

**MINUTES OF THE 532<sup>nd</sup> MEETING OF THE OHIO TURNPIKE COMMISSION**

**May 21, 2007**

**Chairman:** It's 10:00 a.m. Good morning. The meeting will come to order. Will the Assistant Secretary-Treasurer please call the roll?

**Assistant Secretary-Treasurer:** Mr. Balog

**Mr. Balog:** Here

**Assistant Secretary-Treasurer:** Mr. Regula

**Mr. Regula:** Here

**Assistant Secretary-Treasurer:** Mr. Dixon

**Mr. Dixon:** Here

**Assistant Secretary-Treasurer:** Mr. Kidston

**Mr. Kidston:** Here

**Assistant Secretary-Treasurer:** Bonnie Teeuwen, representing ODOT

**Ms. Teeuwen:** Here

**Assistant Secretary-Treasurer:** No one is here from the Lt. Governor's Office and we have Suzette Thagard representing the Office of Budget and Management.

**Ms. Thagard:** Here

**Assistant Secretary-Treasurer:** The two Legislative members will not be in attendance today. So we do have a quorum Mr. Chairman

**Chairman:** Thank you. We have a number of guests here today and I would like to go ahead and have everyone introduce themselves. Jim, would you start?

**Those in attendance:** Jim Steiner, CFO/Comptroller, Ohio Turnpike; Eric Erickson, Fifth Third; Bobby Everhart, URS; Lori Partridge, Ohio Turnpike; Heidi Jedel, Ohio Turnpike; David Miller, Director of Audit and IC, Ohio Turnpike; Kathy Weiss, Director of Contracts Administration, Ohio Turnpike; Mike Burgess, URS; Joshua Burks, HNTB; Katie Ott, HNTB; Matt Dagostino, Telsource; Nick Georgalis, TRLR Data Services; John Conner, Key Bank Capital Markets; John Petty, Nat City Investments; Stephen Szanto, Cabrera Capital; Mark Fisher, A.G. Edwards; John Lee, J.P. Morgan; Ashton Simmons, Lehigh Gas Corporation; Floyd Jeffries, Ohio Operating Engineers; Frank Lamb, Huntington Bank; Don Taggert, Ohio

Operating Engineers; Lauren Hakos, Public Affairs Manager, Ohio Turnpike; Bill Keaton, Ohio Turnpike; Jerry Pursley, Deputy Executive Director; Dan Castrigano, Chief Engineer.

**Absent:** Representative from Governor's Office, Senator Stephen Buehrer and Representative Stephen Reinhard.

**Chairman:** Thank you. This is the 532<sup>nd</sup> Meeting of the Ohio Turnpike Commission. We are here meeting at the Commission's headquarters as provided for in the Commission's Code of Bylaws for a regular meeting. Various reports will be received and we will act on several resolutions. Draft copies have been previously sent to the members and updated drafts are in the members' folders. The resolutions will be explained during the appropriate reports. May I have a motion to adopt the minutes of the April 9, 2007 Commission Meeting?

**Mr. Dixon:** So moved

**Chairman:** Is there a second?

**Mr. Kidston:** Second

**Chairman:** Call the roll please.

**Executive Director:** Mr. Dixon

**Mr. Dixon:** Yes

**Executive Director:** Mr. Kidston

**Mr. Kidston:** Yes

**Executive Director:** Ms. Teeuwen

**Ms. Teeuwen:** Yes

**Executive Director:** Mr. Regula

**Mr. Regula:** Yes

**Executive Director:** Mr. Balog

**Mr. Balog:** Yes

**Executive Director:** Five yeas and the minutes are adopted.

**Chairman:** Thank you. If there are no questions, we will proceed with the report of the Secretary-Treasurer, Mr. Dixon.

**Secretary-Treasurer:** Thank you Mr. Chairman. The following items have been sent to the members since the last scheduled meeting of the Commission on April 9, 2007. They are as follows:

- Minutes of the April 9, 2007 Commission Meeting
- Traffic and Revenue Reports, March and April 2007
- Total Revenue by Month and Year, March and April 2007
- Investment Report, March and April 2007
- Financial Statement, March and April 2007
- Traffic Crash Summary, March and April 2007
- Budget Report, first three months 2007
- Various News Releases

That completes my report Mr. Chairman. I'll entertain any questions.

**Chairman:** Any questions for Mr. Dixon?

**Secretary-Treasurer:** Thank you sir.

**Chairman:** Executive Director, Gary.

**Executive Director:** Thank you Mr. Chairman. I have no report, but I will just make a comment that I communicated to most of the members that there has been legislation introduced, House Bill 168, to require the Commission to maintain the approaches to the overpasses, where local roads cross the Turnpike. There has been sponsor testimony and proponent testimony. We will be attending in the weeks ahead to present opposition testimony, but where that will go, I don't think we are certain at this time, but I think that we are concerned that the legislation may mandate us to maintain those slopes. That is all I have.

**Chairman:** Thank you. Any questions for Gary? Resolutions, Dan.

**Chief Engineer:** Thank you Mr. Chairman. I have three resolutions and one brief housekeeping matter to present this morning. The first resolution is a resolution Authorizing the Executive Director to Enter into an Agreement with The Village of West Unity for Water and Sewer Service to The Tiffin River and Indian Meadow Service Plazas. You may recall that on April 9<sup>th</sup> at our last Commission Meeting, the Commission adopted Resolution No. 9-2007 declaring our intention to replace the Tiffin River and Indian Meadow Service Plazas at Milepost 20.8 in Williams County, Ohio. The previous facilities that were at that location were the only service plazas on the Turnpike that were still equipped with our own water and wastewater

treatment facilities. In early March of this year, we received an offer from the Village of West Unity to provide municipal water and wastewater service to the locations. As a result of that letter on April 18<sup>th</sup>, myself along with members of the Commission's Engineering Department, our consulting engineer on the project and Commission Member Kidston met with the Village of West Unity to talk about the needs for the water and wastewater service at these facilities. As a result of that the Village of West Unity offered to the Commission to provide water and wastewater service to the facilities at a cost not to exceed \$1,587,575.00 under terms and conditions that are mutually acceptable to both the Commission and the Village of West Unity. I am recommending that the Commission accept this proposal. It is much more economical to receive the services from the Village rather than reconstruct our own water and wastewater treatment facilities at the locations. If the General Counsel would please read the resolved?

**General Counsel:** RESOLVED that the Executive Director and Chief Engineer are hereby authorized to negotiate and execute an agreement with the Village of West Unity for the purpose of obtaining water and sewer service to the Tiffin River and Indian Meadow Service Plazas, which agreement may include the Commission reimbursing the Village of West Unity for those infrastructure improvements necessary to provide such service; and

FURTHER RESOLVED, the Executive Director and Chief Engineer are authorized to take any and all actions necessary to carry out the terms of said agreement.

**Chairman:** Motion to adopt?

**Mr. Dixon:** So moved

**Chairman:** Is there a second?

**Mr. Regula:** Second

**Chairman:** Any questions or discussion on the motion? I just have one real quick question Dan. I see that there is protective, I assume, some type of protective ordinance or resolution passed by the community that we are reimbursed for anybody that taps into the water or sewer line along the extension. Is that correct?

**Chief Engineer:** That is correct Mr. Chairman. Right now they are looking if they are going to annex the area that goes from their current Village limits to the service plazas into the Village or not. When that occurs we would be eligible, these are some of the terms that we will talk about when we get into some detailed meetings with the Village, to be reimbursed for tap-in fees for both the water and the sewer.

**Chairman:** When I've seen some of these ordinances, sometimes they have a sunset provision on them where they would expire after a period of time, so if somebody taps-in within the next ten years you would get your proportioned share of that reimbursement and come back. We tried to negotiate that to make that forever because it could be a long time until the development occurs out there, but we should be reimbursed for our proportioned share of that.

**Chief Engineer:** That's correct Mr. Chairman. Right now we have several agreements with municipalities along the Turnpike for our other service plazas and we did negotiate into those terms. Right now, we could have terms anywhere from 20 to 30 years depending on the municipality we are working with, but obviously we will try to get that as long as possible.

**Chairman:** Call the roll.

**Executive Director:** Mr. Dixon

**Mr. Dixon:** Yes

**Executive Director:** Mr. Regula

**Mr. Regula:** Yes

**Executive Director:** Mr. Balog

**Mr. Balog:** Yes

**Executive Director:** Ms. Teeuwen

**Ms. Teeuwen:** Yes

**Executive Director:** Mr. Kidston

**Mr. Kidston:** Abstain

**Executive Director:** There are four yeas and the resolution is adopted.

**RESOLUTION NO. 12-2007**

**Resolution Authorizing the Executive Director to Enter into an Agreement with  
The Village of West Unity for Water and Sewer  
Service to The Tiffin River and Indian Meadow Service Plazas**

WHEREAS, Section 5537.04(10) of the Ohio Revised Code provides that the Commission may make or enter into all contracts and agreements necessary to the performance of its duties and the execution of its powers; and

WHEREAS, Section 5537.28 of the Revised Code authorizes the Commission to use toll revenues for the purpose of making infrastructure improvements to existing service plaza facilities in order to carry out its duties, powers and functions; and

WHEREAS, the Commission adopted Resolution No. 9-2007 on April 9, 2007 in which it declared its intention to replace and rebuild the Tiffin River and Indian Meadow Service Plazas located in Williams County; and

WHEREAS, the expenditures by the Commission to provide for water and sewer service to the Tiffin River and Indian Meadow Service Plazas 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 to enter into such agreement; and

WHEREAS, the Village of West Unity has offered to provide water and sewer service to the Tiffin River and Indian Meadow Service Plazas at a cost not to exceed **\$1,587,575.00**, under terms and conditions that are mutually acceptable to both the Village and the Commission; and

WHEREAS, the Village of West Unity will need to construct significant infrastructure improvements in order to extend and provide such water and sewer service to the Tiffin River and Indian Meadow Service Plazas; and

WHEREAS, the Chief Engineer has recommended that the Commission accept the Village of West Unity's offer to provide water and sewer service to the Tiffin River and Indian Meadow Service Plazas in lieu of the Commission rebuilding, maintaining and operating its own water and sewer treatment plant at the service plazas in conformity with Ohio EPA requirements; and

WHEREAS, the Commission's Chief Engineer and Executive Director have reviewed the proposal provided by the Village of West Unity and both concur that it is in the Commission's best interests to enter into an agreement with the Village for this purpose.

NOW, THEREFORE, BE IT

RESOLVED that the Executive Director and Chief Engineer are hereby authorized to negotiate and execute an agreement with the Village of West Unity for the purpose of obtaining water and sewer service to the Tiffin River and Indian Meadow Service Plazas, which agreement may include the Commission reimbursing the Village of West Unity for those infrastructure improvements necessary to provide such service; and

FURTHER RESOLVED, the Executive Director and Chief Engineer are authorized to take any and all actions necessary to carry out the terms of said agreement.

**(Resolution No. 12-2007 adopted May 21, 2007)**

**Chief Engineer:** Thank you. The second resolution this morning is a resolution awarding a contract to Furnish, Install and Test SONET Fiber Optic Telecommunications System Equipment at all Ohio Turnpike Commission Facilities under Invitation No. 4065. This is the upgrade of our communication system that is required for our planned ITS projects, as well as the toll collection system that is currently under design, as well as the OTC business systems applications. This project was on our 2007 Capital Budget. We received two bids in response to

Invitation No. 4065. The apparent low bid was submitted by AT&T in Columbus, Ohio. The Director of Contracts Administration has advised that there are numerous legal deficiencies with this bid and also HNTB, our project manager on this project, has also reviewed AT&T's bid and had advised that there are numerous technical deficiencies with their bid. The apparent second low bid has been submitted by Telsource Corporation of Fairfield, New Jersey in the base bid amount of \$3,998,082.31. This bidder has performed satisfactorily for the Commission in the past and the base bid is under the engineer's estimate. The contract specifications also include provisions for the purchase of optional bid items that may be exercised at the discretion of the Commission. The Commission's Telecommunications Manager is recommending exercise of options in the amount of \$154,424.75. These options include a five year extended warranty and some additional training for Commission employees. The total amount of the award is \$4,152,507.06. If the General Counsel would please read the resolved?

**General Counsel:** RESOLVED that the bid of AT&T is deemed non-responsive and is rejected; and

FURTHER RESOLVED that the bid of **Telsource Corporation of Fairfield, New Jersey** in the total amount of **\$4,152,507.06 (\$3,998,082.31 base bid, \$154,424.75 optional bid items)**, under Invitation No. 4065 is, and is by the Commission deemed to be the lowest responsive and responsible bid received and the chairperson and executive director, or either of them, is hereby authorized to: (1) at the earliest time permitted under the Bidding Documents, or in the event objections are filed with the director of contracts administration by the rejected bidder then only after the Commission's affirmation of the rejection, execute a Contract with the successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid Invitation; (2) to direct the return to the bidders of their bid security at such time as **Telsource Corporation** has entered into a Contract; and (3) to take any and all action necessary to properly carry out the terms of said Contract.

FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **HNTB Ohio of Cleveland, Ohio** to Invitation No. 4065 for the purpose of performing construction administration services, with such assignment in accordance with the Engineering Design Services Agreement specific to this Project between the Ohio Turnpike Commission and HNTB Ohio.

**Chairman:** Motion to adopt?

**Mr. Regula:** So moved

**Chairman:** Is there a second?

**Mr. Kidston:** Second

**Chairman:** Questions on the motion before us?

**Mr. Dixon:** Can I just, you know, and I know you tried to get in touch with me Gary to go over this.

**Executive Director:** Yes we did.

**Mr. Dixon:** And I just wasn't available. So can I get a brief overview of what the SONET System does? Short, tell me exactly what it does.

**Executive Director:** As I understand it, maybe I should have Dan do it, but basically this is a connection between our computer system and our fiber optic network, apparently that is the bottleneck in our system now. We are sending information from here to down the road and we are receiving information down the road or wherever it might be at various locations and we are improving that one section of the network where there is a bottleneck.

**Chief Engineer:** Sounds good to me, I am a Civil Engineer. That's right Gary, Bill is here if there is some detailed questions on it. But it is the interface between our computer hardware that we have here and the fiber that runs along the entire length of the Turnpike and this equipment is required at every location along the Turnpike, all of the maintenance buildings, the service plazas, and the toll plazas.

**Mr. Dixon:** It connects us with all of our satellites.

**Chief Engineer:** Yes.

**Mr. Dixon:** Thank you.

**Chairman:** You provided us with a fairly detailed written report on why we are rejecting the lowest bidder and why we are taking the second. I think we need to, at least, have a little discussion about that on the record and I wondered if you'd be able to explain some of the deficiencies because we are not talking about a bid of \$100,000.00, we are talking in excess of three-quarters of a million dollars between the base bid from the first bidder and the second bidder. I wonder if you could talk about some of that information and have a little discussion about that.

**Chief Engineer:** Certainly Mr. Chairman. As far as the legal deficiencies cited in their bid, I would defer to Kathy Weiss, our Director of Contracts Administration.

**Chairman:** Kathy.

**Director of Contracts Administration:** Good morning Mr. Chairman and Commissioners. The primary concern is that AT&T has indicated that the products and services that are proposed in the Bid Invitation are going to have to be subject to their standard contract and our Invitation sets forth the terms and conditions of the contract and they wouldn't agree to sign that. They specifically refused to agree to the Commission's terms in the Invitation concerning assignment, mediation, approval of subcontractors, termination, indemnification, jurisdiction of Ohio courts, when the warranty would begin, the nature of the warranty, rights of ownership. These are very major terms and conditions and our Invitations require that the contractor that is awarded the contract sign the contract within ten days There is absolutely no



way they would be able to negotiate this contract in that timeframe, it would delay the start of the project. On the technical side, AT&T has also indicated that it will do “only the portions of the scope of work it feels it can perform” and if you would like to hear more about that, HNTB is here to discuss the technical deficiencies, if you would like to hear about that. Basically, the Invitation clearly states that a bidder is supposed to bring exceptions that they take to the Invitation to our attention prior to bid opening. AT&T did not do this and also what they did is they left a few things out of the bid form and they also tried to add \$54,000.00 to the bid after the bid opening. These are erasures and changes and things that could cause again for a bid to be rejected. So, essentially what we did with the resolution is we put language in there that states that, because of the magnitude of the contract, it is a large dollar amount, if AT&T as a rejected bidder wanted to file a protest with us, they would have five days to do so after receiving notice, and the award of this contract is contingent upon that. In other words, if they don’t protest in the timeframe, then the contract will be awarded. If they do, then we would conduct a meeting with them and the Commission would either reject or affirm the rejection at the next meeting.

**Chairman:** So that hearing will happen if AT&T so requests it?

**Director of Contracts Administration:** That’s correct.

**Chairman:** You said HNTB is here to discuss that?

**Director of Contracts Administration:** Yes Mr. Chairman. Would you like to hear further about the technical aspects?

**Chairman:** Yes I would like just a little flavor of the technical aspects also.

**Director of Contracts Administration:** If you have any other questions, just let me know.

**Chief Engineer:** Mr. Chairman, we have Katie Ott, who is our project manager on this project from HNTB. Any items that she does not discuss here this morning, attached to my recommendation letter, is HNTB’s review of the technical parameters of the project, which includes a three page listing of the technical deficiencies in AT&T’s bid.

**Chairman:** Good morning.

**Katie Ott, HNTB:** Good morning. We have a letter that we sent, that I assume you guys also got here, and most of the technical deficiencies kind of piggy-backed on the legal deficiencies because they refused to comply with a lot of that stuff, that there was some technical problems and so they were non-compliant with a lot of the scope items, such as the training, and a lot of the warranty issues and this allowed them to give a lower bid for the project than they would have had they not taken these exceptions. So, we really felt that the exceptions allowed them to have the lower bid and we’ve run into this situation in some other locations and it has really delayed projects several months.

**Chairman:** There is reference to Texas inside the material that was provided to us. Is that the place where you dealt with them.

**Katie Ott, HNTB:** Yea, there is a few people that have been working on, not the ones that evaluated this, but other people that are working on the projects that have had delays of six months or more due to negotiations and such. That didn't play into the evaluation, but it is also a concern.

**Chief Engineer:** Mr. Chairman, just to give you the flavor of some of the items that AT&T took exceptions to for example, they said the warranty would begin on the equipment once the equipment was installed at our facility rather than once the final acceptance is done on the job. They also said other items, such as jumper cables and miscellaneous items, will be billed separately where our specifications require a complete turn-key system, items like that.

**Chairman:** I saw the reference that happens at cut-off versus acceptance.

**Chief Engineer:** That's correct. They also said that we take ownership of the equipment at the shipping point rather than once it is here and installed. That can be a huge liability and if something breaks where did it happen.

**Katie Ott, HNTB:** Yea, you'd be responsible for it.

**Ms. Teeuwen:** Dan, any concern that there were only two bidders on this?

**Chief Engineer:** Mr. Chairman and Commission Member Teeuwen, there also is included in here the bid packages that were mailed out. We also had a pre-bid conference on this bid where we did receive several respondents at that pre-bid. Kathy, do you have any more, I know you did some research into this.

**Director of Contracts Administration:** We had 13, Mr. Chair and Commissioners, we had 13 companies in attendance at the pre-bid meeting. There were, as you said, obviously two bidders, we felt that there was probably sufficient interest for three bids, but at the last minute, sometimes it is the amount of time that is dedicated to a project that causes a company to choose to not bid and it's a pretty big project, so I think some of the companies that came to the pre-bid conference felt that maybe it was too much for them to bite off and chew.

**Chairman:** Thank you.

**Ms. Teeuwen:** One other question, the optional items those are within our engineer's estimate also?

**Chief Engineer:** That's correct.

**Ms. Teeuwen:** Thank you.

**Mr. Regula:** Mr. Chairman, so I can make an assumption that AT&T knew that they would probably not get this bid due to what they were attempting to change? I mean obviously you put out specs and you expect them to bid accordingly and they wanted to change the rules per se, so they would assume that we would reject it based upon that.

**Director of Contracts Administration:** Mr. Chair and Commissioner Regula, I don't want to necessarily make that assumption. Clearly, they'd know that they have not complied with all of the specifications. They will certainly know within the next 24-hours when we send them a letter telling them that they have not complied, so I really couldn't say for sure what their reaction is going to be.

**Mr. Regula:** But they have enough knowledge of the bidding process. They should have been aware of what we were requesting.

**Director of Contracts Administration:** Certainly.

**Chairman:** Any other questions? Please call the roll.

**Executive Director:** Mr. Regula

**Mr. Regula:** Yes

**Executive Director:** Mr. Kidston

**Mr. Kidston:** Yes

**Executive Director:** Mr. Balog

**Mr. Balog:** Yes

**Executive Director:** Mr. Dixon

**Mr. Dixon:** Yes

**Executive Director:** Ms. Teeuwen

**Ms. Teeuwen:** Yes

**Executive Director:** Five yeas and the resolution is adopted.

**RESOLUTION NO. 13-2007**

**Resolution Awarding a Contract to Furnish, Install and Test SONET Fiber Optic Telecommunications System Equipment at all Ohio Turnpike Commission Facilities under Invitation No. 4065**

WHEREAS, the Commission has duly advertised for bids for Invitation No. 4065 for the furnishing, installing and testing of a SONET Fiber Optic Telecommunications System (“SONET System”) at all Ohio Turnpike Commission facilities; and

WHEREAS, the expenditures by the Commission for the furnishing, installing and testing of a SONET System at all the Ohio Turnpike Commission facilities under Invitation No. 4065 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 such Contract; and

WHEREAS, the Commission received two (2) bids in response to Invitation No. 4065, and said bids have been reviewed and analyzed by the Commission’s consultant for this Project, HNTB Ohio, and the Commission’s chief engineer whose reports concerning such analysis are before the Commission; and

WHEREAS, the Commission’s director of contracts administration has also reviewed said bids for compliance with the legal requirements of Invitation No. 4065 and has advised that the apparent low bid submitted by AT&T of Columbus, Ohio does not comply with the legal requirements of Invitation No. 4065 and, therefore, the AT&T bid cannot be considered for award; and

WHEREAS, HNTB has reviewed the second low bid and has reported to the chief engineer that the lowest responsive and responsible bid in the total amount of **\$3,998,082.31**, was submitted by **Telsource Corporation of Fairfield, New Jersey**, and that this bidder proposes to furnish materials and services in accordance with the Commission's specifications; and

WHEREAS, the Specifications contained in the Contract documents provide for the purchase of “Optional Bid Items” that may be exercised at the discretion of the Commission; and

WHEREAS, in his report, the chief engineer recommends the purchase of “Optional Bid Items” in the amount of **\$154,424.75**, as requested by the Commission’s telecommunications manager; and

WHEREAS, the Commission has also been advised by the director of contracts administration that all bids for Invitation No. 4065 were solicited on the basis of the same terms and conditions and the same specifications, that the bid of Telsource Corporation for Invitation No. 4065 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 Telsource Corporation; and

WHEREAS, the director of contracts administration has further advised that, pursuant to the bidding documents for Invitation No. 4065 and Ohio Revised Code Section 5537.07 (A), the Commission expressly reserves the right to reject any and all bids, and that the Commission may reject the bid of AT&T as non-responsive, however, because of the magnitude of the Contract, final award of the Contract to the lowest responsive, responsible bidder should be authorized only after the opportunity for the rejected bidder to object has occurred, as provided for in the Bidding Documents; and

WHEREAS, the director of contracts administration has indicated that, once such opportunity for objections by the rejected bidder has passed or the Commission affirms the rejection after the conduct of a meeting that may be requested by the rejected bidder, the Commission may then legally enter into a Contract with Telsource Corporation for the furnishing, installing and testing of a SONET System at all the Ohio Turnpike Commission facilities in accordance with Invitation No. 4065; and

WHEREAS, the executive director has also reviewed the reports submitted by the Commission's chief engineer and director of contracts administration and, predicated on their analysis, recommends to the Commission that the bid submitted by AT&T be rejected, and that, when appropriate, a Contract be awarded to the lowest responsive and responsible bidder, Telsource Corporation; and

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the bid of AT&T is deemed non-responsive and is rejected; and

FURTHER RESOLVED that the bid of **Telsource Corporation of Fairfield, New Jersey** in the total amount of **\$4,152,507.06 (\$3,998,082.31 base bid, \$154,424.75 optional bid items)**, under Invitation No. 4065 is, and is by the Commission deemed to be the lowest responsive and responsible bid received and the chairperson and executive director, or either of them, is hereby authorized to: (1) at the earliest time permitted under the Bidding Documents, or in the event objections are filed with the director of contracts administration by the rejected bidder then only after the Commission's affirmation of the rejection, execute a Contract with the successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid Invitation; (2) to direct the return to the bidders of their bid security at such time as **Telsource Corporation** has entered into a Contract; and (3) to take any and all action necessary to properly carry out the terms of said Contract.

FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **HNTB Ohio of Cleveland, Ohio** to Invitation No. 4065 for the purpose of performing construction administration services, with such assignment in accordance with the Engineering Design Services Agreement specific to this Project between the Ohio Turnpike Commission and HNTB Ohio.

**(Resolution No. 13-2007 adopted May 21, 2007)**

**Chief Engineer:** Thank you Mr. Chairman. The final resolution I have this morning is a resolution rejecting bids for Contract No. 40-07-01. This is for the repainting of seven structures that go over the Turnpike in Summit, Portage, and Trumbull Counties. This project was on the 2007 Capital Budget. We received bids from four bidders in response to this contract. All bids that we received were in excess of 10% above the engineer's estimate and therefore, we cannot consider award on this project. We are looking at re-bidding this job due to the nature of the bids and where we are in the construction season, in the 2008 construction season. If the General Counsel would please read the resolved?

**General Counsel:** RESOLVED that the above-mentioned bids heretofore received pursuant to the advertisement for bids upon a Contract for repainting of Turnpike bridges in Summit, Portage and Trumbull Counties, Ohio, herein designated **Contract No. 40-07-01**, be and the same hereby are rejected, and the director of contracts administration is authorized to notify the bidders in writing of said action, and to return to the bidders their bid security; and

FURTHER RESOLVED that the executive director and director of contracts administration hereby are authorized to take any and all action necessary, at the appropriate time, to re-advertise for bids for **Contract No. 40-07-01**, or a modified version thereof, for the repainting of bridges in Summit, Portage and/or Trumbull Counties, Ohio.

**Chairman:** Motion to adopt?

**Ms. Teeuwen:** Moved

**Chairman:** Is there a second?

**Mr. Dixon:** Second

**Chairman:** Questions on the rejection of bids? What is the comparison of last year to this year on our bridge painting prices? You indicated that the prices went up.

**Chief Engineer:** I was shocked when we received these bids. Just to give you some idea of the square foot prices that we paid for the painting last year were in the range of \$16.00 per square foot. The low bidder for this year was at \$36.00 per square foot, which obviously is a tremendous increase. What I plan on doing, assuming we adopt this resolution, is I want to contact ODOT, not only District 12, but District 4 to see what their program is this year, if they are continuing with new projects or just carry-over projects from last year. I also plan on bringing in the bidders to see what happened because basically we have the same specifications this year as we did last year on this project.

**Chairman:** I appreciate that. Please call the roll.

**Executive Director:** Ms. Teeuwen

**Ms. Teeuwen:** Yes

**Executive Director:** Mr. Dixon

**Mr. Dixon:** Yes

**Executive Director:** Mr. Kidston

**Mr. Kidston:** Yes

**Executive Director:** Mr. Regula

**Mr. Regula:** Yes

**Executive Director:** Mr. Balog

**Mr. Balog:** Yes

**Executive Director:** Five yeas and the resolution is adopted.

**Chairman:** Thank you.

**Chief Engineer:** The final item I have this morning is a housekeeping matter. In our Code of Bylaws that were revised on March 17, 2003, Article V requires a report back to the Commission on our construction projects once they are completed. There is a small package in your folders: "Ohio Turnpike Commission Construction Summary" with today's date. It contains five construction contracts that have been completed since my last report to you on November 20, 2006. The total award amount of these five contracts was approximately \$14.18 million dollars. The final in place amount for these five contracts was \$13.6 million dollars resulting in a savings of approximately \$542,000.00 for the Commission. Since I began this report back in 2003, we've completed 43 construction projects with a total award amount of \$137.6 million dollars, final in place amount \$136.4 million dollars resulting in a savings of just over \$1.25 million dollars. That completes my report this morning Mr. Chairman.

**Mr. Chairman:** Thank you. General Counsel, Noelle.

**General Counsel:** Mr. Chairman and Commission Members I have prepared for your review and consideration a drafted resolution that would authorize me to include the Commission in legal proceedings most likely initiated by Blaze Building Corporation. As you may recall, the Commission awarded a contract to Blaze Building Corporation for renovations of the west wing that was Contract No. 48-06-01. During the course of the project the Commission did receive an Affidavit of Lien on Public Funds, which is an attested account under the Ohio Mechanic's Lien Statute, the Commission is required to hold contract funds upon receiving notice of a dispute between either the prime contractor and a subcontractor or a supplier and a subcontractor or prime contractor. The attested account was filed against EGZ Hydronics Plumbing and Heating, Inc., which was a subcontractor on the HVAC portion of the contract. So we have withheld those funds in accordance with the statute and Blaze Building Corporation has indicated their intention to dispute the amount owed to the subcontractor. We also received

notice from Blaze Building Corporation that the IRS has issued a Notice of Levy against contract funds against the same subcontractor. Although, Blaze Building Corporation requested that we issue the contract funds nonetheless, we are withholding the funds until we have assurance either through court proceedings or through a signed settlement involving all of the parties to the contract and the IRS that it is appropriate for us to release the funds. Blaze has indicated their intention to file interpleader action which is to a certain degree not an adversary proceeding, it is procedure under the Civil Rules whereby parties can all apply to a court to have a determination of priority of claims and who is to be paid what on a contract dispute and that is my recommendation that we participate in that action to insure that the Commission does not end up paying the same amount twice. So with your permission I will read the resolved.

**Chairman:** Go ahead.

**General Counsel:** RESOLVED that the General Counsel is authorized to include the Ohio Turnpike Commission as a party to an interpleader action filed by Blaze Building Corporation in order to adjudicate and determine the priority of claims and obligations of all the parties with respect to the attested account filed by Tradesman International, Inc., and the Internal Revenue Service Levy issued against EGZ Hydronics Heating and Plumbing, Inc.

**Chairman:** Motion to adopt?

**Mr. Kidston:** So moved

**Chairman:** Second please

**Mr. Regula:** Second

**Chairman:** Questions or discussion?

**Mr. Kidston:** Dan during the normal letting of bids do we require the primes to name their major subs and suppliers.

**Chief Engineer:** Mr. Chairman and Commission Member Kidston, the subcontractor notification is not a requirement at the time of bidding. However, it is required that the Commission approve any subcontractor prior to their working on the project.

**Mr. Kidston:** Are those subs on an approved list of some sort?

**Chief Engineer:** Mr. Chairman and Commission Member Kidston, we do not keep a formal list of approved subcontractors.

**Chairman:** Call the roll please.

**Executive Director:** Mr. Kidston

**Mr. Kidston:** Yes



**Executive Director:** Mr. Regula

**Mr. Regula:** Yes

**Executive Director:** Mr. Dixon

**Mr. Dixon:** Yes

**Executive Director:** Mr. Balog

**Mr. Balog:** Yes

**Executive Director:** Ms. Teeuwen

**Ms. Teeuwen:** Yes

**Executive Director:** Five yeas and the resolution is adopted.

**Chairman:** Next CFO/Comptroller, Jim.

**CFO/Comptroller:** There is a proposed resolution for financial advisory services in your materials. A request for proposal was sent to 16 financial advisory firms on April 5<sup>th</sup> and we received six proposals. The Director of Contracts Administration reviewed each proposal for compliance with all legal requirements. The Deputy Executive Director, the Accounting Manager and I evaluated the proposals for technical merit and we awarded the highest score to Fifth Third Securities. Mr. Erickson of Fifth Third Securities has performed exceptionally well as the Commission's Financial Advisor for the past 11 years assisting the Commission to achieve very low fixed interest rates on five bond issuances totaling almost \$750,000,000.00. He's also helped the Commission obtain the highest credit ratings in the toll industry from all three major credit rating agencies. Fifth Third does provide both financial advisory underwriting and has ranked in the top two for underwriting Ohio bond issues in each of the last three years. The Commission's current contract with Fifth Third Securities terminates on June 11<sup>th</sup>. As provided in the RFP the term of the new agreement would be for an initial term of three years with an option for the Commission to extend the agreement for two additional one year periods. The proposed fee consists of an annual retainer of \$78,000.00, plus out-of-pocket expenses for authorized out-of-state travel only. Although, we have no current plans to borrow additional funds, no added compensation would be due or payable for financial advisory services in connection with refinancing of our existing debt should the Commission choose to do so at some point in the future. The fee is an increase of 18% compared to the current retainer of \$66,000.00 per year. However, the current retainer has not increased during the past nine years and the Consumer Price Index has increased 26% during this period. With your permission Mr. Chairman I would like to ask the General Counsel to read the resolved.

**General Counsel:** RESOLVED that the proposal submitted by **Fifth Third Securities of Columbus, Ohio** is, and is by the Commission determined to be, the best of all

proposals received in response to the Commission's RFP for Financial Advisory Services and is accepted; and

FURTHER RESOLVED that the executive director and director of contracts administration hereby are authorized to execute an Agreement with **Fifth Third Securities** to furnish Financial Advisory Services to the Commission, which shall provide for an initial term of **three (3) years commencing June 12, 2007**, and which further provides for the option to renew the Agreement for two (2) additional one (1) year periods, in the form heretofore prescribed by the Commission pursuant to the aforesaid RFP, and to take any and all action necessary or proper to carry out the terms of said RFP and said Agreement; 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 L.L.P.

**Chairman:** Motion to adopt?

**Mr. Kidston:** So moved

**Chairman:** Is there a second?

**Mr. Regula:** Second

**Chairman:** Questions or discussions on the resolution?

**Mr. Dixon:** How long have you been out here at the Turnpike?

**CFO/Comptroller:** Mr. Chairman and Commission Member Dixon, I have been here since 1999.

**Mr. Dixon:** Since 1999.

**CFO/Comptroller:** So Fifth Third Securities was the advisor.

**Mr. Dixon:** And you worked with Mr. Erickson since that time?

**CFO/Comptroller:** That's correct.

**Mr. Dixon:** Because I have been out here close to the same amount of time and he reports every week and he stands up and smiles, and I think he is a nice guy, and I like him, and it would be hard for me to sit on a committee to make a judgment on him because of that relationship that I have with him. I see that you and Mr. Pursley, who I would qualify as his colleagues, had to make judgment on a contract with Mr. Erickson. I have a hard time with that. I am sure he has been responsive. I am sure he has done a great job. But I think we have a responsibility to create a process, and I am not overstepping my boundaries here because the

Commission develops processes and policies, to create a policy that will withstand the sniff test and that is fair and impartial. I don't know if we have done that yet.

**Chairman:** Mr. Dixon would you like to hold this or would you like to establish that policy for the future. What are your thoughts on that?

**Mr. Dixon:** I think we need, I mean this is a big contract here, and I think we need to look at this and bring, we've got to figure this out Mr. Chairman. Again, I know it was hard for you to make this decision because it is hard for me to say this sitting in front of Mr. Erickson. Okay, it's difficult, I like Mr. Erickson. But I have a responsibility to the Commission and I have a responsibility to make sure that what we do is open and fair and I don't think this is fair.

**Chairman:** Can I ask when the existing contract expires?

**CFO/Comptroller:** Mr. Chairman, it expires on June 11<sup>th</sup> of this year.

**Chairman:** Not to minimize the contract. In any contract this is important and I am not trying, we are talking by the numbers in the contracts that we are involved with. This is a smaller contract and this is \$6,000.00 a month. A dollar is a dollar, I don't disagree. You know when we look at the AT&T contract that we rejected, which was different than \$800,000.00 on a capital project, I realize, could we, and I hear your comment quite clearly and it's a very good comment. The people that are making the recommendations are the same people that work with him day in and day out and I certainly can understand that. On the other hand, they are also the people that have the most experience with him that should be able to go ahead and judge if he is doing a good job or not.

**Mr. Dixon:** There is no argument there. We have a situation. Again, if you decide to go forward with this than that is your prerogative and I will vote like everyone else and I'll vote my conscience and that's all I have to do, but you know, I just, I felt and I struggled over here, I really did, I really struggled because I like Mr. Erickson, I struggled over here, but I felt that I had a responsibility to at least make the comment.

**Director of Contracts Administration:** Mr. Chair and Commissioners, pardon the interruption here, I just wanted to make a comment.

**Mr. Dixon:** That's a movie, Pardon Me for Interrupting.

**Director of Contracts Administration:** The process for evaluation, as the Chairman put it, it is important to have the contract manager involved in that evaluation process and for RFPs we always try to have a minimum of three people involved. Mr. Pursley and Ms. Mejac were not involved in any of the debt issuances that the Commission previously has done and I think they brought additional objectivity to this process. In addition to that, the committee was given an evaluation form from my office that contains the various criteria that they must analyze and it also suggests to them that they use a technique that was scientifically created by Battelle Memorial, it's called PMIQ Technique in conducting their scoring. So all of these things that I am telling you are methods used to keep this process as impartial and fair as possible, and I have

no reason to believe standing here today that this process was in any way unfair. It was very impartial and all of the proposals were evaluated by my office for legal compliance and I think that the decision they made was the right decision based on the scoring that they conducted.

**Mr. Dixon:** Everything that you said was fine and good, I disagree. I simply disagree and you know, come on, how can it be, it can't be, I couldn't, I wouldn't, I couldn't make a fair impartial decision on this, well maybe I could because that is just the kind of guy I am, and I don't want to *inaudible* this. Mr. Chairman bring your vote, but somewhere down the line one of these people may say hey, if I was one of them, I would be out there right now raising all kind of hell about it.

**Chairman:** I think you need to have the person that works with them involved in the process and as Kathy indicated that was just one, the other two people.

**Mr. Dixon:** But what's their involvement, but they are involved in so far as we've got other people involved in here, but they are non-voters, they observe and they have a voice, but they are non-voters, okay? Did you vote sir?

**CFO/Comptroller:** Mr. Chairman and Commission Member Dixon, yes I was one of the three people that was involved in the scoring.

**Mr. Dixon:** Okay.

**Chairman:** And it's not a "vote", you establish a score and the scores are averaged together, is that correct?

**CFO/Comptroller:** Mr. Chairman, we use the consensus scoring, we each reviewed the proposals, individually, then we met together as a group and discussed each proposal and agreed upon a final score for each firm.

**Mr. Dixon:** And two members of that group are his colleagues? Okay. Mr. Chairman, I suggest we move on. I've said what I had to say.

**Chairman:** Thank you. Please call the roll.

**Executive Director:** Mr. Kidston

**Mr. Kidston:** No

**Executive Director:** Mr. Regula

**Mr. Regula:** Yes

**Executive Director:** Mr. Balog

**Mr. Balog:** Yes

**Executive Director:** Ms. Teeuwen

**Ms. Teeuwen:** Yes

**Executive Director:** Mr. Dixon

**Mr. Dixon:** No

**Executive Director:** There are three yeas and two nays, the resolution is adopted.

**Chairman:** Thank you.

**CFO/Comptroller:** Mr. Chairman, I do have a brief report on traffic and revenue for the first four months of the year. This first chart shows the passenger car miles traveled on the Ohio Turnpike over the past two years. Miles traveled by passenger cars in the month of April were 4.1% below the level reached last year. Economic conditions and rising fuel prices are likely the major reasons for this decline. Commercial vehicles miles traveled were 1.6% below the level reached last April. This graph, which was prepared by our Traffic Consultant, Bobby Everhart of URS, depicts the density of truck traffic in the month of April during each of the last four years. It is interesting to note that traffic this April on the eastern half of the Turnpike is comparable to that from last year, while traffic on the western half of the Turnpike has declined and this is most likely the result of an April 1 increase in truck tolls rates on the Indiana toll road that averaged approximately 25%. The preliminary data from the month of May indicates some improvement in both passenger car and commercial traffic. Despite the decline in traffic, the revenues from passenger cars were up 5.1% in April compared to last year, as a result of the January adjustment in toll rates. Likewise, revenues from commercial vehicles were up 8% in April compared to last year. The total year-to-date toll revenues were up \$3.5 million dollars or 6.3% in comparison to last year. However, this is lower than expected and not enough to fully offset the loss of the \$5.2 million dollars that was received from ODOT during the first four months of last year. This final chart shows year-to-date revenues from all sources for each year of this decade, our total revenues as of the end of April are \$1.5 million dollars or 2.2% below those from last year. Fortunately, expense savings are helping to offset this shortfall. That completes my report Mr. Chairman. I'd be happy to respond to any questions.

**Chairman:** Thank you. Any questions. Thanks Jim.

**CFO/Comptroller:** Thank you.

**Chairman:** Financial Advisor?

**Financial Advisor:** No report today.

**Chairman:** Trustee?

**Trustee:** No report Mr. Chairman.

**Chairman:** General Consultant?

**General Consultant:** No report Mr. Chairman.

**Chairman:** Ohio State Highway Patrol.

**Captain Hannay:** Mr. Chairman and Commission Members, unfortunately I have to report two fatalities in the beginning of May. Two pedestrians were struck and killed on the Ohio Turnpike. The first was on the 1<sup>st</sup> of May out west in the Baumhart Road area. This individual was under the influence of alcohol and chose to traverse the lanes of the interstate and was struck and killed by a commercial vehicle. This gentleman was under the influence of alcohol. The second pedestrian was struck four or five days later out in the construction zone in the area of the 203 Milepost in the Windham area. This individual was seen in a bar, a liquor establishment, some 18 minutes prior to the traffic crash. We do believe there is alcohol involved in this pedestrian attempting to cross the interstate. I can answer questions.

**Chairman:** The second one, there was no car related, he was going from one location to the other and just decided that he was going to walk across the Turnpike? Is that correct?

**Captain Hannay:** Well sir, he was involved in an altercation in the establishment in Windham. He left the establishment, he was seen coming back to the establishment again, entertained the altercation with the same people, he was then chased out of the establishment in Windham and he ended up on the Turnpike. He got across the eastbound lanes, across the wall and when he got down in traffic on the westbound side was struck and killed in the passing lane or the inside berm lane.

**Chairman:** It is very unusual to have two pedestrian accidents, our only two fatalities, on the highway.

**Captain Hannay:** Very unusual.

**Mr. Regula:** Did he have to cross a fence or anything in order to get in?

**Captain Hannay:** Yes sir. We have evidence that he crossed a field fence, then he crossed the right of way fence, and then crossed the guardrail, crossed the wall, was seen sitting on the wall, reported to us our officers responding and jumped down into the berm, they have traffic restricted, the berm right lane and middle lane are closed, traffic is pushed against the wall, the passing lane and berm actually are the two westbound lanes and as soon as he got down into the berm against the wall, he was struck and killed by a passenger car.

**Mr. Regula:** So he had to work to get to that point?

**Captain Hannay:** Yes sir. As did the individual out at Baumhart Road. He crossed six lanes or seven lanes, went up to the plaza, spoke to our toll operator at the plaza that he was out of fuel and needed some assistance and she called for our unit who was responding, our unit was within one mile, one minute of this scene when it was reported that he was struck and killed.

**Mr. Regula:** And I am sure that she told him to stay put?

**Captain Hannay:** Absolutely, she did. Our toll operator did absolutely everything that she was required to do by instructing this individual to just stand-by and that an officer was on his way.

**Mr. Regula:** Probably the fact that he was under the influence.

**Captain Hannay:** Very much so, yes.

**Chairman:** Thank you. Any other questions?

**Captain Hannay:** Thank you Mr. Chairman.

**Chairman:** If there is no further business, I'll entertain a motion to adjourn for our next meeting. By the way our next meeting is scheduled for June 22, 2007 at 9:30 a.m., that's Friday the 22<sup>nd</sup>. Is that good for everyone's calendar? Check on it. Mr. Dixon is that date okay?

**Mr. Dixon:** Yes that is good for me. I did have an appointment to apply for with Fifth Third, but I don't need that anymore.

**Chairman:** Thank you, sir. Motion to adjourn.

**Mr. Regula:** So moved.

**Chairman:** Is there a second?

**Mr. Kidston:** Second

**Chairman:** Please call the roll.

**Executive Director:** Mr. Regula

**Mr. Regula:** Yes

**Executive Director:** Mr. Kidston

**Mr. Kidston:** Yes

**Executive Director:** Ms. Teeuwen

**Ms. Teeuwen:** Yes

**Executive Director:** Mr. Dixon

**Mr. Dixon:** Yes

**Executive Director:** Mr. Balog

**Mr. Balog:** Yes

**Executive Director:** Five yeas and the meeting is adjourned.

The meeting adjourned at 10:48 a.m.

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

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George F. Dixon, Secretary-Treasurer