

## **RESOLUTION NO. 401**

### **AUTHORIZING AN UNDERTAKING AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION REGARDING THE ALBANY COUNTY RAIL TRAIL BRIDGE OVER NEW SCOTLAND ROAD (SR 85) REPLACEMENT PROJECT**

Introduced: 11/14/22

By Public Works Committee and Mr. Commisso:

WHEREAS, By Resolution No. 495 for 2021, this Honorable Body authorized a “State Reverse Betterment” agreement with the New York State Department of Transportation (NYSDOT) regarding drainage and pavement work to be completed in conjunction with the replacement of the Albany County Rail Trail Bridge over New Scotland Road (State Route 85) on the State Highway System, and

WHEREAS, By Resolution No. 495 for 2021, this Honorable Body also authorized the performance and funding by the County of Albany in the first instance 100% of the Project costs of construction or reconstruction thereof, to be reimbursed by the State and appropriating funds therefore, and

WHEREAS, The County of Albany (Permitee) from time to time receives permits from the NYSDOT and otherwise conducts activities and operations upon highways and/or within right-of-way controlled by the State of New York such purposes as the obstruction, installation, construction, maintenance and/or operation of facilities, and

WHEREAS, Permitee’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 Permitee assume all responsibility for the temporary control of all modes of traffic including motorized and non-motorized travel affected by Permitee’s operations, complete restoration of state facilities to their condition prior to permitted use or activity, and all claims, damages, losses and expenses, now, therefore, be it

RESOLVED, By the Albany County Legislature, in relation to all operations and/or actions undertaken with state right-of-way, Permitee hereby agrees to excepting only activities undertaken to protect public safety because of emergency conditions or incidents, Permitee shall provide timely written notice to NYSDOT of operations and activities affecting right-of-way under normal circumstances, a minimum of five business days notice shall be provided, and, be it further

RESOLVED, That notification of emergency activities shall be provided to NYSDOT as soon as practicable after the activity, the Permitee 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, and, be it further

RESOLVED, That 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, and, be it further

RESOLVED, That temporary traffic control, highway safety appurtenances, and restoration of state facilities shall be completed in accordance with NYSDOT regulations and standards, and, be it further

RESOLVED, That 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 or activities to substantially the same or equivalent condition as existed before such work was begun as determined by the Commissioner or his/her designee, and, be it further

RESOLVED, That 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, and, be it further

RESOLVED, That 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 and materials to Permittee in connection with the Permittee's work, and, be it further

RESOLVED, That 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, and, be it further

RESOLVED, That 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 the Undertaking, and, be it further

RESOLVED, That Permittee hereby warrants that the obligations of this Undertaking are backed by the full faith and credit of Permittee and 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, and, be it further

RESOLVED, That 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, and, be it further

RESOLVED, That 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 or operations that were permitted by virtue of this Undertaking, and, be it further

RESOLVED, That unless terminated for the purpose of future activities or operations, this Undertaking shall have a term of twenty years and shall be kept on file to facilitate the issuance of future permits to which it will apply.

RESOLVED, That the County Executive is authorized to execute all necessary agreements, certifications or reimbursement requests on behalf of the County of Albany with NYSDOT in connection with the implementation of the Project, and reimbursement of the approved costs associated with the Undertaking, and, be it further

RESOLVED, That a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and, be it further

RESOLVED, That the County Attorney is authorized to approve said agreement as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials, and, be it further

RESOLVED, This Resolution shall take effect immediately.