

MINUTES OF THE 560th MEETING OF THE OHIO TURNPIKE COMMISSION
May 3, 2010

Chairman: (10:09 a.m.) The meeting will come to order. Will the Assistant Secretary-Treasurer please call the roll?

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Here

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Here

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Here

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Here

Assistant Secretary-Treasurer: Nikos is not. Ed Jerse said he would be here. Senator Patton.

Senator Patton: Here

Assistant Secretary-Treasurer: Representative Hagan

Representative Hagan: Here

Chairman: Thank you. Nikos Kaplanov from OBM called and said he'd be unable to attend today. George Dixon, Commission Member Dixon, had surgery this past week and will not be at the meeting. He will be at the June meeting he said. We have a number of guests here today and in keeping with past practice I'd like everyone to introduce themselves:

Those in attendance: Andrea Plassard, Financial Consultant; David Miller, Director of Internal Audit, Ohio Turnpike; Eric Erickson, Fifth Third Securities; Heidi Jedel, Executive Office, Ohio Turnpike; Jennifer Diaz, Legal Department, Ohio Turnpike; Kathy Weiss, Director of Contracts Administration, Ohio Turnpike; Michael Boron, Omnipro Services; Michael Swan, Omnipro Services; Roger Hannay, Ohio State Highway Patrol; Frank Bronzo, KCI Associates of Ohio; Tim Ujvari, Maintenance Engineer, Ohio Turnpike; Don Glosser, Crawford, Murphy & Tilly; Chris Hopkins, Key Bank; Jim Kelly, J.P. Morgan; Kevin Westbrook, URS; Tom James, IUOE #18; Don Taggart, Operators Union Local 18; Frank Lamb, Huntington Bank; John Frola, CT Consultants; Lauren Hakos, Public Affairs &

Marketing Manager, Ohio Turnpike; Stefan Holmes, First Merit Bank; Daniel Van Epps, CSTVCIC; Dennis Avery, G. Stephens.

Chairman: Thank you. This is the 560th meeting of the Ohio Turnpike Commission. We are meeting here at the Commission's headquarters as provided by the Commission's Code of Bylaws for a Special Meeting. Various reports will be received and we will act on several resolutions, draft copies have previously been provided to the Members and updated drafts are in the Members' folders. The resolutions will be explained during the appropriate reports. Can I have a motion to adopt the minutes of the March 22, 2010 Commission Meeting?

Ms. Teeuwen: So moved.

Chairman: Is there a second?

Mr. Kidston: Second.

Chairman: Questions or comments? Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

Chairman: If there is no questions, we will proceed with the report of the Secretary-Treasurer, which will be given by the Assistant Secretary-Treasurer, Mr. Distel.

Assistant Secretary-Treasurer: Thank you Mr. Chairman. The following items have been sent to the Members since the last scheduled meeting of the Commission on March 22, 2010 as read:

1. Minutes of the March 22, 2010 Commission Meeting
2. Traffic and Revenue Report, March, 2010
3. Total Revenue by Month and Year, March, 2010

4. Investment Report, March, 2010
5. Traffic Crash Summary Report, March 2010
6. Financial Statement, March, 2010
7. Budget Report for the first three months of 2010

Mr. Chairman that concludes the report of the Secretary-Treasurer.

Chairman: Any questions or comments? Thank you Mr. Distel. We will turn now to your report, report of the Executive Director.

Executive Director: Thank you Mr. Chairman. Just a brief report. We have six resolutions to consider today. I just wanted to give you an update on our communications and the transponders issued. We issued 2,871 during April for a total now since August 2009 at 67,087 transponders and have opened up 55,961 customer accounts.

The second thing I would like to share with you is a brief report on our Voluntary Separation Incentive Program. In 2008, we had a net loss of eight full-time toll collecting positions. In 2009, we had a net loss of seventeen full-time toll collecting positions for a combined decrease of twenty-five full-time toll collectors. Since we were unable to reduce staffing solely through this attrition it was agreed to offer full-time and part-time toll collectors the opportunity to participate in a voluntary separation program. To summarize, we had seventy-nine part-time toll collectors participate in the program, who had signed up by the end of January of this year. Of this number seventy-one ended their employment February 1st, eight will retire between the 30th of April and the 30th of November. Again, this is part-time, fourteen employees will collect \$5,000, thirty-four employees will collect \$10,000, and thirty-one will collect \$15,000 for their participation for a total payout for the part-timers of \$875,000. For our full-time, we had forty-seven full time toll collectors participate in the voluntary separation by the last date which was March 31st. Of this, eighteen ended their employment in March, fifteen will retire between the 30th of June, I'm sorry, by the 30th of June, and fourteen will retire by the 30th of November. Nineteen toll collectors had twenty-five years of full-time service. Three had twenty to twenty-four years and thirteen had between ten and nineteen years of service. The total participation for the full-timers was just over \$1.6 million dollars, so combined between the full-time and part-time it had a price tag of \$2,520,000.

The third thing I'd like to report is just to give you an idea, we are breaking ground tomorrow for our service plaza in Williams County. I know that many of you have responded that you will be able to be there, but in conjunction with that and our desire to come up with some alternative energy solutions at those plazas, we have a whole series of meetings with alternative energy providers and contractors next Thursday, oh I'm sorry this Thursday, we'll meeting with different firms that hopefully we will be able to discuss our needs and come up with a total package of what we would like to incorporate into that project. I'd like to also mention that thanks to Andrea and the work of our finance department, our CAFR is now with our printer. We expect to have our second draft for our review due back on Thursday, so we are

well ahead of schedule to have our Comprehensive Annual Financial Report prepared very, very soon now. Mr. Chairman that concludes my report. I'd be happy to answer any questions.

Chairman: Any questions for the Executive Director?

Representative Hagan: The second portion of your discussion on the buy-outs of some of the employees, the twenty-five year employees what was the buy-out for each of those, for those who had twenty-five years?

Executive Director: They received \$35,000 in separation pay.

Representative Hagan: Was that what they made for the year or was that just their offer?

Executive Director: Actually a full-time toll collector is somewhere in the area of \$45,000-\$50,000 with overtime. So it was less than a year's salary.

Representative Hagan: Thank you Mr. Chairman. Thank you Director.

Chairman: Thank you Representative Hagan. Any other questions or comments? We will turn to the resolutions. Mr. Distel you have the first resolution.

Executive Director: Yes Mr. Chairman, Members of the Commission, I'll present the first resolution, which is a resolution authorizing us to enter into contract with FirstMerit for banking services. In May of 2005, you passed a resolution authorizing the contract with FirstMerit of Cleveland to serve as the Commission's designated depository and to furnish banking services for an initial term of three years, which commenced July 1, 2005. That contract will expire this year on June 30, 2010. In normal course of business and at the beginning of 2010, this department would have, or the Purchasing Department would have worked with the CFO/Comptroller in preparing a request for proposals for new banking services contract, as indicated in a memorandum that we had in your package, our financial consultant had filled the vacancy for our CFO/Comptroller position and presented obviously some complications because we didn't have a CFO and no lead in this critical contract. What we did in light of the circumstances and we are requesting with this resolution is authorizing a one-year extension with FirstMerit Bank for these services with the intent in the meantime to prepare a RFP and go out for proposals next year. With that would the General Counsel please read the Resolved.

General Counsel: RESOLVED that the Executive Director and Director of Contracts Administration hereby are authorized to execute a Contract extension for one year with **FirstMerit Bank** to furnish the various banking services required by the Commission, and to take any and all action necessary or proper to carry out the terms of said Contract; and

FURTHER RESOLVED that the Executive Director of the Ohio Turnpike Commission will provide a certified copy of this Resolution to the Huntington National Bank, as trustee, and the Commission's bond counsel, Peck, Shaffer & Williams, LLP.

Chairman: Is there a motion to adopt the resolution?

Mr. Regula: So moved.

Chairman: Is there a second?

Mr. Kidston: Second.

Chairman: Questions or discussions on the resolution before the Commission? Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

RESOLUTION NO. 12-2010

OHIO TURNPIKE COMMISSION

Resolution Authorizing the Extension of the Contract with FirstMerit Bank to Serve as the Commission's "Designated Depository" and to Furnish Various Banking Services to the Commission

WHEREAS, on May 16, 2005, pursuant to Resolution 25-2005, the Commission authorized a Contract with **FirstMerit Bank of Cleveland, Ohio** to serve as the Commission's "Designated Depository" and to furnish Banking Services for an initial term of three years commencing July 1, 2005, which Contract also contained a provision for one additional two-year renewal term; and

WHEREAS, said Contract will expire on June 30, 2010; and

WHEREAS, in light of several circumstances that have occurred during this past year, the Commission's Financial Consultant and the Director of Contracts Administration, whose reports are both before the Commission, recommend that the Commission approve an additional

one-year extension of the Contract for Banking Services, during which year a competitive selection process will be conducted for a new Banking Services contract to commence on July 1, 2011; and

WHEREAS, inasmuch as expenditures under the extension will exceed 10% of the total expenditures made since award of the Banking Services Contract by the Commission in 2005, Article V, Section 1.00 of the Commission's Code of Bylaws requires Commission action to authorize the Contract extension; and

WHEREAS, the Executive Director has reviewed the reports of the Financial Consultant and the Director of Contracts Administration and concurs with their recommendation; and

WHEREAS, the Commission has duly considered said recommendation.

NOW, THEREFORE, BE IT

RESOLVED that the Executive Director and Director of Contracts Administration hereby are authorized to execute a Contract extension for one year with **FirstMerit Bank** to furnish the various banking services required by the Commission, and to take any and all action necessary or proper to carry out the terms of said Contract; and

FURTHER RESOLVED that the Executive Director of the Ohio Turnpike Commission will provide a certified copy of this Resolution to the Huntington National Bank, as trustee, and the Commission's bond counsel, Peck, Shaffer & Williams, LLP.

(Resolution No. 12-2010 adopted May 3, 2010)

Chairman: Anything further?

Executive Director: Nothing further Mr. Chairman.

Chairman: Thank you. Just ought to note in the minutes that Ed Jerse from the Department of Development came in during the Assistant-Secretary Treasurer's report and is here for the entire meeting.

Any other comments or questions for Mr. Distel? Thank you. We will go to the Chief Engineer, Dan.

Chief Engineer: Thank you Mr. Chairman, Commission Members. I have five resolutions for your consideration this morning. The first is awarding Contract 40-10-01, which is for repainting of six structures over the Ohio Turnpike mainline located in Williams County, Ohio. We received three bids in response to this project. The apparent low bid was submitted by Panther Industrial Painting of Campbell, Ohio in the total amount of \$1,297,900. This bid is below the Engineer's estimate. This bidder has not worked for the Turnpike in the past, although we have checked out with their references, including ODOT Districts 10 and 11 with favorable results. This project was on our 2010 Capital Budget. The resolution also contains a provision

to assignment Greenman-Pederson, Inc., of Akron, Ohio to the project for the purposes performing inspection and testing services. If the General Counsel would please read the Resolved.

General Counsel: RESOLVED that the bid of **Panther Industrial Painting, LLC** of **Campbell, Ohio**, in the amount of **\$1,297,900.00**, for the performance of **Contract No. 40-10-01** is, and is by the Commission, determined to be the lowest responsive and responsible bid received for the performance of said Contract, and is accepted, and that the Chairperson and Executive Director, or either of them, hereby is authorized to: 1) execute a Contract with said successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; 2) direct the return to the bidders of their bid security, when appropriate; and 3) take any and all action necessary or proper to carry out the terms of said bid and of said Contract; and

FURTHER RESOLVED that the Commission hereby authorizes the Executive Director and the Chief Engineer to assign **Greenman-Pederson, Inc.** of Akron, Ohio, to Contract No. 40-10-01 for the purpose of performing inspection and testing services, with such assignment in accordance with the 2009-2010 General Engineering Services Agreement between the Ohio Turnpike Commission and Greenman-Pederson, Inc.; and

FURTHER RESOLVED that Project No. 40-10-01 is designated a Fuel Tax Project under the Commission's 1994 Master Trust Agreement.

Chairman: Is there a motion to adopt the resolution before the Commission?

Mr. Kidston: So moved.

Chairman: Is there a second?

Mr. Regula: Second.

Chairman: Questions or discussions on the resolution? Senator Patton.

Senator Patton: Just a question to Dan. The \$1,297,900, do they have it broken down per foot? As I recall in looking at other painting contracts in the past sometimes the bidders bid per square foot, and that's my only knowledge of how the painting contracts have escalated significantly in these past couple of years, so I am just wondering if it's available to easily....

Chief Engineer: Mr. Chairman, Commission Member Patton, there was an estimated square footage on the contract to give them some idea of the structure sizes. The actual bid amount was a lump sum bid, however, we can get that information, we can break it down.

Senator Patton: I appreciate it. Thank you.

Chairman: Any further questions or comments? Yes, Representative Hagan.

Representative Hagan: Just to follow-up with the Senator there, is it typical just to get three bids? Only three bids? There seems to be a sizeable amount of painting companies out there and I might be wrong on that.

Chairman: I would yield to Dan on that. I know we are always striving to get as many bids as we possibly can.

Chief Engineer: Mr. Chairman, Commission Member Hagan, I believe, typically, we get between three and six depending on where we are. With the latest restrictions and pre-qualifications with the contractors in the painting in the state, I believe that the number of prequalified painters has been reduced slightly. Commission Member Teeuwen you may want to comment on that, is that the case?

Ms. Teeuwen: Yes, we noticed in the last few years that we've had substantially less bidders, two sometimes in our case at ODOT. The fact that you got three, that's I think a good sign.

Representative Hagan: Thank you.

Chairman: And we sent out fifty-eight notices and eleven contractors who requested plans, so you know at this point you only get three out of eleven, but at least we got a fairly wide spectrum.

Mr. Regula: If I may, one question for Dan, are they going to a water-borne type of painting system or they'd still use an enamel, I know a lot of different with the EPA and that type of thing, everybody is going to a water based system, similar to painting cars now is a water-based system is that what's happening in our industry.

Chief Engineer: Mr. Chairman, Commission Member Regula. In the past couple of years we have tried some newer systems to see how it's going to workout. This system is the organic zinc epoxy urethane system. But it still complies with the VOC requirements.

Mr. Regula: Just curious. Thank you.

Chairman: Any further questions? Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

RESOLUTION NO. 13-2010

OHIO TURNPIKE COMMISSION

Resolution Awarding Contract No. 40-10-01

WHEREAS, the Commission has duly advertised according to law for bids upon a Contract for repainting of the following bridges over the Turnpike Mainline located in Williams County, Ohio, herein designated **Contract No. 40-10-01:**

<u>Bridge</u>	<u>Milepost</u>
Malcolm Church Road	3.10
Ricketts Bridge Road	4.10
West Eagle Church Road	5.10
Nettle Creek Road	6.20
White Bridge Road	6.90
Champion Road	7.60

WHEREAS, expenditures for the Contract to be awarded will exceed \$150,000.00, and, therefore, in accordance with Article V, Section 1.00 of the Commission's Code of Bylaws, Commission action is necessary for the award of said Contract; and

WHEREAS, the Commission received bids from three bidders for the performance of said Contract; and

WHEREAS, said bids have been reviewed and analyzed by the Commission's Chief Engineer, whose report concerning such analysis is before the Commission; and

WHEREAS, the Chief Engineer reports that the lowest responsive and responsible bid for the performance of Contract No. 40-10-01 was submitted by **Panther Industrial Painting, LLC** of **Campbell, Ohio** in the total amount of **\$1,297,900.00**, which bid is below the Engineer's Estimate and which bid he recommends be accepted by the Commission; and

WHEREAS, the Commission has been advised by the Director of Contracts Administration that all bids for Contract No. 40-10-01 were solicited on the basis of the same terms and conditions and the same specifications, that the bid of Panther Industrial Painting, LLC for Contract No. 40-10-01 conforms to the requirements of Section 5537.07, Section 9.312 and Section 153.54 of the Ohio Revised Code, and that a performance bond with good and sufficient surety has been submitted by Panther Industrial Painting, LLC; and

WHEREAS, the Commission's Executive Director has reviewed the reports of the Chief Engineer and the Director of Contracts Administration and, predicated upon such analyses, has made his recommendation to the Commission that Contract No. 40-10-01 be awarded to the lowest responsive and responsible bidder, Panther Industrial Painting, LLC; and

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the bid of **Panther Industrial Painting, LLC** of **Campbell, Ohio**, in the amount of **\$1,297,900.00**, for the performance of **Contract No. 40-10-01** is, and is by the Commission, determined to be the lowest responsive and responsible bid received for the performance of said Contract, and is accepted, and that the Chairperson and Executive Director, or either of them, hereby is authorized to: 1) execute a Contract with said successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; 2) direct the return to the bidders of their bid security, when appropriate; and 3) take any and all action necessary or proper to carry out the terms of said bid and of said Contract; and

FURTHER RESOLVED that the Commission hereby authorizes the Executive Director and the Chief Engineer to assign **Greenman-Pederson, Inc.** of Akron, Ohio, to Contract No. 40-10-01 for the purpose of performing inspection and testing services, with such assignment in accordance with the 2009-2010 General Engineering Services Agreement between the Ohio Turnpike Commission and Greenman-Pederson, Inc.; and

FURTHER RESOLVED that Project No. 40-10-01 is designated a Fuel Tax Project under the Commission's 1994 Master Trust Agreement.

(Resolution No. 13-2010 adopted May 3, 2010)

Chief Engineer: Thank you. The second resolution is awarding Contract 59-10-05. This is for resurfacing of the mainline roadway from mileposts 132.1 to 136.2 located in Erie and Lorain Counties, Ohio. One thing I will make note of is that this project was not on the 2010 Capital Budget. However, with the rejection of Project 59-10-01 in Williams County that was rejected on May 22nd, we are using a small portion of those funds to fund this project to try and catch up on some of our resurfacing projects. We received three bids in response to this contract. The apparent low bid was submitted by Gerken Paving, Inc., of Napoleon, Ohio in the total amount of \$1,516,050.80. The total amount bid is below the engineer's estimate and this contractor has performed satisfactorily in the past for the Commission. The resolution also includes provisions to assign G. Stephens, Inc., of Akron, Ohio to the Contract for performing construction inspection services and Geo-Sci, Inc., of Berea, Ohio for the purposes of performing materials testing and inspection. If the General Counsel would please read the Resolved.

General Counsel: RESOLVED that the bid of **Gerken Paving, Inc.** of **Napoleon, Ohio**, in the amount of **\$1,516,050.80** for the performance of Contract No. 59-10-05 is, and is by the Commission, determined to be the lowest responsive and responsible bid received for the performance of said Contract, and is accepted, and that the Chairperson and Executive Director,

or either of them, hereby is authorized to: 1) execute a Contract with said successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; 2) direct the return to the bidders of their bid security, when appropriate; and 3) take any and all action necessary or proper to carry out the terms of said bid and of said Contract; and

FURTHER RESOLVED that the Commission hereby authorizes the Executive Director and the Chief Engineer to assign **G. Stephens, Inc.** of **Akron, Ohio** to Contract No. 59-10-05 for the purpose of performing construction inspection, and **Geo-Sci, Inc.** of **Berea, Ohio** for the purpose of performing material testing and inspection, with such assignments in accordance with the 2009-2010 General Engineering Services Agreements between the Ohio Turnpike Commission and said engineering firms; and

FURTHER RESOLVED that Project No. 59-10-05 is designated a System Project under the Commission's 1994 Master Trust Agreement.

Chairman: Is there a motion to adopt the resolution?

Ms. Teeuwen: So moved.

Chairman: Is there a second?

Mr. Kidston: Second.

Chairman: Before we open up the discussion, I have a question for you Dan real quick. You had indicated that this contract was below the engineer's estimate, but I looked through quickly the information I had received previously and I didn't see what that estimate was on there, usually it's on the summation sheet or something, I didn't see it.

Chief Engineer: Mr. Chairman, typically it's on the bid tabs, it doesn't look like Purchasing put it on there on this one. But the estimate on this one was \$1.9 million dollars.

Chairman: Thank you. Any questions? Bonnie.

Ms. Teeuwen: Mr. Chairman, just a comment. I am very pleased to see that you selected G. Stephens and Geo-Sci that are set aside companies and I appreciate the diversity in the professional services, so thank you for that.

Chief Engineer: Thank you.

Chairman: Comments or questions?

Mr. Kidston: Also, I'd like to note that on a \$2 million paving project we have three bidders and on a \$5 million dollar project previously we had one bidder, so I think that it is in our best interest to try to divide these contracts up to smaller amounts, so that we get more additional bidders.

Chairman: You had mentioned that, I think we'll also find out that the location was part of it because all of the material has to be generated and there's a significant amount of material in that project. Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

RESOLUTION NO. 14-2010

OHIO TURNPIKE COMMISSION

Resolution Awarding Contract No. 59-10-05

WHEREAS, the Commission has duly advertised according to law for bids upon a Contract for Repairs and Resurfacing, Eastbound and Westbound Roadways, Right and Center Lanes Only, from Milepost 132.1 to Milepost 136.2 located in Erie and Lorain Counties, Ohio, herein designated **Contract No. 59-10-05**; and

WHEREAS, expenditures for the Contract to be awarded will exceed \$150,000.00, and, therefore, in accordance with Article V, Section 1.00 of the Commission's Code of Bylaws, Commission action is necessary for the award of said Contract; and

WHEREAS, the Commission received three bids for the performance of said Contract; and

WHEREAS, said bids have been reviewed and analyzed by the Commission's Chief Engineer, whose report concerning such analysis is before the Commission; and

WHEREAS, the Chief Engineer reports that the lowest responsive and responsible bid for the performance of Contract No. 59-10-05 was received from **Gerken Paving, Inc.** of **Napoleon, Ohio**, in the amount of **\$1,516,050.80**, which bid he recommends be accepted by the Commission; and

WHEREAS, the Commission has been advised by the Director of Contracts Administration that all bids for Contract No. 59-10-05 were solicited on the basis of the same terms and conditions and the same specifications, that the bid of Gerken Paving, Inc. for Contract No. 59-10-05 conforms to the requirements of Ohio Revised Code Sections 5537.07, 9.312 and 153.54, and that a performance bond with good and sufficient surety has been submitted by Gerken Paving, Inc.; and

WHEREAS, the Commission's Executive Director has reviewed the reports of the Chief Engineer and the Director of Contracts Administration and, predicated upon such analysis, has made his recommendation to the Commission to award Contract No. 59-10-05 to the lowest responsive and responsible bidder, Gerken Paving, Inc.; and

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the bid of **Gerken Paving, Inc.** of **Napoleon, Ohio**, in the amount of **\$1,516,050.80** for the performance of Contract No. 59-10-05 is, and is by the Commission, determined to be the lowest responsive and responsible bid received for the performance of said Contract, and is accepted, and that the Chairperson and Executive Director, or either of them, hereby is authorized to: 1) execute a Contract with said successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; 2) direct the return to the bidders of their bid security, when appropriate; and 3) take any and all action necessary or proper to carry out the terms of said bid and of said Contract; and

FURTHER RESOLVED that the Commission hereby authorizes the Executive Director and the Chief Engineer to assign **G. Stephens, Inc.** of **Akron, Ohio** to Contract No. 59-10-05 for the purpose of performing construction inspection, and **Geo-Sci, Inc.** of **Berea, Ohio** for the purpose of performing material testing and inspection, with such assignments in accordance with the 2009-2010 General Engineering Services Agreements between the Ohio Turnpike Commission and said engineering firms; and

FURTHER RESOLVED that Project No. 59-10-05 is designated a System Project under the Commission's 1994 Master Trust Agreement.

(Resolution No. 14-2010 adopted May 3, 2010)

Chief Engineer: Thank you. The third resolution is a resolution authorizing an amendment of the current contract we have with Jacob, Carter, Burgess in Project 71-05-03. This is for providing professional consulting services relating to the design and implementation of the new toll collection system project. To date, Jacobs has been authorized a total fee for construction administrative services in the total amount of \$878,810. On April 16th of this year, Jacobs submitted an additional fee modification request in the total amount not to exceed \$59,715 due to the fact that we have expended a considerable amount of time with our go-live activities in this project. It should be noted that even with this revision the contract administration fee of this project represents only 3/4% of the total Toll Collection

System/Customer Service Center project. If the General Counsel would please read the Resolved.

General Counsel: RESOLVED that the Commission hereby authorizes and directs the Executive Director and the Director of Contracts Administration to amend the Professional Consulting Services Contract with Jacobs Carter Burgess to add the not-to-exceed amount of \$59,715 for the performance of Construction Administration activities required for the implementation of the new Toll Collection System and Customer Service Center Project.

Chairman: Motion to adopt?

Mr. Kidston: So moved.

Chairman: Is there a second?

Mr. Regula: Second.

Chairman: Questions or discussions on the resolution before the Commission? Representative Hagan.

Representative Hagan: Thank you. Just as a note to the Commission and the Members on a more personal level. I used a transponder on Friday evening, my personal transponder on Friday evening, and got off at 161 and because the transponder did not work I took a ticket in the Youngstown area and when I got off the employee there said that she used it as a lost ticket and charged my transponder the full amount. I would suggest that the employees be advised that obviously it is not a lost ticket if I have a ticket in my hand and give her the transponder at 161. Therefore, I would recommend that we let the employees know or at least have this company let them know that it cannot be, if I have a ticket, if someone has a ticket in hand....

Chairman: It's not a lost ticket.

Executive Director: Right, it's not a lost ticket.

Representative Hagan: It's not a lost ticket.

Executive Director: Mr. Chairman, if I might comment. I apologize that you had a problem. But number one, our field staff has been instructed on how to deal with that situation. If it did not take a read and open the gate on entry, obviously it was not a lost ticket situation and we will certainly review that with Toll Audit, I'm sorry with Toll Operations. That was not the right procedure. The procedure was, as you had indicated, they can correlate the transaction because they have your point of entry, they can take your transponder number and correct your account. I'll look at that transaction after we are done here and make sure you are not charged the extra fee for the lost ticket.

Representative Hagan: On a personal level, it's not a matter of whether I was charged, it could have happened to others as well.

Chairman: We are in complete agreement.

Executive Director: We'll make sure that it's corrected.

Representative Hagan: Thank you.

Chairman: Comments or questions? We're really relying on you Dan on this one. You know I see you and David Miller have your names on the bottom of the letter supporting this, so you know we rely on your judgment, so your recommendation is that it should be approved, I am going to support it.

Chief Engineer: Yes that's our recommendation Mr. Chairman. We are keeping pretty close tabs on this contract.

Chairman: Thank you. Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

RESOLUTION NO. 15-2010

OHIO TURNPIKE COMMISSION

**Resolution Authorizing Amendment of the
Contract with Jacobs Carter Burgess (Project No. 71-05-03)**

WHEREAS, since 2005, **Jacobs Carter Burgess** of **Dallas, Texas** ("**Jacobs**") has provided professional consulting services related to the design and implementation of the Commission's new Toll Collection System and Customer Service Center under the Contract for Project No. 71-05-03; and

WHEREAS, the Commission, via Resolution 47-2005, authorized Jacobs to perform the initial study and prepare the strategic plan for replacement of the Toll Collection System and, via Resolution 43-2006, authorized Jacobs to prepare detailed Contract Documents and Specifications for the new Toll Collection System and Customer Service Center, and to assist with evaluation of responses received to the Commission's Request for Proposals; and

WHEREAS, the Commission, via Resolution 24-2008, authorized Jacobs to perform Construction Administration Services during the ongoing implementation of the new Toll Collection System and Customer Service Center in the total not-to-exceed amount of **\$637,746**; and

WHEREAS, since the assignment to perform Construction Administration Services, the Commission, via Resolution 21-2009, authorized an increase to the fees for Jacobs' Construction Administration activities in the amount of **\$178,245**, and the Executive Director, pursuant to his authority, subsequently authorized an additional increase in the amount of **\$62,189**; and

WHEREAS, the Chief Engineer and the Director of Audit and Internal Control have both advised that, since October 1, 2009, Jacobs Carter Burgess has spent considerable time assisting the Commission with several unanticipated issues that have resulted from the Toll Collection System "go-live" activities, and that the current authorized funds are insufficient to complete the Project; and

WHEREAS, Jacobs has submitted a fee modification request in the not-to-exceed amount of **\$59,715** that has been reviewed by the Chief Engineer and the Director of Audit and Internal Control, who have both recommended that the request for the performance of the additional Construction Administration activities be approved; and

WHEREAS, pursuant to the Commission's Bylaws, additional expenditures beyond 10% of the original spending authority granted by the Commission to the Executive Director require Commission approval unless, among other exceptions, the increase is a result of "circumstances that would create a life, safety or health-threatening situation;" and

WHEREAS, the Executive Director has reviewed the Chief Engineer's and the Director of Audit and Internal Control's recommendation and concurs with the Jacobs Carter Burgess Fee Modification Request; and

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the Commission hereby authorizes and directs the Executive Director and the Director of Contracts Administration to amend the Professional Consulting Services Contract with Jacobs Carter Burgess to add the not-to-exceed amount of \$59,715 for the performance of Construction Administration activities required for the implementation of the new Toll Collection System and Customer Service Center Project.

(Resolution No. 15-2010 adopted May 3, 2010)

Chief Engineer: Next up is Invitation No. 4136 contract award for sodium chloride for our winter 2010-2011 needs. This contract represents approximately 64,500 tons for the next winter. We received four bids in response to the subject contract, I should note that the documents required that the Commission purchase a minimum of 75% of the total estimated quantity, while it obligates the contractors to furnish up to 130% of the estimated quantities at the bid prices. The bid also contains provisions for pricing for a conveyor for conveying up to 20% of the total estimated cost into our storage domes. Although we do have that in there, it's not likely to be used. As the Commission may recall that we now currently own four salt conveyors for this purpose. The apparent low bids for Item Nos. 1, 2, 3, 13, 14, and 15 were submitted by Morton Salt of Chicago, Illinois in the total amount of \$1,771,666. That number represents the 130% and the 20% of the conveyor charges. The total amount that the apparent low bids in response to Items 5, 6, 7, 8, 9, 10, 11, and 12 were submitted by Cargill, Inc. Deicing Technology Business Unit of North Olmsted, Ohio in the total amount bid of \$2,734,017. And the low bid submitted in response to Item No. 4 was submitted by North American Salt Company of Overland Park, Kansas in the total amount of \$114,055.50 for a grand total of \$4,619,738.50. Just to give the Commission an idea that the amounts bid this year represents an approximate 1.6% increase over last winter's bid prices. If the General Counsel would please read the Resolved.

General Counsel: RESOLVED that the bids of the following companies:

<u>Items</u>	<u>Company</u>	<u>Total Award</u>
1, 2, 3, 13, 14 & 15	Morton Salt Chicago, Illinois	\$1,771,666.00
5, 6, 7, 8, 9, 10, 11 & 12	Cargill, Inc. Deicing Technology Business Unit, N. Olmsted, Ohio	\$2,734,017.00
4	North American Salt Company Overland Park, Kansas	\$114,055.50
Grand Total of Awards		\$4,619,738.50

for Invitation No. 4136 are, and are by the Commission deemed to be the lowest responsive and responsible bids received and the Executive Director and the Director of Contracts Administration, or either of them, is hereby authorized to: 1) execute a Contract with each successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid Invitation, which Contract awards reflect 130% of estimated quantities bid for each individual delivery destination and any additional conveyor charges; 2) direct the return to the bidders of their bid securities at such time as the successful bidders have each entered into a Contract; and 3) take any and all action necessary to properly carry out the terms of said Contracts.

Chairman: Is there a motion to adopt?

Mr. Regula: So moved.

Chairman: Is there a second?

Ms. Teeuwen: Second.

Chairman: Questions or comments. I know this was not in the packet earlier, so this has been delivered to us recently.

Mr. Kidston: Does Detroit not have a conveyor system? Is that why, or did they just not, they seem to be lower on the salt price, but they didn't bid the conveyor part of it, Detroit Salt Company, for instance in Kunkle I?

Chief Engineer: I'm sorry, Mr. Chairman, Mr. Kidston, where is that?

Mr. Kidston: Detroit Salt Company bid, but they didn't bid any of the conveyor options or alternates. I believe it's the second page in.

Chief Engineer: Tim, do you have any input on that?

Maintenance Engineer: Actually Dan, we do not with that portion, they were not a low bidder on any of the component parts through Kunkle through Interchange 59. So, they were not considered. We do not look at the conveyor when we are evaluating the bids.

Chairman: I was looking, I see for Kunkle I, Detroit bid \$6,705 materials, plus freight and Morton bid \$6,581 materials, plus freight.

Mr. Kidston: Oh, my apologies. Yep I missed it. I was looking at Cargill and saw that, so Morton underbid them regardless even with...?

Chairman: Correct, it appears that way.

Executive Director: Mr. Chairman if I might just, while we are on that subject is we try and avoid these conveyor charges. You know if you look at the total contract price it's about \$75,000 because we have those four conveyors we had to, I believe we bought two last year, we very rarely ask them to actually use that conveyor to store our salt, so we avoid that at all cost.

Chairman: Thank you. Senator Patton.

Senator Patton: Just a comment, in our most recent transportation budget there was some conjecture especially from some of my colleagues in Southern Ohio that the salt bids would come, especially in one or two of the previous years had probably difficult winter had come in very, very high it's delightful to see the 1.5% increase overall. I think by having those hearings we kind of brought the current vendors, you know, into a state of reality that we are watching these things. Although, I know that Morton Salt is listed out of Chicago, Illinois, I am also grateful that they have a presence in Northeastern Ohio, as does Cargill. It's always good to

see the hometown kids get some business, which means Ohioans are going to work. But again to the engineer, my congratulations because I think 1.5% increase is something clearly we can live with compared to the direction it appeared that it was going, so nice job Dan.

Chief Engineer: Thank you and thank you for the hearings.

Chairman: Any further comments or questions? Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

RESOLUTION NO. 16-2010

OHIO TURNPIKE COMMISSION

Resolution Concerning Award of Contracts for Sodium Chloride (Rock Salt) Pursuant to Invitation No. 4136

WHEREAS, the Commission has duly advertised in accordance with law for bids for Invitation No. 4136 for furnishing its requirements for sodium chloride (rock salt) estimated at approximately 64,500 tons; and

WHEREAS, expenditures under the Contracts to be awarded for rock salt under Invitation No. 4136 will exceed \$150,000.00 and, in accordance with Article V, Section 1.00 of the Commission's Code of Bylaws, Commission action is necessary for the award of such Contracts; and

WHEREAS, four bids were received in response to the Invitation, which included quotations for rock salt, freight charges to designated Commission locations and any additional "conveyor system" charges for stockpiling, if needed; and

WHEREAS, the Bidding Documents require that the Commission shall purchase a minimum of 75% of the estimated quantities set forth in the Bid Schedule and, because the severity of the snow and ice season for 2010/2011 is unpredictable, the Bidding Documents also

allow for the Commission to purchase up to 130% of the estimated quantities bid for each designated delivery location; and

WHEREAS, the bids were reviewed and analyzed by the Maintenance Engineer, whose report concerning such analysis is before the Commission; and

WHEREAS, the Maintenance Engineer states that the following companies submitted the lowest responsive and responsible bids for the rock salt, including freight:

<u>Items and Estimated Tons</u>	<u>Company</u>	<u>Bid Amount based on Estimated Quantities</u>	<u>130% of Estimated Quantities Bid</u>	<u>Conveyor Charges</u>	<u>Total</u>
1, 2, 3, 13, 14 & 15 (22,500 tons)	Morton Salt Chicago, Illinois	\$1,341,985.00	\$1,744,580.50	\$27,085.50	\$1,771,666.00
5, 6, 7, 8, 9, 10, 11 & 12 (40,500 tons)	Cargill, Inc. Deicing Technology Business Unit, N. Olmsted, Ohio	\$2,066,640.00	\$2,686,632.00	\$47,385.00	\$2,734,017.00
4 (1,500 tons)	North American Salt Company Overland Park, Kansas	\$86,505.00	\$12,456.50	\$1,599.00	\$114,055.50
Totals reflecting 130% of estimated quantities bid, including freight		\$4,543,669.00			
The totals also reflect an estimated additional cost of conveying 20% of the maximum Contract quantity that may be delivered by the Contractors utilizing a conveyor.		\$76,069.50			
Grand Total		\$4,619,738.50			

WHEREAS, the Maintenance Engineer further reports that the bidders propose to furnish materials and services in accordance with the Commission’s Specifications, and he, therefore, recommends that the Commission proceed with awards of the following Contracts: 1) Items 1, 2, 3, 13, 14 and 15 to Morton Salt; 2) Items 5, 6, 7, 8, 9, 10, 11 and 12 to Cargill Inc.; and 3) Item 4 to North American Salt Company; and

WHEREAS, the Maintenance Engineer recommends an award to Morton Salt in the amount of \$1,771,666.00, which amount reflects 130% of quantities bid, and includes \$27,085.50 for conveying up to 20% of the maximum Contract quantity that may be delivered by the Contractor utilizing a conveyor; and

WHEREAS, the Maintenance Engineer recommends an award to Cargill, Inc. in the amount of \$2,734,017.00, which amount reflects 130% of quantities bid, and includes \$47,385.00 for conveying up to 20% of the maximum Contract quantity that may be delivered by the Contractor utilizing a conveyor; and

WHEREAS, the Maintenance Engineer recommends an award to North American Salt Company in the amount of \$114,044.50, which amount reflects 130% of quantities bid, and includes \$1,599.00 for conveying up to 20% of the maximum Contract quantity that may be delivered by the Contractor utilizing a conveyor; and

WHEREAS, the Director of Contracts Administration has advised the Commission that the low bids of Morton Salt for Items 1, 2, 3, 13, 14 and 15, and Cargill, Inc. for Items 5, 6, 7, 8, 9, 10, 11 and 12 each comply with the Commission’s Domestic and Ohio Preference Policy (“Policy”), and she and the General Counsel have together rendered a report evaluating whether the low bid of North American Salt Company for Item 4 complies with the Policy, and it is their opinion that, inasmuch as the bid is in excess of five percent below the next lowest bid received for that Item, it should be considered; and

WHEREAS, the Director of Contracts Administration has further advised that all bids for Invitation No. 4136 were solicited on the basis of the same terms, conditions and specifications, that the bids of Morton Salt, Cargill, Inc. Deicing Technology Business Unit and North American Salt Company each conform to the requirements of Ohio Revised Code Sections 5537.07 and 9.312, and that a bid guaranty and performance bond of good and sufficient surety has been submitted by each bidder; and

WHEREAS, the Executive Director has reviewed the reports of both the Maintenance Engineer and the Director of Contracts Administration and, predicated upon such analysis, has made his recommendation that Contracts be awarded for Items 1, 2, 3, 13, 14 and 15 to Morton Salt; Items 5, 6, 7, 8, 9, 10, 11 and 12 to Cargill, Inc. Deicing Technology Business Unit; and Item 4 to North American Salt Company; and

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the bids of the following companies:

<u>Items</u>	<u>Company</u>	<u>Total Award</u>
1, 2, 3, 13, 14 & 15	Morton Salt Chicago, Illinois	\$1,771,666.00
5, 6, 7, 8, 9, 10, 11 & 12	Cargill, Inc. Deicing Technology Business Unit, N. Olmsted, Ohio	\$2,734,017.00
4	North American Salt Company Overland Park, Kansas	\$114,055.50
Grand Total of Awards		\$4,619,738.50

for Invitation No. 4136 are, and are by the Commission deemed to be the lowest responsive and responsible bids received and the Executive Director and the Director of Contracts Administration, or either of them, is hereby authorized to: 1) execute a Contract with each successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid Invitation, which Contract awards reflect 130% of estimated quantities bid for each individual delivery destination and any additional conveyor charges; 2) direct the return to the bidders of

their bid securities at such time as the successful bidders have each entered into a Contract; and 3) take any and all action necessary to properly carry out the terms of said Contracts.

(Resolution No. 16-2010 adopted May 3, 2010)

Chief Engineer: The final resolution I have this morning pertains to Invitation 4135 for the purchase of truck snowplows and equipment. The Commission may recall that on November 16, 2009 via Resolution 30-2009 you authorized the Executive Director to accept National Clean Diesel funding assistance grants in the amount up to \$789,600. Last month, we awarded a contract for a portion of those funds, the bulk of the funds up to \$600,000 is included for utilizing to offset the costs for new tandem dump trucks having an improved snowplow design that is part of the funding for this contract. We received nine bids in response to the three groups. The first group was for furnishing eight, ten truck cabs and chassis. Group II was for the front-wing plows central hydraulic systems, dump bodies and lighting systems for the ten trucks. Group III was for eight trailer-mounted plows and hopper bodies. We received, as I said, nine bids in response to the three groups. The Maintenance Engineer has advised that none of the six bids received for Group I, the truck cabs and chassis comply with the Commission's technical specifications. He is further recommending that all six bids be rejected and re-advertised as soon as possible with revised specifications. Just to give you some idea the problems we had here, the Commission may recall that part of our funding for the last contract we awarded for improved mufflers on the trucks. We are getting our first look at these mufflers and our truck specifications require a clear frame from the back of the cab to the rear axle from mounting of truck wing plows, etc. Well this new muffler design encroaches into that clear frame requirement. Then we are going to have to do something with the length of the truck to get some clear frame down there. Also, some of the bidders had problems with our gross combination weight of the assembly, which is the gross weight of the truck, its contents, and also the plow that will be towed. Since Group II, the dump bodies front wing plows are integral to Group I, as I said these wings have to be mounted on the clear frame requirements since we are rejecting Group I, we are most likely going to get a separate, a different design for Group II. We are also recommending the two bids received in response to Group II, again we will revise the specifications to re-advertise as soon as possible. We received one bid in response to Group III, the eight trailer-mounted plows and hopper bodies. That was submitted by Viking Cives of Harrisville, New York in the total amount of \$781,720. This bidder proposed to furnish material and equipment in accordance with the specifications. This separate tow plow can be purchased separate from the trucks and therefore, we are recommending approving this purchase. Again, if this resolution gets authorized we will revise those specifications for Groups I and II and get those re-advertised as soon as possible. If the General Counsel would please read the Resolved.

General Counsel: RESOLVED that the six bids received for **Group I** and the two bids received for **Group II** of Invitation No. 4135, be and the same hereby are rejected, and the Executive Director and the Director of Contracts Administration, or either of them, is authorized to: 1) notify the bidders in writing of said action, 2) to return to the bidders the bid security they furnished in response to said Invitation, and 3) to re-advertise for bids for Group I and Group II as soon as possible; and

FURTHER RESOLVED that the bid of **Viking Cives** of **Harrisville, New York** in the total amount of **\$781,720.00** for **Group III** under Invitation No. 4135 (for furnishing eight trailer mounted plows and hopper bodies) is, and is by the Commission, determined to be the lowest responsive and responsible bid received for Group III, and is accepted, and the Executive Director and the Director of Contracts Administration, or either of them, hereby is authorized to: 1) execute a Contract with the successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid, 2) direct the return to the bidder of its bid security when appropriate, and 3) take any and all action necessary or proper to carry out the terms of said Contract; and

FURTHER RESOLVED that the Executive Director and the General Counsel, or either of them, hereby are authorized to execute an amendment to the final grant agreement executed by and between the Ohio Turnpike Commission and the Ohio Department of Development to adjust delivery timelines in the event such changes become necessary

Chairman: Is there a motion to adopt the resolution?

Mr. Regula: So moved.

Chairman: Is there a second?

Mr. Kidston: Second.

Chairman: Questions or discussions on the resolution? Senator.

Senator Patton: Just a quick question. On Group I, five of the six bids, it states they obviously didn't comply with the specs, the fifth low bid from the Youngstown company they said that their award didn't have a sufficient bid guarantee, is it fair to ask if they would have had that would they have bid on something that met the specifications, or did they at first blush because they didn't make a bid guaranty?

Chief Engineer: Mr. Chairman, Commission Member Patton, I don't know the depth that we went into that review. Tim, how was their equipment furnished?

Maintenance Engineer: That was Cerni and they were proposing an International, which would not have met the specifications.

Chief Engineer: Thank you.

Senator Patton: Thank you.

Chairman: The question I have is, does the affect the grant? I see there's a provision in the resolution authorizing the Executive Director and General Counsel to amend the grant. How much of the grant would be applied towards the Group III that we are purchasing? How does that work?

Chief Engineer: Mr. Chairman, this portion of the \$789,600 this contract represents \$600,000 of those funds and to answer the first part of your question, we have already been in contact with them, they know that we are going to have to reject this contract, and we've got an approval to stretch the timeline out a little bit on this.

Chairman: Okay. Of the, you know one of the questions I would have is we've gone ahead and we bid out for ten trucks and chassis, we had six vendors bid and nobody satisfied the bid specifications, it isn't as if you're, how do you go ahead if you have specific things that you need, these are trucks and how do they go ahead and meet the specifications, or how do you amend the specifications?

Chief Engineer: Mr. Chairman, as I said earlier the problem we had with is the equipment furnished with the truck, be it these new mufflers or hydraulic tanks, there are encroaching beyond the rear of the cab and that's where we mount the Group II equipment. One simple fix for this is probably just to extend the wheelbase of the truck, which will give us more room behind that cab to mount to Group II equipment. Group III, the tow plows that's not mounted at all that's just pulled by the truck as long as we get a truck with enough horsepower it'll pull the plows. So it's really not dependent on what's furnished.

Chairman: If we wouldn't be able to buy the Group I trucks and we buy the Group III tow plows can we use some of the grant to pay for that or how would that be broken out or do we have to buy the trucks also?

Chief Engineer: Mr. Chairman, we have to buy the trucks. The basic premise behind this grant was we were going to replace sixteen snowplow units with eight. We were taking eight trucks off of the road and reducing emissions, and basically the truck and the plow is the entire unit to accomplish this.

Chairman: So we need to go through the bidding procedure and we need to buy the trucks, so otherwise we do not get the grant.

Chief Engineer: Yes and we've already got an extension to do that.

Chairman: Questions? Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

RESOLUTION NO. 17-2010

OHIO TURNPIKE COMMISSION

Resolution Rejecting Bids for the Purchase of Ten Truck Cabs and Chassis; Rejecting Bids for the Purchase of Ten Dump Bodies, Front and Wing Plows, Central Hydraulic and Control Systems and Lighting Systems; and Awarding a Contract for the Purchase of Eight Trailer Mounted Plows and Hopper Bodies under Invitation No. 4135

WHEREAS, via Resolution 30-2009, the Commission accepted a National Clean Diesel Funding Assistance Grant in conjunction with the American Recovery and Reinvestment Act of 2009, which funds are to be used for the purpose of reducing fuel consumption, operating vehicles on biodiesel fuel, and reducing fuel emissions; and

WHEREAS, under the final grant agreement executed by and between the Ohio Turnpike Commission and the Ohio Department of Development, up to \$600,000 of the Grant is to be utilized for offsetting the cost for new tandem-axle dump trucks having an improved snow plow design that meet 2010 emission standards; and

WHEREAS, in accordance with the final grant agreement, the Commission advertised for bids under Invitation No. 4135 for the furnishing to the Commission of ten truck cabs and chassis (**Group I**); furnishing and installing ten dump bodies, front and wing plows, central hydraulic and control systems, and lighting systems (**Group II**); and furnishing eight trailer mounted plows and hopper bodies (**Group III**).

WHEREAS, the Commission received nine bids in response to the various Groups within Invitation No. 4135; and

WHEREAS, expenditures for the Contracts to be awarded under Invitation No. 4135 will exceed \$150,000, and, therefore, in accordance with Article V, Section 1.00 of the Commission's Code of Bylaws, Commission action is necessary for the award and/or rejection of said Contracts; and

WHEREAS, said bids were reviewed and analyzed by the Commission's Maintenance Engineer, whose report concerning said analysis is before the Commission; and

WHEREAS, the Maintenance Engineer reports that none of the six bids received for the **Group I** truck cabs and chassis comply with the Commission's Technical Specifications, and he, therefore, recommends that the Commission reject all six bids and re-advertise for them as soon as possible; and

WHEREAS, the Maintenance Engineer further reports that, due to the fact that the **Group II** dump bodies, front and wing plows, etc. are integral components to the Group I cab and chassis, he also recommends that the Commission reject the two bids received for Group II and re-advertise for them as soon as possible; and

WHEREAS, the Maintenance Engineer reports that the sole bid for the **Group III** trailer mounted plows and hopper bodies was submitted by **Viking Cives of Harrisville, New York**, in the total amount of **\$781,720.00** (eight each at \$97,715.00) and, because this bidder proposes to furnish equipment and services in accordance with the Specifications, he recommends that a Contract be awarded to Viking Cives for Group III; and

WHEREAS, the Commission's Director of Contracts Administration has submitted a report advising the Commission that, pursuant to the Bidding Documents for Invitation No. 4135 and Ohio Revised Code Section 5537.07(A), the Commission has expressly reserved the right to reject any and all bids and, therefore, may lawfully reject the bids submitted for both Group I and Group II; and

WHEREAS, the Commission has been further advised by the Director of Contracts Administration that bids for Invitation No. 4135 were solicited on the basis of the same terms and conditions and the same specifications, that the bid of Viking Cives for Group III qualifies for consideration under the Commission's "Buy Ohio Bid Preference" policy and conforms to the requirements of Ohio Revised Code Section 5537.07 and Section 9.312, and that a bid guaranty with good and sufficient surety has been submitted by the aforementioned bidder; and

WHEREAS, the Commission's Executive Director has reviewed the reports of the Maintenance Engineer and the Director of Contracts Administration and, predicated upon such analysis, concurs that all bids for Group I and Group II be rejected, and that a Contract under Invitation No. 4135 for Group III be awarded to the lowest responsive and responsible bidder, Viking Cives; and

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the six bids received for **Group I** and the two bids received for **Group II** of Invitation No. 4135, be and the same hereby are rejected, and the Executive Director and the Director of Contracts Administration, or either of them, is authorized to: 1) notify the bidders in writing of said action, 2) to return to the bidders the bid security they furnished in response to said Invitation, and 3) to re-advertise for bids for Group I and Group II as soon as possible; and

FURTHER RESOLVED that the bid of **Viking Cives of Harrisville, New York** in the total amount of **\$781,720.00** for **Group III** under Invitation No. 4135 (for furnishing eight trailer mounted plows and hopper bodies) is, and is by the Commission, determined to be the lowest responsive and responsible bid received for Group III, and is accepted, and the Executive Director and the Director of Contracts Administration, or either of them, hereby is authorized to: 1) execute a Contract with the successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid, 2) direct the return to the bidder of its bid security

when appropriate, and 3) take any and all action necessary or proper to carry out the terms of said Contract; and

FURTHER RESOLVED that the Executive Director and the General Counsel, or either of them, hereby are authorized to execute an amendment to the final grant agreement executed by and between the Ohio Turnpike Commission and the Ohio Department of Development to adjust delivery timelines in the event such changes become necessary.

(Resolution No. 17-2010 adopted May 3, 2010)

Chief Engineer: That's all I have this morning Mr. Chairman.

Chairman: Thank you. General Counsel.

General Counsel: Thank you Mr. Chairman, Commission Members. I do have one item to report to you. I've included in your folder a cover memo and copy of the Decision rendered by the Erie County Sixth Appellate District Court of Appeals in the case captioned Ohio Turnpike Commission v. Spellman Outdoor Advertising Services, et al. You may recall that the Commission initiated this particular lawsuit to enforce the provisions of a restrictive covenant that prohibited the erection of advertising devices on this particular property. The restrictive covenants were acquired by the Commission back in 1953 when the turnpike was originally constructed and it is consistent and in conformity with the Commission's longstanding policy of taking all reasonable and lawful actions necessary to restrict the construction erection of these commercial billboards. By way of background, the parcel in question in Berlin Heights was created when the turnpike acquired a portion of property owned by Milo Weaver in 1953, and the turnpike runs through the middle of that original parcel, so Milo, the original property owner maintained ownership of parcels north of the turnpike and south of the turnpike and the southern most portion of the turnpike, the parcel south of the turnpike is the property in issue and since we acquired the restrictive covenant when we bought the property there have been several different successful or consecutive owners that own that southern most parcel. Before we filed the lawsuit we did undertake a title examination and retained an expert to conduct a title examination of the property records on file with the Erie County Recorder and the opinion of the expert was that the restrictive covenant that we acquired remained a limitation of the property because the restrictive covenant and the wording of it provided that it was to run with the land, that's a common legal term. We did proceed in the trial court, we did try to resolve this without having to go to court, but the trial court after hearing argument and briefs from the parties rendered a decision in favor of the billboard company and in favor of the property owners. The general basis of the trial court's decision was that the restrictive covenant did not continue to be a limitation on the property because when the Salmons acquired their property from the preceding owner the restrictive covenant was not referenced in the deed conveying the property to them. Actually, after Milo Weaver, when he originally sold the southern most parcel to a previous owner the deed conveying that property to the first in that string of owners did not have the restrictive covenant referenced in the deed. As I indicated though, our expert did conclude that, and it was his opinion that the restrictive covenant remained a limitation of the property. We appealed that decision as a matter of right to the Court of Appeals in Erie County and the Erie County Court of Appeals affirmed the decision of the trial court and the big issue in this

case is whether or not the Marketable Title Act, which is a statute that governs land conveyances in Ohio applies and to the extent of how it applies to public agencies including the State of Ohio. Even though both the trial court and the Court of Appeals concluded and acknowledged that the State of Ohio is exempt from the provisions of the Marketable Title Act, they proceeded to apply various provisions of the Marketable Title Act to conclude that the restrictive covenant was not within the chain of title of this particular property. At this juncture, because after conferring with outside counsel, we recommend that the Commission consult with the Ohio Attorney General for the reason that the decision itself, whether it's right or wrong probably needs to be appealed to the Supreme Court to decide this as a matter of public policy. The question, there isn't a lot of case law on the issue of to what extent does the Marketable Title Act apply to the state, or even the Federal Government for that matter. It's something that needs to be clarified and at this point it's my recommendation that we confer with the Attorney General because the case doesn't just have implications for us as a public entity, it has implications for the State of Ohio in its totality and all of the political subdivisions. So it is a question that is of paramount importance in not just enforcing these restrictive covenants, but it really has the effect of if the precedent stands affecting any property interest of the State of Ohio or one of its agencies or instrumentalities, and so with your permission I mean I wanted you to be aware, the Commission to be aware of the decision, but also to make you aware that we probably will consult with the Office of the Attorney General on this unless the Commission feels differently.

Chairman: Comments or thoughts?

Mr. Jerse: So it is my understanding that the restrictive covenant is recorded in the deed to the property that was sold, but if you went to the Recorder's office you would see the restrictive covenant, but it wasn't in the deed that the gentleman conveyed to the new owner, is that the problem?

Senator Patton: To the first and then the subsequent owners. They screwed up the first time and continued to screw up in subsequent purchases after that.

Mr. Jerse: But if you would have gone to the Recorder's Office would it had been, would the restrictive...?

General Counsel: Oh Mr. Chairman, Commission Members, the restrictive covenant is in the deed that Milo, in which Milo Weaver, the original owner conveyed the property to the turnpike. Okay, it's a matter of debate, a legal debate I should say, whether or not it's in the chain of title. We respectfully disagree with the courts' interpretation because of the language in the deed restrictive covenant it says it shall run with the land. The question is, the Marketable Title Act, its purpose is to facilitate marketability of title to property. However, it specifically exempts governmental entities from its application because of the important public policy reasons behind exempting the state. It's a question of debate whether or not it falls within the chain of title. It's our position, it was our position in the Court of Appeals and the lower trial court that it did fall within the chain of title. So, it's how the Marketable Title Act applies to us and to what extent it applies to the State of Ohio is probably a question best left to the Supreme Court.

Mr. Jerse: I guess my question is if they had done a title search would they have found the restrictive covenant?

General Counsel: If they had continued to go back, let me add one additional point. In general, the Marketable Title Act allows title examiners when they issue these policies and underwrite a title examination to go back only forty years, meaning once you've reached forty years of continuous ownership and you check the deeds going back on a property forty years generally anything that was in existence before that forty year period is extinguished, meaning it just by virtue of the time period and I don't know if I am describing it exactly right, and our title examiner rendered an opinion to the court indicating that when you are dealing with the United States Government, or the State of Ohio, generally you have to go back an additional period of time to confirm what that ownership interests are to the property and whether there are any restrictions or easements of record that need to be incorporated into the current ownership, or deed so to speak. It's a little bit complicated; I don't know if I am explaining it clearly to you, but generally so the Marketable Title Act developed this forty year rule and our position is no in this situation because we did incorporate this restrictive covenant into the deed conveying our property and it was binding on the original owner, you have to go back for an additional period of time in that it is within the chain of title. So, I am doing the best I can to explain it.

Mr. Jerse: Mr. Chairman, it seems if I read this correctly we are kind of at the mercy of the property owners as he conveys the property to others to include it and if he doesn't we are kind of stuck.

General Counsel: Well that's the issue that needs to be decided.

Mr. Regula: If I may ask Mr. Chairman, Noelle, would this have made a difference, are they specifying that there's a difference here because the restriction was put on by a public entity? Now, if this was in a situation where it was two individuals and my neighbor went to put up a sign in my allotment with has a restriction against signage would it have been less of a problem, is the problem because of the fact of what we are as a public entity versus if this would have been two private owner's complaints against one another? Am I getting this?

General Counsel: Mr. Chairman, Commission Member Regula, that's exactly right. There's no doubt, there's no question that if this was a transaction between two private parties the Marketable Title Act would apply clearly and right on point and you'd only be going back forty years per the statute.

Chairman: And they could construct the sign between two private individuals?

General Counsel: Yes, subject to zoning regulations.

Chairman: But in our situation we think the Marketable Title Act does not apply because we are a government entity and the self serving action that they took in 1950-whatever it was, and transferred the property without continuing the deed restriction into the subsequent deeds gave the title company the right to go ahead and only go back forty years and said we only have to check back forty years, you are okay, you can go ahead and construct the billboard.

General Counsel: Mr. Chairman that is exactly right.

Mr. Regula: So were the present owners actually, did they actually know that existed at one time or when they took title of the property, they didn't see it there, and therefore when the sign company came to them and said we want to construct this, they weren't aware it was ever on it or is that in question?

General Counsel: Mr. Chairman, Commission Member Regula, actually the case was decided on summary judgment and when you decide a case on summary judgment you rely on the briefs of the party primarily, there may be some evidence submitted like for example, we submitted an expert affidavit. Generally, you are deciding the case based upon the parties' agreement that there are no real disputes of fact, these are the facts, we agree there are no disputes of facts, so you don't need to have a trial, you decide it on the briefs submitted by the parties. So, to answer your question, we don't know what the current property owners were aware of, I can tell you in fairness to them, when they got the deed to the property there was no restrictive covenant referenced. Their defense is being undertaken by the title company who issued the policy to them and obviously concluded that there was no restriction on the property.

Mr. Regula: So what would you look at as a long-term effect upon other adjoining properties of the turnpike if we do not continue to fight the fight, so to speak?

General Counsel: Mr. Chairman, Commission Member Regula, it would have a very negative effect on our policy and our enforcement of the policy.

Mr. Regula: That would be thought too.

General Counsel: Keep in mind, we do not have these restrictive covenants that extend to all of the properties along the turnpike. When we had a case that went to court in filing an eminent domain, there is case law that goes back fifty years that we could not include the restrictive covenant into those deeds, so in situations where the turnpike acquired property by eminent domain there are going to be some properties along the way that don't have that restriction.

Mr. Regula: Okay.

General Counsel: However, there is a statute and ODOT administers the program for issuing permits for billboard devices and there's a whole statutory scheme on the state level and the federal level to enforce the Highway Beautification Act, which is what this stems from.

Mr. Regula: Thank you.

Chairman: Any further questions or comments? Keep us informed on the progress of it. I think the Commission is, you know, supportive of continuing the action if that's our position at this point in time as with previous authorization you had received.

General Counsel: Thank you Mr. Chairman.

Chairman: Thank you. Next will be the Comptroller.

Financial Consultant: Good morning Mr. Chairman, Commission Members. I have an update on traffic and revenue through March of this year.

This first chart you see is a chart that shows monthly passenger car vehicle miles traveled along the turnpike during corresponding two-year period. For the month of March, we show a slight increase of 1.6% over prior year.

The next chart in front of you is a comparable chart of commercial vehicle miles traveled during this two-year period. Commercial miles have increased by 4.3% over prior years.

This third chart on vehicle miles is all traffic for the month of March. We show an increase of 2.6% over the same period in 2009. This bar graph is a summary of passenger and commercial vehicle miles traveled through March over the past ten years. As you can see, passenger car miles year-to-date are slightly below prior year numbers, and commercial vehicle miles are at about the same level as prior years.

This next chart shows monthly passenger car toll revenues during corresponding two years. This chart shows favorable trends with a 34.4% increase this March over prior year.

This next chart is our commercial toll revenues during the corresponding years. Commercial toll revenues show favorable trends beginning in October of 2009. The increase is at the 35.8% for March over prior year.

Our next chart is total toll revenues for this two-year period with total revenues up by 35.2% over last year's results.

This next chart is more of a numeric representation of toll revenues, passenger and commercial revenues for March year-to-date over the past ten years. Year-to-date passenger car revenue is at \$18.7 million and commercial revenue is at \$28.6 million.

On the next few charts I have are updates on our E-ZPass usage. For the month of March, the tolls from approximately 29% of the miles traveled by passenger cars and 70% of the miles traveled by commercial vehicles were paid by E-ZPass usage. These percentages are fairly consistent with prior month. 21.9% of toll revenue earned during March was from passenger vehicle E-ZPass users and 67.4% of the commercial revenue was from E-ZPass users. Overall in March, 48.8% of toll revenues earned were paid using the E-ZPass system.

Then I have a little update on where the transponder usage is coming from. As you know E-ZPass transponders used on the turnpike could originate from a number of different tolling authorities. Those authorities then reimburse the Commission for revenues earned for their Ohio turnpike usage. This chart shows our March results and as you can see the New York State Thruway and Illinois State Highway are the leading issuers of transponders currently being used

on the Turnpike. 11.5% of E-ZPass revenue currently comes from customers using Ohio issued transponders. So the remaining E-ZPass revenue is collected from other member agencies as you can see on this chart.

That concludes March results. We are currently in the process of compiling our April numbers and will get those reports out to you shortly. That's all I have.

Chairman: Any questions or comments? More people should get E-ZPass. A reduction in costs, that's the whole concept of putting it in place. We need to make sure we keep putting that notice out. Anything further? Questions? Thank you. Financial Advisor.

Financial Advisor: No report today Mr. Chairman.

Chairman: Thank you. Kevin, on behalf of URS, General Consultant.

General Consultant: No report this time Mr. Chairman.

Chairman: Thank you. Trustee.

Trustee: No report Mr. Chairman.

Chairman: Thank you Mr. Lamb. Ohio State Highway Patrol.

Captain Hannay: Just a brief report Mr. Chairman. We experienced a traffic fatality April 12th on the Ohio Turnpike. This is the first fatality reported in 2010. This is one death below where we were last year at this time. This particular traffic crash occurred at about 2:30 a.m. The victim struck the rear end of a commercial vehicle that was in motion on the turnpike, so he was traveling at an extremely high rate of speed. He ended up against the wall and ended up in a fire. So, we are waiting on the Coroner's Office to finalize his report and tell us if there was any impairment involved with this driver. The second thing I have to report is we had one of our troopers, Tommy Alexander involved in a commercial vehicle crash last week on Thursday. He was outside his patrol car talking with a violator at the right front door of her vehicle, a FedEx double went off the side of the road, struck the rear of the patrol car, forced it into the guardrail and then struck the rear of the van, the violator's vehicle, and that action struck Tommy and threw him over the guardrail. He suffered right shoulder injuries. However, he was treated and released a day later. He is resting at home. So that was good news. That occurred out at Milepost 13 adjacent to the toll plaza out there. Also on Friday, we seized 239 pounds of marijuana on a traffic stop out in Lucas County. The value of that narcotic or the marijuana was estimated to be about \$10 million dollars. I can answer some questions now, Sir.

Chairman: Questions?

Representative Hagan: Mr. Chairman. Can you tell me since they have been running these double trailers what the accident rate is or how many accidents they've had? I think, has it been five years or longer? Ten years, eight years since we've been running the double trailers.

Captain Hannay: Mr. Chairman, Commission Member Hagan, the doubles and triples, I have been up here for five years, doubles and triple trailers, we've had long combination vehicles for an extended length of time.

Chief Engineer: Mr. Chairman, Commission Member Hagan, the doubles, which came in first, they actually came in the early 1960's and the triples was in the mid-1980's.

Captain Hannay: Also I might add, this combination vehicle would have been legal on any interstate in Ohio, not just on the turnpike. This was a combination of shorter trailers being towed that FedEx uses quite a bit around the state.

Representative Hagan: One question then, let me rephrase, the triples, since we've been running triples on the turnpike, do we have records of any additional accidents or how many accidents since we've been running?

Captain Hannay: Mr. Chairman, Commission Member Hagan, yes we do have those statistics, I don't have those with me right now, I can get you that answer, I'll work with traffic crash and the statistical bodies available to us, we'll get you those answers.

Chief Engineer: Mr. Chairman, if I might add, Commission Member Hagan, the doubles and triples program that we do run those drivers have to be certified; they require more experience, cleaner driving records than a regular truck driver. We frequently inspect those vehicles also. We do maintain monthly reports on those as the Captain says. I don't know the numbers offhand, but I do know that the doubles and triples actually have a safer driving record than a regular fifty-three foot semi out here.

Representative Hagan: I am satisfied with that answer. I won't need anymore information from you Captain.

Captain Hannay: Thank you, Sir. I will add we do pay very close attention to the long combination vehicles out here, just to watch the vehicles, how they track, and we do have very active patrons out here that they report anytime they see a problem with a long combination vehicle. We are very, very active with that program.

Representative Hagan: Thank you. Thank you Mr. Chairman.

Captain Hannay: Thank you.

Chairman: Thank you. Any further questions? I'm sorry, Senator Patton.

Senator Patton: More than a question. Just to congratulate the Patrol on such a significant seizure and I don't want to compromise the, you know what led up to that if it's something that's an ongoing kind of a practice, but can you just give me at least, you know, the background was it a normal traffic stop that suddenly the Trooper had some suspicion or was this something that you had some information prior to be on the lookout for a particular vehicle?

Captain Hannay: Mr. Chairman, Commission Member Patton, this particular seizure generated out of just a traffic stop. The violator was stopped for a lane violation, the officer that made the traffic stop felt suspicious about the responses that the driver was giving them. The air around a vehicle is considered public, we do have our K-9s that are very active. The officer involved in the traffic stop did summon the K-9 there. The K-9 walked around the vehicle and alerted that there was marijuana inboard or onboard or a narcotic onboard which once the K-9 alerts that is probable cause for us to go ahead and continue to search and this search revealed the contraband.

Senator Patton: Very nice job.

Captain Hannay: Thank you, Sir.

Representative Hagan: Mr. Chairman let me follow that up too as well.

Chairman: Representative Hagan.

Representative Hagan: Have you been able to determine the source or the origin of the marijuana? It would seem to me that because of our problems with the border, that we've seen an influx of marijuana particularly, my particular interest is because a lot of it coming from the northern end of Mexico has been the result of a lot of deaths, murders, some crimes that we don't see here, but the result of which we may be causing. Have you been able to determine the origin?

Captain Hannay: Mr. Chairman, Commission Member Hagan, unfortunately the people we arrest in possession of the contraband of this size, they're not very willing to cooperate. They're not willing to give up their source. If we can't determine through E-ZPass, or through credit card activity, working with the DEA to track the origin of this particular load, we may never know where it's coming from. There is a lot of activity right now coming from the west coast along the California to Seattle borders, there's a lot of it being grown there and being shipped east. We see a lot of the contraband going east, a lot of the money going back west.

Representative Hagan: I am glad to hear you're not doing any water boarding.

Captain Hannay: That's correct.

Representative Hagan: Thank you, Captain.

Senator Patton: You would.

Chairman: Further comments? Thank you.

Captain Hannay: Thank you Mr. Chairman.

Chairman: Any other questions or comments, further business? If there's no further business I'll take a Motion to Adjourn to the next regularly scheduled meeting which will be Monday, June 21st at 10:00 a.m. Motion to adjourn?

Mr. Kidston: So moved.

Chairman: Is there a second?

Ms. Teeuwen: Second.

Chairman: Please call the roll.

Assistant Secretary-Treasurer: Chairman Balog

Mr. Balog: Yes

Assistant Secretary-Treasurer: Mr. Regula

Mr. Regula: Yes

Assistant Secretary-Treasurer: Mr. Kidston

Mr. Kidston: Yes

Assistant Secretary-Treasurer: Ms. Teeuwen

Ms. Teeuwen: Yes

Time of adjournment was 11:14 a.m.

Approved as a correct transcript of the proceedings of the Ohio
Turnpike Commission

George F. Dixon, Secretary-Treasurer