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BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of DiGioia-Suburban :  
Excavating, LLC, Notice of Apparent :  
Violation and Intent to Assess :  
Forfeiture.

Case No. 07-663-TR-CV  
(OH1624003989C)

ATTORNEY GENERAL'S OFFICE  
PUBLIC UTILITIES SECTION

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**SETTLEMENT AGREEMENT**

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**I. Introduction**

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), DiGioia-Suburban Excavating, LLC (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this settlement agreement and urge the Commission to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This agreement however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result considering the law, facts and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This settlement agreement is submitted on the condition that the Commission adopts the agreed upon terms. In the event the Commission rejects any part of the settlement agreement, or adds to, or otherwise materially modifies its terms, either party

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may terminate and withdraw consent to the agreement within 30 days of issuance of the Commission's order, by filing with the Commission.

## **II. Procedural History**

- A. On September 26, 2006 a vehicle operated by Respondent and driven by Henry R. Bigler was inspected within the State of Ohio by Staff of the Ohio Highway Patrol. The inspection resulted in the discovery of one apparent violation. The apparent violation was failing to secure vehicle equipment in violation of 49 C.F.R. §392.9(a)(2).
- B. Respondent was timely served with a notice of preliminary determination in accordance with Rule 4901:2-7-12 O.A.C. for Case No. OH1624003989C. The preliminary determination assessed Respondent \$100.00.
- C. On May 31, 2007, Respondent made a timely formal request for an administrative hearing pursuant to §4901:2-7-13, O.A.C.
- D. The parties have negotiated this settlement agreement which the parties believe resolves all the issues raised in the notice of preliminary determination.

## **III. Settlement Agreement**

The parties hereto agree and recommend that the Commission find as follows:

- A. Respondent agrees to pay a civil forfeiture of \$50.00 for failing to secure vehicle equipment in violation of 49 C.F.R. §392.9(a)(2). Respondent

acknowledges that this violation may be included in the Respondent's Safety-Net record and history of violations insofar as it may be relevant for purposes of determining future penalty actions.

- B. This settlement agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the settlement agreement shall be considered the effective date of the settlement agreement.
- C. This settlement agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

### **III. Conclusion**

The Signatory parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respectfully request that the Commission issue an entry in accordance with the terms set forth in this Settlement Agreement.

The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 20<sup>th</sup> day of August, 2007.

On behalf of  
Excavating, LLC

DiGioia-Suburban

On behalf of the Staff of the Public  
Utilities Commission of Ohio



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