

3-13-56

OHIO TURNPIKE COMMISSION

Resolution No. 18 -1956 Authorizing Partial Payment
in Return for Release -- Contract C-16

WHEREAS pursuant to the terms of Contract C-16, the Commission has retained 10% of the amounts of monthly estimates of work performed and materials furnished;

WHEREAS The Herkner Construction Company, contractor under said Contract C-16, has requested that the Commission release one-half of the amounts so retained, and the Commission is willing to release and pay said sum to The Herkner Construction Company, but only upon condition that said contractor shall release the Commission from all claims and demands of said contractor for or in connection with the performance, or any alleged breach, of said Contract C-16, except its claim for the balance of said retained percentage and for such sums as may become due for work not yet performed or materials not yet furnished; and

WHEREAS the release of one-half of the retained percentage in accordance with the request of the contractor and upon the aforementioned conditions with respect to claims and demands of the contractor has been recommended by the Commission's consulting engineers, chief engineer, and general counsel;

NOW, THEREFORE, BE IT

RESOLVED that the Commission finds that it is in the best interest of the Commission to pay forthwith to The Herkner Construction Company one-half of the sum withheld from said company as "retained percentage" under Contract C-16, in consideration of a release of claims to be furnished to the Commission by said company;

FURTHER RESOLVED that, in view of its aforesaid finding, the Commission's acting executive director may direct payment to The Herkner Construction Company, contractor under Contract C-16, 95% of the total of monthly estimates for work performed and materials furnished pursuant to said contract (including estimates for work performed and materials furnished pursuant to extra-work orders approved by the chief engineer), less the total of all partial payments previously made; provided, however, that such payment shall be made prior to the final payment under the contract only if said contractor shall furnish to the Commission a consent thereto duly executed by the surety on its bond, and shall execute and furnish to the Commission a release of all claims, demands, actions, and causes of action of said contractor against the Commission, except said contractor's claim for the remaining 5% of the aforesaid moneys;

FURTHER RESOLVED that said release may provide that it shall not prevent the adjustment of quantities to reflect final measurements nor affect the continuing obligations of the contractor or its surety with respect to defective work or materials and indemnification of the commission, or any obligation under the contract or the bond with respect to work yet to be performed and the agreed compensation therefor; and

FURTHER RESOLVED that the aforesaid consent of surety and release shall each be in form satisfactory to the Commission's general counsel and may contain other stipulations deemed requisite or appropriate by general counsel.

Copies hereof distributed 3-14-56 to: Acting Executive Director
Comptroller
Chief Engineer
Consulting Engineer (5)
Trustee
Bricker, Marburger, Evatt & Barton, Attn.
Robert John Barton, Esq.