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## OFFICE MEMORANDUM

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**DATE:** June 10, 2009

**TO:** Region Engineers  
Region Delivery Engineers  
TSC Managers  
Resident/Project Engineers  
Region Construction Engineers

**FROM:** Gregory C. Johnson  
Chief Operations Officer

John C. Friend  
Engineer of Delivery

Mark Van Port Fleet  
Engineer of Development

**SUBJECT:** Bureau of Highway Instructional Memorandum 2009-06  
Region Oversight of Local Agency Construction Projects  
(Supersedes BOH IM 2006-10)

The Michigan Department of Transportation (MDOT) and local agencies have a mutual goal of providing a quality and cost-effective transportation system while ensuring federal and state funding participation.

Per Title 23 of the Code of Federal Regulations (CFR) under Part 635.105(a), MDOT is responsible for all federal aid highway projects developed and delivered in Michigan. This responsibility includes adequate oversight of local agency federal aid highway construction projects. Therefore, MDOT staff and consultants overseeing local agency construction projects are required to follow the procedures as set forth in this instructional memorandum.

This instructional memorandum is being updated to reflect the changes based on reviews completed by the Federal Highway Administration (FHWA) in 2007 and 2008 and their recommendations noted in their process review summary reports entitled *2007 MDOT Oversight of Local Agency Construction Projects* and *Process Review Report Covering Project Documentation by Local Governments*, respectively.

This document makes several references to MDOT's *Construction Manual*. It is imperative that department and local agency personnel involved with local agency construction projects use the most recent version of the manual. The procedures in this BOH IM are effective immediately and apply to all local agency construction projects. This information will be included in the next update of MDOT's *Construction Manual*.

**DEFINITIONS:**

LPE The local agency project engineer.

DR MDOT's designated representative responsible for oversight on local agency construction projects. This MDOT representative must be a licensed professional engineer and will usually be the Transportation Service Center (TSC) delivery engineer. The DR may designate other MDOT or consultant staff to act on their behalf. However, by doing so the DR is not relieved of their oversight responsibilities.

Staffing may vary from TSC to TSC, which may require slightly different coordination processes for oversight activities. The local agency should coordinate with the DR (or designee) to establish processes for submittals, inspections, reviews, communications and other oversight activities prior to the start of the work.

**PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS****(Road/Bridge/Enhancement)**

**These procedures are designed to ensure federal and state funding participation for local agency projects let by MDOT.**

Base Plan Review/Plan Review Meetings (formerly called Pre-Grade Inspection/Grade Inspection Meetings) – The Local Agency Programs (LAP) Unit is responsible for scheduling and conducting plan review and inspection meetings, and notifying the appropriate department personnel. Every effort should be made to coordinate scheduling of the review meetings with the DR (or designee). Each region or TSC shall provide the name of the DR to the local agency. The local agency is responsible for sending the preliminary plans, specifications, estimate package, and applicable pages from the Program Application for Local Agency/Federal Enhancement and Safe Routes to School Projects (Form 0259) or Program Application for Local Agency Projects Road and Safety Projects (Form 0260) to the DR. If the DR is unable to attend the Plan Review meeting, he/she should forward all comments regarding the project to the LAP Unit staff engineer no later than the date of the scheduled meeting. These comments will be discussed at the Plan Review meeting and addressed by the local agency. The local agency is responsible for the quality of the plans, specifications, and estimates. The DR's comments, if any, are intended to provide basic constructability guidance and statewide consistency. The LAP Unit is responsible for ensuring the plans meet minimum federal or state funding eligibility requirements during the design stage in consultation with the FHWA. The local agency shall notify the DR in the early stages of plan development of projects that involve work within MDOT's right-of-way. For additional information, refer to MDOT's *Construction Manual*, Section 102, Plans, Proposal, Input, Review and Evaluation, and Progress Clause.

The local agency shall forward the Project Engineer Professional Registrations and Certifications portion of Form 0259 or Form 0260 to the DR for their review and concurrence. The second page of this portion of the form includes language that the LPE certifies the local agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work, as noted in Title 23 of the CFR under Part 635.105(c-3). The form must be signed by the LPE and the authorized person employed by the local agency and sent to the LAP Unit prior to allowing the project to move forward into advertising. If the DR does not concur that the agency is

adequately staffed and suitably equipped to manage the project, they should notify the local agency and meet with them to discuss their concerns. If the local agency makes any changes to the project staffing certified on forms 0259 or 0260, they should immediately notify the DR in writing. Failure to do this may delay the project. The LPE must submit revised copies of professional registrations and certifications for the new personnel.

Checklist for Construction Documentation – The LPE should refer to MDOT's *Construction Manual*, and BOH IM 2008-09, *Retention and Disposal of Construction Project Records*, for information on project administration procedures and details for the retention and disposal of project records, as well as current construction documentation requirements. The DR (or designee) should be available to provide guidance to the LPE, if requested. In addition, when Inspector's Daily Reports (IDRs) are modified or changed, the original and all revisions are to be kept in the project files as a permanent part of the project records.

Preconstruction Meeting – A preconstruction meeting shall be held prior to the contract award. The LPE is responsible for scheduling and conducting the preconstruction meeting and shall invite the DR. The DR (or designee) is encouraged to attend local agency preconstruction meetings. In addition, the DR (or designee) shall attend preconstruction meetings for projects within MDOT's right-of-way. For additional information, please refer to MDOT's *Construction Manual*, Section 102, Preconstruction Meeting. The LPE is also responsible for submitting the following information to the DR, along with the progress schedule:

- The authorized person employed by the local agency and their contact information.
- The project engineer, including their PE license number, expiration date, and contact information.
- The testing and inspection personnel with certification numbers and expiration dates.

Delays in the submittal of the above information, or if the information is significantly different than that submitted at the Plan Review, may delay approval of the progress schedule and award of the project. If there are questions with regard to the submittal of the above information, the DR should be contacted prior to the preconstruction meeting to discuss the process for submitting this information.

If a testing company or consultant will be used, their name and contact information should be included in the letter. Also, include a letter from that company indicating they will be working on the project, along with the pertinent information/certifications of their personnel and a statement indicating they are qualified to do the work.

Should any information or personnel change during the course of the project, the DR should be informed in writing within 15 days of the change. Additional personnel can be listed on the letter as backup or alternates as needed.

The above information will be verified during the interim project records review to be sure the personnel match the IDRs and other project documentation. It may also be used if a project is visited by the DR to determine if the personnel on site match who the local agency designated.

Interim Meetings – If a DR (or designee) does not attend the preconstruction meeting, an opportunity must be provided for the LPE to meet and discuss issues/concerns or field-related problems with MDOT.

Interim Project Documentation Reviews – During the active construction phase, an interim review of the FieldManager and project record files is to be completed, unless one of the criteria below is met:

- The local agency engineer is certified and performing as project engineer.
- The DR has documented the LPE has performed construction engineering functions at an acceptable level on an ongoing basis (at least one project for each of the previous three years). An acceptable level is defined as having attained substantial compliance with the contract documentation during final estimate reviews with minimal follow-up corrections being necessary.
- The DR has documented the LPE has engaged the services of the same consulting engineer that has performed construction engineering at an acceptable level on an ongoing basis as described above.

Reviews are to be completed by the DR (or designee). A minimum of five pay items are to be reviewed, including earthwork, concrete, HMA, and other major items. The review is to be completed in accordance with the procedures outlined in Section 109.9 of MDOT's *Construction Manual*. The review is to include the prevailing wage documentation. This includes certified payrolls, wage rate interviews, comparison of interviews with certified payrolls with appropriate follow up, as needed, and project site display of required posters and wage rate information. The review should be conducted as early in the active portion of the project as practical to ensure proper documentation throughout the remainder of the project.

Field Inspections – During construction of the project, the DR (or designee) may be available as a technical resource; the LPE should provide written notification to the DR when a project starts. The DR (or designee) is to conduct at least one field inspection on all large or complex projects. The field inspection is to be a general inspection of the project, including a review of the construction operations, traffic control, and progress of the project. The DR should provide guidance, where applicable, or address any issues the local agency may have with the project. The inspection shall be documented by the LPE and placed in the project files. The DR (or designee) will complete an inspection report and place it in their project file. A copy of the inspection report will also be sent to the LPE. The local agency inspector should also document the site was visited by the DR on their IDR.

Work Orders and Contract Modifications – The LPE must contact the DR for concurrence before initiating work orders or contract modifications that involve extras/adjustments that will exceed FHWA, State Administrative Board or State Transportation Commission thresholds. The thresholds can be reviewed in BOH IM 2004-14, *Processing Contract Modifications*, and BOH IM 2005-11, *Federal Highway Administration Approval Limits on Contract Modifications*. The process for obtaining concurrence/approval for all work orders and contract modifications should be coordinated with the DR prior to the start of the work. A document titled *Local Agency Programs Section, Federal Eligibility Guidelines*, is available at the LAP's Web site:

[http://www.michigan.gov/documents/mdot\\_federal\\_Guidelines\\_99105\\_7.pdf](http://www.michigan.gov/documents/mdot_federal_Guidelines_99105_7.pdf). These guidelines indicate under what circumstances items are eligible for participation for projects funded with federal and/or state funds. All contract modifications must be signed, authorized, and approved, per current MDOT procedures. See *Construction Manual*, Section 103, Contract Modifications. The LPE should also review the agreement between MDOT and the local agency to determine if funding is capped and other requirements in the agreement are met. If the LPE is not part of the local agency, the local agency must be kept informed of the status of the agreement.

Extension of Time – The LPE must forward all contractor extension of time requests, Form 1100A, to the DR for review and approval before initiating a contract modification. Refer to MDOT’s *Construction Manual*, Section 108, Extension of Time and Liquidated Damages. The LPE must process all extension of time requests and/or contract modifications to extend the contract completion date in a timely manner to avoid the loss of participating federal funds, as described below in the Final Inspection and Acceptance of Project section.

Contractor Claims – Upon receipt of the contractor’s Notice of Intent to File Claim, the delivery engineer will sign and date the notice and return a signed copy to the contractor with copies to the LPE, TSC manager and region engineer. The delivery engineer shall create a claim data record in the claims tracking database.

The TSC will conduct informal local agency reviews to resolve claim issues at the lowest level, if possible. If the claim advances to the region level, the TSC will be the lead for the joint TSC/local agency presentation. The region will be the lead for the joint region/local agency presentation at the Central Office Review.

For further information regarding the claims review process, refer to BOH IM 2008-02, *Review of Contractor Claims*.

Contractor Performance Evaluations – The LPE shall follow the most recent MDOT procedures for contractor performance evaluations (currently BOH IM 2002-03, *Contractor Performance Evaluations*) and any special provisions in the proposal. The LPE should coordinate with the DR on the appropriate procedure for processing the evaluations.

Final Inspection and Acceptance of Project – The LPE shall notify the DR when the project is ready for a final field inspection. The DR (or designee) shall attend the final field inspection or make arrangements to inspect the project with the LPE at a different time. The LPE shall submit Form 1120 to the DR for signature by the TSC manager. The “inspected by” section on Form 1120 should be filled out for all who are present during the final inspection. Refer to MDOT’s *Construction Manual*, Section 109, Acceptance of Work. The LPE shall make every effort to secure final acceptance as quickly as practical after completion of the work within three months of the project completion date, or the date established by subsequent extension of time requests approved by MDOT. Failure to do so may jeopardize federal funding for the project or future projects.

Final Project Reviews (Certified/Uncertified Engineers) – Refer to MDOT’s *Construction Manual*, Section 109, Final Estimate Review, for further details on conducting final reviews of project documentation. These reviews are required on all local projects administered by non-

certified engineer(s) to document substantial conformance with the plans, proposal, specifications, and other federal requirements.

Monitoring Overdue Finals – The DR (or designee) shall monitor and track overdue finals for local government projects and advise the respective LPEs. The DR may provide assistance to respective LPEs in eliminating all overdue finals. For information, please contact the Contract Services Division or the Construction and Technology Division's Region Services Unit.

Charging Time – MDOT staff who perform design and construction project oversight services must charge their time to the respective local agency project. If the local government project number is not available or not yet programmed, time is to be charged and coded per the current MDOT procedure. The current MDOT procedure is detailed in Construction Advisory 2007-16, *Charging Time to Local Agency Projects*.

### **PROJECT ADMINISTRATION: LOCAL-LET LOCAL AGENCY PROJECTS** **(Enhancement Projects Only)**

**These procedures are designed to ensure federal and state funding participation for local agency projects let by the local unit of government.**

Base Plan Review/Plan Review Meetings – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Advertising and Award Notifications – The LAP Unit shall provide a copy of the local/state agreements and the authorizations to advertise and award to the DR and the LPE. The authorization to award will include a description of the scope of work, and contain the bid and agreement amounts.

Checklist for Construction Documentation – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Preconstruction Meeting – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information. In addition, the local agency shall supply a final set of contract documents (proposal, plans, addendums, etc.) to the DR at the preconstruction meeting, or send them to the DR if they do not attend the meeting.

Interim Meetings – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Interim Project Documentation Reviews – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Field Inspections – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Overruns – The maximum amount of federal and state funds available for the project is established in the MDOT/local agency agreement. If federal or state participation in the "as bid" federal or state participating work does not exceed that limit, federal or state reimbursement may be made on "as constructed" quantities that exceed the original contract estimate. The overrun must be deemed by the DR to be necessary to complete the work as specified on the plans, cannot exceed the total bid for the contract by ten percent, and requires prior MDOT approval by the DR. Overrun work that is performed prior to approval is not eligible for state or federal reimbursement. Federal and state reimbursement may not exceed the available funds as established in the MDOT/local agency agreement at any time.

Extra Work – The LPE must contact the DR for concurrence before initiating work orders or contract modifications for extras/adjustments. Extra work is defined in the *Standard Specifications for Construction*, which is available on MDOT's Web site ([www.michigan.gov/mdot](http://www.michigan.gov/mdot)) under "maps & publications". Reimbursement of all eligible project costs, including any extra or overrun, shall not exceed the maximum amount of federal and state funds available for the project, as defined in the MDOT/local agency agreement. Extra work eligible for reimbursement is limited to \$48,000 and shall not begin until approval by the DR is received and documented in the project files. Extra work performed prior to approval is not eligible for state or federal reimbursement. A document titled *Local Agency Programs Section, Federal Eligibility Guidelines* is available at LAP's Web site [http://www.michigan.gov/documents/mdot\\_federal\\_Guidelines\\_99105\\_7.pdf](http://www.michigan.gov/documents/mdot_federal_Guidelines_99105_7.pdf). These guidelines indicate under what circumstances items are eligible for participation for projects funded with federal and/or state funds.

Extension of Time – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Contractor Claims – Federal and state participation in claims is subject to the maximum amount of federal and state funds, as established in the MDOT/local agency agreement.

Final Inspection and Acceptance of Project – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Final Project Reviews (Certified/Uncertified Engineers) – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

Final Estimate – The LPE shall submit the Final Estimate Package Memo (Form 1105), along with copies of the Final Inspection/Acceptance and Certification Report (Form 1120), and Post Certification of Subcontract Compliance (Form 1386) to the DR for review and approval. The DR shall forward the final estimate package to the LAP Unit for processing and approval. The

DR should direct the LPE to the department's Web site ([www.michigan.gov/mdotlap](http://www.michigan.gov/mdotlap)) for further information on these and other procedures related to local-let projects that are federally funded transportation enhancement or state funded economic development projects.

Charging Time – The information for this area is the same as listed in the PROJECT ADMINISTRATION: MDOT-LET LOCAL AGENCY PROJECTS section. See above for further information.

### **PROJECT ADMINISTRATION: ECONOMIC DEVELOPMENT DIRECT GRANT PROJECTS**

**These procedures are designed specifically for those “direct grant” projects let by the local agency with state funding participation only. All economic development projects that are not administered as direct grants will be administered as MDOT-let local agency projects.**

Direct Grant Process – In fiscal year 2000, the Office of Economic Development (OED) implemented a unique process for administering state transportation economic development fund grants. The OED provides the grant directly to the local agency to be let and awarded under the local requirements of Public Act 51 of 1951. The only exception to following local requirements is that contractors must pay state prevailing wage rates on direct grant projects.

Project Administration – A DR is not required for direct grant projects. The OED will conduct pre- and post-project site visits, approve modifications (in some instances), and close out the project upon completion.

The OED will inform the region or TSC early during project development of Transportation Economic Development Fund projects in which they may be interested. The OED will work cooperatively to ensure potential trunkline-related issues are addressed. On occasion, local recipients of direct grants perform work on a state trunkline under MDOT permit. When this occurs, the permitting process will ensure adherence to MDOT procedures. There will be no change to the direct grant process. Question or concerns regarding direct grant projects should be directed to the OED.

### **CONSTRUCTION & TECHNOLOGY DIVISION ASSISTANCE**

#### Staff Engineers by Region

Bay	Dale Spencley	517-322-6630
Grand	Eric Burns	517-322-6331
Metro	Gian Taneja	517 322-6181
North	Curtis Bleech	517-322-1237
Southwest	Steve Kahl	517-322-5707
Superior	Dave Gauthier	517-322-5710
University	Kevin Kennedy	517-322-6043

The above information is also available on the Construction and Technology Division public Web site under contact info. The link is on MDOT's Web site at [www.michigan.gov/mdot](http://www.michigan.gov/mdot) under the "about MDOT" heading; click on "Highway Delivery".

Pile Driving Data – Data are obtained through the Construction and Technology Division. Contact the Bridge Operations Section at 517-322-5120 or 517-322-6331.

Monitoring Overdue Finals – Contact the Construction and Technology Division's operations review specialist at 517-322-6181.

MDEQ-Environmental Notification – The MDEQ is responsible for providing notification to the local road commissions of any non-contiguous wetlands within their jurisdiction that may be impacted by their respective projects. We encourage all region/TSC staff responsible for local agency oversight to contact their respective region resource specialist for assistance to ensure consistency with federal and state requirements for wetland protection.

Review Process-MDOT/LAP – Refer to [www.michigan.gov/mdotlap](http://www.michigan.gov/mdotlap) for guidelines on federal eligibility, performing construction engineering, and for instructions on preparing to bid federal aid projects through MDOT. Contact Local Agency Programs at 517-335-2233.

Office of Economic Development – Please contact the manager of the Office of Economic Development at 517-335-1069.

Please share this information with consultants and local agencies within your area.

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Chief Operations Officer

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Engineer of Delivery

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Engineer of Development

BOHD:C/T:BJO:SE:kab

Index: Local Government Projects

cc:	C&T Division Staff	B. Wieferrich	APAM
	M. DeLong	C. Rademacher	CRAM
	J. Reincke	P. Sebenick	MAA
	J. Culp	G. Moore	MCA
	B. O'Brien	K. Reincke	MCPA
	P. Collins	D. Calabrese, FHWA	MITA
	M. Kapp	ACEC	MML