

3-13-56

## OHIO TURNPIKE COMMISSION

Resolution No. 7 -1956 Pertaining to Partial Waiver of  
§G-9.07 of Contract C-38

WHEREAS George Vang, Inc., contractor under Contract C-38, has completed the work required of it under said contract and has refused to accept final payment thereunder except upon condition that the Commission agree that acceptance thereof shall not prejudice its right to assert a claim for damages and/or additional payment in connection with the alleged discrepancy between the subsurface conditions found by George Vang, Inc. at the two bridges over the Sandusky River and the subsurface conditions claimed by George Vang, Inc. to have been represented to it or concealed from it by the Commission or its consultants, or in connection with the furnishing or failure to furnish records, data, borings, test excavations, and other subsurface investigations or information in the hands of the Commission or its consultants, whether said claim sounds in tort or in contract;

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 by legal means said claim in the amount of not more than \$214,858.31 plus interest; and

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

NOW, THEREFORE, BE IT

RESOLVED that the Commission shall, and hereby it does, waive §G-9.07 of Contract C-38 to the extent and only to the extent that George Vang, Inc., contractor under said contract, shall be entitled to assert the aforementioned claim in the amount of not more than \$214,858.31, plus any interest claimed thereunder, notwithstanding the following language contained therein:

" \* \* \* 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 the comptroller be, and hereby he is, authorized to make final payment under said contract of the amount certified to him as due thereunder upon the dismissal of the first count set out in the complaint in George Vang, Inc. vs. Ohio Turnpike Commission, as heretofore filed, being Civil Action No. 4584 on the docket of the District Court of the United States for the Southern District of Ohio, Eastern Division, and to notify George Vang, Inc. of this waiver by sending to it an authenticated copy of this resolution; and

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

Copies hereof distributed 3-14-56 to: Acting Executive Director  
Comptroller  
Chief Engineer  
Consulting Engineer  
Squire, Sanders & Dempsey (2)