

Memorandum of Understanding  
 Between  
 Michigan Department of Transportation  
 and the  
 Michigan Department of Environmental Quality

THIS MEMORANDUM OF UNDERSTANDING is entered into this date of Feb 16, 2000, in accordance with Section 505 of Public Act 136 of 1999, for the purpose of establishing the amount of the yearly allocation from the State Trunkline Fund and from the Michigan Transportation Fund the Michigan Department of Environmental Quality; the amount of the account established annually by the Michigan Department of Transportation, Bureau of Aeronautics Fund, and the services to be provided as a result of such allocations.

The relationship between financing the programs of the above funds and the Legislative concern that the Michigan Department of Transportation is providing sufficient funds for public transportation, makes essential that the two agencies cooperate to the maximum extent possible to insure that limited transportation revenue is most efficiently utilized.

This Memorandum of Understanding recognizes the statutory and constitutional duties of each Department and is not intended to limit those duties and responsibilities, but it must also recognize that Transportation Funds are constitutionally restricted and should not be used for other than transportation purposes.

The Michigan Department of Transportation agrees to grant the Michigan Department of Environmental Quality the following sums for the fiscal year 1999-2000:

from the Michigan Transportation Fund (Land and Water Management)	\$780,000.00
from the Michigan Aeronautics Fund (Land and Water Mangement)	\$40,000.00
	_____
TOTAL	\$853,000.00

It is mutually agreed that the Michigan Department of Environmental Quality shall:

1. Use the grant to support the cost of the and Land and Water Management Division services provided to the Michigan Department of Transportation, as detailed specifically in Attachment A, dated October 4, 1999, and Attachment B, dated October 4, 1999, attached hereto and made part hereof.
2. Provide a detailed cost allocation methodology that is appropriate to the type of services being provided and the activities financed and supporting rationale for the portion of costs allocated to transportation funds by May 1, 2000. Funding distributions will discontinue after May 1, 2000, until detailed cost allocation methodology is received. Send the report to Michigan Department of Transportation, Financial Operations Division, Attention: Kim Horrach
3. Provide a detailed cost methodology that is appropriate to the types of services provided and the activities financed and provide supporting rationale for the portion of costs invoiced to Aeronautics Funds (Attachment B).
4. Provide the Michigan Department of Transportation with estimated costs to be recovered from Transportation Funds and Aeronautic Funds, separated by spending authorization accounts.
5. Prepare and submit a written report to the Department of Management and Budget Director separating Transportation Funds (Attachment A) and Aeronautic Funds (Attachment B), stating by spending authorization account the amount of estimated funds contracted with the Michigan Department of Transportation, the amount of funds expended, and the amount of funds returned to the Transportation Funds (Attachment A), and the amount remaining in the Aeronautics Fund account (Attachment B). This report is to be prepared and submitted at the close of the fiscal year before April 1 of the following year.
6. Submit a copy of the above year end report to the auditor general and permit the Legislative Auditor General staff to review the annual expenditures that relate to the services provided and charged to above mentioned funds.
7. Request no additional funding to perform the above identified services without prior notification to the Michigan Department of Transportation.
8. Insure that any unspent above-mentioned funds at year end are lapsed back to the

Michigan Transportation Funds or are invoiced in the Aeronautics Fund account.

9. Participate, if requested, in an annual review with the Michigan Department of Transportation of the services and programs financed from constitutionally restricted Transportation and Aeronautic Funds.
10. Supply the Michigan department of transportation with the necessary coding to allow the Michigan Department of Transportation to process interfund transfer via Michigan Administrative Information Network for Michigan Transportation Funds
11. Receive from the Michigan Department of Transportation the necessary coding to allow the Michigan Department of Environmental Quality to process interfund transfers via the Michigan Administrative Information Network for Aeronautics Funds. This coding is as follows:

Contract#	M 84-00-ENV
Project #	S/L
Federal Item #	AM 612
Job #	52203
Account #	5000

12. Use the amount appropriated from the Michigan Transportation Fund (Attachment A) to cover the cost of recently enacted permit fees that are environmentally related. Use the Michigan Aeronautics Fund account established for these purposes to cover the cost of recently enacted permit fees applicable to aviation projects that are environmentally related. The permit fees covered are those related to the National Resources and Environmental protection Act (P.A. 451 of 1994 and related statutes) as set forth in Attachments A and B.

This Memorandum of Understanding may be terminated at such time as may be agreed to by both Departments or by either Department giving (30) days notice to the other Department.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: \_\_\_\_\_

TITLE:

MICHIGAN DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_

TITLE: Department Director

Date: \_\_\_\_\_

Attachment A

October

4, 1999

It is agreed that:

- 1) The annual fund transfer will be credited to offset the full cost of individual permit fees for the PTA(s) as authorized under the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended:

Part 31, Sec. 3104, 3107 and 3108, Water Resources Protection (Floodplain Regulatory Authority)

Part 325, Great Lakes Submerged Lands

Part 301, Inland Lakes and Streams

Part 303, Wetland Protection

- II This agreement supersedes any and all previous contractual obligations between the Michigan Department of Transportation and, specifically, the Michigan Department of Natural Resources, Land and Water Management Division with respect to providing expediting and coordinating services related to the environmental clearance and permitting process.

- III. The Michigan Department of Natural Resources, Land and Water Management

Division agrees to provide the following services:

A) A single point of contact for the PTA(d) and the following departmental entities to coordinate environmental reviews, resolve informally where possible, enforcement issues; and obtain appropriate information as needed. Furthermore, the MDEQ/LWMD will coordinate all environmental review with the following Michigan Department of Environmental Quality divisions for all bridge, culvert and transportation projects which impact a regulated waterbody and which use Act 51 funds:

- 1) Surface Water Quality Division
- 2) Environmental Response Division
- 3) Air Quality Division -
- 4) Waste Management Division

The MDEQ/LWMD agrees to develop an interdepartmental MOU with the Michigan Department of Natural Resources to insure consistent environmental reviews on transportation projects.

- B) Conduct and/or coordinate from the Lansing office, field review and processing service for LWMD environmental permitting and hydrologic/hydraulic analysis on a state-wide basis for state, county and municipal transportation construction and maintenance projects to maximize coordination and ensure timely processing.
- C) Participate on a Joint Agency Transportation Committee on a semi-annually basis consisting of representatives from the Michigan Department of Transportation, Michigan Municipal League, and Michigan County Road Association to address environmental issues as they relate to public transportation agencies and updating the interpretation and implementation of this agreement.
- D) In cooperation with the JATC, prepare with state, county and municipal transportation agencies written guidelines on permit application procedures

and the environmental review process. In cooperation with the PTA(s), provide training on the above, at least on a biannual basis, to all appropriate personnel to promote consistency in understanding of environmental regulations. This is further discussed in Section III (A).

- E) Review and respond to each transportation project application requiring permitting by the Michigan Department of Environmental Quality within 60 days after receipt of a completed application except when a public hearing is held, and/or project requires Environmental Protection Agency review as specified by Section 404 of the Clean Water Act.
- F) Review the project's impact on the state's natural resources and resolve conflicts between the applicant and objecting citizens or agencies and/or other Michigan Department of Environmental Quality divisions where possible.
- G) Coordinate the preliminary project review with Federal agencies in Section 10 and Section 404 waters, coordinate project proposals with the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and U.S. Environmental Protection Agency, and provide Section 401 water quality certification and certification of consistency with the Coastal Zone Management Plan, as required.
- H) Consider applications, where appropriate, for special processing, such as emergency conditions. Conduct expeditious reviews as necessary to meet reasonable funding and construction deadlines.
- I) For projects that do not fall under the NEPA/404 review process, conduct coordinated Department preliminary reviews and respond back to the PTA(s) with appropriate findings.
- J) Meet with PTA(s) and review their preliminary and/or final designs for compatibility with applicable state statutes, as necessary to minimizing costly delays.
- K) Meet on site, as needed, with PTA(s) as necessary, to resolve site specific problems as they relate to the potential impact of the design/construction

on natural resources and MDEQ/LWMD permitting authority.

- L) Resolve informally, where possible, complaints against PTA(s) and act as a mediator between the applicant and complainant in seeking a cooperative resolution consistent with State statutes and sound environmental and economical practices.
- M) Provide flood frequency discharge estimates to design staff including state transportation engineers, county road commission engineers, municipal engineers and consulting engineers working for road agencies. On request, review and verify Michigan Department of Transportation design discharge estimates.
- N) Provide, upon request, available flood hazard information, i.e. flood elevations, floodway delineations and other appropriate flood data within 60 days after receipt of request, and 30 days for repeat submittal.
- O) Upon request, conduct preliminary review of PTA(s) analysis and provide technical assistance, where necessary, to ensure a structure's hydraulic acceptance prior to actual permit application.
- P) Conduct a final hydraulic review to ensure a structure's compatibility to the river/stream system prior to actual permit issuance.
- Q) Maintain a computerized hydrologic database containing the following information:
  - 1) Drainage Area;
  - 2) The 10%, 2%, 1%, 0.2%, flood frequency discharge estimates;
  - 3) Method of Analysis-Regression, SCS, DAR, etc.;
  - 4) Rainfall Data Used (rainfall Amount and Distribution);
  - 5) Latitude and longitude

- 6) Location information - Water body; Road Crossings, Quarter Section, Section, Town, Range, County, Township, Watershed (MDEQ Convention);
- 7) Optional Data - Time of Concentration to Peak, Runoff Curve Number (SCS), Volume of Runoff, ie., V10, V50, V100, V500, FIS Data.

The MDEQ/LWMD will provide the MDOT an updated copy of the database file, approximately every four months. The MDOT will be free to provide copies of this file to any of the county and municipal transportation agencies. This database will not be used for design or permit application purposes without written approval of the data by the MDEQ/LWMD.

IV It is further understood that the MDEQ/LWMD will:

- A) Request no additional funding to perform the services identified in this agreement unless mutually agreed to.
- B) Dedicate 11 FTEs or portions of FTEs to perform the duties prescribed in this Memorandum of Understanding, maintain daily logs, and report to the Michigan Department of Transportation on a semi-annually basis the time spent on the following:
  - 1) Permit applications received, preliminary reviews, flood discharges provided, site inspections/meetings, County Road Commission (CRC) meetings, and the number of permits issued in 30, 60 or 90 days.
  - 2) Time spent on:
    - a) MDOT projects
    - b) County projects
    - c) Municipal projects
  - 3) A Summary of Travel Costs:
  - 4) Equipment/supplies - any equipment purchases greater than \$500.00 must be itemized.

Furthermore, the FTEs or portions of FTEs designated to implement the provisions of this MOU and which receive reimbursement from this agreement pursuant to the provisions set forth in this agreement, cannot be transferred, reassigned, or otherwise lost, without appropriate savings being returned to the transportation fund in the Michigan Transportation Fund.

- C. Participate in an annual performance review of transportation related services completed by MDEQ/LWMD with the JATC.
  
- V. The PTA(s) covered by this agreement and the MDEQ/LWMD will agree to the following conditions:
  - A) The MDEQ/LWMD will define baseline training requirements based on the P.A. 451, Part 303 administrative rules for the PTA(s) personnel and their agents in wetland identification, function, and regulation, to encourage avoidance and minimization, and identify the need for a permit. The PTA(s) will provide the scheduling and training facilities.

In addition, the MDEQ/LWMD with the JATC will develop the education, experience and training criteria necessary for the PTA(s) to be recognized as "competent" by the MDEQ/LWMD in wetland delineation, and wetland mitigation and monitoring requirements as it relates to transportation projects. It is expected that the appropriate MDEQ/LWMD personnel will possess the same education, experience and training qualifications.

- B) The MDEQ/LWMD will participate in the environmental clearance process for transportation projects, as defined by the most recent version of Merging NEPA/404 for Transportation Projects in the same manner as the federal agency's agreement. The PTA(s) will provide all relevant and appropriate information. The MDEQ/LWMD will inform the PTA(s) of the extent and content of any known issue which may jeopardize the issuance of a permit or delay the project. Concurrence points may be revisited if there is new compelling data or information during the permit process.

Early coordination and concurrence process will be developed for non-federally funded, major projects by the JATC.

- 2) The PTA(s) will commit to "maximum practical wetland creation" from construction activities. Maximum practical wetland creation as determined by the PTA(s), is defined as creation of wetland above what is required by permit. The MDEQ/LWMD, with assistance from the JATC, will develop procedures and guidelines for granting reasonable credit for "Moment of Opportunity Wetlands". This may include creation of wetland areas without prior involvement of the MDEQ/LWMD, (provided that permits are not required for such creation) when the immediate opportunity for such creation is presented by construction activity. These procedures will allow maximum practical flexibility addressing in-kind, in-basin, and other mitigation requirements outlined in the administrative rules for PA 451 of 1994, Part 303, Wetland Protection.
- D) The PTA(s) will be responsible for the monitoring of created wetlands as determined during the environmental clearance process. The MDEQ/LWMD will provide oversight to the PTA(s) (for MDOT projects the Environmental Section will be responsible for monitoring) for any required wetland monitoring. Monitoring may be extended based on negotiations. Wetlands will be monitored with the primary purpose of assuring success of the required wetland creation.
- E) The MDEQ/LWMD, where appropriate, will allow aggregation of wetland mitigation sites for wetland losses authorized under individual permits, using the procedures and guidance as developed in section III(C) of this agreement. Wetlands created as "Moment of Opportunity Wetlands" may be used as a credit for some of these takes (in all cases per state and federal requirements). Administratively, the area where such aggregation would occur, will allow maximum practical flexibility (addressing in-kind, in-basin, and other mitigation requirements outlined in the administrative rules for Part 303 Wetland Protection, PA 451 of 1994) and cover the entire area of the state. The PTA(s) will work with the MDEQ/LWMD to develop the mitigation area(s). This planning would take into account proposed highway improvements in the upcoming years and could provide concurrent or pre-mitigation of wetland losses in an orderly fashion.

The PTA(s) will aggregate mitigation on a no net loss basis for wetland losses authorized under the PA 451, Part 303 Wetland Protection General Permit

category for public roadway maintenance and safety projects after the "General Permit Categories for Minor Activities in the State of Michigan" is approved.

- F) MDEQ/LWMD will support and provide assistance in obtaining public lands owned by the Department of Natural Resources for the purposes of wetland mitigation wherever appropriate.
- G) The JATC will review state and federal permitting requirements and develop recommendations to reduce the currently required regulatory documentation while insuring maximum environmental protection. As a part of the process, the committee will review MDEQ/LWMD permit regulations with the intent of defining "minor construction" activities and developing a specific list of those activities requiring permits, exempt from permits, or requiring review to determine if permits are necessary. Authorization of "permit-by-rule" will be investigated. The MDEQ/LWMD and PTA(s) will work jointly to obtain any required concurrences from federal agencies to allow use of modified procedures as necessary. The recommendations will be developed within six (6) months of the signing and funding of this agreement.
- H) Procedures developed by the JATC and agreed to by all parties included in this agreement, will be deemed as being operational guidelines under this agreement.

This memorandum will be reviewed annually by both the Michigan Department of Transportation and the Department of Environmental Quality and may be terminated at such time as may be agreed to by both departments or by either department giving 30 days notice to the other department.

It is agreed that:

1. An account will be set up annually by the Michigan Department of Transportation, Bureau of Aeronautics (hereinafter referred to as MDOT/AERO), utilizing State Aeronautics Funds, from which the Michigan Department of Environmental Quality, Land and Water Management Division (hereinafter referred to as MDEQ/LWMD) will draw to offset the full cost of individual permit fees and MDEQ/LWMD staff time needed to comply with the conditions of this Memorandum of Understanding (MOU), for MDOT/AERO projects (with the exception of projects occurring at the Detroit Metropolitan Airport), as authorized under the following parts of the Natural Resources and Environmental Protection Act, 1994 P.A. 451, as amended:

Part 31, Sec. 3101-3105, 3107, and 3108, Water Resources Protection (Floodplain Regulatory Authority);

Part 301, Inland Lakes and Streams;

Part 303, Wetland Protection;

Part 325, Great Lakes Submerged Lands.

2. This agreement supersedes any and all previous contractual obligations between MDOT/AERO and MDEQ/LWMD with respect to providing expedited and coordinated services related to the environmental clearance and permitting process.
1. The MDEQ/LWMD agrees to provide the following services:
    1. A single point of contact for MDOT/AERO and the following departmental entities to coordinate environmental reviews; resolve informally where possible, enforcement issues; and obtain appropriate information as needed. Furthermore, the MDEQ/LWMD will coordinate all environmental review with the following Michigan Department of Environmental Quality divisions for

MDOT/AERO projects which impact a regulated waterbody and which use Michigan Aeronautics funds:

1. Surface Water Quality Division
2. Environmental Response Division
3. Air Quality Division
4. Waste Management Division

The MDEQ/LWMD agrees to coordinate with the Michigan Department of Natural Resources (MDNR) to ensure consistent environmental reviews on transportation projects.

2. Conduct and/or coordinate from the Lansing office, field review and processing services for MDEQ/LWMD environmental permitting programs and the hydrologic/hydraulic analysis on a state-wide basis for aviation construction and maintenance projects to maximize coordination and ensure timely processing.
3. Participate on a Joint Agency Transportation Committee (JATC) on a quarterly basis, consisting of representatives from the Michigan Department of Transportation (MDOT), Michigan Municipal League, and Michigan County Road Association, to address environmental issues as they relate to public transportation agencies and updating the interpretation and implementation of this agreement.
4. In cooperation with the JATC, prepare with and provide to MDOT/AERO, written guidelines on permit application procedures and the environmental review process. Also, grant MDOT/AERO staff the opportunity to participate in any MDEQ/LWMD training sessions directed towards transportation projects.
5. Review and respond to each Aeronautics project application requiring permitting by the MDEQ/LWMD within 60 days after receipt of a complete application except when a public hearing is held, and/or project requires US Environmental Protection Agency review as specified by Section 404 of the Federal Clean Water Act (Section 404).
6. Review the project's impact on the State's natural resources and resolve conflicts between the applicant and objecting citizens or agencies and/or other MDEQ

and/or MDNR divisions, where possible.

7. Coordinate the preliminary project review with Federal Agencies in Section 10 and Section 404 waters, and coordinate project proposals with the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency. Also, provide Section 401 water quality certification and consistency with the Coastal Zone Management Plan, as required.
8. Consider applications, where appropriate, for special processing such as emergency conditions. Conduct expeditious reviews as necessary to meet reasonable funding and construction deadlines.
9. For projects that do not fall under the National Environmental Policy Act (NEPA) or 404 review process, upon request, conduct coordinated MDEQ preliminary reviews and respond back to MDOT/AERO with associated findings.
10. Meet with MDOT/AERO, Sponsor Airports, and Design Consultants to review their preliminary and/or final designs for compatibility with applicable State statutes as necessary to minimize costly delays.
11. Meet on-site with MDOT/AERO as necessary, to resolve site-specific problems as they relate to the potential impact of design and/or construction on natural resources and MDEQ/LWMD's permitting programs.
12. Resolve informally, where possible, complaints against Sponsor Airports and/or MDOT/AERO and act as a mediator between applicant and complainant in seeking a cooperative resolution consistent with State statutes and sound environmental and economic practices.
13. Provide flood frequency discharge estimates to Design Consultants and/or MDOT/AERO staff within 60 days after receipt of request, and 30 days for repeat submittal. On request, review and verify aviation project's design discharge estimates.
14. Provide, upon request, available flood hazard information, i.e. flood elevations, floodway delineations, and other appropriate flood data.

15. Upon request, conduct a preliminary review of the Sponsor Airport's or their consultant's hydraulic analysis and provide technical assistance, when necessary, to ensure a structure's hydraulic acceptance prior to actual permit application.
16. Conduct a final hydraulic review to ensure a structure's compatibility to the river/stream system prior to actual permit issuance.
17. Maintain a computerized hydrologic database containing the following information:
  1. Drainage Area;
  2. The 10%, 2%, 1%, 0.2%, flood frequency discharge estimates;
  3. Method and date of Analysis-Regression, SCS, DAR, etc.;
  4. Rainfall Data Used (Rainfall Amount and Distribution);
  5. Latitude and Longitude;
  6. Location Information - Waterbody, Road Crossing, Quarter Section, Section Town, Range, County, Township, Watershed (MDEQ convention); and
  7. Optional Data - Time of Concentration, Time to Peak, Runoff Curve Number (SCS), Volume of Runoff, i.e. V10, V50, V100, V500, FIS data.

The MDEQ/LWMD will provide the MDOT/AERO with an updated copy of the database file, approximately every four months. The MDOT/AERO will be free to provide copies of this file to any of the aeronautics project Sponsors or their Consultant's. This database will not be used for design or permit application purposes without written approval of the data by the MDEQ/LWMD.

II It is further agreed that the MDEQ/LWMD will:

- 1) Request no additional funding to perform the services identified in this agreement unless mutually agreed to.
- 2) Dedicate the portions of FTE positions (with a minimum anticipated invoicing of \$20,000) to perform the duties prescribed in this Memorandum of Understanding, maintain daily logs, and report to the MDOT/AERO and JATC on a quarterly basis on the following:
  - 1) Permits received, preliminary reviews, flood discharges provided, site inspections, meetings, and the number of permits issued in 30, 60, and 90

days;

- 2) Time spent (as represented on a payroll time report) on MDOT/AERO Projects;
- 3) A Summary of Travel Costs;
- 4) Equipment/supplies - any equipment purchases greater than \$500.00 must be itemized.

Furthermore, the portion of FTE positions designated to implement the provisions of this MOU and which receive reimbursement from this agreement pursuant to the provisions set forth in this agreement, cannot be transferred, reassigned, or otherwise lost without the appropriate savings being returned to the MDOT/AERO account.

1. Participate in an annual review of transportation-related services completed by the MDEQ/LWMD with the JATC.

III. MDOT/AERO and the MDEQ/LWMD will agree to the following conditions:

2. The MDEQ/LWMD will participate in the environmental clearance process for aviation projects, merging NEPA/404 requirements with requirements of FAA Order 5050.4A (The Airport Environmental Handbook), as amended, all current FAA Advisory Circulars including AC 150/5200-33, and State or Federal Agency MOUs that pertain to aviation and wetlands and/or wildlife attractants. MDOT/AERO will provide all relevant and appropriate information and updates. The MDEQ/LWMD will inform MDOT/AERO of the extent and content of any known issue which may jeopardize the issuance of a permit or delay a project. Concurrence may be revisited if there is new compelling data or information during the permit process.

An early coordination and concurrence process will be developed by MDEQ/LWMD and MDOT/AERO for non-federally funded aviation projects that impact regulated waterbodies.

3. The Sponsor Airport will be responsible for the monitoring of created wetlands

as determined during the environmental clearance process. The MDEQ/LWMD will provide oversight to the Sponsor Airports for any required wetland monitoring. Wetlands will be monitored with the primary purpose of assuring success of the required wetland creation.

4. MDEQ/LWMD will support and provide assistance in obtaining public lands owned by the Department of Natural Resources for the purposes of wetland mitigation wherever appropriate.
5. MDOT/AERO will review state and federal permitting requirements and develop recommendations to reduce the currently required regulatory documentation while insuring maximum environmental protection and incorporating FAA requirements and regulations for airports into the process. The MDEQ/LWMD and MDOT/AERO will work jointly to obtain any required concurrences from federal agencies to allow use of modified procedures as necessary.
6. Procedures developed by the JATC that pertain to aviation projects as well as FHWA projects and agreed to by all parties included in this agreement will be deemed as being operational guidelines under this agreement. Also, procedures developed by MDOT/AERO that pertain specifically to aviation projects and agreed to by MDEQ/LWMD will be deemed as being operational guidelines under this agreement.

This Memorandum of Understanding as pertains to aviation will be reviewed annually by both MDOT/AERO and MDEQ/LWMD and may be terminated at such time as may be agreed to by MDOT/AERO or MDEQ/LWMD. MDOT/AERO and MDEQ/LWMD must give 30 days notice to the other department.