

# OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

## Resolution Authorizing Expenditures for the Settlement of Claims Related to the Completion of Contract No. 53-11-01 and 53-11-02

WHEREAS, on January 24, 2011, by Resolution No. 1-2011, the Commission awarded multiple trade contracts, designated as Contract No. 53-11-01 and 53-11-02, for the reconstruction of the Mahoning Valley and Glacier Hills Service Plazas located at Milepost 237.2 in Mahoning County, as follows:

<u>Bid Package</u>	<u>Prime Contractor</u>	<u>Amount</u>
A - Site Work	Miller Brothers Construction Company, Inc. Archbold, Ohio	\$12,686,701.39
B - General Trades	Reginella Construction Company, Ltd. Pittsburgh, Pennsylvania	9,930,730.00
C - HVAC/Mechanical	Roth Bros., Inc. Youngstown, Ohio	2,399,660.00
D - Plumbing	The Conti Corporation Lowellville, Ohio	1,209,622.00
E - Electrical	Penn-Ohio Electrical Company Masury, Ohio	3,426,369.00
		<hr/> \$29,653,082.39

WHEREAS, on May 21, 2012, the Commission terminated the Contract of Reginella Construction Company (“Reginella”) due to its default under the terms and conditions of the General Trades Contract for Contract No. 53-11-01 and 53-11-02; and

WHEREAS, the terms and conditions of Contract No. 53-11-01 and 53-11-02 and the Contract Bond provided by Reginella required Travelers Casualty and Surety Company of America (“Travelers”), as Surety for the Project, to undertake completion of the Project, and effective June 3, 2012, Travelers entered into a “Takeover Agreement” with the Commission; and

WHEREAS, the Contract with Reginella, as taken over by Travelers, requires Travelers to, “indemnify and hold harmless the Commission from and against all claims, damages, losses and expenses, direct, indirect or consequential arising out of or resulting from the work” performed or not performed by Reginella under the Contract, and further entitles the Commission to recover liquidated damages for Reginella’s or Travelers’ failure to meet the Project completion deadlines; and

WHEREAS, pursuant to Resolution No. 39-2012, the Commission authorized the General Counsel, “to do or cause to be done all things that may be appropriate or necessary, whether by agreement or through legal proceedings, to defend the Commission when necessary and to assert any claims the Commission may have against others as a result of Reginella’s default under Contract No. 53-11-01 and 53-11-02; and to pursue the recovery of all costs or expenses incurred by the Commission in undertaking its legal defense with respect to any claims against the Commission, and similarly with respect to any claims asserted by the Commission;” and

WHEREAS, Resolution No. 39-2012 further authorized the continued retention of **Calfee, Halter and Griswold, of Cleveland, Ohio**, under the supervision of the General Counsel, to provide “legal services required in connection with the aforementioned claims associated with Contract No. 53-11-01 and 53-11-02[;]” and

WHEREAS, the reconstructed Mahoning Valley and Glacier Hills Service Plazas Reconstruction were opened to the public in May 2013, and the Commission has diligently pursued warranty issues with the various prime contractors since that time in an effort to close-out the Project; and

WHEREAS, under procedures set forth in Article 8 of the General Conditions of Contract for Contract No. 53-11-01 and 53-11-02, four of the prime contractors (Miller Brothers Construction Company, Roth Brothers, The Conti Corporation and Penn-Ohio Electrical Company) have filed claims with the Commission; and

WHEREAS, Miller Brothers Construction has also commenced suit against the Commission in the Cuyahoga County Court of Common Pleas, and the Commission has filed a counterclaim against Miller Brothers Construction, as well as Third Party Claims against Reginella Construction Company

and its surety Travelers Casualty and Surety, Penn-Ohio Electrical Company and its surety Cincinnati Insurance; and

WHEREAS, all of the parties to the litigation, as well as Roth Brothers and The Conti Corporation have agreed to participate in a mediation of the claims in September 2014, and the General Counsel has recommended to the Commission that it is in its best interest to actively participate in the mediation and to pursue the possible settlement of any or all claims of the prime contractors, either through the mediation, or, if unsuccessful, then during the course of the litigation; and

WHEREAS, in addition to the authority previously granted to the General Counsel under Resolution No. 39-2012, this Resolution grants full settlement authority to the General Counsel for purposes of the aforementioned mediation and/or any litigation that has resulted or will result from the claims of the prime contractors under Contract No. 53-11-01 and 53-11-02; and

WHEREAS, the Commission has duly considered the General Counsel's recommendations.

NOW, THEREFORE, BE IT

RESOLVED that, in addition to the instructions of the Commission and authority previously granted to the General Counsel under Resolution No. 39-2012, the General Counsel is hereby fully authorized to pursue and engage in any settlement, as she deems appropriate, of any or all claims asserted against the Commission by the prime contractors under Contract No. 53-11-01 and 53-11-02 through mediation and/or in the course of litigation that has been filed or will be filed by said prime contractors against the Commission.

**(Resolution No. 56-2014 adopted August 18, 2014)**