance the project. To date, less than 2 percent of the permanent work has been completed. Based on Triton's most recent construction schedule received on December 5, 2018, substantial completion is predicted to occur on October 1, 2019 with demobilization and site restoration activities continuing through the end of October 2019. We have reviewed our estimated CM fee against Triton's most recent construction schedule. Using expenditures to date combined with Triton's schedule, we have updated our monthly CM Manhour/fee estimate to cover the remainder of the project. We estimate an additional fee of approximately $901,450 will be required to allow Gannett Fleming to provide the anticipated level of service required by the WVCA and the NRCS through the end of 2019. Based on our past experience with Triton, we also recommend that a contingency amount of 10 percent be allocated ($90,150) to cover unanticipated activities and potential schedule adjustments by the Contractor. As such, we are herein requesting that our CM fee for Upper Deckers be increased from **$990,690.00** to **$1,982,290.00**, an increase of **$991,600.00**. Table 1 summarizes our requested fee adjustment.

Gannett Fleming, Inc.

P.O. Box 67100 • Harrisburg, PA 17106-7100 | 207 Senate Avenue • Camp Hill, PA 17011-2316
t: 717.763.7211 • f: 717.763.8150
www.gannettfleming.com

Table 1

Construction Phase Services Time and Material Fee with Not-to-Exceed Limit[1]	
Original CM Fee Authorized Under PO CPO 1400 4902 AGR1600000009	$990,690
Additional CM Fee Requested	$991,600
Total CM Fee Requested	$1,982,290

Note 1: Construction phase services are proposed as time and material with a not-to-exceed limit as listed under the "Total CM Fee Requested". Gannett Fleming will not exceed the total fee without written authorization from the WVCA.

This shortfall is a result of a number of factors beyond the control of Gannett Fleming and/or the WVCA. Several of these factors were identified in direct communication to your technical staff and legal representative in the past months and included (1) delays in bidding the project which were not captured in our original labor rates and direct expenses, and (2) pre-construction services which were provided at the request of the WVCA which were not anticipated or included in our original estimate. However, the fact that the project will continue for an additional construction season is the primary reason for most of the requested funds.

We would also like to take this opportunity to request an extension of the effective end date for the PO. Based on Triton's construction schedule, we are hopeful that the Upper Deckers project is completed by the end of 2019. Allowing time for project closeout activities, we recommend a project end date of **July 31, 2020**. This represents a time extension of **510 days** for a total PO timeframe of **1,605 days** (1095 + 510).

In summary, we are requesting our CM Fee for the Upper Deckers Creek Site 1 Rehabilitation Project be increased to $1,982,290 and we are requesting our contract time be increased to 1,605 days with an effective end date of July 31, 2020.

We thank you for your consideration of this request. If you have questions or need additional information to process this request, please do not hesitate to contact me or Mr. Eric Neast of our office at 717-763-7212, extensions 2504 and 2828, respectively.

Very truly yours,
GANNETT FLEMING, INC.

Paul Schweiger

PAUL G. SCHWEIGER, P.E.
Vice President and Manager
Dams and Hydraulics Section

Exhibit E

P.O. BOX 1168, ST. ALBANS, WV 25177
P (304) 758-2180 F (304) 758-2286

June 10, 2020

West Virginia Conservation Agency
Monongahela Conservation District
201 Scott Avenue
Morgantown, WV 26508

Attn: Art Mouser
Contracting Officer

RE: Upper Deckers Creek Site 1 Rehabilitation Project
MCD-2107-4-14
Triton Construction, Inc. Project #17.17
Additional Excavation at Toe-Modification Request

Dear Mr. Mouser:

Triton provided MCD with notice of potential cost and schedule impacts to the project via letter dated September 6, 2019, as a result of the directive to excavate additional material at the downstream toe of the dam. The plans called for rock to be at or near elevation 1700.00, whereas rock was actually located 1694.00 1695.00. This differing site condition resulted in additional excavation costs and subsequent backfill of the excavation costs as a result of the decision to proceed to the lower elevation.

Triton is hereby requesting a contract modification in the amount of ***$91,303.11*** as a result of this directive. The attached cost summary details the labor, equipment and material costs for this issue.

If you have any questions or comments regarding this matter, feel free to contact me at (304) 755-1401.

Sincerely,

Chris Apperson
Vice President

Mark Myers, Chairman
Monongahela Conservation District
201 Scott Avenue
Morgantown, West Virginia 26508

Gene Saurborn
West Virginia Conservation Agency
Gus R. Douglas Agricultural Center at Guthrie
1900 Kanawha Blvd. East
Charleston, West Virginia 25305

RE: Upper Deckers Creek Site 1 Rehabilitation Project
MCD 2017-04-14
Monongalia County Conservation (MCD)
Triton Construction, Inc. Project #17-17
Proposed Contract Modification Increasing Contract Amount
and Time for Additional Excavation

Gentlemen:

Pursuant to Section 6 DIFFERING SITE CONDITIONS and Section 31 MODIFICATIONS/CHANGE ORDERS of the Contract, this letter is to provide notice that the recent directive to excavate additional material near or at the toe of the dam for Roller Compacted Concrete to bear on competent rock will result in additional costs and contract time to the project.

The Plans indicated the top of rock to be at or near elevation 1700 00 FT, rock is actually at or near elevations 1694.0- 1695.00 FT. Additional excavation and material necessary to replace the excavation was not contemplated, agreed to, or included in the contract price or the time for completion.

Thank you for your attention to this matter. Should you have any questions, suggestions or concerns, please do not hesitate to contact me

Sincerely,

Chris Apperson
Vice President

TRITON CONSTRUCTION INC

PROJECT: Upper Deckers Creek Site #1
WORK: Spillway Endsill Undercut

ESTIMATED COST

5/15/2020

LABOR	$	37,027.93
MATERIAL	$	24,265.06
OWNED EQUIPMENT	$	15,451.50
RENTED EQUIPMENT	$	-
SUBCONTRACTOR	$	-
SUB-TOTAL (A)	$	76,744.49
BOND	$	767.44
INSURANCE (Sub-total (A) x 1.0%)	$	767.44
SUB-TOTAL (B)	$	78,279.38
FIELD OVERHEAD (7.5%)	$	5,870.95
SUB-TOTAL (C)	$	84,150.33
B&O TAX (2%)	$	-
SUBTOTAL	**$**	**84,150.33**
HOME OFFICE OVERHEAD (8.5%)		***$7,152.78***
TOTAL	**$**	***91,303.11***

TRITON CONSTRUCTION
INC

PROJECT Upper Deckers Creek Site #1
WORK Spillway Endsill Undercut

LABOR SUMMARY

DATE	EMP NO	NAME	TRADE	REG HOURS	OT1 HOURS	WAGE RATE	AMOUNT	FRINGE RATE	AMOUNT
	1515	Broadwater, James A Jr.		48 5	23	$ 26.17	$ 2,172.11	$ 16.90	$ 1,208.35
	785	Bolton, George M Jr.		0	0	$ 26.17	$ -	$ 16.90	$ -
	1045	Irvin, Kenneth D Jr.		0	0	$ 26.17	$ -	$ 16.90	$ -
	941	Cox, John H		23	14	$ 34.00	$ 1,496.00	$ 19.00	$ 705.96
	1501	Davis, Joseph R		0	0	$ 31.19	$ -	$ 18.10	$ -
	1686	Farmer, Kathryn L		0	0	$ 26.17	$ -	$ 16.90	$ -
	2085	Hellner, Jerry L		17	0	$ 31.19	$ 530.22	$ 18.10	$ 387.70
	1882	Helsey, Dylan P		58	33 5	$ 26.17	$ 2,702.86	$ 16.90	$ 1,461.85
	939	Hershman, Chad		61	29 5	$ 26.17	$ 2,754.39	$ 16.90	$ 1,529.45
	2084	Heston, Thomas S		0	0	$ 31.19	$ -	$ 18.10	$ -
	1956	Knotts, Terence E		64 5	13	$ 26.17	$ 2,108.28	$ 16.90	$ 1,389.75
	1744	Leggett, Joshua R		0	0	$ 26.17	$ -	$ 16.90	$ -
	785	Leggett, Tracy J		0	0	$ 26.17	$ -	$ 16.90	$ -
	1947	Miller, Mycal D		0	0	$ 30.00	$ -	$ 16.90	$ -
	838	Mullins, Brandon J		0	4	$ 26.17	$ 157.02	$ 19.90	$ 87.80
	2083	Neyman, Sherry L		0	0	$ 26.17	$ -	$ 16.90	$ -
	2088	Neyman, Teddy L		0	0	$ 26.17	$ -	$ 16.90	$ -
	916	Pollyak, Shea M		0	0	$ 28.95	$ -	$ 16.90	$ -
	1839	Potts, Garrett A		9	0	$ 24.95	$ 224.55	$ 16.90	$ 152.10
	1743	Rohrbaugh, Shawn E		75	15	$ 31.99	$ 2,248.95	$ 13.24	$ 834.12
	1763	Selders, Earl L		0	0	$ 31.19	$ -	$ 18.10	$ -
	1882	Selders, Jeremy W		0	12	$ 31.19	$ 561.42	$ 18.10	$ 217.20
	1984	Skidmore, Jason N		0	0	$ 39.95	$ -	$ 18.10	$ -
	1858	Thomas, Daniel R II		65 5	29 5	$ 26.17	$ 2,636.63	$ 16.90	$ 1,504.10
	1580	Vogelsang, Frederick L		25 5	16	$ 31.19	$ 1,543.91	$ 18.10	$ 751.15
	1353	Wenke, Megan		0	0	$ 28.95	$ -	$ 16.90	$ -
	2089	Will, Alan P		0	0	$ 31.19	$ -	$ 18.10	$ -
	1518	Wil, Anthony P		11	19 5	$ 31.19	$ 1,255.40	$ 18.10	$ 552.05
				424.00	208.00		$ 20,480.94		$ 10,601.36

TAXES & INSURANCE	
Social Security	6.20
Medicare	1.45
Workers Comp	12.68
Fed UI	0.60
State UI	8.50
TOTAL	29.93

WAGE TOTAL	$20,480.94
FRINGE TOTAL	$10,601.36
TAX (on wages)	$5,945.62
TOTAL LABOR	$37,027.93

TRITON CONSTRUCTION INC

PROJECT: Upper Deckers Creek Site #1
WORK: Spillway Endsill Undercut

MATERIAL SUMMARY

DATE	DESCRIPTION	QUANTITY	PRICE	AMOUNT
	Central Supply	1.00	$ 5,375.10	$ 5,375.10
	Central Supply	1.00	$ 16,956.70	$ 16,956.70
	Ace Hardware	1.00	$ 69.99	$ 69.99
	Ace Hardware	1.00	$ 489.78	$ 489.78
				$ -
				$ -
				$ -
				$ -
		SUBTOTAL		$ 22,891.57
		TAX @ 6.00%		$ 1,373.49
		TOTAL MATERIAL		$ 24,265.06

10/18

4523 Benedum Drive
Bridgeport, WV 26330

Customer No: 519341
Invoice No: 390757
Inv Date: 09/21/19
Page: Page 1 of 2
Customer PO: 17-17
Customer Job: DECKERS CREEK DAM

RECEIVED
SEP 30 2019
By

POSTED
10/7/19

Triton Construction Inc
PO Box 1350
St. Albans WV 25177

ap@tritonwv.com

17.17
911.21 (add to PO per GH)

Date	Ticket #	Item	Description	QuanBy	UM	Unit Price	MatTotal	TaxCode	TaxTotal	Total
									From: 05052 Readymix - Westover	
09/21/19	76667 ✓	3408A402	CLASS K7 SLAG	9.50	CY	166.00	1,577.00	WV24	94.62	1,671.62
09/21/19	76667	111109	CHILLED WATER	9.50	CY	6.50	61.75	WV24	3.71	65.46
09/21/19	76667	19.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/21/19	76667	10	SATURDAY DELIVERY CHARGE	1.00	CY	160.00	160.00	WV24	9.60	169.60
09/21/19	76667	985	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/21/19	76668 ✓	3408A402	CLASS K7 SLAG	9.50	CY	166.00	1,577.00	WV24	94.62	1,671.62
09/21/19	76668	111109	CHILLED WATER	9.50	CY	6.50	61.75	WV24	3.71	65.46
09/21/19	76668	19.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/21/19	76668	10	SATURDAY DELIVERY CHARGE	1.00	CY	160.00	160.00	WV24	9.60	169.60
09/21/19	76668	985	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/21/19	76669 ✓	3408A402	CLASS K7 SLAG	9.00	CY	166.00	1,494.00	WV24	89.64	1,583.64
09/21/19	76669	111109	CHILLED WATER	9.00	CY	6.50	58.50	WV24	3.51	62.01
09/21/19	76669	19.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/21/19	76669	10	SATURDAY DELIVERY CHARGE	1.00	CY	160.00	160.00	WV24	9.60	169.60
09/21/19	76669	985	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
							5,575.16		322.31	5,897.47

Total Invoice:

PO# 17.17.003

28 CU = $4643.00
H20 = $ 182.00
Fuel(3) = $ 35.10
Env. (3) = $ 30.00
Sat Del = $ 480.00

Total Cubic Yards of Readymix for this Invoice 28.00

Thank you for calling the Red Trucks
304-592-5577

Add: $727.10

10/11

A CRH COMPANY

4922 Benedum Drive
Bridgeport, WV 26330

RECEIVED
SEP 23 2019
By________

Customer No:	519341
Invoice No:	289348
Inv Date:	09/13/19
Page:	Page 1 of 3
Customer PO:	17-17
Customer Job:	DECKERS CREEK DAM

Tallon Construction Inc
PO Box 1368
St. Albans WV 25177
ap@tallonwv.com

30.07
60 cy = $9960.00
1320# Ice = 924.00
H2O = 390.00
Super P = 420.00
(6) Fuel = 70.20
(6) Env - 60

911.21
24 cy = $4316.00
572# Ice = 400.40
H2O (24) = 169.00
17.17 Super P = 182.00
Fuel (3) = 35.10
Stamped - no approval / codes
Env. = 30.00

POSTED 120099

Date	Ticket #	Item	Description	Quantity	U/M	Unit Price	Mat'l Total	TaxCode	TaxTotal	Total
									From: 56050 Readymix - Westover	
09/13/19	78506 ✓	3406A402	CLASS K7 SLAG	10.00	CY	166.00	1,660.00	WV24	99.60	1,759.60
09/13/19	78506	111111	ICE (LBS)	220.00	LB	0.70	154.00	WV24	9.24	163.24
09/13/19	78506	111100	CHILLED WATER	10.00	GY	6.50	65.00	WV24	3.90	68.90
09/13/19	78506	10.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/13/19	78506	111151	SUPERPLASTICIZER	10.00	CY	7.00	70.00	WV24	4.20	74.20
09/13/19	78506	906	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78508 ✓	3406A402	CLASS K7 SLAG	10.00	CY	166.00	1,660.00	WV24	99.60	1,759.60
09/13/19	78508	111111	ICE (LBS)	220.00	LB	0.70	154.00	WV24	9.24	163.24
09/13/19	78508	111100	CHILLED WATER	10.00	GY	6.50	65.00	WV24	3.90	68.90
09/13/19	78508	10.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/13/19	78508	111151	SUPERPLASTICIZER	10.00	CY	7.00	70.00	WV24	4.20	74.20
09/13/19	78508	906	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78509 ✓	3406A402	CLASS K7 SLAG	10.00	CY	166.00	1,660.00	WV24	99.60	1,759.60
09/13/19	78509	111111	ICE (LBS)	220.00	LB	0.70	154.00	WV24	9.24	163.24
09/13/19	78509	111100	CHILLED WATER	10.00	GY	6.50	65.00	WV24	3.90	68.90
09/13/19	78509	10.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/13/19	78509	111151	SUPERPLASTICIZER	10.00	CY	7.00	70.00	WV24	4.20	74.20
09/13/19	78509	906	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78511 ✓	3406A402	CLASS K7 SLAG	10.00	CY	166.00	1,660.00	WV24	99.60	1,759.60
09/13/19	78511	111111	ICE (LBS)	220.00	LB	0.70	154.00	WV24	9.24	163.24
09/13/19	78511	111100	CHILLED WATER	10.00	GY	6.50	65.00	WV24	3.90	68.90
09/13/19	78511	10.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/13/19	78511	111151	SUPERPLASTICIZER	10.00	CY	7.00	70.00	WV24	4.20	74.20
09/13/19	78511	906	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78510 ✓	3406A402	CLASS K7 SLAG	10.00	CY	166.00	1,660.00	WV24	99.60	1,759.60
09/13/19	78510	111111	ICE (LBS)	220.00	LB	0.70	154.00	WV24	9.24	163.24

30.07

$18642.0 - 30.07
Add: $5132.50 - 911.21

PO# 17.17.003

4233 Emerson Ave
Bridgeport, WV 26330

Triton Construction Inc
PO Box 1369
St. Albans WV 25177

ap@tritonwv.com

Customer No: 518341
Invoice No: 369348
Inv Date 09/13/19
Page: Page 2 of 3
Customer PO: 17-17
Customer Job: DECKERS CREEK DAM

Date	Ticket #	Item	Description	Quantity	UM	Unit Price	ExtTotal	TaxCode	TaxTotal	Total
09/13/19	78516	111109	CHILLED WATER	[illegible]		8.50	85.00	WV24	3.56	88.56
09/13/19	78516	19.2	FUEL SURCHARGE - ZONE 2	[illegible]		11.70	11.70	WV24	0.70	12.40
09/13/19	78516	111151	SUPERPLASTICIZER	10.00	CY	7.00	70.00	WV24	4.20	74.20
09/13/19	78516	905	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78517 ✓	3408A402	CLASS K7 SLAB	10.00	CY	100.00	1,000.00	WV24	60.00	1,060.00
09/13/19	78517	111111	ICE (LBS)	[illegible]		0.70	154.00	WV24	9.24	163.24
09/13/19	78517	111109	CHILLED WATER	[illegible]		8.50	85.00	WV24	3.56	88.56
09/13/19	78517	19.2	FUEL SURCHARGE - ZONE 2	[illegible]		11.70	11.70	WV24	0.70	12.40
09/13/19	78517	111151	SUPERPLASTICIZER	[illegible]		7.00	70.00	WV24	4.20	74.20
09/13/19	78517	905	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78518 ✓	3408A402	CLASS K7 SLAB	[illegible]	CY	100.00	1,000.00	WV24	60.00	1,060.00
09/13/19	78518	111111	[illegible]	[illegible]		0.70	154.00	WV24	9.24	163.24
09/13/19	78518	111109	CHILLED WATER	10.00	CY	8.50	85.00	WV24	3.56	88.56
09/13/19	78518	19.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/13/19	78518	111151	SUPERPLASTICIZER	10.00	CY	7.00	70.00	WV24	4.20	74.20
09/13/19	78518	905	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78521 ✓	3408A402	CLASS K7 SLAB	10.00	CY	100.00	1,000.00	WV24	60.00	1,060.00
09/13/19	78521	111111	ICE (LBS)	[illegible]		0.70	154.00	WV24	9.24	163.24
09/13/19	78521	111109	CHILLED WATER	10.00	CY	8.50	85.00	WV24	3.56	88.56
09/13/19	78521	19.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/13/19	78521	111151	SUPERPLASTICIZER	10.00	CY	7.00	70.00	WV24	4.20	74.20
09/13/19	78521	905	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV24	0.60	10.60
09/13/19	78523 ✓	3408A402	CLASS K7 SLAB	9.00	CY	100.00	900.00	WV24	55.76	1,055.76
09/13/19	78523	111111	ICE (LBS)	[illegible]		0.70	92.40	WV24	5.54	97.94
09/13/19	78523	111109	CHILLED WATER	5.00	CY	8.50	35.00	WV24	2.24	41.24
09/13/19	78523	19.2	FUEL SURCHARGE - ZONE 2	1.00	EA	11.70	11.70	WV24	0.70	12.40
09/13/19	78523	111151	SUPERPLASTICIZER	6.00	CY	7.00	42.00	WV24	2.52	44.52

30.07

911.21

CENTRAL SUPPLY CO.
A CENTRAL COMPANY

4123 Interstate Drive
Bridgeport, WV 26330

Customer No: 519341
Invoice No: 388348
Inv Date: 09/13/19
Page: Page 3 of 3
Customer PO: 17-17
Customer Job: DECKERS CREEK DAM

Triton Construction Inc
PO Box 1360
St Albans WV 25177

ap@tritonwv.com

Date	Ticket #	Item	Description	Quantity	UM	Unit Price	MatlTotal	TaxCode	TaxTotal	Total
09/13/19	76523	985	ENVIRONMENTAL DISPOSAL FEE	1.00	CY	10.00	10.00	WV29	0.60	10.60
			Total Invoice:				16,956.70		1,017.38	17,974.08

Total Cubic Yards of Readymix for this Invoice 35.00

Thank you for calling the Red Trucks!
304-592-5577

All payments are due and payable by the due date shown on the invoice. We will assess up to the state's legal maximum rate for finance charges on delinquent accounts.

Invoice Amount: 17,974.08

Amount Paid: _____

Customer Name: Triton Construction Inc
Customer No: 519341
Invoice #: 388348
Date: 09/13/19
Customer Job: DECKERS CREEK DAM
Customer PO: 17-17
Due Date: 10/13/19

If you have any questions about your invoice please call 304-592-5577

Remit Payment To: Central Supply Company of WV
PO Box 741363
Atlanta, GA 30374-1363

Please provide your email address below if you would like to start receiving your invoices via email

_____

Streets

10/4

Hardware

Thanks for shopping
our friendly store

Streets Ace Hardware

PO Box 190
Masontown WV 26542
(304) 864-5231

TRITON CONSTRUCTION INC
PO Box 1368
St Albans WV 25177
ACCOUNT # 811

ITEM	QTY	SPEC/REG	EXT
52230	1 03	69 99	69 99
	EACH		

MAIL 16D DUPLEX BRT 52

SUBTOTAL $	69 99
TAX $	4 20
TOTAL $	74.19

CHARGE $ 74 19

I AGREE TO PAY THE ABOVE TOTAL ACCORDING TO THE POSTED TERMS AND CONDITIONS

SIGNATURE Authorized Signer

EMPLOYEE	TERM	INV#	TIME	DATE
9	2	73274	08 12	05-Sep-19

Your receipt guarantees
your no-hassle return

We're your source for seasonal supplies
and all your hardware needs

INVOICE

RECEIVED
BY

17.17
9.11.21

POSTED
9/12/19

10/4

RECEIVED
SEP 17 ...
BY

Hardware

Thanks for shopping
our friendly store

Streets Ace Hardware

Po Box 198
Mountaintown, WV 26542
(304) 864-5231

TRITON CONSTRUCTION INC
PO Box 1380
St Albans WV 25177
ACCOUNT # 911

ITEM	QTY	SALE/REG	EXT
0818341023(0	12 00	0 99	11 88
2020869	EACH		
PENCIL CARPNTR MED LEAD			
283	15 00	35 49	532 35
	EACH		
23/32 CDX PLYWOOD			
248R	30 00	3 19	95 70
RLS	EACH		
2X4-8 REGULAR.			

SUBTOTAL $	489 78
TAX $	29 39
TOTAL $	519.17

CHARGE 519 17

I AGREE TO PAY THE ABOVE TOTAL ACCORDING TO THE POSTED TERMS AND CONDITIONS

SIGNATURE Author and Signer

EMPLOYEE	TERM	INV#	TIME	DATE
8	2	22387	11 14	04-Sep-19

Your receipt guarantees
your no-hassle-return

We're your source for seasonal supplies
and all your hardware needs

INVOICE

17.17
511.21 ✓

POSTED 11/25

PROJECT Upper Deckers Creek Site #1
WORK Spillway Endsill Undercut

	DESCRIPTION			[illegible]	RATE	HALF RATE	OPERATING	
050-003	[illegible]				40.86	20.43		
105-056	[illegible]				14.64	7.32		
115-016	Gen Set			$	110.65	55.33		
115-021	[illegible]			$	110.65	55.33		
055-037	[illegible]			$	54.11	27.06	[illegible]	$ 648.32
165-011	[illegible]			$	114.13	57.07	[illegible]	2,067.38
165-010	[illegible]				109.69	54.85	[illegible]	2,632.54
110-[illegible]	[illegible]				24.05	12.03		
040-015	T D6K2 Dozer				91.82	45.92	[illegible]	3,309.12
030-076	210 Excavator				95.89	47.95	[illegible]	4,027.38
010-051	[illegible] Fuel Truck				30.02	15.01	[illegible]	240.16
150-061	[illegible]				14.55	7.28		
005-[illegible]	[illegible] Ford F250		[illegible]		14.88	7.45	550.82	[illegible]
005-030	[illegible] Ford Utility Bed		[illegible]		15.03	7.52	1,074.63	[illegible]
035-121	[illegible] Ford F150				17.18	8.59		
035-40[illegible]	[illegible] Ford F250				24.99	12.50		
[illegible]	[illegible] Ford F150				12.11	6.06		

TOTAL OWNED EQUIPMENT $ 15,451.50

[illegible] Rates at 1/2 FHWA Rate per WVDOH Spec 109.4.3.3

EquipmentWatch

www.equipmentwatch.com

All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Komatsu WA270-7
4-Wd Articulated Wheel Loaders

Size Class
135 - 149 HP
Weight:
N/A

Configuration for WA270-7

Bucket Capacity - Heaped	**2.5 cu yd - 3.5 cu yd**	**Power Mode**	**Diesel**
Net Horsepower	**148 hp**		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$4,575.00	$1,050.00	$220.00	$46.00	$28.00	$54.41
Adjustments						
Region (West Virgin DOT: 99.3%)	($32.03)	($8.06)	($1.54)	($0.34)		
Model Year (2019: 99.2%)	($36.34)	($10.17)	($2.04)	($0.26)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$4,506.63	$1,260.17	$215.22	$47.38	$28.00	$54.41

Non-Active Use Rates	Hourly
Standby Rate	$12.00
Idling Rate	$40.05

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	41%	$1,875.75/mo
Overhead (ownership)	39%	$1,784.25/mo
CFC (ownership)	9%	$411.75/mo
Indirect (ownership)	11%	$503.25/mo
Fuel (operating) @ 3.61	51%	$14.44/hr

Revised Date: 2nd Half 2018

These are the most accurate rates for the selected Revision Date(s). However, due to more frequent online updates, these rates may not match Rental Rate Blue Book Print. Visit the Cost Recovery Product Guide on our Help page for more information.

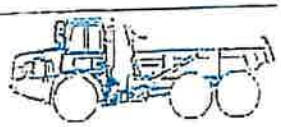
The equipment represented in this report has been exclusively prepared for MATT POWELL (matt.powell@tlionw.com)

www.equipmentwatch.com

All prices shown in US dollars ($)

June 12, 2020

Rental Rate Blue Book®



Volvo A25G
Articulated Rear Dumps

Size Class:
20 - 25 MTons
Weight:
N/A

Configuration for A25G

Axle Configuration	**6 x 4**	**Body Capacity (Struck-Heaped)**	**15.3 - 19.6 cu yd**
Net Horsepower	**318.8 hp**	**Power Mode**	**Diesel**
Rated Payload	**28.48 t**		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD $12 415.00	USD $3,475.00	USD $570.00	USD $130.00	USD $61.02	USD $121.66
Adjustments						
Region (West Virginia: 96.6%)	(USD $24.85)	(USD $6.95)	(USD $1.74)	(USD $0.26)		
Model Year (2014: 97.4%)	(USD $322.14)	(USD $90.17)	(USD $22.57)	(USD $3.37)		
Adjusted Hourly Ownership Cost (100%)	-					
Hourly Operating Cost (100%)						
Total:	USD $12,068.03	USD $3,377.50	USD $545.69	USD $126.37	USD $61.02	USD $121.66

Non-Active Use Rates	Hourly
Standby Rate	USD $34.00
Idling Rate	USD $68.03

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	37%	USD $4 593.35/mo
Overhead (ownership)	49%	USD $6,710.90/mo
CFO (ownership)	9%	USD $1 117.35/mo
Interest (ownership)	5%	USD $693.20/mo
Fuel (operating) @ USD 3.07	30%	USD $18.45/hr

Revised Date: 1st half 2020

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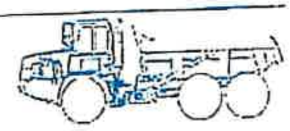
All prices shown in US dollars ($)

June 12, 2020

Rental Rate Blue Book®



Caterpillar 725C2
Articulated Rear Dumps

Size Class:
25 - 28 MTons
Weight:
N/A

Configuration for 725C2

Net Horsepower	314.9 hp	Power Mode	Diesel

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD $10,885.00	USD $3,050.00	USD $785.00	USD $115 00	USD $45.13	USD $110.98
Adjustments						
Region (West Virginia: 99.8%)	(USD $21.77)	(USD $6.10)	(USD $1.53)	(USD $0.23)		
Model Year (2018: 98.5%)	(USD $162.95)	(USD $45.66)	(USD $11 45)	(USD $1 72)		
Adjusted Hourly Ownership Cost (100%)	-	-	-			
Hourly Operating Cost (100%)						
Total:	USD $10,700.28	USD $2,998.24	USD $772.02	USD $113.05	USD $48.13	USD $108.93

Non-Active Use Rates

	Hourly
Standby Rate	USD $30.45
Idling Rate	USD $60.02

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	37%	USD $4 027 45/mo
Overhaul (ownership)	46%	USD $5,007 18/mo
CFC (ownership)	9%	USD $979 88/mo
Indirect (ownership)	8%	USD $870 90/mo
Fuel (operating) @ USD 3 07	39%	USD $19 22/hr

Revised Date: 1st half 2020

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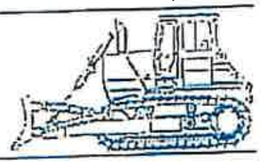
All prices shown in US dollars ($)

April 23, 2020

Rental Rate Blue Book®



Caterpillar D6K2 LGP
Lgp Crawler Dozers

Size Class
105 - 128 HP
Weight
N/A

Configuration for D6K2 LGP

Dozer Type	**VPAT**	**Net Horsepower**	**128.8 hp**
Operator Protection	**ROPS/FOPS**	**Power Mode**	**Diesel**

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD $9,710.00	USD $2,440.00	USD $610.00	USD $92.00	USD $42.50	USD $92.32
Adjustments						
Region (West Virginia: 99.3%)	(USD $60.57)	(USD $17.08)	(USD $4.27)	(USD $0.64)		
Model Year (2017: 99.9%)	(USD $9.68)	(USD $2.42)	(USD $0.61)	(USD $0.09)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-	-	
Hourly Operating Cost (100%)						
Total:	USD $1,646.38	USD $2,420.50	USD $605.12	USD $91.28	USD $42.61	USD $91.92

	Hourly
Non-Active Use Rates	
Standby Rate	USD $24.86
Idling Rate	USD $55.54

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	29%	USD $2,825.90/mo
Overhead (ownership)	54%	USD $4,783.40/mo
CFC (ownership)	9%	USD $789.53/mo
Indirect (ownership)	8%	USD $[illegible]/mo
Fuel (operating) @ USD 3.07	38%	USD $16.45/hr

Revised Date: 1st half 2020

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All prices shown in US dollars ($)

April 23, 2020

Rental Rate Blue Book®

Komatsu PC210LCI-11
Crawler Mounted Hydraulic Excavators

Size Class:
21.1 - 34.0 MTons
Weight:
IIIA

Configuration for PC210LCI-11

Bucket Capacity - Heaped	**0.7 - 1.6 cu yd**	**Net Horsepower**	**165 hp**
Operating Weight	**51869 lbs**	**Power Mode**	**Diesel**

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD $8,348.00	USD $2,336.00	USD $555.00	USD $68.00	USD $48.74	USD $96.13
Adjustments						
Region (West Virginia 89.8%)	(USD $41.78)	(USD $11.69)	(USD $2.80)	(USD $0.44)		
Model Year (2020: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost (100%)					-	
Hourly Operating Cost (100%)						
Total:	USD $8,306.20	USD $2,323.30	USD $552.20	USD $67.56	USD $48.74	USD $96.13

Non-Active Use Rates

	Hourly
Standby Rate	USD $33.67
Idling Rate	USD $33.78

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	37%	USD $3,085.80/mo
Overhead (ownership)	46%	USD $3,836.48/mo
CPC (ownership)	10%	USD $834.00/mo
Interest (ownership)	6%	USD $500.40/mo
Fuel (operating) @ USD 2.07	44%	USD $21.21/hr

Revised Date: 1st half 2020

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www.equipmentwatch.com

All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Ford F-250
On-Highway Light Duty Trucks

Size Class
350 HP & Over
Weight
N/A

Configuration for F-250

Axle Configuration	4 X 4	Power Mode	Gasoline
Cab Type	Conventional	Horsepower	137 hp
Ton Rating	3 / 4		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$880.00	$245.00	$51.00	$9.00	$10.25	$15.25
Adjustments						
Region (West Virginia DOT: 99.8%)	($1.76)	($0.49)	($0.12)	($0.02)		
Model Year (2012: 95.7%)	($37.76)	($10.51)	($2.62)	($0.39)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-	-	
Hourly Operating Cost (100%)					$10.25	$15.03
Total:	$840.48	$234.00	$58.26	$8.59		

Non-Active Use Rates

	Hourly
Standby Rate	$2.38
Idling Rate	$11.94

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	54%	$479.20/mo
Overhaul (ownership)	29%	$255.20/mo
CPC (ownership)	7%	$61.60/mo
Indirect (ownership)	10%	$88.00/mo
Fuel (operating) @ 2.76	70%	$7.16/hr

Revised Date: 1st Half 2019

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EquipmentWatch

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All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Ford F-250
On-Highway Light Duty Trucks

Size Class.
[illegible] HP & Over
Weight
N/A

Configuration for F-250

Axle Configuration	4 X 4	Power Mode	Gasoline
Cab Type	Conventional	Horsepower	137 hp
Ton Rating	3 / 4		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	[illegible]	$245.00	$61.00	[illegible]	$10.25	[illegible]
Adjustments						
Region (West Virginia DOT 99.6%)	[illegible]	[illegible]	[illegible]	[illegible]		
Model Year (2006: [illegible])	[illegible]	[illegible]	[illegible]	[illegible]		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)						
Totals	[illegible]	$257.15	[illegible]	[illegible]	$10.25	$14.89

	Hourly
Non-Active Use Rates	
Standby Rate	$2.32
Idling Rate	$11.60

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	54%	$473.29/mo
Overhaul (ownership)	25%	[illegible]/mo
CFC (ownership)	7%	[illegible]/mo
Indirect (ownership)	10%	[illegible]/mo
Fuel (operating) @ 2.75	70%	$7.16/hr

Revised Date: 1st Half 2019

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The equipment represented in this report has been exclusively prepared for MATT POWELL (matt.powell@[illegible])

EquipmentWatch

www.equipmentwatch.com

All prices shown in US$

February 1, 2019

Rental Rate Blue Book®

Miscellaneous DSL 4X2 2500
On-Highway Water Tankers

Size Class:
To 199 HP
Weight
19,500 lbs.

Configuration for DSL 4X2 2500

Power Mode	Diesel	Horsepower	199
Tank Capacity	2500 gal		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$2,000.00	$500.00	$140.00	$21.00	$26.75	$32.11
Adjustments						
Region (West Virginia DOT- 99.5%)	($4.00)	($1.12)	($0.28)	($0.04)		
Model Year (1995: 81.7%)	($365.27)	($102.36)	($25.57)	($3.84)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	-
Total:	$1,630.73	$456.88	$114.15	$17.12	$26.75	$32.11

Non-Active Use Rates	Hourly
Standby Rate	$4.81
Idling Rate	$21.53

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	49%	$980.00/mo
Overhead (ownership)	31%	$620.66/mo
CPC (ownership)	9%	$180.00/mo
Indirect (ownership)	11%	$220.66/mo
Fuel (operating) @ 3.27	86%	$12.36/hr

Revised Date: 1st Half 2019

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The equipment represented in this report has been exclusively prepared for MATT POWELL (matt.powell@uticonw.com)

PROJECT: Upper Deckett Creek Site #1
WORK: Spillway Endsill Undercut

RENTED EQUIPMENT SUMMARY

ITEM	ID #	DURATION	RENTAL AMOUNT	OPERATING	OPERATING C...
			$		
			$		
			$		
			$		
		0	$ -		$ -

RENTAL SUB TOTAL	$ -
OPERATING COSTS	$ -
SALES TAX	$ -
TOTAL RENTED EQUIPMENT	$ -

TRITON CONSTRUCTION INC

PROJECT: Upper Deckers Creek Site #1
WORK: Spillway Endsill Undercut

SUBCONTRACTOR SUMMARY

	AMOUNT

TOTAL SUBCONTRACTOR $

Exhibit F

TRITON
CONSTRUCTION, INC.

P.O. BOX [illegible] ST. ALBANS, WV 25177
P (304) 719-2100 F (304) 719-2200

April 29, 2020

West Virginia Conservation Agency
Monongahela Conservation District
201 Scott Avenue
Morgantown, WV 26508

Attn: Art Mouser
Contracting Officer

RE: Upper Deckers Creek Site 1 Rehabilitation Project
MCD-2107-4-14
Triton Construction, Inc. Project #17.17
Concrete Activity Delays-Modification Request

Dear Mr. Mouser:

Triton provided MCD with notice of potential cost and schedule impacts to the project via letter dated August 30, 2019, as a result of concrete activity delays. The Specifications were enforced incorrectly and cost the project 24 days on the critical path. No response to this letter was provided by MCD or its agents, nor was any attempt made to mitigate these delays and associated costs.

Triton is hereby requesting a contract modification in the amount of ***$271,241.62*** as a result of the specification change. The attached cost summary details the extended field overhead, idle equipment, fuel consumption, equipment rental and idle batch plant rental cost for this issue.

If you have any questions or comments regarding this matter, feel free to contact me at (740) 391-5847.

Sincerely,

Matthew C. Powell, P.E.
Operations Manager

TRITON
CONSTRUCTION, INC.

P.O. BOX 1360 ▪ T. ALBANS, WV 25177
P (304) 722-2100 F (304) 722-2120

August 30, 2019

West Virginia Conservation Agency
Monongahela Conservation District
201 Scott Avenue
Morgantown, WV 26508

Attn: Art Mouser
Contracting Officer

RE: Upper Deckers Creek Site 1 Rehabilitation Project
MCD-2107-4-14
Triton Construction, Inc. Project #17.17
Concrete Activity Delays

Dear Mr. Mouser:

This letter is to serve a notice that Triton Construction has been delayed by the incorrect interpretation of the contract specification as it relates to concrete placement. Specification Section 31, paragraph 13 states:

Construction Joints shall be covered and cured for 7 Days or until concrete placement resumes.

New concrete shall not be placed until the hardened concrete has cured at least 12 hours.

Triton has been directed by the responses to RFI's 053 and 057. These responses state that no vertical lift of concrete shall be placed until 7 days has passed. This clearly contradicts the contract documents, by which Triton has prepared the project schedule as is resulting a significant delay to the project. To date, this issue has resulted in a delay to the project of 24 days.

Triton will be requesting additional compensation and extension of contract time for the delay caused by the change in specification. The full cost impacts are not known at this point in time.

If you have any questions or comments regarding this matter, feel free to contact me at (740) 391-5847.

Sincerely,

Matthew C. Powell, P.E.
Operations Manager

TRITON CONSTRUCTION INC

PROJECT: Upper Decker Creek Site #1
WORK: Concrete Activity Delay Costs

ESTIMATED COST

4/29/2020

LABOR	$	56,194.45
MATERIAL	$	19,511.39
OWNED EQUIPMENT	$	80,859.12
RENTED EQUIPMENT	$	28,741.21
SUBCONTRACTOR	$	42,684.96
SUB-TOTAL (A)	$	227,991.13
BOND	$	2,279.91
INSURANCE (Sub-total (A) x 1.0%)	$	2,279.91
SUB-TOTAL (B)	$	232,550.95
FIELD OVERHEAD (7.5%)	$	17,441.32
SUB-TOTAL (C)	$	249,992.28
B&O TAX (2%)	$	-
SUBTOTAL	**$**	**249,992.28**
HOME OFFICE OVERHEAD (8.5%)		***$21,249.34***
TOTAL	**$**	**271,241.62**

*Above cost does not include any Liqidated Damage charges

TRITON CONSTRUCTION INC

PROJECT Upper Decker Creek Site #1
WORK Concrete Activity Delay Costs

LABOR SUMMARY

DATE	EMP. NO.	NAME	TRADE	REG HOURS	OT1 HOURS	WAGE RATE	AMOUNT	FRINGE RATE	FRINGE AMOUNT
			Labor Foreman-Actual	200.00	40	$ 27.95	$ 7,267.00	$ 16.30	$ 3,912.00
			Laborer L2-Actual	0.00	0	$ 25.92	$ -	$ 16.30	$ -
			Laborer Foreman-Foreca	0.00		$ 24.86	$ -	$ 16.30	$ -
			Laborer L2-Forecast	0.00		$ 25.92	$ -	$ 16.30	$ -
			Operator-Forecast	0.00		$ 30.49	$ -	$ 18.60	$ -
			Operator O2-Actual	0.00	0	$ 30.49	$ -	$ 18.60	$ -
			Project Manger	200.00	40	$ 50.00	$ 13,000.00	$ 15.00	$ 3,600.00
			Project Engineer	200.00	40	$ 40.00	$ 10,400.00	$ 15.00	$ 3,600.00
			Operations Manager	50.00	10	$ 55.00	$ 3,575.00	$ 15.00	$ 900.00
				650.00	130.00		$ 34,242.00		$ 12,012.00

TAXES & INSURANCE	
Social Security	6.20
Medicare	1.45
Workers Comp	12.08
Fed. U.I	0.80
State U.I.	8.50
TOTAL	29.03

WAGE TOTAL	$34,242.00
FRINGE TOTAL	$12,012.00
TAX (on wages)	$9,940.45
TOTAL LABOR	$56,194.45

TRITON CONSTRUCTION
INC

PROJECT: Upper Decker Creek Site #1
WORK: Concrete Activity Delay Costs

MATERIAL SUMMARY

DATE	DESCRIPTION	QUANTITY	PRICE	AMOUNT
				$ -
	Fuel for Pumps (951 GAL/WEEK*4 WEEKS)	3,804.00	$ 3.00	$ 11,412.00
	Fuel For Gen Sets (400 GAL/WEEK*4 WEEKS)	1,600.00	$ 3.00	$ 4,800.00
	Dumpster	1.00	$ 390.00	$ 390.00
	Office Septic	1.00	$ 105.00	$ 105.00
	Office Internet	1.00	$ 160.97	$ 160.97
	Project Manager Housing	1.00	$ 675.00	$ 675.00
	Project Staff Per Diem	48.00	$ 18.00	$ 864.00
			SUBTOTAL	$ 18,406.97
			TAX @ 6.00%	$ 1,104.42
			TOTAL MATERIAL	$ 19,511.39

OWNED EQUIPMENT SUMMARY

ID No		OP	IDLE	OPERATING	IDLE	OPERATING	IDLE	EQUIPMENT
050-003	CAT CS-433E Roller	0	192	$ 40 98	$ 20 49		3,934.08	3,934 08
105-008	IR 185 CFM Air Compressor	0	192	$ 14 64	$ 7 32		1,405.44	1,405 44
115-019	Diesel Gen Set	192		$ 110 65	$ 55 33	21,244 80		21,244 80
115-021	Diesel Gen Set		192	$ 110 65	$ 55 33		10,622.40	10,622.40
055-037	Komatsu WA270 Loader		192	$ 54 11	27 06		5,194.56	5,194 56
1389612N	4" Diesel Pump		192	$ 14 26	7 14		1,370.88	1,370 88
GHT-759	6" Diesel Pump		192	$ 41 37	20 69		3,971.52	3,971.52
010-013	GMC C7500 Flatbed		192	$ 24 65	12 33		2,366.40	2,366.40
040-019	CAT D6K2 Dozer	0	192	$ 91 92	45 96		8,824.32	8,824 32
030-079	Komatsu 210i Excavator		192	$ 95 89	47 95		9,205.44	9,205.44
010-051	International Fuel Truck	24	168	$ 30 02	$ 15 01	720 48	2,521 68	3,242 16
150-051	Finn Straw Blower		192	$ 14 52	7 26		1,393.92	
005-024	2008 Ford F250	0	192	$ 14 89	7 45		1,428.44	1,428.44
005-039	2012 Ford Utility Bed		192	$ 15 03	7 52		1,442.88	1,442.88
005-121	2018 Ford F150	0	192	$ 17 18	8 59		1,649.28	1,649.28
005-108	2017 Ford F350		192	$ 24 99	12 50		2,399.04	2,399.04
005-045	2013 Ford F150		192	$ 12.11	$ 6 06		1 162.56	1 162.56

TOTAL OWNED EQUIPMENT $ 99,859 12

** Idel Rates at 1/2 FHWA Rate per WVDOH Spec 109 4 3 3

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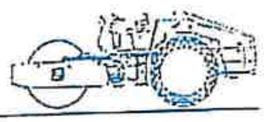
All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Caterpillar CS-433E (disc. 2010)
Single Drum Vibratory Compactors



Size Class:
5.0 - 7.9 MTons
Weight:
14,878 lbs.

Configuration for CS-433E (disc. 2010)

Drum Type	Smooth	Drum Width	67 in
Drum Type	Smooth	Drum Width	67 in
Power Mode	Diesel	Net Horsepower	98 hp
Power Mode	Diesel	Net Horsepower	98 hp

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$3,149.00	$880.00	$220.00	$33.00	$22.35	$41.09
Adjustments						
Region (West Virginia DOT: [illegible]%)	($18.84)	($5.28)	($1.32)	($0.20)		
Model Year ([illegible]: 100%)	-	-	-	-		
Adjusted Hourly Ownership Cost ([illegible]%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$3,121.16	$874.72	$218.68	$32.80	$22.25	$40.98

	Hourly
Non-Active Use Rates	
Standby Rate	$8.87
Idling Rate	$25.47

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	31%	$1,001.40/mo
Overhaul (ownership)	[illegible]	$918.95/mo
CFC (ownership)	7%	$218.60/mo
Indirect (ownership)	13%	$408.26/mo
Fuel (operating) @ 2.3	25%	$5.74/hr

Revised Date: 1st Half 2017

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EquipmentWatch

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All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Ingersoll Rand P175WJD
Portable Rotary Screw Air Compressors

Size Class:
125 - 249 cfm
Weight:
2,978 lbs.

Configuration for P175WJD

Power Mode	Diesel	Horsepower	56
Rated Pressure @ PSI	100	Air Delivery Rating	175 cu ft/min

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$830.00	$230.00	$58.00	$9.00	$10.35	$15.07
Adjustments						
Region (West Virginia DOT: 90.5%)	($4.18)	($1,18)	($0.28)	($0.04)		
Model Year (1999; 91.9%)	($70.20)	($19.45)	($4.91)	($0.76)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					$10.35	$14.84
Total:	$755.65	$209.40	$52.80	$8.20		

	Hourly
Non-Active Use Rates	
Standby Rate	$2.18
Idling Rate	$10.35

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	22%	$189.80/mo
Overhaul (ownership)	60%	$509.80/mo
CFC (ownership)	6%	$45.60/mo
Indirect (ownership)	6%	$48.00/mo
Fuel (operating) @ 3.27	64%	$[illegible]/hr

Revised Date: 1st Half 2018

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EquipmentWatch

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All prices shown in US$

October 23, 2018

Rental Rate Blue Book®

Average AVERAGE 201 - 400 KW
Large Generator Sets

Size Class:
201 - 400 KW
Weight:
N/A

Configuration for AVERAGE 201 - 400 KW

Power Mode	Diesel	Horsepower	445 hp
Enclosure	Enclosed	Prime Output @ 60 Hz	315 kW

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$3,055.00	$885.00	$215.00	$32.00	$83.40	$110.93
Adjustments						
Region (100%)	-	-	-	-		
Model Year (2014: 98.4%)	($49.36)	($13.84)	($3.44)	($0.61)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$3,005.64	$881.16	$211.56	$31.49	$83.40	$110.85

Non-Active Use Rates	Hourly
Standby Rate	$10.68
Idling Rate	$59.58

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	41%	$1,264.65/mo
Overhaul (ownership)	38%	$1,172.50/mo
CFC (ownership)	7%	$216.95/mo
Indirect (ownership)	14%	$431.90/mo
Fuel (operating) @ 3.01	77%	$72.33/hr

Revised Date: 2nd Half 2018

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www.equipmentwatch.com

All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Komatsu WA270-7
4-Wd Articulated Wheel Loaders

Size Class:
135 - 149 HP
Weight:
N/A

Configuration for WA270-7

Bucket Capacity - Heaped	2.5 cu yd - 3.5 cu yd	Power Mode	Diesel
Net Horsepower	149 hp		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$4,575.00	$1,280.00	$320.00	$48.00	$28.68	$54.49
Adjustments						
Region (West Virginia DOT: 99.3%)	($32.03)	($8.96)	($2.24)	($0.34)		
Model Year (2016: 99.2%)	($36.34)	($10.17)	($2.54)	($0.38)		
Adjusted Hourly Ownership Cost (100%)						
Hourly Operating Cost (100%)						
Total:	$4,[illegible]	$1,[illegible]	$319.22	$47.23	$19.56	$34.11

	Hourly
Non-Active Use Rates	
Standby Rate	$12.50
Idling Rate	$48.05

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	41%	$1,875.78/mo
Overhaul (ownership)	39%	$1,784.23/mo
CFC (ownership)	9%	$411.75/mo
Indirect (ownership)	11%	$503.25/mo
Fuel (operating) @ 3.01	51%	$14.44/hr

Revised Date: 2nd Half 2018

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EquipmentWatch.

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All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Miscellaneous 4" DIESEL/22MTC
Self Priming Trash Pumps

Size Class:
3" - 4"
Weight:
N/A

Configuration for 4" DIESEL/22MTC

Power Mode	Diesel	Horsepower	18
CPB Rating	22MTC	Pump Size	4 in
Pump Capacity	35000 gal/hr		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$1,228.00	$340.00	$68.00	$13.08	$7.75	$14.68
Adjustments to Region (West Virginia DOT: 97.8%)	($26.84)	($7.49)	($1.87)	($0.29)		
Model Year (2012: 99.3%)	($44.16)	($12.36)	($3.08)	($0.47)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$1,148.81	$320.53	$63.05	$12.24	$7.75	$14.28

Non-Active Use Rates	Hourly
Standby Rate	$3.30
Idling Rate	$10.18

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	42%	$524.50/mo
Overhead (ownership)	42%	$512.40/mo
CFC (ownership)	8%	$72.36/mo
Indirect (ownership)	8%	$109.35/mo
Fuel (operating) @ 3.27	47%	$3.86/hr

Revised Date: 1st Half 2019

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All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Miscellaneous 6" GASOLINE
Self Priming Trash Pumps

Size Class
6" & Over
Weight
1,[illegible] lbs.

Configuration for 6" GASOLINE

Power Mode	Gasoline	Horsepower	90
CPS Rating	76[illegible]T	Pump Size	6 in
Pump Capacity	90000 gal/hr		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$1,[illegible]	$455.00	$115.00	$17.00	$32.79	$41.98
Adjustments						
Region (West Virginia DOT: 97.9%)	($36.94)	($10.01)	($2.53)	($0.37)		
Model Year (2012: 96.3%)	($59.92)	($16.48)	($4.16)	($0.62)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$1,[illegible].74	$421.03	$108.31	$16.01	$32.79	$41.37

Non-Active Use Rates

	Hourly
Standby Rate	$4.33
Idling Rate	$34.[illegible]

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	43%	$[illegible].80/mo
Overhead (ownership)	42%	$[illegible].40/mo
CFC (ownership)	6%	$97.20/mo
Indirect (ownership)	9%	$145.80/mo
Fuel (operating) @ 2.75	79%	$25.90/hr

Revised Date: 1st Half 2019

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All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

GMC/CHEVY C73
On-Highway Light Duty Trucks

Size Class.
300 HP & Over
Weight
N/A

Configuration for C73

Axle Configuration	4 x 2	Power Mode	Gasoline
Cab Type	Crew	Horsepower	300 hp
Ton Rating	1		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$980.00	$270.00	$68.00	$10.90	$19.75	$25.20
Adjustments						
Region (West Virginia DOT: 99.8%)	($1.82)	($0.84)	($0.14)	($0.00)		
Model Year (1997: 90.1%)	($94.85)	($26.98)	($6.72)	($0.98)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$883.33	$242.78	$61.14	$8.98	$19.75	$24.85

	Hourly
Non-Active Use Rates	$2.45
Standby Rate	$10.50
Idling Rate	

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	54%	$516.48/mo
Overhead (ownership)	29%	$279.40/mo
CFC (ownership)	7%	$67.20/mo
Indirect (ownership)	10%	$96.96/mo
Fuel (operating) @ 2.75	79%	$15.59/hr

Revised Date: 1st Half 2019

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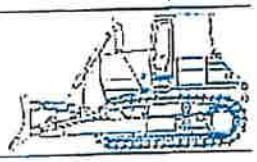
All prices shown in US dollars ($)

April 23, 2020

Rental Rate Blue Book®

Caterpillar D6K2 LGP
Lgp Crawler Dozers

Size Class:
165 - 185 HP
Weight:
N/A



Configuration for D6K2 LGP

Dozer Type	**VPAT**	**Net Horsepower**	**165.0 hp**
Operator Protection	**ROPS/FOPS**	**Power Mode**	**Diesel**

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD $3,719.00	USD $2,645.00	USD $619.00	USD $92.00	USD $42.83	USD $62.32
Adjustments						
Region (West Virginia: 99.3%)	(USD $60.87)	(USD $17.06)	(USD $4.27)	(USD $0.64)		
Model Year (2017: 98.5%)	(USD $6.68)	(USD $3.42)	(USD $0.81)	(USD $0.09)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)						
Total:	USD $3,649.36	USD $2,624.52	USD $613.72	USD $91.36	USD $42.83	USD $61.93

Non-Active Use Rates

	Hourly
Standby Rate	USD $24.65
Idling Rate	USD $35.54

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	28%	USD $3,035.90/mo
Overhead (ownership)	64%	USD $4,793.48/mo
CPC (ownership)	9%	USD $783.98/mo
Indirect (ownership)	8%	USD $666.50/mo
Fuel (operating) @ USD 3.87	36%	USD $16.45/hr

Revised Date: 1st half 2020

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April 23, 2020

Rental Rate Blue Book®

Komatsu PC210LCI-11
Crawler Mounted Hydraulic Excavators

Size Class:
21.1 - 24.9 MTons
Weight
N/A

Configuration for PC210LCI-11

Bucket Capacity - Heaped	0.7 - 1.6 cu yd	Net Horsepower	165 hp
Operating Weight	[illegible] lbs	Power Mode	Diesel

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	USD $[illegible]	USD $2,335.00	USD $[illegible]	USD $[illegible]	USD $46.74	USD $[illegible]
Adjustments						
Region (West Virginia: [illegible]%)	(USD $41.76)	(USD $11.88)	(USD $[illegible])	(USD $0.44)		
Model Year (2020: 100%)	-	-		-		
Adjusted Hourly Ownership Cost (100%)					-	
Hourly Operating Cost (100%)						
Total:	USD $[illegible]	USD $2,323.12	USD $[illegible]	USD $37.64	USD $46.74	USD $[illegible]

Non-Active Use Rates

	Hourly
Standby Rate	USD $23.07
Idling Rate	USD $[illegible]

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	37%	USD $[illegible]/mo
Overhaul (ownership)	40%	USD $[illegible]/mo
CFC (ownership)	10%	USD $[illegible]/mo
Indirect (ownership)	8%	USD $[illegible]/mo
Fuel (operating) @ USD 3.07	44%	USD $31.21/hr

Revised Date: 1st half 2020

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Rental Rate Blue Book®

February 1, 2019

Miscellaneous DSL 4X2 2500
On-Highway Water Tankers

Size Class:
To 150 HP
Weight:
50,000 lbs.

Configuration for DSL 4X2 2500

Power Mode	**Diesel**	**Horsepower**	**150**
Tank Capacity	**2500 gal**		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$2,906.80	$560.00	$146.89	$21.80	$20.76	$32.11
Adjustments						
Region (West Virginia DOT: 99.8%)	($4.66)	($1.12)	($0.36)	($0.04)		
Model Year (1999: 81.7%)	($388.27)	($102.36)	($25.87)	($3.84)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	-
Total:	$1,838.73	$456.64	$114.15	$17.12	$20.76	$32.11

Non-Active Use Rates	Hourly
Standby Rate	$4.83
Idling Rate	$11.83

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	48%	$868.80/mo
Overhead (ownership)	31%	$560.80/mo
CPC (ownership)	8%	$150.00/mo
Interest (ownership)	11%	$230.00/mo
Fuel (operating) @ 3.27	89%	$12.36/hr

Revised Date: 1st Half 2019

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All prices shown in US$

February 1, 2019

Rental Rate Blue Book®

Finn B70
Trailer Mounted Mulchers

Size Class:
To 55 HP
Weight:
2,250 lbs.

Configuration for B70

Power Mode	Diesel	Horsepower	33.5

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$1,350.00	$380.00	$85.00	$14.00	$8.20	$15.67
Adjustments						
Region (West Virginia DOT: 99.2%)	($10.80)	($3.04)	($0.76)	($0.11)		
Model Year (1990: 83%)	($227.66)	($64.06)	($16.02)	($2.36)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$1,111.54	$312.83	$78.22	$11.53	$8.20	$14.52

	Hourly
Non-Active Use Rates	
Standby Rate	$3.19
Idling Rate	$10.25

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	37%	$499.50/mo
Overhaul (ownership)	50%	$675.00/mo
CFC (ownership)	6%	$81.00/mo
Indirect (ownership)	7%	$94.50/mo
Fuel (operating) @ 3.27	45%	$3.69/hr

Revised Date: 1st Half 2019

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All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Ford F-250
On-Highway Light Duty Trucks

Size Class
366 HP & Over
Weight
N/A

Configuration for F-250

Axle Configuration	4 X 4	Power Mode	Gasoline
Cab Type	Conventional	Horsepower	137 hp
Ton Rating	3 / 4		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$880.00	$245.00	$51.00	$9.00	$10.25	$15.25
Adjustments						
Region (West Virginia DOT: 99.8%)	($1.76)	($0.49)	($0.12)	($0.02)		
Model Year (2008: 92.8%)	($62.36)	($17.36)	($4.32)	($0.84)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-		
Hourly Operating Cost (100%)					-	
Total:	$815.88	$227.15	$56.56	$8.34	$10.25	$14.91

Non-Active Use Rates	Hourly
Standby Rate	$2.32
Idling Rate	$11.09

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	54%	$478.20/mo
Overhaul (ownership)	29%	$255.20/mo
CFC (ownership)	7%	$61.50/mo
Indirect (ownership)	10%	$88.00/mo
Fuel (operating) @ 2.75	70%	$7.16/hr

Revised Date: 1st Half 2019

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EquipmentWatch

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All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Ford F-250
On-Highway Light Duty Trucks

Size Class
300 HP & Over
Weight
N/A

Configuration for F-250

Axle Configuration	4 X 4	Power Mode	Gasoline
Cab Type	Conventional	Horsepower	137 hp
Ton Rating	3 / 4		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$880.00	$245.80	$61.00	$9.09	$10.25	$15.25
Adjustments						
Region (West Virginia DOT: [illegible]%)	($1 76)	($0.49)	($6.12)	($0.02)		
Model Year (2012: [illegible]%)	($37 78)	($10 61)	($2.62)	($0.39)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-	-	
Hourly Operating Cost (100%)					$10.25	
Totals	$840.46	$234.80	$58.26	$8.68		$18.63

	Hourly
Non-Active Use Rates	
Standby Rate	$2.30
Idling Rate	$11.84

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	54%	$475.20/mo
Overhead (ownership)	25%	$[illegible].20/mo
CFC (ownership)	7%	$61.60/mo
Indirect (ownership)	10%	$88.00/mo
Fuel (operating) @ 2.75	70%	$7.15/hr

Revised Date: 1st Half 2019

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EquipmentWatch

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All prices shown in USD

January 31, 2019

Rental Rate Blue Book®

Miscellaneous 4X4 1/2 191 CREW GAS
On-Highway Light Duty Trucks

Size Class.
160 - 190 HP
Weight*
4,500 lbs.

Configuration for 4X4 1/2 191 CREW GAS

Axle Configuration	4X4	Power Mode	Gasoline
Horsepower	191	Cab Type	Crew
Ton Rating	1/2		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$746.00	$210.00	$53.00	$8.00	$13.00	$17.23
Adjustments						
Region (West Virginia DOT: 89.8%)	($1.48)	($0.42)	($0.11)	($0.02)		
Model Year (2019: 99%)	($7.44)	($2.10)	($0.53)	($0.08)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-	-	
Hourly Operating Cost (100%)						
Total:	$736.07	$207.48	$52.36	$7.94	$13.00	$17.18

Non-Active Use Rates	Hourly
Standby Rate	$2.00
Idling Rate	$14.18

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	54%	$400.20/mo
Overhaul (ownership)	29%	$216.05/mo
Overhead (ownership)	7%	$52.15/mo
CPC (ownership)	10%	$74.60/mo
Interest (ownership)	77%	$9.58/hr
Fuel (operating) @ 2.78		

Revised Date: 1st Half 2019

These are the most accurate rates for the selected Revision Date(s). However, due to more frequent online updates, these rates may not match Rental Rate Blue Book Print. Visit the Cost Recovery Product Guide on our Help page for more information.

The equipment represented in this report has been exclusively prepared for MATT POWELL (matt.powell@dot.wv.gov)

EquipmentWatch

www.equipmentwatch.com

All prices shown in US$

January 31, 2019

Rental Rate Blue Book®

Ford F-350 SD
On-Highway Light Duty Trucks

Blue Class:
300 HP & Over
Weight
N/A

Configuration for F-350 SD

Axle Configuration	4 X 4	Power Mode	Gasoline
Cab Type	Crew	Horsepower	300 hp
Ton Rating	1		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$946.00	$285.00	$60.00	$10.00	$10.70	$25.04
Adjustments						
Region (West Virginia DOT: 89.8%)	($1 88)	($8.89)	($6.13)	($0.92)		
Model Year (2017: 99.3%)	($0 67)	($1.88)	($0.48)	($0.07)		
Adjusted Hourly Ownership Cost (100%)	-	-	-	-	-	
Hourly Operating Cost (100%)					$10.70	$24.99
Total:	$931.45	$282.22	$55.41	$9.01		

Non-Active Use Rates	Hourly
Standby Rate	$2.65
Idling Rate	$30.97

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	34%	$967.66/mo
Overhead (ownership)	28%	$272.66/mo
CFC (ownership)	7%	$66.66/mo
Indirect (ownership)	10%	$94.00/mo
Fuel (operating) @ 2.75	52%	$15.94/hr

Revised Date: 1st Half 2019

These are the most accurate rates for the selected Revision Date(s). However, due to more frequent online updates, these rates may not match Rental Rate Blue Book Print. Visit the Cost Recovery Product Guide on our Help page for more information.

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EquipmentWatch

www.equipmentwatch.com

All prices shown in US$

Adjustments for Ralph R Pickup in All Saved Models

February 19, 2018

Miscellaneous 4X2 1/2 143 CONV GAS
On-Highway Light Duty Trucks

Size Class:
150 - 199 HP
Weight:
N/A

Configuration for 4X2 1/2 143 CONV GAS

Axle Configuration	**4X2**	**Power Mode**	**Gasoline**
Horsepower	**143**	**Cab Type**	**Conventional**
Ton Rating	**1/2**		

Blue Book Rates

** FHWA Rate is equal to the monthly ownership cost divided by 176 plus the hourly estimated operating cost.

	Ownership Costs				Estimated Operating Costs	FHWA Rate**
	Monthly	Weekly	Daily	Hourly	Hourly	Hourly
Published Rates	$600.00	$170.00	$42.00	$6.00	$6.50	$12.31
Adjustments						
Region (Ohio DOT 100.2%)	$1.20	$0.34	$0.08	$0.01		
Model Year (2013: 97%)	($18.84)	($5.11)	($1.28)	($0.18)		
Ownership (100%)	-	-	-	-	-	
Operating (100%)						
Total:	$582.36	$165.23	$41.36	$5.83	$6.50	$12.11

Non-Active Use Rates	Hourly
Standby Rate	$1.00
Idling Rate	$0.65

Rate Element Allocation

Element	Percentage	Value
Depreciation (ownership)	30%	$330.00/mo
Overhaul (ownership)	29%	$174.30/mo
GFC (ownership)	6%	$36.00/mo
Indirect (ownership)	15%	$90.00/mo
Fuel (operating) @ 3.26	72%	$6.39/hr

Revised Date: 1st Half 2018

These are the most accurate rates for the selected Revision Date(s). However, due to more frequent online updates, these rates may not match Rental Rate Blue Book Print. Visit the Cost Recovery Product Guide on our Help page for more information.

The equipment represented in this report has been exclusively prepared for MATT POWELL (matt.powell@jtcnow.com)

RENTED EQUIPMENT SUMMARY

ITEM	ID #	DESCRIPTION	DURATION MONTHS	RATE	RENTAL AMOUNT	OPERATING COST / HR	OPERATING COSTS
		Thompson Pumps	1	$ 22,375.97	$ 22,375.97		
		Office Trailers	2	$ 323.00	$ 646.00		
		Dewatering Generators	2	$ 1,363.75	$ 2,727.50		
		Dewatering Generator-Backup	2	$ 682.44	$ 1,364.88		
			7		$ 27,114.35	$	

RENTAL SUB TOTAL	$	27,114.35
OPERATING COSTS	$	-
SALES TAX	$	1,626.86
TOTAL RENTED EQUIPMENT	$	28,741.21

BUILDING CONSULTANTS OF WEST VIRGINIA, INC

P.O Box 606 • Po
:4) 586-5379 • 1-800-297-7270 •
Send Payments to 1800 Lorain

Page

Bill To: 0000792
Triton Construction Inc
P.O. Box 1360
Saint Albans, WV 25177

Ship To Address:
Triton Construction Inc
Upper Deckers Creek Dam
Reedsville, WV 26547

Rental Invoice

Invoice Number. 0053639
Invoice Date 1/28/2019
Billing Cycle
2/28/2019 3/28/2019
Contract No R003863
Contract Date 04/16/2018
Salesperson JOH

Customer PO	Ship Via:	F.O.B.	Terms: PAYABLE UPON RECEIPT

Item Number	On Rent		Unit Price	Extension
553	1		255 00	255 00
97-1700		Product: 1050		
Billed from 2/28/2019	3/28/2019			
STEPS	2		25 00	50 00
Steps		Product: STEP		
Billed from 2/28/2019	3/28/2019			

17.17
57.1
to be paid electig

Net Invoice	305 00
Sales Tax	18 30
Invoice Total:	323.30
Amount Due:	323.30

PLEASE MAKE CHECK PAYABLE TO
MODULAR BUILDING CONSULTANTS OF WEST VIRGINIA, INC.

A FINANCE CHARGE OF 21% PER YEAR (1 75% per month) WILL BE ADDED TO BALANCES AFTER 30 DAYS

RECEIVED

Bil
To: TRITON CONSTRUCTION INC
P O BOX 1360
ST ALBANS, WV 25177

Ship
To JOB-65158
UPPER DICKERS CREEK SITE 1
MICHAEL DAETWYLER
UPPPER DICKERS CREEK STRUCTURE
NUMBER ONE DAM
INDEPENDENCE, WV 26374

PO No. Order No.

12/03/18
12/03/18
12/03/18
12/03/18
12/03/18
12/03/18
12/03/18
12/03/18
12/03/18

17.17
14.13

ECC

Job Site

RECEIVED

4 WEEK BILLING INVOICE

159865780-001

541-2100

Customer #
Invoice Date
Date Out
Billed Through
DR Job Loc
DR Job #
Customer Job ID
P.O. #
Ordered By
Reserved By
Salesperson

: 111
: 1717
: GREG FERRI
: SUSAN GROVES
: JEFFREY DALRYMPLE

Invoice Amount $1,363.75

4 Week

17.17

17.4

93187

TRITON CONSTRUCTION
INC

PROJECT: Upper Decker Creek Site #1
WORK: Concrete Activity Delay Costs

SUBCONTRACTOR SUMMARY

	AMOUNT
Golden Triangle-Plant Rental	$ 42,684.96

TOTAL SUBCONTRACTOR $ 42,684.96

Golden Triangle Construction Company
[illegible]
[illegible], PA [illegible]

Job: Upper [illegible] Creek Dam
CO Est #: 8
Owner Est: [illegible]
PE Date: [illegible]

Contract Number	Line Number	Item Code	Description	QTY	Units	Unit Price	Previous QTY to Date	QTY This Estimate	Total QTY To Date	This Estimate	Amount To Date	Comments
[illegible]	[illegible]	[illegible]	Mobilization and Demobilization	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Facing Concrete	73	CY	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Coarse Aggregate for RCC	17500	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Fine Aggregate for RCC	24065	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Cement for Roller Compacted Concrete	2110	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Pozzolan for Roller Compacted Concrete	2110	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Mix, Convey, Place and Cure RCC	17500	CY	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Roller Compacted Concrete Test Section	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	BATCH PLANT RELATED EQUIP MARKUP	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	ADDITIONAL BATCH PLANT COST FOR [illegible]	8	EA	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]		2019 Mobilization and Demobilization Adj	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	2019 Facing Concrete Adj	73	CY	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	2019 Coarse Aggregate for RCC Adj	[illegible]	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	2019 Fine Aggregate for RCC Adj	[illegible]	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	2019 Cement for RCC Adj	[illegible]	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	2019 Pozzolan for RCC Adj	[illegible]	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	2019 Mix, Convey, Place and Cure RCC Adj	[illegible]	CY	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	2019 RCC Test Section Adj	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Facing Concrete for Drain	[illegible]	CY	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Additional [illegible] Coarse Aggregate for RCC Adj [illegible]	[illegible]	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	Additional [illegible] Fine Aggregate for RCC Adj [illegible]	[illegible]	TN	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	1	LS	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]

Total To Date [redacted]

Previous Est [redacted]

Total Due [redacted]

Exhibit G

TRITON
CONSTRUCTION, INC.
P.O. BOX 1360, ST. ALBANS, WV 25177
P (304) 755-2100 F (304) 755-2200

June 11, 2020

West Virginia Conservation Agency
Monongahela Conservation District
201 Scott Avenue
Morgantown, WV 26508

Attn: Art Mouser
Contracting Officer

RE: Upper Deckers Creek Site 1 Rehabilitation Project
MCD-2107-4-14
Triton Construction, Inc. Project #17.17
2019 Additional Dewatering Delays-Modification Request

Dear Mr. Mouser:

On June 28, 2019 Triton notified the Monongahela Conservation District (MCD) of potential cost and schedule impacts to the project due to the directive for us to drill into the dam embankment in order to provide additional dewatering measures. This directive was in clear contradiction to the Construction Specification (CS) 11.8.b.4 and CS11.8.b.7. and was originally discussed at an in-person meeting on March 13, 2019, at NRCS' Morgantown office. Triton is hereby considering the project specifications defective per Contract Provision 31 paragraph (h). The directive and associated enhancements to the previously approved dewatering plan, resulted in a significant project delay (210 days). Changes to the dewatering plan also resulted in increased direct and indirect costs to Triton and its associates. No response to the June 28, 2019 letter was provided by MCD or its agents, nor was any attempt made to mitigate these delays and associated costs.

Construction Specification 11.8.b.4 states that the project shall dewater the site to a minimum depth of three feet below the proposed foundation grades. This requirement was not met in ten locations: piezometer GF7S, and Observation Wells 3 thru 11. The foundation areas were ultimately dewatered through a series of in-excavation sumps, which was also prohibited by Construction Specification 11. Additional dewatering wells, foundation sand wells, well points and observation wells were installed within the limits of excavation in 2019. A total of 48 wells were installed in 2019, in locations prohibited by Construction Specification 11. All of the above items are prohibited by Construction Specification 11, which further demonstrates a defective specification condition with the project. Three items of Construction Specification 11 were defective:

1) Dewatering to a depth of 3' below proposed foundation grades was not achieved
2) Dewatering the project thought use of sumps was prohibited
3) Installation of wells withing the limits of excavation was prohibited

The project completion date was affected by 210 days as a result of the defective specifications in the 2019 construction season. The schedule update dated January 22, 2019, showed a completion date of October 28, 2019. Contract Modification #7 stated the project completion date was November 1, 2019. Triton provided notice of substantial completion on May 28, 2020, showing a 210 Day delay.

Triton is hereby requesting a contract modification in the amount of *$2,916,756.13* as a result of the defective specifications. The attached cost summaries detail all expenses incurred and are listed below:

1) Moretrench Costs of Revised Drilling Plan	$239,535.39
2) Triton Well Drilling Support Costs	$3,775.18
3) Additional Generator/Transfer Switch/Autodialler	$12,328.36
4) Additional E&S Items (7 Months)	$135,231.06
5) Golden Triangle Additional Costs	$585,923.22
6) WVDEP Permit Re-Application and Changes	$10,744.55
7) Riser Structure Dewatering Sump	$9,188.32
8) Toe Drain Exploration and Sump Install	$12,788.40
9) Foundation Sand Wells-Installed by Triton	$82,398.84
10) Well Point System	$41,846.99
11) Winter Curing of RCC	$481,461.89
12) Soil Drying	$81,939.37
13) On Site Borrow Site Development	$141,555.65
14) Extended Field Overhead and Idle Equipment	$1,078,038.91
TOTAL	**$2,916,756.13**

This costs for this Modification Request detailed above, is for the period from March 13, 2019 to the completion of the project. Triton is also requesting a time extension of 210 days, from November 1, 2019 to the date of substantial completion, May 28, 2020.

If you have any questions or comments regarding this matter, feel free to contact me at (304) 755-1401.

Sincerely,

Chris Apperson
Vice President

Exhibit H

Contract Receivables Report

AS OF: 10/26/2020

17.17 DECKERS CREEK DAM

IONGCO01 MONONGAHELA CONSERVATION D

Contract Amount: 7,970,000.00

Invoice No	Estimate No	Description	Invoice Date	Paid	Amount Invoiced	Amount Received	Balance Due	Retainage	Net Receivable
1857	1	Estimate 1	1/1/2018	2/26/2018	147,993.09	147,993.09	0.00		0.00
1928	2	Estimate 2	2/28/2018	4/30/2018	94,960.61	94,960.61	0.00		0.00
1929	3	Estimate 3	2/28/2018	4/30/2018	66,157.53	66,157.53	0.00		0.00
1940	4	Estimate 4	3/31/2018	5/8/2018	135,871.74	135,871.74	0.00		0.00
1975	5	Estimate 5	4/30/2018	6/14/2018	160,469.78	160,469.78	0.00		0.00
2007	6	Estimate 6	5/31/2018	7/16/2018	290,786.21	290,786.21	0.00		0.00
2057	7	Estimate 7	7/1/2018	9/28/2018	303,578.09	303,578.09	0.00		0.00
2187	8	Estimate 8	8/15/2018	5/6/2019	175,618.44	175,618.44	0.00		0.00
2197	9	Estimate 9	10/2/2018	5/6/2019	208,760.07	208,760.07	0.00		0.00
2205	10	Estimate 10	10/15/2018	5/6/2019	148,907.71	148,907.71	0.00		0.00
2244	11	Estimate 11	10/31/2018	5/6/2019	151,410.70	118,941.87	32,468.83		32,468.83
2274	12	Estimate 12	11/30/2018	3/4/2019	121,493.83	52,930.54	68,563.29		68,563.29
2432	13	Estimate 13	12/31/2018	5/6/2019	204,130.43	204,130.43	0.00		0.00
2525	14	Estimate 14	4/30/2019	7/16/2019	438,667.96	394,801.17	43,866.79		43,866.79
2590	15	Estimate 15	6/1/2019	9/4/2019	162,973.81	146,676.43	16,297.38		16,297.38
2591	16	Estimate 16	6/30/2019	9/11/2019	209,880.89	188,892.81	20,988.08		20,988.08
2592	17	Estimate 17	7/31/2019	10/23/2019	187,564.74	168,735.78	18,828.96		18,828.96
2667	18	Estimate 18	8/31/2019	12/10/2019	300,094.19	260,065.35	40,028.84		40,028.84
2716	19	Estimate 19	9/30/2019	1/10/2020	493,494.94	316,991.06	176,503.88		176,503.88
2752	20	Estimate 20	10/31/2019	1/24/2020	853,417.57	745,034.51	108,383.06		108,383.06
2774	21	Estimate 21	11/30/2019	2/24/2020	877,470.98	596,875.66	280,595.32		280,595.32
2812	22	Estimate 22	12/31/2019	3/17/2020	436,994.47	714,254.42	-277,259.95		-277,259.95
2851	23	Estimate 23	2/29/2020	4/13/2020	714,526.15	694,203.39	20,322.76		20,322.76

Contract Receivables Report

AS OF: 10/26/2020

17,17 DECKERS CREEK DAM

IONGCO01 MONONGAHELA CONSERVATION D

Contract Amount: 7,970,000.00

Invoice No	Estimate No	Description
2906	24	Estimate 24
2933	25	Estimate 25
2981	26	Estimate 26
2982	26	Estimate 26
3019	RET	Estimate RET
3020	RET	Estimate RET

Invoice Date	Paid	Amount Invoiced	Amount Received	Balance Due	Retainage	Net Receivable
3/31/2020	5/14/2020	393,138.83	317,159.98	75,978.85		75,978.85
4/23/2020	7/2/2020	841,046.20	323,849.58	517,196.62		517,196.62
5/31/2020		-48,150.00	0.00	-48,150.00		-48,150.00
5/31/2020		-158,285.95	0.00	-158,285.95		-158,285.95
6/29/2020	7/23/2020	605,886.59	486,436.50	119,450.09		119,450.09
6/29/2020		0.00	0.00	0.00	119,450.00	-119,450.00
		8,518,859.60	7,463,082.75	1,055,776.85	119,450.00	936,326.85
	Grand Total:	8,518,859.60	7,463,082.75	1,055,776.85	119,450.00	936,326.85

Contractor's Application for Payment No. 26

	Application Period: 04/24/20 to 06/5/20	Application Date: 06/05/20
To (Owner): Monongahela Conservation District 201 Scott Ave,Morgantown, WV 26508	From (Contractor): Triton Construction	Via (Engineer): Gannett Fleming, Inc. Harrisburg, PA
Project: Rehabilitation of Upper Deckers Creek Site #1	Contract: MCD 2017-04-14 UDC Site 1 Rehab	
Owner's Contract No.: MCD 2017-04-14 UDC SITE 1 REHAB	Contractor's Project No.: 17.17	Engineer's Project No 61371

Application For Payment

Change Order Summary

Approved Change Orders		
Number	Additions	Deductions
Modification #03		$11,175.00
Modification #07	$600,000.00	
TOTALS	$600,000.00	$11,175.00
NET CHANGE BY CHANGE ORDERS	$588,825.00	

1. ORIGINAL CONTRACT PRICE		$	$7,970,000.00
2. Net change by Change Orders		$	$588,825.00
3. Current Contract Price (Line 1 ± 2)		$	$8,558,825.00
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate)		$	$8,518,859.60
5. RETAINAGE:			
a.	X _____ Work Completed	$	$685,886.60
b.	X _____ Stored Material	$	
c. Total Retainage (Line 5a + Line 5b)		$	$685,886.60
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)		$	$8,518,859.60
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)		$	$7,582,532.84
8. AMOUNT DUE THIS APPLICATION		$	$936,326.76
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above)		$	$685,886.60

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective

By _____ 6/5/20

Payment of: $ 936,326.76
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____ (Engineer) _____ (Date)

Payment of: $ 936,326.76
(Line 8 or other - attach explanation of the other amount)

is approved by: _____ (Owner) _____ (Date)

Approved by: _____ Funding Agency (if applicable) _____ (Date)

Progress Estimate

Contractor's Application

For (contract):	Monongahela Conservation District - MCD 2017-04-14 UDC Site 1 Rehab / Gannet Fleming 061377	Application Number	26
Application Period:	April 24, 2020 - June 5, 2020	Application Date	06/05/20

A			B			Work Completed				E	F		G
Item			Scheduled Value			C		D		Materials Presently Stored	Total Completed and Stored to Date		Balance to Finish
						From Previous Application (C+D)		This Period					
Bid Item No	Description		QTY	Unit Price	$ Amount	QTY	Value	QTY	Value	(not in C or D)	(C + D + E)	(F/B)	(B - F)
1 / CS.01	Clearing	AC	[illegible]	$20,000.00	[illegible]	100%	[illegible]				[illegible]	100.00%	
2 / CS.03	Structure Removal	LS	1.00	$20,000.00	$20,000.00	100%	[illegible]				[illegible]	[illegible]	
3 / CS.05	Pollution Control Plan	LS	1.00	$10,000.00	[illegible]	100%	[illegible]				[illegible]	[illegible]	
4 / CS.05	Temporary Fertilizer	LB	1,000	$1.00	$1,000.00	100%	$1,000.00				[illegible]	[illegible]	
5 / CS.05	Temporary Seeding - Seed Mixture I	LB	60	$12.00	$720.00	100%	$720.00				$720.00	100.00%	
6 / CS.05	Temporary Seeding - Seed Mixture II	LB	140	$10.00	[illegible]	100%	$1,400.00				[illegible]	100%	
7 / CS.05	Temporary Reservoir Seeding - Seed Mixture II	LB	2,800	$5.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
8 / CS.05	Temporary Straw Mulch	TN	60	$320.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	$12,230.80
9 / CS.05	Construction & Maintenance of Access Roads	LS	1.00	$575,000.00	[illegible]	[illegible]	$575,000.00				[illegible]	[illegible]	
10 / CS.05	Sediment Trap	EA	[illegible]	$75,000.00	$75,000.00	100%	[illegible]				[illegible]	[illegible]	
11 / CS.05	Sediment Trap Cleanout	EA	[illegible]	$700.00	$2,800.00								[illegible]
12 / CS.05	Temporary Slope Pipe	LS	1.00	$8,000.00	[illegible]								[illegible]
12B / CS.05	8" Compost Filter Sock (Installed)	LF	[illegible]	$7.12	[illegible]	100%	[illegible]				[illegible]	[illegible]	
12R / CS.05	8" Compost Filter Sock (Removed)	LF	[illegible]	$0.53	$227.00			[illegible]	$227.00		$227.00	[illegible]	
13 / CS.06	Seeding & Mulching	AC	[illegible]	$3,300.00	[illegible]	[illegible]	[illegible]				[illegible]	100%	
14 / CS.06	Erosion Control Matting for Steep Slopes	SY	[illegible]	$1.55	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	
15 / CS.07	Surveys	LS	1.00	$160,000.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	
16 / CS.08	Mobilization and Demobilization	LS	1.00	$100,000.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	
17 / CS.11	Dewatering the Construction Site	LS	1.00	$1,500,027.50	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	
18 / CS.11	Diverting Surface Water	LS	1.00	$900,000.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	
19 / CS.21	Excav. Riser Structure Foundation, Unclassified	CY	[illegible]	$11.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
20 / CS.21	Excavation, Unclassified	CY	[illegible]	$5.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
21 / CS.23	Compacting Structure Backfill	LS	1.00	$80,000.00	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	
22 / CS.23	Earthfill, Approved Class A	CY	[illegible]	$5.00	[illegible]	[illegible]	$122,665.00				$122,665.00	[illegible]	[illegible]
23 / CS.23	Earthfill, Random Class C	CY	[illegible]	$4.50	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]

24 / CS 24	Type 2A Aggregate	CY	[illegible]	$66.00	[illegible]	[illegible]	$3,993.00				[illegible]	[illegible]	[illegible]
25 / CS 24	Fine Drainfill	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
26 / CS 24	Coarse Drainfill	CY	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
27 / CS 26	Spreading Topsoil	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
28 / CS 31	Backfill Concrete	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
29 / CS 31	Facing Concrete	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
30 / CS 31	Reinforced Concrete	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
31 / CS 31	Steel Reinforcement	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
32 / CS 36	Coarse Aggregate/Roller Compacted Concrete	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
33 / CS 36	Fine Aggregate / Roller Compacted Concrete	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
34 / CS 36	Cement / Roller Compacted Concrete	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
35 / CS 36	Pozzolan / Roller Compacted Concrete	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
36 / CS 36	Mix, Convey, Place & Cure RCC	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
37 / CS 36	Roller Compacted Concrete Test Section	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
38 / CS 41	Principal Spillway 30" Control	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
39 / CS 45	6" PVC Slotted Drain Piping	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
40 / CS 45	8" PVC Slotted Drain Piping	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
41 / CS 45	6" PVC Non-Perforated Drain Piping	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
42 / CS 45	8" PVC Non-Perforated Drain Piping	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
43 / CS 53	Water Supply	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
44 / CS 61	Loose Rip Rap	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
45 / CS 63	Preparation & Cleaning of Rock Surface	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
46 / CS 63	Treatment of Rock Surface	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
47 / CS 66	A.C.B. Pavement System	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
48 / CS 71	Water Control Gate, 5' x 5'	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
49 / CS 71	Water Control Gate, 30" x 30"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
50 / CS 81	Baffle Structure	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
51 / CS 81	Ladder	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
52 / CS 81	Manhole Assembly	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
53 / CS 81	Trash Racks	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
54 / CS 81	Aluminum Handrail	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]
55 / CS 83	Dioxus Plaque & Monument	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]

EXHIBIT B

IN THE LEGISLATIVE CLAIMS COMMISSION OF THE STATE OF WEST VIRGINIA

TRITON CONSTRUCTION, INC.,

Claimant,

v. Claim Number: CC-21-0030

STATE CONSERVATION COMMITTEE,
an agency of the State of West Virginia, and
WEST VIRGINIA CONSERVATION AGENCY,
an agency of the State of West Virginia, and
MONONGAHELA CONSERVATION DISTRICT,
a West Virginia Conservation District, and
WEST VIRGINIA DEPARTMENT OF AGRICULTURE,
an agency of the State of West Virginia,

Respondents.

ORDER

On this day, the Respondent's West Virginia Department of Agriculture, State Conservation Committee, and West Virginia Conservation Agency's Joint Motion to Stay came on for consideration by the Legislative Claims Commission. The Respondents, by their counsel, moved to have the proceedings before the West Virginia Legislative Claims Commission held in abeyance until such time as the civil action filed by the Claimant in the Circuit Court of Preston County has been resolved.

The Claims Commission, having duly considered the matter and having determined that a Stay should be granted, hereby ORDERS that the above-referenced claim be and the same is stayed by the Claims Commission and held in abeyance until such time as counsel for the Claimant and the Respondents advises the Claims Commission in writing that the civil action pending in the Circuit Court of Preston County has been resolved. Accordingly, the hearing before

the Legislative Claims Commission scheduled for Thursday, July 29, 2021 beginning at 1:30 pm, shall postponed until further notice.

Entered this 12th day of July, 2021.

Presiding Commissioner