

AGENDA REPORT

TO: Mayor Pat Humphrey & Clare City Commission
FROM: Jeremy Howard, City Manager
DATE: November 2, 2023
RE: Approval of MDOT Performance & Identification Resolution

For the Agenda of November 6, 2023

Background. The City enjoys an agreement with MDOT to work within and maintain (on a reimbursable basis) the MDOT road system (U.S. BR-127 & U.S. BR-10/M-115) that courses through the City of Clare on a permit basis. MDOT requires the City to submit an annual performance resolution (*copy att'd*) outlining the parameters and conditions of this agreement and to identify municipal individuals who are authorized to submit permits related to work within the state's trunk lines. The City Commission is asked to approve the resolution.

Issues & Questions Specified. Should the City Commission approve the required MDOT Performance & Identification Resolution?

Alternatives.

1. Approve the resolution.
2. Do not approve the resolution.
3. Defer or delay a decision on this matter to a subsequently scheduled City Commission meeting.

Financial Impact. As this is an administrative requirement of MDOT, this agency could potentially terminate the current agreement we have in place with them or stop payment of Act 51 payments to the City until the resolution is approved/adopted.

Recommendation. I recommend that the City Commission approve the required MDOT Performance & Identification Resolution by adopting the attached Resolution 2023-087.

Attachment.

1. MDOT Performance Resolution 2023-087.

RESOLUTION 2023-087
PERFORMANCE RESOLUTION FOR
MUNICIPALITIES

This Performance Resolution (Resolution) is required by the Michigan Department of Transportation for purposes of issuing to a Municipality an "Individual Permit for Use of State Highway Right of Way", and/or an "Annual Application and Permit for Miscellaneous Operations within State Highway Right of Way".

RESOLVED WHEREAS, the **CITY OF CLARE**

(County, City, Village, Township, etc.)

hereinafter referred to as the "MUNICIPALITY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utilities or other facilities, or to conduct other activities, on, over, and under State Highway Right of Way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the MUNICIPALITY agrees that:

1. Each party to this *Resolution* shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this *Resolution*, as provided by law. This *Resolution* is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.
2. If any of the work performed for the MUNICIPALITY is performed by a contractor, the MUNICIPALITY shall require its contractor to hold harmless, indemnify and defend in litigation, the State of Michigan, the DEPARTMENT and their agents and employee's, against any claims for damages to public or private property and for injuries to person arising out of the performance of the work, except for claims that result from the sole negligence or willful acts of the DEPARTMENT, until the contractor achieves final acceptance of the MUNICIPALITY Failure of the MUNICIPALITY to require its contractor to indemnify the DEPARTMENT, as set forth above, shall be considered a breach of its duties to the DEPARTMENT.
3. Any work performed for the MUNICIPALITY by a contractor or subcontractor will be solely as a contractor for the MUNICIPALITY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the MUNICIPALITY, or their subcontractors or any other person not a party to the PERMIT without the DEPARTMENT'S specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims by any contractor or subcontractor will be the sole responsibility of the MUNICIPALITY.
4. The MUNICIPALITY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.
5. The MUNICIPALITY will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operation and/or maintenance of the MUNICIPALITY'S facilities according to a PERMIT issued by the DEPARTMENT.

- 6. With respect to any activities authorized by a PERMIT, when the MUNICIPALITY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.
- 7. The incorporation by the DEPARTMENT of this *Resolution* as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.
- 8. This *Resolution* shall continue in force from this date until cancelled by the MUNICIPALITY or the DEPARTMENT with no less than thirty (30) days prior written notice provided to the other party. It will not be cancelled or otherwise terminated by the MUNICIPALITY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED that the following position(s) are authorized to apply to the DEPARTMENT for the necessary permit to work within State Highway Right of Way on behalf of the MUNICIPALITY.

Title and/or Name:

Deputy City Clerk

Public Works Department Secretary

Assistant Deputy City Clerk

Administrative Assistant to the Clerk

Director of Public Works

Clerk

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by

the Clare City Commission

(Name of Board, etc.)

of the City of Clare

(Name of MUNICIPALITY)

of Clare

(County)

at a regular meeting held on the 6th day

of November A.D. 2023.

Signed

Clare City Clerk

Title

Diane M. Lyon

Print Signed Name