

OHIO TURNPIKE & INFRASTRUCTURE COMMISSION

Resolution Authorizing Agreement with AVI Foodsystems, Inc. for the Operation of Food and Retail Concessions at the Commission's Portage and Brady's Leap Service Plazas

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, the former 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, former Director Acton issued the "Director's Stay Safe Ohio Order," which was in effect through May 29, 2020 and subsequently revised by "Updated and Revised Order for Business Guidance and Social Distancing," dated May 29, 2020, and extended until rescinded or modified by the Director of Health or the State of Emergency declared by the Governor no longer exists, which permits governmental entities and other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 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 Director of Service Plaza Operations recommends that the Commission finds and determines that the contract approved pursuant to this Resolution is necessary for the Commission to continue its operations and complies with the Updated and Revised Order for Business Guidance and Social Distancing and that the work to be performed under the contract shall comply with the Sector Specific COVID-19 Information and Checklist for Businesses/Employees set forth in the 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, on September 24, 2020, in conformance with the requirements of Ohio Revised Code Section 5537.13, the Commission published notice of its Request for Proposals ("RFP") for Food and Retail Concession Operations at the Portage and Brady's Leap Service Plazas located at Milepost 197.0 in Portage County (Agreement No. 2020-SP-7-MCA-FRC); and

WHEREAS, on December 4, 2020, three Proposals for the operation of food and retail concessions were received from 7-Eleven, Inc., of Irving, Texas, Petrogas Group dba Applegreen PLC, of Andover, Massachusetts, and AVI Foodsystems, Inc., of Warren, Ohio; and

WHEREAS, an Evaluation Team consisting of staff from the Service Plaza Operations Department and Office of Equity and Inclusion reviewed the Proposals submitted and concluded that the best Proposal in terms of branding, financial and operational capabilities was submitted by AVI Foodsystems, Inc. and further indicated in the evaluation summary that AVI Foodsystems,

Inc. has significant experience and expertise in operating food and retail concessions in the business, education, healthcare and leisure sectors; and

WHEREAS, Revenue Sharing Proposals were then unsealed; and

WHEREAS, AVI Foodsystems submitted the best Technical and Revenue Sharing Proposal, which was further negotiated by Commission staff, with the overall Proposal summarized as follows:

<u>Concessionaire</u>	<u>Brand Concepts</u>	<u>Payments to the Commission</u>
AVI Foodsystems, Inc.	<ul style="list-style-type: none">- Dunkin'- Jersey Mike's- Freshens Fresh Food Kitchen- Wendy's- Retail Store	<p>The Commission will get 10% of gross receipts, which is comprised of the following:</p> <ul style="list-style-type: none">(1) 5% of gross receipts of food and retail concessions,(2) 4% for property management, and(3) 1% for capital improvements made by the Commission. <p>The Commission will also receive an amount equal to 50% of the common area maintenance costs, which include utilities and janitorial services.</p> <p>AVI Foodsystems is contractually obligated to pay to the Commission a Minimum Guaranteed Payment of \$550,000 in Calendar Year 2022 for both Service Plazas if gross receipts do not exceed \$5,500,000.</p>

WHEREAS, the Commission's Staff Attorney has determined that the AVI Foodsystems, Inc. proposal conforms to the requirements of Ohio Revised Code Sections 5537.07 and 5537.13, Proposals were solicited on the basis of the same terms and conditions with respect to all respondents and potential respondents, AVI Foodsystems, Inc. has provided the requisite proposal guaranty and proof of insurance required under the RFP, and the Commission may legally accept said company's proposal; and

WHEREAS, the Executive Director has reviewed the recommendation of the Evaluation Team and, predicated upon their analysis, has made his recommendation to the Commission that Agreement No. 2020-SP-7-MCA-FRC be awarded to AVI Foodsystems, Inc.; and

WHEREAS, the Commission has duly considered such recommendations.

NOW, THEREFORE, BE IT

RESOLVED that the Proposal submitted by AVI Foodsystems, Inc., of Warren, Ohio, for the performance of Food and Retail Concession Operations at the Portage and Brady's Leap Service Plazas is hereby accepted, and that the Executive Director and/or General Counsel are directed to: 1) execute Agreement No. 2020-SP-7-MCA-FRC with AVI Foodsystems, Inc. for an initial term of ten (10) years, 2) direct the return to each respondent of their proposal guaranty at such time as AVI Foodsystems, Inc. has entered into the Agreement with the Commission, 3) renew said Agreement for up to five (5) additional, five-year periods, and 4) take any and all action necessary to properly carry out the terms of said Agreement; and

FURTHER RESOLVED that the Commission finds and determines that the agreement approved pursuant to this Resolution is necessary for the Commission to continue its operations and complies with the Updated and Revised Order for Business Guidance and Social Distancing and that the work to be performed under the contract shall comply with the Sector Specific COVID-19 Information and Checklist for Businesses/Employees set forth in the 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

FURTHER RESOLVED that the Executive Director has the authority under Article V, Section 1.00 of the Code of Bylaws to approve such extra work or change orders under said

contract that does not exceed ten percent of the approved contract amount or the Executive Director's contracting authority and which is a result of an increase in the planned quantities, newly mandated requirements that did not exist at the time of original contract award, or circumstances that would create a life, safety, or health threatening situation or would unduly delay the completion of the Projects or increase its costs.

(Resolution No. 10-2021 adopted February 22, 2021)