



Office of the County Executive

Monroe County, New York

Adam J. Bello
County Executive

April 10, 2020

To The Honorable
Monroe County Legislature
407 County Office Building
Rochester, New York 14614

OFFICIAL FILE COPY
No. <u>200147</u>
Not to be removed from the Office of the Legislature Of Monroe County
Committee Assignment
TRANSPORTATION - L

Subject: Authorize an Undertaking for the New York State Department of Transportation to Allow Future County Utility and Non-Utility Work in State Rights of Way

Honorable Legislators:

I recommend that Your Honorable Body authorize the attached Undertaking for the benefit of the New York State Department of Transportation, in order for Monroe County to obtain Utility and Non-Utility Work Permits to perform work in State rights of way.

The New York State Department of Transportation requires indemnification from entities applying for permits to work within rights-of-way controlled by the State of New York. Access to and operation within a State right-of-way are conditioned upon compliance with Highway Law Sections 52, 103, 203 and/or 234, including requirements that the permittee assume all responsibility for: (a) the temporary control of all modes of traffic (including motorized and non-motorized travel) affected by the permittee's operations; (b) complete restoration of State facilities to their condition prior to the permitted use or activity; and (c) all claims, damages, losses and expenses. Execution of the attached Undertaking will satisfy the State's requirements. This Undertaking shall have a term of twenty (20) years and will be kept on file to facilitate the issuance of future permits on State highways.

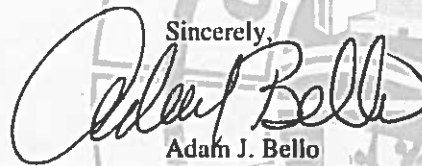
Typical examples of County work within State rights-of-way include: expressway highway lighting rehabilitation projects; using State roads as part of a detour; curb radius and pavement work adjacent to a State road; replacement of pavement markings; replacement of traffic signal loops; connecting into a manhole for storm sewer; and any work related to tying County highway work to a State road.

The specific legislative action required is to to authorize the County Executive, or his designee, to execute the attached Undertaking, and any amendments thereto, for the benefit of the New York State Department of Transportation, in order for Monroe County to obtain Utility and Non-Utility Work Permits to perform work in State rights of way.

This action is a Type II Action pursuant to 6 NYCRR § 617.5(c) and is not subject to review under the State Environmental Quality Review Act.

This action will have no impact on the revenues or expenditures of the current Monroe County budget.

I recommend that this matter be referred to the appropriate committee(s) for favorable actions by Your Honorable Body.

Sincerely,

Adam J. Bello
Monroe County Executive

AJB:db



UNDERTAKING

For the benefit of

The New York State Department of Transportation

In connection with work affecting state highways

(For use by New York municipalities and federal agencies)

WHEREAS, the undersigned _____ (Municipality, County, Town, City or Village, or any agency of the federal government, hereinafter referred to as "Permittee") from time to time receives permits from the New York State Department of Transportation (hereinafter referred to as the "NYSDOT") and otherwise conducts activities and operations upon highways and/or within right-of-way controlled by the State of New York for such purposes as the obstruction, installation, construction, maintenance and/or operation of facilities; and

WHEREAS, Permittee's access and operation upon state right-of-way is conditioned upon compliance with Highway Law Sections 52, 103, 203 and/or 234, including the conditions that Permittee assume all responsibility for (a) the temporary control of all modes of traffic (including motorized and non-motorized travel) affected by Permittee's operations, (b) complete restoration of state facilities to their condition prior to permitted use or activity, and (c) all claims, damages, losses and expenses,

NOW, THEREFORE, in relation to all operations and/or actions undertaken within state right-of-way, Permittee hereby agrees to the following terms and conditions:

1. Permit Applications. Excepting only activities undertaken to protect public safety because of emergency conditions or incidents, Permittee shall provide timely written notice to NYSDOT of operations or activities affecting state right-of-way. Under normal circumstances, a minimum of five business days notice shall be provided. Notification of emergency activities shall be provided to NYSDOT as soon as practicable after the activity. The Permittee shall apply for project-specific permits for activities not allowed under any existing annual permit. Such application shall identify proposed project locations, desired dates/hours, proposed work/activities, traffic control, and site restoration

2. Applicable Rules, Regulations & Conditions. Permittee shall comply with all of the laws, rules and regulations applicable to construction, maintenance activities and operations and shall further comply with such terms and conditions that may be imposed by NYSDOT in connection with permitted activity or operations. Temporary Traffic Control, highway safety appurtenances, and restoration of state facilities shall be completed in accordance with NYSDOT regulations and standards.

3. Site Restoration. Permittee shall, at its own expense, promptly complete the work allowed under each permit and, within a reasonable time, restore State property damaged by its work/activities to substantially the same or equivalent condition as existed before such work was begun as determined by the Commissioner or his/her designee. In the event that the Permittee fails to so restore damaged State property within what the Commissioner deems to be a reasonable time, the Commissioner, after giving written notice to the Permittee, may restore the property to substantially the same or equivalent condition as existed before the Permittee's work/activities, in which case, Permittee agrees to reimburse the reasonable expenses in connection therewith.

PERM 1 (2/12)

4. **Payment & Release of Liens.** Permittee shall be responsible for the payment of all costs and materials relating to its work in the public right-of-way, and agrees to defend and save harmless NYSDOT against any and all lien claims made by persons supplying services or materials to Permittee in connection with Permittee's work.

5. **Indemnity.** In addition to the protection afforded to NYSDOT under any available insurance, NYSDOT shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations, whether undertaken by Permittee's own forces or by contractors or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State of New York, NYSDOT, and their agents from and against all claims, damages, losses and expenses, including but not limited to, claims for personal injuries, property damage, wrongful death, and/or environmental claims and attorney fees arising out of any such claim, that are in any way associated with the Permittee's, activities or operations under any and all permits issued using this Undertaking.

FURTHERMORE, Permittee hereby warrants that the obligations of this Undertaking are backed by the full faith and credit of Permittee. Permittee may insure or bond any of the obligations set forth herein, or may rely upon self-insurance, budgeted funds, or funds for general operations.

This Undertaking shall be applicable to all permitted activities and operations undertaken after the date of execution and work initiated while this Undertaking is in effect. This Undertaking may be revoked by the Permittee or rejected by NYSDOT upon thirty days written notice but will continue to apply to all permitted activities/operations that were permitted by virtue of this Undertaking. Unless terminated for the purpose of future activities/operations, this Undertaking shall have a term of twenty (20) years and shall be kept on file to facilitate the issuance of future permits to which it will apply.

IN WITNESS WHEREOF, _____ (Municipality-County, Town, City, Village or federal agency) agrees to the terms of this Undertaking, and has caused its execution by the authorized officer or employee (attach Resolution of Approval).

Authorized Agent

Date

Print Name/Title

Address

() _____
Phone number

Address

e-mail