

7-15-55

OHIO TURNPIKE COMMISSION

Resolution No. 44 -1955 Pertaining to
Partial Waiver of §G-9.07 of Contract C-1

WHEREAS the Harrison Construction Company, contractor under Contract C-1, has completed the work required of it under said contract and is unwilling to accept final payment thereunder, except upon condition that the acceptance thereof shall not constitute a waiver of certain claims which it has hitherto made against the Commission;

WHEREAS the Commission considers that it is desirable in the interest of the Commission to waive that part of §G-9.07 of the aforesaid contract, which provides that the acceptance of final payment shall operate as a release to the Commission from all claims and liabilities; such waiver to be effective, however, only to permit the contractor to assert and prosecute the claims hitherto presented to the Commission;

WHEREAS the Commission has been advised by its general counsel that it may lawfully make such waiver, and the Commission's executive director, chief engineer, and consulting engineer have recommended that it do so;

WHEREAS, although Contract C-1 was not completed within the time provided in §SP-1.07 thereof, the Commission has been advised by its consulting engineer, chief engineer, and executive director that it has suffered no damages by reason of delay in completion of said contract; and

WHEREAS the Commission's chief engineer, consulting engineer, and executive director have recommended that it make final payment of the amount due under said contract without the deduction of liquidated damages, and the Commission has been advised by its general counsel that it may lawfully do so if it shall determine that it has not been damaged;

NOW, THEREFORE, BE IT

RESOLVED that the Commission shall, and it hereby does, waive §G-9.07 of Contract C-1 to the extent, and only to the extent, that the Harrison Construction Company, contractor under said contract, shall be entitled to assert and prosecute claims against the Commission, subject to the limitations contained in the next succeeding paragraph hereof, notwithstanding the following language contained in said contract:

"* * * The acceptance by the Contractor of final payment shall operate as a release to the Commission from all claims and liabilities of every type and nature owing to the Contractor in connection with the performance of the Contract. * * *"

FURTHER RESOLVED that said waiver shall be effective only to permit the Harrison Construction Company to assert and prosecute the claims heretofore presented to the Commission by said the Harrison Construction Company;

FURTHER RESOLVED that the Commission determines that it has suffered no damages for which the Harrison Construction Company is responsible by reason of any delay in the performance of said Contract C-1;

FURTHER RESOLVED that the proper officers of the Commission be, and each of them hereby is, authorized to certify and make final payment of the amount due under said contract, without deduction of any amount for liquidated damages and notwithstanding the pendency of the aforementioned claims asserted by the contractor against the Commission; and

FURTHER RESOLVED that the waiver hereby effected does not constitute an admission of liability by the Commission upon said claims or any of them, or any part thereof, or of the accuracy or relevance of any allegations of fact which have been made in support thereof.