

# **TCS MODERNIZATION PROJECT**

## **OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION**

### **Resolution Declaring the Necessity of Purchasing Wetland Credits and Approving the Expenditure of Funds Under Project No. 39-20-03 in the Total Amount of \$617,100.00 from The Nature Conservancy**

WHEREAS, on March 9, 2020, Governor Mike DeWine issued Executive Order 2020-01D declaring a State of Emergency for the entire State of Ohio in response to the COVID-19 pandemic; and

WHEREAS, on March 22, 2020, Amy Acton, MD, MPH, Director of Health, issued a “Stay at Home Order” which expired on May 1, 2020, requiring individuals to stay home unless engaged in Essential Activities, Essential Governmental Functions or to operate Essential Businesses and Operations; and

WHEREAS, under the Stay at Home Order, the Ohio Turnpike and Infrastructure Commission (“Commission”) continued operations as Essential Infrastructure and Essential Governmental Functions and further determined that its contractors and service providers must continue to perform services and supply goods and materials to the Commission as Essential Infrastructure, Critical Trades, Supplies for Essential Business and Operators and/or Essential Critical Infrastructure Workers; and

WHEREAS, on April 30, 2020, Director Acton issued the “Director’s Stay Safe Ohio Order,” which was in effect through May 29, 2020 and subsequently revised by former Director Acton’s “Updated and Revised Order for Business Guidance and Social Distancing,” dated May 29, 2020, and extended by current Interim Director of Health, Lance D. Himes, until rescinded or modified by Interim Director Himes or the State of Emergency declared by the Governor no longer exists, which permits governmental entities and other businesses to continue operations subject to Sector Specific COVID-19 Information and Checklist for Businesses/Employees requiring measures such as, ensuring 6 feet between employees, daily symptom assessments of employees, wearing face coverings, regular handwashing, disinfecting work stations and common areas, changing shift patterns, working from home when possible, among others; and

WHEREAS, the Chief Engineer has issued a memorandum to the Commission’s contractors regarding required work site measures that comply with the Director’s Updated and Revised Order for Business Guidance and Social Distancing and this memorandum is available on the Commission’s website at <https://www.ohioturnpike.org/business/doing-business-with-us/construction-projects>; and

WHEREAS, the Chief Engineer recommends that the Commission finds that the contract to be approved pursuant to this Resolution is necessary for the Commission to continue its operations and complies with the Director’s Updated and Revised Order for Business Guidance and Social Distancing and that the work to be performed under the contracts shall comply with the Sector Specific COVID-19 Information and Checklist for Businesses/Employees set forth in the requirements of the Director’s Updated and Revised Order for Business Guidance and Social Distancing and the Commission’s work site memorandum, as may be amended from time to time, unless or until such order is lifted entirely; and

WHEREAS, the Commission, for the purpose of modernizing the Ohio Turnpike Toll Collection System adopted the Toll Collection System and Customer Service Center Strategic Plan (the “Strategic Plan”) under Resolution No. 57-2017; and

WHEREAS, in connection with the Strategic Plan, the Chief Engineer has caused the design and planning for new toll plazas (both eastbound and westbound), along with an eastbound access ramp from the Ohio Turnpike to the southern toll plaza, a westbound access ramp from the Ohio Turnpike to the northern toll plaza, an eastbound exit ramp merging from the southern toll plaza on to the Ohio Turnpike, and a westbound access ramp merging from the northern toll plaza on to the Ohio Turnpike, to implement both open road tolling and toll collection by traditional cash payment at or near MP 211 in connection with the new toll collection system in 2020-2022; and

WHEREAS, this construction will result in unavoidable permanent impacts to jurisdictional waters of the United States and therefore stream and wetland mitigation are required in accordance with guidelines of Ohio Environmental Protection Agency Section 401 and Army Corp Section 404 Permits. The hierarchy set forth in federal (33 C.F.R. 332) and state (O.A.C. 3745-1-54) law was used to properly mitigate the aquatic resources; and

WHEREAS, the first order of hierarchy requires the purchase of Mitigation Bank Credits; however, no active wetland Mitigation Bank Credits are available for purchase in the Pittsburgh Corps District; and

WHEREAS, the second order of hierarchy requires the purchase an In-lieu Fee (“ILF”) program credit; and the required permits necessitate the Commission to mitigate 4.89 acres of wetland impacts at specific mitigation ratios; and

WHEREAS, pursuant to both federal and state laws, the Commission is required to purchase 12.1 ILF wetland credits; and

WHEREAS, the Nature Conservancy requires a fee of \$51,000 per credit; and therefore, the cost to the Commission for 12.1 ILF wetland credits at \$51,000 each, is a total of \$617,100.00, for the wetland credit purchase; and

WHEREAS, public bidding per Section 5537.07(A) of the Ohio Revised Code is required for all expenditures of more than \$50,000 except as provided by applicable state law, including contracts for professional or other personal services; and

WHEREAS, the Nature Conservancy is the only provider of ILF wetland credits in this District and the purchase of wetlands credits is a contract for professional services; therefore, no public bidding for purchasing wetland credits was conducted by the Commission as an exception allowed by Section 5537.07(A) and would have been futile for the Commission; and

WHEREAS, in furtherance of, and as necessary for public use in implementing the Strategic Plan, and for the overall public purpose of modernizing, maintaining and operating the Ohio Turnpike in a safe and efficient manner, the Commission is in the final stages of acquiring property to complete this project in Trumbull County; and

WHEREAS, Commission action is necessary to approve the expenditure in accordance with Article V, Section 1.00 of the Commission’s Bylaws because the amount of the required expenditure will exceed \$150,000.00; and

WHEREAS, the Chief Engineer recommended the Commission enter into an agreement with The Nature Conservancy to purchase 12.1 ILF wetland credits for Project Nos. 39-20-03 in the total amount of \$617,100.00; and

WHEREAS, the Commission’s Executive Director concurs with the Chief Engineer’s recommendation that the Commission approve the purchase of ILF wetland credits from The Nature Conservancy; and

WHEREAS, the Commission has duly considered such recommendation.

NOW, THEREFORE, BE IT

RESOLVED that the Commission hereby declares that the purchase of wetland credits are necessary in furtherance of obtaining a permit for this project, to implement both open road tolling and toll collection by traditional cash payment at or near MP 211 in connection with the new toll collection system, all for the modernization, proper operation, and maintenance of the Ohio Turnpike, as part of Project No. 39-20-03 under the Strategic Plan; and

FURTHER RESOLVED by the Ohio Turnpike and Infrastructure Commission that the proposal from The Nature Conservancy to purchase 12.1 wetland credits in the not-to-exceed amount of \$617,100.00 is approved; and

FURTHER RESOLVED that in compliance with Ohio Revised Code Chapter 5537, the Executive Director or the Chief Engineer is authorized and directed to enter into an agreement for the purchase of the wetland credits; and

FURTHER RESOLVED that Project No. 39-20-03 is a designated System project under the Master Trust Agreement; and

FURTHER RESOLVED that the Commission finds and determines that the purchase of such wetland credits is necessary to continue the operations of the Ohio Turnpike and complies with the Director's Stay Safe Ohio Order and this Commission further requires that any activity necessary and appropriate for the appropriation of property shall comply with the requirements of the Director's Updated and Revised Order for Business Guidance and Social Distancing and the Commission's work site memorandum, as may be amended from time to time, unless or until such order is lifted entirely.

**(Resolution No. 54-2020 adopted August 17, 2020)**