

## OHIO TURNPIKE COMMISSION

Resolution No. 39 - 1956 Authorizing Partial Payment and Waiver  
of Damages for Delay Upon Certain Conditions -- Contract C-16

WHEREAS the Commission has heretofore, by and in its resolution No. 18-1956, provided for the payment to The Herkner Construction Company, contractor under Contract C-16, of one half of the 10% "retained percentage" withheld from said contractor pursuant to the terms of said contract, upon certain conditions;

WHEREAS certain controversies have arisen between the Commission and said contractor, from time to time, and said conditions are not acceptable to said contractor;

WHEREAS said contractor is willing to agree to other conditions, and the Commission's consulting engineer, chief engineer, and general counsel have recommended that the aforesaid moneys be paid to the contractor and that the Commission release the contractor from any claim which it might otherwise assert against him for delay in performance, as hereinafter provided; and

WHEREAS the Commission has fully considered the matter and desires to provide for the release of said moneys and said claim, as aforesaid;

NOW, THEREFORE, BE IT

RESOLVED that the Commission finds that it is in the best interests 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 and to release said contractor from any liability to the Commission on account of delays in the performance of said contract only, in consideration of a release of claims to be furnished to the Commission by said company, which release shall be qualified as hereinafter provided;

FURTHER RESOLVED that, in view of its aforesaid finding, the controller shall, upon direction of the Commission's chief engineer and general counsel, cause payment to be made to The Herkner Construction Company, contractor under Contract C-16, of 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;

FURTHER RESOLVED that the Commission's general counsel and chief engineer be, and hereby they are, instructed jointly to execute on behalf of the Commission and deliver to said The Herkner Construction Company a release releasing said company from any and all damages to which the Commission might otherwise be entitled on account of the failure of said company to complete said Contract C-16 or any portion thereof within any of the times prescribed or required by said contract;

FURTHER RESOLVED that the foregoing partial release of retainage shall be made, and the foregoing release shall be executed and delivered, only upon condition that The Herkner Construction Company shall release the Commission from any and all claims, and demands, actions, and causes of action of said contractor against the Commission, except said contractor's claim for the balance of the aforesaid "retained percentage"; provided, however, that said release shall provide that it shall not prevent the routine 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 affect any obligation under the contract or the bond with respect to work yet to be performed and the agreed compensation therefor, nor shall it preclude the contractor from asserting and pursuing his rights to payment on account of the matters identified by the following extra-work orders:

EW(FA)11, Drying Blue ~~T~~ill ✓  
EW(FA)12, Re-design of 66" corrugated  
metal pipe  
EW(RV)18, Salvage of Timber ✓  
EW(RV)21, Scoring Parapets ✓  
EW(RV)23, Expansion Joints ✓  
EW(RV)28, Box Culvert Extension ✓

FURTHER RESOLVED that the instruments executed in carrying out this resolution shall be in form satisfactory to the Commission's general counsel and may contain other stipulations deemed requisite or appropriate by general counsel, and that this resolution shall be carried into execution only upon general counsel's satisfaction that the surety has furnished any and all requisite consents; and

FURTHER RESOLVED that this resolution shall supersede resolution No. 18-1956.

Copies hereof distributed 6/20/56 to: The Herkner Construction Co. (certified)  
Robert Barton, Esq. (certified)  
Executive Director  
Director of Information & Research  
Deputy Executive Director  
Chief Engineer  
Trustee ( Certified)  
Consulting Engineer(5)  
Comptroller