

OHIO TURNPIKE COMMISSION

Resolution Authorizing Legal Expenditures Relative To the Completion of Contract No. 53-11-01 and 53-11-02

WHEREAS, on January 24, 2011, by Resolution No. 1-2011, the Commission awarded multiple trade contracts, designated as Contract No. 53-11-01 and 53-11-02, for the reconstruction of the Mahoning Valley and Glacier Hills Service Plazas located at Milepost 237.2 in Mahoning County, as follows:

<u>Bid Package</u>	<u>Bidder</u>	<u>Amount</u>
A - Site Work	Miller Brothers Construction Company, Inc. Archbold, Ohio	\$12,686,701.39
B - General Trades	Reginella Construction Company, Ltd. Pittsburgh, Pennsylvania	9,930,730.00
C - HVAC/Mechanical	Roth Bros., Inc. Youngstown, Ohio	2,399,660.00
D - Plumbing	The Conti Corporation Lowellville, Ohio	1,209,622.00
E - Electrical	Penn-Ohio Electrical Company Masury, Ohio	3,426,369.00
		<hr/> \$29,653,082.39

WHEREAS, on May 21, 2012, the Commission terminated the Contract of Reginella Construction Company ("Reginella") due to its default under the terms and conditions of the General Trades Contract for Contract No. 53-11-01 and 53-11-02; and

WHEREAS, the terms and conditions of Contract No. 53-11-01 and 53-11-02 require Travelers Casualty and Surety Company of America ("Travelers"), as Surety for the Project, to undertake completion of the Project, and effective June 3, 2012, Travelers entered into a "Takeover Agreement" with the Commission; and

WHEREAS, the Contract with Reginella, as taken over by Travelers, requires Travelers to defend, indemnify, protect and hold harmless the Commission from any and all claims, causes of actions, judgments, damages, costs and expenses of any nature, kind, or description to which the Commission may be subject to by reason of the performance or non-performance of the Reginella's work under the Contract, and further entitles the Commission to recoup liquidated damages for Reginella's failure to meet completion deadlines; and

WHEREAS, as a result of Reginella's failure to pay subcontractors and material suppliers, the Commission engaged the firm of **Calfee, Halter and Griswold of Cleveland, Ohio**, for the purpose of assisting the Commission in the defense of several mechanics lien claims, and the General Counsel advises that additional claims will likely result from the delay in Project completion; and

WHEREAS, the General Counsel further advises that, in compliance with Article V, Section 1.00 of the Commission's Code of Bylaws, the Commission is being requested to authorize continued expenditures with said firm, which expenditures the General Counsel indicates the Commission will seek to recoup through the indemnification and liquidated damage clauses of the aforementioned Takeover Agreement with Travelers; and

WHEREAS, the Commission has duly considered the General Counsel's recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the General Counsel be, and she is hereby instructed to do or cause to be done all things that may be appropriate or necessary, whether by agreement or through legal proceedings, to defend the Commission when necessary and to assert any claims the Commission may have against others as a result of Reginella's default under Contract No. 53-11-01 and 53-11-02; and to pursue the recovery of all costs or expenses incurred by the Commission in undertaking its legal defense with respect to any claims against the Commission, and similarly with respect to any claims asserted by the Commission; and

FURTHER RESOLVED, that the continued retention of **Calfee, Halter and Griswold of Cleveland, Ohio**, is authorized by the Commission, under the supervision of the General Counsel, for

the purpose of providing legal services required in connection with the aforementioned claims associated with Contract No. 53-11-01 and 53-11-02.

(Resolution No. 39-2012 adopted August 20, 2012)