

SUMMER 2020

# CROSS SECTION



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## On The Cover

Halbert Road Culvert  
Project—  
Northern Concrete  
Pipe, Inc.



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At the time this article was written, Governor Whitmer had just announced that construction would be the next industry to be fully opened up for business during the COVID-19 crisis

## Executive Vice President

and Stay at Home order. In the end, our industry will likely be forever changed in many ways and it is my commitment to you that MITA is here 24/7 to help the industry adjust to these changes.

From the moment the COVID-19 crisis began, MITA staff has been personally in touch with members on a daily basis answering questions and providing updates on a variety of health, safety, MDOT, legal and legislative topics through regular bulletins, informational webinars and a video related to safety on jobsites.

MITA has been in constant contact with MDOT and other agencies across the state on key issues, such as how they intended to work with contractors to deliver critical infrastructure projects during the crisis. MITA also partnered

with other heavy/highway industry associations to issue COVID-19 guidance documents; provided the industry valuable information from the Secretary of State regarding extensions being allowed for vehicle registration renewals; and communicated important details to the industry regarding federal financial assistance programs. MITA hosted two different webinars that were attended by literally hundreds of participants, where staff and MITA consultants personally answered numerous questions from members regarding issues related to unemployment, health care, MISS DIG, PPE requirements and federal programs and laws.

As this crisis began, MITA asked the Governor to shutdown all construction

*Continued on 9*



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**Rob Coppersmith**

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Are you sick of hearing the phrase “in these times” or watching commercials that promise we will get through this together while they try to sell you something? These new phrases have quickly become cliches in our “new normal”. What we have to accomplish as an industry is working within our given circumstances to the best of our ability with a common-sense approach. I liken the virus to safety; everyone has their own scale of what’s safe or not regardless of what the MIOSHA regulations say and operate according to their beliefs. Right or wrong this comparison is playing out before our very eyes. Some advocate the herd mentality. For a guy with asthma, it hard to embrace (since I’m on the edge of the herd), but it is understandable. The reality is we need to learn how to live with this until there is a cure or die a slow death watching the news at home.

The MITA events bring the industry together in an age of distancing by devices. I’ve met members who have done business for years and meet for the first time at a MITA event. I can say they are always happy to meet.

# THE SHOW MUST GO ON?

The MITA Future Leaders Class is currently on pause and is a prime example of a program that relies on the social interaction that a Zoom meeting just can’t provide. This program will either be reworked or put on hold until next year.

After that, we have a large contingency of events listed below. They are being managed and either rescheduled or cancelled. The vendors of these locations are working on ideas for providing the events in a safe manner and will inform members in

a timely manner. In the likelihood an event has to be postponed or canceled, we will do everything possible to make members whole.

In closing, MITA is and has always been committed to the health and well-being of the industry and will work hard to make all things possible, possible. We have been navigating the virus issue from day one and will continue to do so until it is over. We will do this along with all the other services you’ve come to rely on.

## Upcoming Summer and Early Fall MITA Events

**Classic Car Show & Low Country Boil, PAC Event**  
*Friday, June 26, 2020 [Cancelled]*

**Summer Conference & Board Meeting**  
*Crystal Mountain, July 23-26, 2020 [Cancelled]*

**West Michigan Golf Outing**  
*Boulder Creek, Wednesday, June 29, 2020*  
*[Rescheduled]*

**Central Michigan Golf Outing**  
*Eagle Eye, Wednesday, August 26, 2020*

**Wild Game Dinner & Scholarship Fundraiser**  
*Palazzo Grande, Thursday, September 24, 2020*

# MITA 2020 CALENDAR OF EVENTS

For the most up to date information available, and to register for events, visit the events section of the MITA website ([www.thinkmita.org](http://www.thinkmita.org)). If you have questions, please email MITA Events Coordinator Danielle Coppersmith at [daniellecoppersmith@thinkmita.org](mailto:daniellecoppersmith@thinkmita.org).

JUNE  
26

11 a.m.  
First Annual Class Car Show and Low  
Country Boil & Barbeque  
MITA Office *[Cancelled]*

SEP.  
15

8:30 a.m.  
MITA Board Meeting  
Country Club of Lansing

JULY  
8

9 a.m.  
MITA Metro Golf Outing  
Twin Lakes Golf Course, Oakland

SEP.  
24

6 p.m.  
Wild Game Dinner  
Palazzo Grande, Shelby Township

JULY  
23-26

MITA Summer Conference  
Crystal Mountain *[Cancelled]*

DEC.  
11

9 a.m.  
Board Meeting  
Country Club of Lansing

JULY  
23

9 a.m.  
MITA Board Meeting  
Location TBD

DEC.  
11

11:30 a.m.  
Central Holiday Party  
Country Club of Lansing

JULY  
29

9 a.m.  
West Michigan Golf Outing  
Boulder Creek, Belmont

DEC.  
15

11:30 a.m.  
Western Holiday Party, Location TBD

AUG.  
26

9 a.m.  
MITA Central Golf Outing  
Eagle Eye Golf Club, East Lansing

DEC.  
17

11:30 a.m.  
Metro Holiday Party, Location TBD



*Continued from 5*

in March because of concerns for the health and safety of employees, obvious medical frontline needs and mass confusion regarding the Stay at Home, Stay Safe Executive Order. By doing so, MITA was able to get significant clarity regarding the definition of "essential construction," allowances for contractors to choose to shutdown for COVID-related circumstances and contractual protections that were negotiated with MDOT leadership and have been applied on projects across the state.

Once safety protocols had been developed and fear had begun to dissipate, MITA joined other construction associations on April 24 in an official request to Governor Whitmer that all segments of the construction industry should re-open in a safe manner as soon as possible.

This request was possible due in part to COVID-19 guidelines that the MITA staff had worked on with others from industry in order to get to work safely and efficiently.

While this issue of the magazine was planned before the crisis, we have adjusted our articles where appropriate to focus on the impact the crisis has had on our industry. On page 41, Greg Brooks, Director of Safety and Compliance, discusses how to perform a successful Toolbox Talks safety training, in lieu of the many in person safety trainings that needed to be cancelled. Our Vice President of Membership Services, Rob Coppersmith, discusses on page 7 upcoming MITA events and any adjustments that we will make to stay in line with COVID-19 guidelines. Lance Binoniemi, Vice President of

Government Affairs, on page 34 talks about how the crisis has impacted the legislature. And getting totally back to business, updates from our engineering staff on pages 15 and 18 discuss MDOT Spec Book changes and recaps Work Zone Awareness Week; and our Director of Workforce Development, Ken Bertolini, on page 38 provides the valuable results of a recent Workforce Development Survey that MITA distributed to MITA members.

As the construction season gets back into full swing, MITA staff will continue to monitor topics that might impact our industry. As always, we are only a phone call away if you need us. Stay well, and best wishes for a successful season.

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**Fax: 419-478-0208**

Joseph Ciacchi, Vice President  
**Phone: 740-590-9827**



The Cortis Bros. Trucking & Excavating staff include (from left to right): Mark Rix, superintendent; Scott Vernier, superintendent; Paul Muscat, vice president; Rob Johnson, chief estimator, John Monte Jr., engineering; and Tom Wolak, shop manager. Not pictured: Joseph Robinson, estimator and Jeff Thompson, superintendent.

## Cortis Bros. Trucking & Excavating

Cortis Bros. Trucking & Excavating, established in 1986 and headquartered in Marine City, provides construction services throughout southeastern Michigan, and the company focuses on underground utility construction, educational construction and athletic field installation.

Examples of current and past projects include site and underground work for Waterford Community Schools; and athletic fields for school districts in Centerline, Livonia and Roseville.

Dan Cortis, who is transitioning to retirement from his role as company president, said the company started out doing mostly residential work, and in the 1990s began working on small

school jobs. School projects have now grown into the bigger part of what the company does on a daily basis.

"That is just what they do," said Paul Muscat, current company president. "We are grateful when a site is completed, and we have been involved in building something new for a school district that may never have had a new field built."

At the season's peak, the company has a crew of 45, including field, office, and truckers.

The first employee who was hired in 1986 just retired two years ago, and at least 20 workers have been with Cortis for over 20 years. Which brings them to the topic all construction companies talk about and mull over

these days: Workforce development. It is a challenge they face every day.

But even with that challenge, Paul said the company is starting to "bust at the seams" of their office in Marine City. Their first office was a pole barn behind Dan's house in Algonac. They moved to a shop in Algonac, and then build their current location in 2000.

"We are happy with our growth, with what we do, and we are looking forward to many more years," Paul said. "Our concentrated presence in southeast Michigan gives us a clear understanding of our market and what our customers need. We are devoted to serving our customers and providing professional and high-quality construction services."



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[pmuscat@cortisbros.com](mailto:pmuscat@cortisbros.com)

#### **Robert Johnson**

Chief Estimator

#### **Joseph Robinson**

Estimator

#### **John Monte, Jr.**

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### SPECIALTIES

- Underground Utility Construction
- Educational Construction
- Athletic Field Installation



The Bush Concrete Products team (from left to right): Tim Dood, vice president/general manager; Tammy Brumm, office manager; and Jon Beukema, plant manager.

## Bush Concrete Products, Inc.

Bush Vault Co. (BVC) was founded in 1927 by Ben Bush. As the concept for manufacturing burial vaults gained acceptance, the business steadily grew. After purchasing Heights Cement Company in 1950, BVC began manufacturing septic tanks, drywall covers and other concrete products. In 1964, the company became an incorporated business in the state of Michigan. In an effort to better describe its broad line of products, BVC changed its name to Bush Concrete Products (SCP) in 1968. The following year, BCP moved to its current location in Muskegon.

BCP continued to grow its product line to include precast steps, sign bases, bollards and trash receptacles and in 2001 was purchased by Jerry McGrath. To continue to grow the business, BCP introduced precast manholes and other MDOT products in 2001. With Tim Dood and Jon Beukema joining the team in 2012, BCP added underground utility vaults and other specialized precast products. In 2014, Tammy Brumm joined the team to manage the front office.

At BCP, the top priorities are quality made products and personalized customer service. Their precast

concrete is manufactured in-house with exceptional durability and is delivered to the site ready to be installed. They take pride in finding ways to overcome a challenging job site, ensure water tightness when required and are willing to tackle tough projects with tight timeframes.

"As a member of MITA, we are given opportunities to promote our products and help us reach markets across the state, said Tim Dood, vice president and general manager. "MITA provides us with a wealth of knowledge and keeps us updated with infrastructure news and announcements in Michigan. The annual convention, various outings, and social events sponsored by MITA keep members connected in a positive way. We continue to be encouraged even in the midst of this challenging time with COVID-19 and believe our industry will overcome this current crisis. The people who make up the infrastructure industry in Michigan are committed to working together through these challenges to get the job done, this year and in the years to come. We look forward to a prosperous future supplying precast for building roads, bridges and other infrastructure needs in Michigan."

Feel free to contact the BCP office for more information on products or to speak with an experienced staff member.





# Bush

## CONCRETE PRODUCTS, INC.

### *Meet the Bush Concrete Products, Inc., Team*

**Tim Dood** joined the team in 2012 as the director of sales and marketing. During his 34 years of precast experience, he served in a number of positions within operations and sales. Tim was promoted to vice president/general manager. He continues to prioritize quality service and personal relationships with all our customers. He enjoys time with his wife, Rosalie, their children (7), and their grandchildren (9). He also enjoys camping, traveling, reading, time with friends and any beach on Lake Michigan.

**Jon Beukema** joined the team in 2012 as a driver. With his 20 years of precast experience and dedication, he was promoted to plant manager. His education from NPCA and his work experience allows him to provide customers with an array of ideas. He takes pride in making customers his number one priority. He enjoys time with his wife, Lisa, and their daughters, Avery and Sidney. He also enjoys camping, taking his Jeep to Silver Lake Sand Dunes, swimming and rebuilding vehicles (toys).

**Tammy Brumm** joined the team in 2014 as the office manager. She is passionate about her work and confident going into her next phase of management duties. She retired from the airlines to continue her education in accounting. She brought a blend of many talents to the team, is a team player and believes in healthy communication. She is committed to both customer satisfaction and to the Bush Concrete family of employees. She enjoys spending time with her husband, Paul, family and friends. She also enjoys camping at Silver Lake Sand Dunes, working out, yoga, traveling, spiritual time and challenging herself to new adventures.

## Bush Concrete Products, Inc.

[www.bushconcreteproducts.com](http://www.bushconcreteproducts.com)

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#### **Tammy Brumm**

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## 2020 MITA SCHOLARSHIP FUND RECIPIENTS

Established in 2016, this is the fifth year in a row that MITA has offered scholarships to individuals looking to pursue a career in the heavy/highway construction industry. Several applicants submitted their information for consideration for the 2020-2021 academic year, all of whom were great candidates. After careful and thoughtful deliberation, the MITA Board of Directors is pleased to announce this year's MITA Scholarship Fund recipients.



**Allison Spierling**

Michigan Technological University  
BS in Civil Engineering



**Austin DeBuck**

Oakland University  
BS in Civil Engineering



**Colton TerBeek**

Michigan State University  
BS in Construction Management



**Gabe Johnson**

Northern Michigan University  
BS in Construction Management



**Katie McInnis**

**(Dave Fons Scholarship Recipient)**  
Michigan Technological University  
BS in Civil Engineering



**Joe Bertolini**

Michigan State University  
BS in Construction Management



**Rob Herrick**

Capella University  
Master's in Business Administration



**Michael Gatz**

Michigan State University  
BS in Civil Engineering



**Vincenzo Mersino**

Ave Maria University  
BA in Business Administration





Glenn Bukoski, P.E.

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# MDOT'S STANDARD SPECIFICATION REVIEW...

## IT'S A PROCESS

MDOT initiates a review process for their standard specifications on a somewhat routine basis, typically five to eight years after the last review. These regular reviews allow for specification updates related to internal MDOT and industry recommendations and for formal incorporation of existing Supplemental Specifications, as well as appropriately matured Frequently

Used Special Provisions. The MDOT Standard Specifications for Construction archive maintained in the MITA office includes fifteen past editions dating all the way back to the 1950 edition.

In late summer of 2016, MDOT began the planning process for the review of the standing 2012 Standard Specifications with the

*Continued on page 16*

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goal of publishing the 2020 Standard Specifications for Construction in early 2020. MDOT's initial target for field implementation of the 2020 Standard Specifications was the 2021 construction season, meaning the new standard specification book would have to be published for incorporation in all projects beginning with the October 2020 letting.

By mid-summer 2018, the various internal MDOT committees had completed their review work and MDOT was ready to pass the initial draft version of the 2020 Standard Specifications over to industry to begin its' review process.

As with the most recent standard specification review, which was initiated in 2008, MITA again served as the industry general chair, facilitating and coordinating the appropriate

delegation of the specific division review responsibilities to our industry partners. MITA retained review chair responsibilities for Divisions 1, 2, 4, 7, and 8, while delegating review chair responsibilities for Division 3 to MAA, Division 5 to APAM and MRPA, and Division 6 to MCA. Each division chair was charged with assembling their review team, scheduling and conducting their industry meetings, scheduling and conducting their industry and MDOT division chair collaborative meetings, and developing, as necessary, their division impasse issue documentation for submittal to the MDOT Impasse Panel.

Maintaining the MDOT prescribed review process schedule, all industry division reviews were completed, and where necessary, impasse issues

were identified and documented, such that the Impasse Panel meetings were scheduled as planned in the last quarter of 2019.

Impasse issues are those proposed specification changes that an industry division team and the MDOT division team cannot reach agreement on during their collaborative meetings. Each industry division review team is allowed to identify and raise a limited number of issues (maximum of 10) to the MDOT Impasse Panel level for final consideration. The Impasse Panel is made up of three MDOT top leadership representatives who hear the position of each party on an issue, initiate dialogue with the parties to get clarification and understanding, and ultimately issue a final determination on the status of the issue as it relates to whether it is incorporated in the

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## COMMENT—VICE PRESIDENT OF ENGINEERING SERVICES

standard specifications or not.

The MDOT Impasse Panel final determinations for all division impasse issues were formally issued in early January 2020. Although now slightly behind their planned timeline, MDOT still felt they could meet their field implementation target of the 2021 construction season.

In early March, however, MDOT notified the industry that they would be moving back the implementation date for the 2020 Standard Specifications for Construction to the August 2021 letting, to allow for a more seamless transition and to ensure all lettings for the 2022 construction season will utilize the same standard specifications. MDOT also cited an additional factor in their decision to be an emphasis on new letting targets for August through December, which presumably

would include more projects being let as a result of Governor Whitmer's Rebuilding Michigan bond initiative.

If you think you missed the opportunity to participate as an industry representative in this standard specification review process, don't be discouraged, as we are certain the process will start again in five to eight years.

*(Author's Note: In late March 2020, the COVID-19 pandemic hit, prompting "Stay Home, Stay Safe" orders and widespread business and government shutdowns. The full economic impacts of the COVID-19 crisis are unknown at the time of this writing, and it is not unreasonable to believe that MDOT will not be exempt from budgetary shortfalls that may cause changes to any plans cited in this article.)*

### Job Site Inspections & Safety Training

MITA's major focus on safety encompasses regular training, informational updates and regular job site inspections to ensure that member companies are compliant with keeping the workforce and motorists safe when work is being done.

MITA staff is now available for inspections upon requests and will comply with company and government-related COVID-19 policies and procedures on your jobsite.

For more information, to schedule a job site inspection, or to set up a job training session (on site or via Zoom), please contact:

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Like numerous other things, the novel coronavirus (COVID-19) pandemic wreaked havoc on Michigan's plans for National Work Zone Awareness Week (NWZAW). MITA, the Michigan Department of Transportation (MDOT), and many of our industry partners were very excited to host the national press event this year at the American Center for Mobility. But, as everyone was struggling to adjust to their new normal with this virus in their midst, the press event was cancelled.

Although COVID-19 stopped the NWZAW press event from taking place, it did not stop our industry from drawing attention to this important annual spring campaign, which is held at the start of every construction season to encourage safe driving through work zones.

Being that much of our infrastructure construction work has been deemed essential and given the fact that many construction projects continue to progress, work zone awareness is still as important as ever. And, for that reason, COVID-19 did not stop industry from highlighting the importance of safe work zones during NWZAW.

This year's theme was, "We Can Do It! Protect Workers. Protect Road Users. Safe Work Zones for All!" By using social media, highway billboards, and electronic message signs throughout the state, many industry workers actively participated in NWZAW to help remind the public to

*Continued on page 20*



# Safe Work Zones for All

Protect workers. Protect road users.



2020 National Work Zone Awareness Week



## COMMENT—VICE PRESIDENT OF INDUSTRY RELATIONS

*Continued from page 18*

drive carefully in and around work zones. Wear Orange Wednesday, which was held on April 22, was a visible reminder and show of support for the families who have lost loved ones in work zone crashes. The effort generated many social media posts with the hashtags [#Orange4Safety](#) and [#NWZAW](#), even though social distancing and working from home protocols are still firmly in place.

Some good news to share is that Michigan will still have the chance to be the host state for the national event in the future and is currently scheduled to host in 2021 at the American Center for Mobility. MITA will keep our members posted as 2021 plans progress, and to encourage full industry participation. Until then, stay well and stay safe!

You can support the Michigan Work Zone Safety Task Force, and all industry efforts to promote work zone safety, by following and liking the Facebook page at [facebook.com/MichiganWZSTF](https://www.facebook.com/MichiganWZSTF).



Many MITA members and MDOT employees recognized Work Zone Safety Week in April. One example, from left to right: Lindsey Renner, P.E., MDOT Field Operations Engineer; Mary Bramble, with MDOT's Traffic and Safety Unit; Dave Aikin, P.K. Contracting; and Chuck Bergmann with MDOT Work Zones.



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## SUMMER 2020: MITA PAC UPDATE

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# COVID-19 CLAIMS:

## THOUGHTS AND CONSIDERATIONS FOR HANDLING COVID-19 RELATED ISSUES ENCOUNTERED ON PROJECTS

By Michael C. Decker, Butzel Long

COVID-19 has presented us with challenges that we never expected. Yet, we have confronted and overcome them. The same can be said about projects as they regularly present unexpected challenges that must be confronted and overcome. Below are thoughts on COVID-19 related issues that you may encounter, if you have not already, as you proceed with your projects.

On March 23, 2020, Governor Whitmer signed Executive Order 2020-21 (EO 2020-21 or Executive Order), more commonly known as the "Stay Home, Stay Safe" Order, which directed all Michigan businesses and operations to temporarily suspend in-person operations unnecessary to sustain or protect life until April 15, 2020. EO 2020-21 also directed all Michiganders to stay in their homes unless they are part of the critical infrastructure workforce, engaged in outdoor activity, or performing tasks necessary to the health and safety of themselves or their families and implemented social distancing and other measures for mitigating and safeguarding against the spread of COVID-19. The "stay home" and "social distancing" requirements of EO 2020-21 were subsequently extended until April 30th via Executive Order 2020-42, which was signed on April 9th, and until May 15th via Executive Order 2020-59, which was signed on April 24th (EO 2020-42 extended those requirements until April 30th and EO 2020-59 extended those requirements until May 15th).

EO 2020-21, however, spared in-person operations of certain construction in certain circumstances. For example, it provided a limited exemption for some private construction activities. It also provided an exemption for "public works," although it provided little guidance on what qualified as "public works." Eventually, statements from state offices and departments cleared most of the uncertainty about what qualified as "public works," as well as what qualified as permissible construction, under the Executive Order. First, on March 25th, MDOT confirmed that its projects qualified as "public works" and were generally exempt

from the Executive Order, contending that it understood the Executive Order as stating Michigan's infrastructure and transportation system is considered critical infrastructure and the construction and maintenance of the same by MDOT personnel and its contractors and consultants is allowed to proceed. Second, on March 27th, the Governor's Office issued a letter that clarified what was exempt as far as construction was concerned. That letter stated that construction necessary to "maintain and improve roads, bridges, telecommunications infrastructure, and public health infrastructure (such as the creation or expansion of

*Continued on page 26*

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## LEGAL ISSUES

*Continued from page 24*

hospitals or other medical facilities to provide or support the provision of necessary care during the emergency)" and "maintain the safety, sanitation, and essential operations of a residence during the emergency" was permissible under the Executive Order. MITA also confirmed, based on conversations with the Governor's Office and its interpretation of federal guidance, that "critical infrastructure workers" were considered part of the workforce involved in all modes of heavy construction, including, without limitation, construction of road and bridges, sewer systems, and airports and rails.

While the Executive Order spared those certain type of construction, it still required them and their workers to adhere to social distancing and other measures for mitigating and safeguarding against the spread of COVID-19. At the end of the day, the Executive Order impacted all construction, either creating delays attributable to required social distancing and other mitigation measures or causing wholesale suspensions and terminations of projects. Of course, with delays, suspension, and terminations, come claims for them, and with claims,

come contractual provisions for them. Below are some 2012 MDOT Standard Specifications for Construction and standard general conditions for construction to pay particular attention to when handling COVID-19 delay related issues on your projects.

### **MDOT Standard Specifications**

- **Std. Spec. 103.02.D** – It sets forth the process for submitting claims for additional compensation and time associated with a suspension of all or any portion of the work by the Engineer. It states that "Upon receipt, the Engineer will evaluate the Contractor's request" and "If the Engineer agrees that the cost or time required for the performance of the contract has increased as a result of the suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any tier, and the suspension was not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing."
- **Std. Spec. 103.02.F** – It states that "The Engineer may

eliminate all or a portion of any pay item" and "The Department will compensate the Contractor a fair and equitable amount for all direct costs incurred on the item prior to the elimination of the pay item."

- **Std. Spec. 104.01.B** – It provides the Engineer with authority to suspend all or any portion of the work for "Conditions considered unfavorable for the prosecution of the work" or "Any other condition or reason deemed to be in the interest of the public." It further provides that "Upon written notice of a suspension, the Contractor will put the work in a satisfactory condition and protect the work, as directed by the Engineer."
- **Std. Spec. 108.08.B** – It states that, "If there are delays due to suspension of work ordered by the Engineer in accordance with subsection 103.02.D that affect the controlling operation or the suspension changes the controlling operation(s) required for completion of the project, the time extension will be the duration of the delay."

*Continued on page 28*



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## LEGAL ISSUES

Continued from page 26

- **Std. Spec. 108.08.C** – It provides that, “If there are delays due to unforeseen causes beyond the control and without the fault or negligence of the Contractor,” including Acts of God, Acts of Government, Acts of State or any political subdivision; fires, floods, and epidemics, or delayed delivery of the materials specified and approved for the project when the Contractor identifies and the Department verifies that the delay is an industry-wide shortage of materials, “the time extension will be the duration of the delay to the controlling operation.”
- **Std. Spec. 108.09.B** – It states that “Compensable delays are delays that are caused by the Department and could not have been reasonably foreseen or anticipated by the Contractor.” It further states that “The Contractor will be entitled to compensation for the delay computed in accordance with 109.05.E” if the delay is caused by, among other things, “Contract revisions as defined in subsections 103.02.B, 103.02.C, 103.02.E, or 103.02.F” or “An Engineer-ordered suspension as defined in subsection 103.02.D.”
- **Std. Spec. 108.09.C** – It states that “Non-excusable delays are delays that are the Contractor’s fault or responsibility” and “All non-excusable delays are non-compensable.”
- **Std. Spec. 108.12** – It states that “If the Department determines that termination is in the Department’s best interest, the Department may terminate the contract or any portion of the contract” and “If the Department orders termination of a contract

effective on a certain date, the Department will pay the Contractor for completed or partially completed work as of that date at the contract unit prices or on a force account basis, as determined by the Engineer.

It further states that “The Department may terminate the contract after determining that, for reasons beyond either the Department’s or the Contractor’s control, the Contractor is prevented from proceeding



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with or completing the contract work” and that “Reasons for termination may include, but are not limited to,” among other things, “A national emergency that creates a serious shortage of materials” or “Restraining orders or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws, or where the issuance of the order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.”

- **Std. Spec. 109.05.E.1** – It states that “If the Contractor incurs a delay attributable to the Department, the Department will pay for the costs specified in this section as allowed by subsection 108.09.B, unless these costs have been previously paid as allowed in subsection 109.05.D” and “Such payment constitutes full compensation for the delay costs.”

These specifications, as well as others, should be collectively evaluated in determining whether any COVID-19 related delay that you experience constitutes an excusable delay, entitling you to time for it, or a compensable delay, entitling you to compensation for it. Regardless of whether your delay is excusable or compensable or both, it is imperative that you track the time and costs associated with it so you can appropriately submit and support your claim for it. Otherwise, your run the risk of your claim being denied. That tracking process should include:

- Submitting notices for additional time and compensation and supplementing the same as necessary;
- Submitting notices for delays and notices for idle equipment

and supplementing the same as necessary;

- Monitoring and updating critical path schedules and submittals;
- Communicating with the owner and contractors, subcontractors, and suppliers and coordinating and cooperating with the same as necessary or deemed fit or as required or permitted under the contract documents;
- Maintaining and reconciling force account records;
- Tracking and creating complications of all costs, including, but not limited to, costs associated with: (1) labor, materials, and equipment, (2) acceleration of the work, (3) subcontractor and suppliers and related items and resources; (4) performing the work at a later time and labor, materials, and equipment escalation; and (5) lost or reduced productivity;
- Preparing timelines of events;
- Drafting and issuing letters about events and supplementing the same as necessary; and
- Engaging and involving your attorneys and other consultants to assist you with your issues and claims as soon as you recognize or anticipate the same.

### Standard General Conditions

The construction industry is unique when it comes to dealing with COVID-19 related delays since construction contracts typically contain provisions about time for performance and fees for failing to perform on time. Specifically, provisions stating that time is “of the essence” in the performance of the contract and providing for liquidated damages for failing to perform on time. For example, AIA A201–2017, General Conditions of the Contract for Construction, § 8.2.1, which states that “Time limits stated

in the Contract Document are of the essence of the Contract,” and § 9.5.1.6, which provides for the withholding of payment to cover liquidated damages if the work is not completed within the contract time. Similarly, EJCDC C-520–2013, Agreement Between Owner and Contract for Construction Contract, § 4.01, which states that “All time limits... are of the essence of the Contract,” and § 4.03, which provides for liquidated damages for not achieving the times specified within the contract.

The construction industry is even more unique when dealing with COVID-19 related delays since construction contracts also typically contain force majeure clauses and provisions about excusable delays and no damages for delays. For example, AIA A201–2017, General Conditions of the Contract for Construction, § 8.3.1, which entitles the contractor to an extension of time for delays caused by “an act or neglect of the Owner or the Architect,” “authorized by the Owner,” or for “labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control” and EJCDC 700–2013, Standard General Conditions of the Construction Contract, § 4.05, which entitles the contractor to “an equitable adjustment” in time if the “Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work” or for delays caused by “severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes,” “abnormal weather conditions,” and “acts of war or terrorism.”

In dealing with COVID-19 related delays, you should determine whether your contracts have these types of

provisions and collectively evaluate them to determine your rights (and obligations) and remedies relative to them. As far as claims pursuant to these type of provisions, they should be handled no different than any other claims, meaning appropriately tracking and documenting, supporting, and submitting and supplementing them in accordance with the terms and conditions of your contract.

As far as force majeure clauses are concerned, they have garnered particular attention in recent weeks given the fact that they address specific events, which are deemed unforeseeable and rarely, if ever, encountered, yet we are likely encountering one of those rare events with COVID-19. In Michigan, force majeure clauses are narrowly construed, meaning a force majeure clause "will generally only excuse a party's nonperformance if the event that caused the party's nonperformance is specifically identified." *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App

437, 447 (2015). With that said, does a force majeure clause that provides that a force majeure event includes an epidemic, but not a pandemic, apply to COVID-19, which has been designated as a pandemic? The answer is likely yes. In fact, it is likely yes if a force majeure clause provides that a force majeure event includes "epidemic," "pandemic," "disease," "outbreak," or the like. The reason being is that COVID-19 has been designated as both an epidemic and a pandemic by the World Health Organization (the World Health Organization officially changed its designation of COVID-19 from an epidemic to a pandemic on March 11, 2020). <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>. Also, according to Merriam-Webster's Dictionary, an "epidemic" is defined as "an outbreak of disease that spreads quickly and affects many individuals at the same time" and a "pandemic" is defined as "an outbreak of a disease that occurs

over a wide geographic area and affects an exceptionally high proportion of the population" and "kind of epidemic: one which has spread across a wider geographic range than an epidemic, and which has affected a significant portion of the population." See <https://www.merriam-webster.com/dictionary/epidemic> and <https://www.merriam-webster.com/dictionary/pandemic>. Since an epidemic and a pandemic are alike and, in fact, a pandemic encompasses an epidemic, they are likely one in the same.

A couple of additional notes on force majeure clauses:

1. A contracting party cannot immediately cease performing its contractual obligations when a force majeure clause is or may be applicable. To invoke a force majeure clause, a contracting party must not have been the cause of the delaying event or must not have failed to prevent the delaying event from occurring by exercising due diligence and care. See *Erickson v Dart Oil & Gas Corp*, 189 Mich App 679, 688 (1991); *Cordoba v. City of Detroit*, 2001 WL 1009308 at 3 (Mich App Sept 4, 2001). According to Michigan common law, "a party's failure to explore or utilize available options to overcome the delaying condition can constitute lack of due diligence." *Id.*
2. Force majeure clauses may have time-sensitive notice requirements associated with them. Obviously, such notices requirements should be strictly observed.

### Construction Liens and Bond Claims

Another COVID-19 related issue that you may face on your projects deals with construction liens and bond



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claims. For you to obtain a valid and enforceable construction lien, you must record that lien within 90 days of last furnishing labor or materials. See MCL 570.1111. With that said, have you considered what happens to your construction lien rights if a COVID-19 related suspension puts you off the project for more than 90 days and the owner terminates your contract or is otherwise unable to allow work to recommence?

Recently, the Michigan Legislature and the Michigan Supreme Court extended the deadlines for filing of certain documents. For example, on March 23, 2020, the Michigan Supreme Court issued Administrative Order No. 2020-3, which extended the deadlines for commencing civil and probate type cases and filing initial pleadings in those types of cases. The extensions bestowed by the Michigan Legislature and the Michigan Supreme Court in recent weeks, however, have

not extended the deadline for filing construction liens. Therefore, if you are owed money on a project, you only have 90 days from the last time that you furnished labor or materials to record your lien with the register of deeds of the county in which the project is located. It is recommended that you not wait until the last minute to record your lien, especially if you are dealing with a register of deeds that does not have electronic filing and you therefore need to record your lien in person or by mail since many registers of deeds are closed or open on limited days or for limited hours because of COVID-19. If you miss the deadline to record your lien, your lien will likely be invalid and unenforceable.

Similar timeframes are applicable to bond claims. Therefore, similar caution should be afforded to bond claims.

The foregoing thoughts and considerations are not exhaustive. Rather, they are intended to get you

thinking about all items related to COVID-19 related delays and issues that you may experience on your projects. If you have any questions about the foregoing thoughts and consideration or need any assistance with handling any COVID-19 related delays or issues, please do not hesitate to contact Michael C. Decker at (517) 372-4928 or [decker@butzel.com](mailto:decker@butzel.com) or any of the other attorneys in Butzel Long's Construction Law Practice Group.

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## COVID-19 Guidance Posters

Offered By **MITA**

MITA is now taking pre-orders for posters which offer guidance to help prevent the spread of the COVID-19 virus in offices and on job sites.

The posters are available in two sizes: 12" x 18" printed on waterproof, tear-proof vinyl or 32" x 48" printed on a more heavy-duty material suitable for outdoor use. The exact prices will be set once we have a final order amount, but will be approximately \$8 each for the small poster and about \$46 each for the large poster, plus sales tax and shipping.

To place your order, please email  
Nancy Brown, Director of Communications,  
at [nancybrown@thinkmita.org](mailto:nancybrown@thinkmita.org).

**PROTECT YOUR FAMILY AND CO-WORKERS**

**REDUCE THE SPREAD OF COVID-19 AND OTHER VIRUSES**

**WATCH FOR SYMPTOMS**

Know the symptoms of Coronavirus, which can include the following:

- ▶ Fever or chills
- ▶ Cough
- ▶ Shortness of breath or difficulty breathing
- ▶ Fatigue
- ▶ Muscle or body aches
- ▶ Headache
- ▶ New loss of taste or smell
- ▶ Sore throat
- ▶ Congestion or runny nose
- ▶ Nausea or vomiting
- ▶ Diarrhea

This list is not all possible symptoms. Please call your medical provider for any other symptoms that are severe or concerning to you.

**Help prevent the spread of respiratory diseases, like COVID-19, by:**

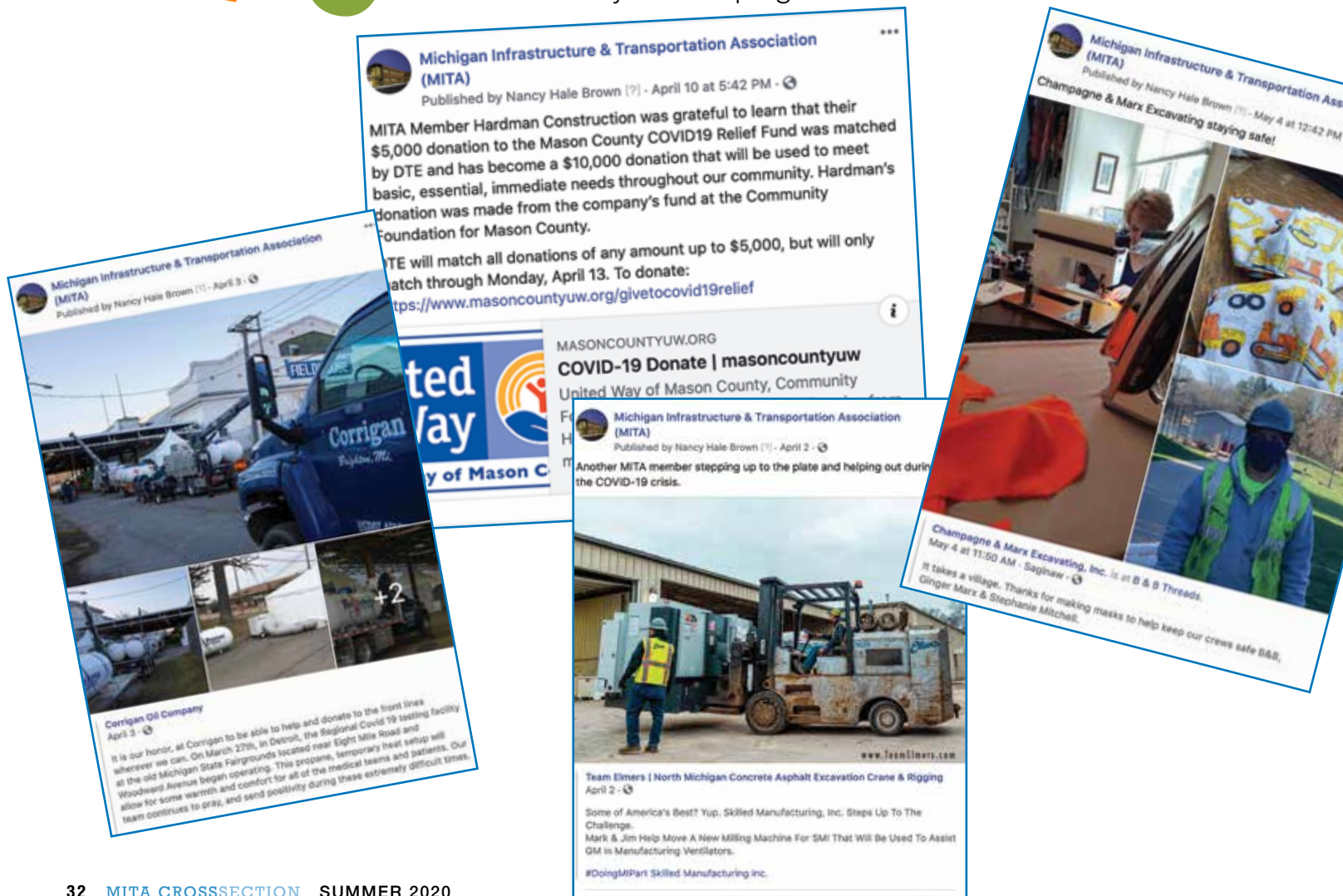
- ▶ Washing hands for 20 seconds
- ▶ Cleaning and disinfecting frequently touched objects/surfaces
- ▶ Avoiding touching your eyes, nose, and mouth
- ▶ Staying at least 6 feet (about 2 arms' length) from other people
- ▶ Covering your cough or sneeze
- ▶ Staying at home when sick
- ▶ Using an alcohol-based hand sanitizer
- ▶ Wearing a face covering when physical distancing cannot be maintained

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# MITA Members Gave Back During COVID-19 Crisis

From the start of the COVID-19 crisis, MITA's Director of Communications, Nancy Brown, posted regular updates on the MITA Facebook page which showed examples of how many MITA members were dealing with the crisis – especially showcasing companies that were giving back to the community and keeping their crews safe.





# Here are a few of the highlights as of press time.



Kids-TALK Children's Advocacy Center  
April 15 at 10:09 AM ·  
EVERYDAY HEROES: We extend a heartfelt thanks City of Detroit Government donating 1,000 face masks and several hundred pairs of gloves to our Kids-TALK...  
See More



Northern Concrete Pipe, Inc.  
April 2 ·  
Todd Marciniak, Northern Concrete Pipe Director of Safety, with Clarence Sevilian, President of Northern Region McLaren Hospital. Say City's, Northern Concrete Pipe has donated 2 cases of N95 masks to the Northern Region McLaren Hospital, to help medical staff fighting the COVID-19 pandemic. The N95 masks are needed, so McLaren Hospitals can continue to ensure front line providers are properly equipped to care for patients.





Lance Binoniemi

To contact Lance Binoniemi, email him at [lancebinoniemi@thinkmita.org](mailto:lancebinoniemi@thinkmita.org) or call the MITA office at 517-347-8336.

# COVID – 19 HITS THE LEGISLATURE

During the early stages of COVID-19 in Michigan, a few lawmakers were affected by the virus and one lost his life. While more cases may be identified as more tests become available, there have been three lawmakers from the Detroit area who tested positive for the Corona Virus. As Southeast Michigan has been hit significantly harder than outstate, it's not surprising to see some legislators, who are in large crowds most days because of their jobs, contact the virus.

Representative Tyrone Carter tested positive for COVID-19 around mid-March, shortly after attending a 12-hour House of Representatives session in Lansing. A second Detroit lawmaker

tested positive for COVID-19 towards the end of March. Representative Karen Whitsett is serving her first term in the House of Representatives and represents the 9th House district that consists of parts of Detroit and Dearborn. Rep. Whitsett was prescribed hydroxychloroquine for the virus and has proclaimed that it saved her life. She has been in the national spotlight supporting President Trump in his push for more treatments of COVID-19 and because of her outspokenness has been censured by the Detroit Democratic Caucus.

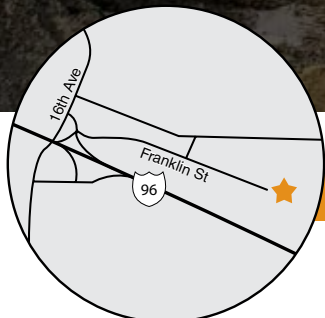
A third suspected case of COVID-19 cost Representative Isaac Robinson of  
*Continued on page 36*



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*Continued from page 34*

Detroit his life. Also in his first term, Representative Robinson began to show symptoms for several days and despite pleas from family and friends, refused to seek medical treatment. Before becoming a state representative, Rep. Robinson worked at a private law firm and prior to that was a political director for a local Teamster Union.

Because of the various social distancing regulations, the House and Senate have adopted procedures to protect their members during the pandemic. Both bodies have met a few times, most recently to vote against Governor Whitmer's state of emergency and stay at home orders, in an attempt to open up the economy quicker than the Governor is willing to do.



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# IT'S STILL AN ELECTION YEAR: GET INVOLVED

This year and COVID-19 has changed virtually everything in our daily lives and will likely change the way we vote this coming November. Regardless, it is still an election year and the voting public will make some important decisions throughout the election process. Many top posts are up for election, including President of the United States as well as the Michigan House of Representatives.

Campaigning this summer will look a lot different, at least from the start, than it has in the past. With bans on large gatherings likely to last through the election season, candidates will have to come up with creative ways to

reach out to their voters. Time will tell whether the traditional door-to-door campaigning will be effective in times like these. Much more emphasis on print and social media will likely occur so don't expect that your mailboxes will get a break from the onslaught of campaign literature we are all accustomed to seeing in election years.

With the different style of campaigning, it will be even more important for MITA members to pay close attention and get engaged. Politicians are great at saying what people want to hear, especially behind print material or a microphone but we need to pay close attention when they

are challenged on topics. It's easy for a candidate to say that they support more infrastructure spending but much more difficult for them to explain where they think the money should come from. Those are the questions we need to be asking. MITA members are experts in the heavy construction industry and know more than most politicians, so you should feel confident to challenge those running for office on where they actually stand when it comes to investing in our infrastructure.

No doubt, every candidate running for office this year will be talking about the response to COVID-19 and how we can move forward. However,

*Continued on page 57*

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**Ken Bertolini**

To contact Ken Bertolini, email him at [kenbertolini@thinkmita.org](mailto:kenbertolini@thinkmita.org) or call the MITA office at 517-347-8336.

# WORKFORCE DEVELOPMENT UPDATE

Prior to COVID-19, MITA, Michigan Construction, MDOT, the Michigan Department of Labor and Economic Opportunity, with support from the Governor's office and other major sponsors organized five hiring fairs across the state of Michigan. The first of the events was held in Gaylord in March. By all accounts, it was an extreme success. Nine companies participated in the hiring fair and were impressed with the candidates that showed up interested in careers in the transportation construction industry. A number of the candidates had previous experience in construction including heavy equipment operating and labor experience. It was the inaugural event, and we were excited to hold the other events throughout the state.

The remaining four events were planned and scheduled for the Flint/Bay region, Detroit, Lansing and Grand Rapids. The governor was planning on attending and speaking at the Detroit and Lansing events. Thirty-nine companies signed up to attend and hopefully hire candidates for the coming year. Over 200 job seekers pre-registered to attend, and we anticipated over 300 including walk-ins who did not pre-register. With the high-quality pool of talent that we had in Gaylord, our expectations were to see this trend continue in the other regions. Then the COVID-19 crisis shut down the state.

MITA recently sent out a Michigan transportation

construction workforce development survey and the participation by member companies was high. Results of the survey are being reviewed and will be reported on and made available to member companies soon. Two questions were asked on the survey concerning the hiring fairs. First, participants were asked if restrictions remain in place, would you be interested in a virtual hiring fair. Over 70 percent of the respondents answered yes. They were also asked if restrictions are lifted prior to July 1, would you still be interested in a face-to-face hiring fair. Close to 60 percent of the respondents answered yes.

The excitement, the amount of member companies that signed up to attend, the amount of job seekers that pre-registered, and the number of major sponsors that wanted to be a part of this program have told us a few things. First, in some form, this event still needs to take place this construction season. Second, this needs to be a yearly event taking place, with all things being "normal", in mid-July to early-April, when originally scheduled this year. We work hard to provide member benefits and this has the potential to be an event that helps companies gear-up for the coming construction season with experienced candidates that are familiar with our industry, and who are looking for a career with your organization.



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# AN ESSENTIAL SAFETY TRAINING COMPONENT

By Greg Brooks, MITA's Director of Safety and Compliance

Precautionary measures to prevent the spread of the COVID-19 virus have become a major factor throughout the country over the last couple of months. It has prevented most industries from being able to gather in large groups, hold meetings in a traditional format and attend conferences.

For Michigan's construction industry, this is the time of year that we utilize to meet in these ways to discuss safety and do safety training in order to get necessary certifications. And yet, for good reason, we have been unable to do so.

The discussion and education of safety does not have to be, nor should it be, a once a year event. There are numerous ways we can keep safety fresh on the minds and in the forefront of all employees.

A Toolbox Talk is an informal group discussion that focuses on a particular safety issue. These discussions can be used daily to promote a safety culture as well as to facilitate health and safety discussions on job sites. Here are five keys to a successful Toolbox Talk:

1. Keep it real for your audience.

Ensure the topic is relevant to our industry and your specific job site. Focus on the employees' personal agenda – staying safe so they can attend their family functions after work, participate in off-the-job hobbies and continue providing for their families. Make sure the talk matters to employees both on and off the job. If workers don't feel the topic applies directly to

them, you will have a hard time keeping their interest.

2. Keep it short. We all have limited attention spans and your audience will eventually start tuning out no matter how important the topic of your Toolbox Talk. Stick to necessary

points only and if you have additional information, put it in a handout. Or use it at a follow-up meeting later on. Periodically addressing the same topic while adding new and relevant content can help retention while keeping the subject interesting.

*Continued on page 43*



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Continued from page 41

3. Keep it positive! Incident investigations are a reactive approach to something negative happening in the workplace and safety talks can be the exact opposite. They're an opportunity to proactively encourage safe behavior and improve workplace safety before an incident takes place. Keep the focus on what can be done to create a safe work environment instead of focusing on what has gone wrong in the past.
4. Demonstrate your point. Nobody wants to feel like they're at a lecture so try to make your talk interactive. When the audience is involved, they are more likely to pay attention. Demonstrations, discussions and hands-on examples are all effective ways to get people to participate and it will help them retain more of the information too. This approach can also contribute to employees viewing their regular safety talks as something positive instead of something to endure.
5. Tell a story, not a statistic. People believe stats but they remember stories. Statistics are a great way to get a point across but the best way to convey a point is to tell a story. Storytelling is a powerful method of conveying

Continued on page 57



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## MICHIGAN'S TOP ENGINEERING AND SURVEYING PROJECTS RECOGNIZED AT ANNUAL ACEC/M EXCELLENCE AWARDS GALA

The American Council of Engineering Companies of Michigan (ACEC/M) recently honored firms for engineering and surveying excellence during the association's annual Engineering and Surveying Excellence Awards Gala. On March 7, design professionals and guests gathered at 20 Monroe Live in Grand Rapids to recognize outstanding Michigan engineering and surveying projects from the past year, as well as engineering professionals who have significantly contributed to the profession. The ACEC/M Awards Program recognizes outstanding efforts of professional design firms to solve clients' needs through exceptional projects and offers the opportunity to showcase the year's best engineering and surveying achievements to an audience of peers, clients and decision makers at all levels.

"The knowledge and expertise that filled the room on Saturday was astounding! The projects engineered by private

sector firms have a profound effect on the quality of life for all Michigan residents. Their efforts result in quality roads and bridges, safe drinking water, and a clean environment for people to live, work and play," said Ronald Brenke, PE, ACEC/M Executive Director.

This year's most prestigious award – the Engineering Eminent Conceptor Award – went to Tetra Tech, Inc. for the I-696 Innovative Design Project in Macomb County. The I-696 Dequindre to Nieman project involved the design of 8 miles of depressed interstate freeway including 8 urban interchanges including ramps. The project design consisted of concrete inlay construction including a recently developed specification for cement treated open graded drainage course (OGDC). Several innovative concepts were utilized, including a corridor-wide project PDF, contractual 3D line strings, and a PQS spreadsheet in lieu of quantity breakdown displays.

*Continued on page 45*



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# EXCAVATIONS & TRENCHING:

## A NATIONAL EMPHASIS PROGRAM AGAIN IN 2020

Federal OSHA had made excavations and trenching an agency priority in 2019. This also was coupled with the release of the Federal OSHA National Emphasis Program (NEP) on Trenching and Excavation. Here in Michigan, MIOSHA then issued an agency instruction, Trenching and Excavation – National Emphasis Program (NEP) on Feb. 12, 2019, that identified how MIOSHA would implement this NEP. In 2020, trenching and excavation has once again been selected as a federal OSHA priority goal.

MIOSHA has held several Stand-Down events in the past several months to promote safety for employers and employees working in the construction industry where the work being performed requires excavating/trenching. In 2019, MIOSHA participated in OSHA Region V's Trench Safety Stand-Down week in addition to the National Stand-Down week promoting the same initiative. This year, the National Trench Safety Stand-Down will be held during the week of June 15-19, 2020.

After one year of the Excavating and Trenching NEP, below are some statistics generated from MIOSHA's Construction Safety and Health Division surrounding the inspections

conducted:

- Total number of inspections: 113
- Total number of serious violations: 48
- Total number of repeat violations: 7
- Total number of other-than-serious violations: 86
- Initial penalty: \$144,760

The rule that was cited the most was 408.40941(1), which reads, "Part 9 Excavation, Trenching and Shoring - The side of an excavation more than 5 feet deep shall be sloped as prescribed in table 1, unless supported as prescribed in this part."

We can expect to see MIOSHA paying extra attention to this area in their enforcement efforts again in 2020. It's important that all members have up-to-date training in these areas to avoid injuries and citations.

MITA has new and updated Safety & Health Field Books, Trench Safety Handbooks and will be doing job site inspections to help meet your safety needs.

If you have any questions, please reach out to me at [gregbrooks@thinkmita.org](mailto:gregbrooks@thinkmita.org) or on my mobile at 517-507-2531.

*Continued from page 44*

Design was on an accelerated schedule and completed in less than 4 months.

Five firms were honored with an Engineering Honorable Conceptor Award for their work on the following:

- AECOM Technical Services, Inc. (Chicago) – High-Rate Clarification Plant in Columbiaville
- Fishbeck (Grand Rapids) – Water Treatment Plant Improvements in Ludington
- Prein&Newhof (Grand Rapids) – Water Treatment Pilot Study for PFAS Removal project in Plainfield Charter Township.
- Ruby+Associates, Inc. (Bingham Farms) – Mackinac Bridge Paint Platforms project in Mackinaw City
- The Mannik & Smith Group, Inc.. (Canton) – Ford Flat Rock Facility in Flat Rock

Engineering Merit Awards were presented to:

- C2AE (Gaylord) – Four Mile Road Municipal Water and Wastewater project in Grayling
- Gourdie-Fraser, Inc. (Traverse City) – 8th Street

Reconstruction in Traverse City

- Hubbell, Roth & Clark, Inc. (Bloomfield Hills) – Groundbreaking Trenchless Technology project for the City of Royal Oak
- NTH Consultants, Ltd. (Northville) – Auburn Treatment Plant Pipeline Rehabilitation in Pontiac
- Parsons Transportation Group, Inc. (Troy) – I-75 Concrete Inlay Project in Detroit
- SmithGroup (Detroit) – Biological Sciences Building at the University of Michigan in Ann Arbor
- SmithGroup (Detroit) – Mike Ilitch School of Business at Wayne State University in Detroit
- Spicer Group, Inc. (St. Johns) – Smith Consolidated Drain project in Okemos
- Tyme Consulting Engineers, Inc. (Livonia) – I-75 ITS Fiber Network Backbone Design in Wayne County
- Wade Trim (Taylor) – Wilson Road Extension project at Michigan State University in East Lansing

*Continued on page 57*

## DID YOU KNOW?

Did you know that for just about any question you had about the COVID-19 crisis as it relates to the industry, MITA had an answer or could refer you to someone who did? Evidence of MITA's dedication during the crisis is clear if you visit [www.thinkmita.org](http://www.thinkmita.org), and look at the dozens of bulletins written and distributed to members during the months of March, April and June of this year. What would normally have been a quiet time at MITA, with golf outings, and planning for the summer conference turned into probably the busiest most challenging time in the history of our association. MITA staff was available, as always, 24/7 to meet the emergency needs of members during this difficult time.

By the time you read this article, it is hoped that the industry is back in business full swing, with some cautious procedures in place, due to MITA's forethought and diligence in helping to develop those safety procedures. We also hope to see you at golf outings this summer and the summer conference, which are all being planned as of press time for this magazine.

Until we see you at a MITA event, visit the bulletin section of the MITA website for some reading you can get caught up on, or just use it as a reminder that MITA is always here for you no matter what happens.

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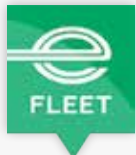
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# DECIDING HOW TO DECIDE

By Richard M. Segal, Sr. Consultant, PCS-Global

Governance encompasses global issues down to family dynamics. Whether it is the United Nations leveling sanctions, or parents setting house rules, it is about who has the desire, power and authority to make, and ultimately enforce, decisions.

Conflict, even war, can erupt over who has a right to decide. Struggle for power can transcend all else. Humanity has established “formulas” to handle governance – charters, constitutions, trusts, legal agreements, courts, boards, etc. They all represent a form of answering this critical question: “Whose decision is it, and how are they going to decide.”

## Employment and Position

Family businesses face additional complexities when the decision-making process is unclear. What if Johnny needs a job, because he underperformed in school and work, and

employing him would be good for the family, but bad for the business. The family wants to see Johnny be financially successful. Who decides?

Possibly the most difficult decision family businesses face is that of the next CEO. Usually that decision is made by the outgoing generation without significant input from the next generation. Corrective actions will likely occur if the next generationers disagree about the decision.

## Money

Compensation and profit distribution decisions pose another prickly area. Monetary rewards and how they are determined can derail family relationships. Fair vs. equal or need vs. performance are areas of concern. What to do with profits, or how to mitigate losses, is another?

How to fund growth is an additional battleground.

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## Executive Suite

The executive suite is charged with strategic planning, operational efficiency, tactical oversight, human resource effectiveness and financial accountability. Who occupies the E suite, and where they sit, is a blend of decisions that affects everything else.

## Decision Placement

To avoid conflict those decisions should have a consistent path. A decision tree should be developed. A template might call for Johnny's employment to be decided by the HR Department in accordance with the Family's Entry Policy. Profits would follow a Distribution Policy enforced by a Board of Directors. The Board of Directors should oversee the Executive Suite and monitor performance while making the "global" business decisions.

It is critical everyone at each level of decision-making knows the proper level of authority and that they are empowered to that level. Otherwise, decisions made will likely be derailed.

Determining whose decision, it is, whether individual, or group, is vital to good outcomes that become enforceable.

## Deciding

Decisions are made in a variety of ways: either an individual, or a group. Good leadership teaches us that soliciting input will lead to better outcomes and buy-in.

Your decision tree puts some decisions into a group setting. This is positive for many reasons - prevents "group think" if the group is diverse, improves buy-in, avoids conflicts caused by unilateral decisions, and promotes shared responsibility and accountability.

Groups need to decide how they will decide, and votes aren't always good. Unless votes are unanimous, there are decenters. Unanimous votes (consensus) usually provide the best results. If everyone can't agree,



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even after vigorous debate, then a negotiated compromise might yield a better result than a divisive vote. Shades of grey might be better than black or white.

## Setting the Stage

Best practices for good governance:

1. Develop a realistic decision tree.
2. Identify individuals, or groups, who occupy the roots, trunk,

branches and leaves on your tree.

3. Fund the individuals and groups on the tree with the right people and empower them with the tools they need.
4. Share tree with all involved.
5. Teach your team how to use the tree and honor the outcomes.
6. Ask often, "Whose decision is it and how will they decide?"

# NORTHERN CONCRETE'S UNIQUE PRECAST SOLUTION RESOLVES CRITICAL CULVERT FAILURE

By John Washabaugh, VP, Northern Concrete Pipe, Inc.

The Calhoun County Road Department discovered a series of CMP Culverts north of the City of Battle Creek that had reached the point of critical failure. Various design alternatives were considered in an attempt to resolve this issue in a timely, cost effective manner. Halbert Road is a vital connector in Bedford Township, between the City of Battle Creek and the rural, subdivided area beyond the city limits.

One such alternative was a clear span bridge. However, due to the unique skew of Waubasca Creek, the structure would be much larger than necessary in order to span from bank to bank. Furthermore, this design would have extended

beyond the right of way to meet permit limitations. The additional span lengths sheet piling substructure costs would have pushed the project total way outside of proposed project funding.

A preliminary design, which utilized a precast concrete box culvert, was initiated. Culvert sizing and other considerations by the Department of Environment, Great Lakes, and Energy (DEGLE), formerly DEQ, required that the final design would not adversely affect the hydraulics of Waubasca Creek. In addition, no work could be done within the water between May 1 and June 30, 2019 due to critical spawning



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and migration periods. Clearance to accommodate future kayak and canoe enthusiasts was a priority as well.

Kristine Parsons, P.E. the director of engineering for the Calhoun County Road Department, reached out to Casey Collings, P.E., of Great Lakes Engineering Group, LLC, for his valued insight for competitive alternatives. Casey suggested an approach he used in Tuscola County whereby precast concrete box culverts were cast in traditional, and radial segments to stay within the restrictive right of way. Engineer Samuel Leatch, P.E., and his team at Wightman in Kalamazoo were instrumental in the overall design for this entire project.

MITA Member Northern Concrete Pipe Inc., with headquarters in Bay City, Mich., was consulted to assist in assembling working drawings. These drawings confirmed that the layout for the 20' span x 5' rise precast concrete box culvert would stay within the designated right of way. Northern's design would appear on the plans and proposals from which the contractors would bid.

Balkema Excavating, Inc., of Kalamazoo, a MITA Member, was the as read low bidder. Overall construction took approximately seven weeks. Installation of all of the 22-ton sections was achieved in only two days. The culvert used eight each sections of traditional design, and 15 each sections with the five-degree skew. Other precast elements such as wingwalls, headwalls, and muddills further assisted in expediting the completion of the project.

"There were a few challenges to building this job," said Timothy Balkema, estimator and project manager with Balkema Excavating, Inc. "One was getting the right sized crane closed enough to set the pieces since

it was such a spread-out footprint. Another was getting the alignment absolutely correct for the serpentine layout of the culvert. The placement and accuracy were achieved by getting quality data from NCP and Wightman to us so we could translate it with our layout equipment to the exact place of every section as designed. The communication throughout the construction between Calhoun County, Wightman, NCP and Balkema kept everyone on the same page and

ahead of schedule in return for a job we all are proud of."

Kristine Parsons, P.E., said that although she didn't have any previous work history with Balkema, they were very conscientious, and worked very quickly to complete the project within budget. "Wightman and Great Lakes Engineering were essential to getting this project to life," she said.

Northern Concrete Pipe, Inc., would like to thank everyone at the Calhoun

*Continued on page 52*



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## MEMBER PROJECT PROFILE – NORTHERN CONCRETE PIPE, INC.

*Continued from page 51*

County Road Department, Great Lakes Engineering Group, and Wightman for specifying durable, reliable precast infrastructure products to replace metal pipe.

**Project Name:** Halvert Road Culvert Replacement

**Owner:** Calhoun County Road Department

**Dept. Engineer:** Kristine Parsons, P.E.

**Project Engineer:** Samuel Leatch, P.E., Wightman, Kalamazoo

**Consultant:** Casey Collings, P.E., Great Lakes Engineering Group, LLC, MITA Member

**Contractor:** Balkema Excavating, Inc., Kalamazoo, MITA Member

**Supplier:** Northern Concrete Pipe, Inc., Bay City, MITA Member

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MITA Member Northern Concrete Pipe, Inc., and other MITA members, were involved in the Halbert Road Culvert Replacement Project in the Battle Creek area in 2019.

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# AVOIDING COVID-19

## ROADBLOCKS TO RESUMING OPERATIONS

By Katherine F. Cser and Aaron D. Graves  
Bodman

While employers may be relieved to receive loans from the federal Paycheck Protection Program ("PPP"), many wonder how they will be able to convince their employees to return to work to satisfy the PPP's payroll expense requirement while avoiding litigation from an anxious workforce.

### PPP Requirements

As part of the Coronavirus Aid, Relief, and Economic Security ("CARES" Act), many small businesses (i.e., those with 500 or fewer employees) have received forgivable loans from the United States Small Business Administration to cover payroll, rent, mortgage interest, and/or utilities. These PPP loans mature in two years and have an interest rate of 1%.

In the PPP loan application, employers were limited to certain costs to determine the loan amount: compensation, paid leave benefits, payments for group health care benefits, payments for dismissal or separation, payments for retirement benefits, and payments for payroll taxes.

PPP loans may be used to cover payroll costs (capped at \$100,000 on an annualized basis for each employee), most mortgage interest, rent, and utility costs over an 8-week period. To the extent employers must use PPP loans to cover paid leave pursuant to the Families First Coronavirus Response Act ("FFCRA"), they are not entitled to tax reimbursement for the paid leave.

Caveats are attached: at least 75%

*Continued on page 54*



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Continued from page 53

of the PPP loans must be used for payroll and while the loans are forgivable, the forgiveness is reduced if the full-time headcount declines and/or salaries and wages decrease during the 8-week period.

Given the roadblocks discouraging employees from working, achieving loan forgiveness may be a challenge for many employers.

### The Roadblocks

More than 1 million Michigan workers are receiving unemployment benefits as a result of the COVID-19 pandemic.<sup>1</sup> Encouraging these individuals to return to work is a considerable task. The reason is twofold: (1) money and (2) safety.

<sup>1</sup>See State of Michigan Press Release "Over 1 Million Michigan Workers Affected by COVID-19 Now Receiving Unemployment Benefits", available at: <https://www.michigan.gov/coronavirus/0,9753,7-406-98158-527111--,00.html>

### Financial Concerns

In response to the COVID-19 pandemic, Michigan's Governor issued executive orders providing unemployed and underemployed residents with unemployment insurance benefits for up to 26 weeks at a maximum of \$362 per week. The CARES Act provides an additional \$600 per week through July 31, 2020, plus a potential additional 13 weeks after State unemployment benefits are exhausted.

For some Michigan construction workers, \$962 per week exceeds what they would earn by working and creates an economic incentive to avoid returning to work.

Employers may need to engage in a number of strategies to overcome this roadblock such as: stressing job security and the retention of benefits; lawfully replacing workers; emphasizing that choosing to remain unemployed while work is available could result in loss of healthcare benefits; advising workers that unemployment claims will be denied when work is available and there is no COVID-19 related reason for absence; and warning staff of the potential consequences for invalid or fraudulent claims: repayment with interest, forfeiture of future benefits and federal prosecution.



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### Health and Safety Concerns

Media sensationalism and the ever-present political drumbeat has created, for some, excessive fear of returning to work. Reminding the workforce of the protective measures being taken to ensure safety may help alleviate the fear factor.

Executive Order 2020-70 requires that employers maintain a COVID-19 preparedness and response plan based on OSHA guidance. For the construction industry, businesses must adhere to all of the safety provisions in the Executive Order and designate a site-specific supervisor to monitor and oversee the COVID-19 preparedness and response plan. This supervisor must remain on-site at all times while work is being performed.

Additionally, Executive Order 2020-70 requires construction employers to screen workers and visitors each day for symptoms of COVID-19; create a dedicated entry point for daily screening; require and provide face shields or masks to be worn when workers cannot consistently maintain six feet of separation from other workers; provide instructions for the distribution of personal protective equipment ("PPE") and designate on-site locations for soiled masks; encourage or require the use of work gloves; identify choke points and high-risk areas where workers must stand near one another and control their access and use to maintain social distance; ensure there are adequate hand washing stations with soap and running water (or hand sanitizer if there is insufficient access to soap and running water at a job site); restrict unnecessary movement between project sites; and create protocols for minimizing personal contact upon delivery of materials to the worksite.

Besides these required safety measures, employers should also remind employees of basic hygiene such as coughing and sneezing into a tissue or sleeve; discourage workers from sharing equipment where possible and; where equipment is shared, clean and disinfect highly trafficked areas and commonly touched surfaces such as handles, tools, machinery, and screens.

Employees handling human resources and safety compliance should keep current on safety requirements and remind employees that they should feel comfortable sharing concerns about workplace safety and that retaliation for raising such concerns is strictly forbidden.

By taking these precautions, employers will fulfill their OSHA obligations, help reassure employees that a safe workplace is being maintained, and minimize the risk of a COVID-19 outbreak at a jobsite.

### COVID-19 Diagnosis

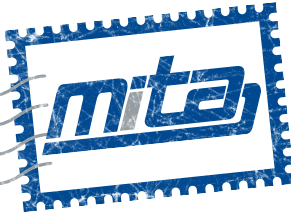
In the event an employee experiences symptoms consistent with COVID-19 at work, an employer should send the employee home immediately and strongly encourage the employee to undergo testing. Executive Order 2020-70 requires construction industry businesses to notify contractors or owners of a confirmed COVID-19 case at the worksite. Consistent with Executive Order 2020-36, employees who had close contact with the symptomatic individual should also be sent home to quarantine for either 14 days since the last day of contact with the symptomatic individual or until the employee receives a negative COVID-19 diagnosis. Pursuant to the Families First Coronavirus Response Act ("FFCRA"), the time off from work for the sick employee and exposed employees may qualify for emergency paid sick leave.

For many employees of MITA members, the workplace is outside and disinfecting the entire jobsite or increasing air circulation after an employee is diagnosed with COVID-19 may not be possible. However, the area the symptomatic employee worked, as well as the tools and equipment the employee used, should be thoroughly cleaned and disinfected.

### Avoiding Retaliation Claims

Finally, MITA members should already be familiar with OSHA requirements and obligations to protect employees from retaliation if they report an unsafe work condition. In addition to training supervisors about the safety measures being taken to prevent the spread of COVID-19, employers should train supervisors that retaliation against employees for raising COVID-19 related safety concerns is strictly forbidden. Just as supervisors must enforce rules about using PPE like hardhats or safety glasses, they must be prepared to enforce social distancing rules and requirements that employees wear facial coverings if they work in close proximity. Employee feelings and opinions about the COVID-19 pandemic may differ from the view of management and supervision. While differing opinions should be respected, safety must be prioritized and enforced.

To overcome the roadblocks to fulfilling contracts with customers and Small Business Administration obligations, MITA members can and should consider all available options to encourage employees to return to work. These options include financial incentives, denying unemployment benefits where appropriate, making appropriate changes to benefits, and emphasizing job security, worker safety and respect.



**Dear Mike:**

I continue to be amazed at the wonderful ways our donors show they care about Ferris State University and our students, and your meaningful gift to the Hot Mix Asphalt and Aggregate Testing Laboratory is no exception.

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Your willingness to be partners in our success means the world to our students and to the entire Ferris community.

*Shelly Pearcy*  
Ferris State University

**Dear Mike:**

I would like to start by thanking you, the board and your staff for all the work and information you have provided during this uncertain and uncharted time in our lives. The resolution that was voted on (by MITA board) and sent to Governor Whitmer (at end of March) is the exact leadership this membership needed; maybe not what our businesses need, but certainly our employees and families.

We, like most have been struggling with the ever-changing business decisions these past few days. Lounsbury Excavating is and will continue to be strongly committed to complying with the executive order. A full company shut down for the health and wellness of our employees, families and community is more important than the bottom line. Thank you for pushing this resolution as it feels like it was a decision made no matter what side of the aisle we sit on, what labor affiliation

we may or may not belong to or the size of our balance sheet.

I just wanted to say thank you again and we are all in this together.

*Michael Hiestand*  
Lounsbury Excavating, Inc.

**Dear Rob:**

Just wanted to thank you again for the great interaction you had with my guys. Like I said, I have never seen them that involved in a safety meeting. My only wish is that we had more time to cover more topics. Thanks for taking the time to come out.

*Kelly Bustraan*  
Lodestar Construction, Inc.

**Dear Mike and Lance:**

Thank you. One way or another I'm fixing these damn roads. With your help we're going to get a lot done and set us up for getting some allies in the damn legislature. See you soon!

*Governor Gretchen Whitmer*

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*Continued from page 45*

This year's Surveying Eminent Conceptor Award went to Spicer Group, Inc. (Saginaw), for its MDOT Railway Scanning project. Spicer Group, Inc. completed a network-wide data collection project for MDOT's Office of Rail for approximately 665 miles of railroad corridor. Various data collection technologies were used including Mobile Terrestrial LiDAR and rail-view imagery, Airborne LiDAR and ortho-imagery, UAV acquired ortho-imagery and traditional RTK GNSS surveying. Using advanced techniques, all data was fused together to create a network-wide geospatial dataset of all MDOT-owned railroad assets.

A Surveying Honorable Conceptor Award was presented to Fleis & VandenBrink Engineering, Inc. (Grand Rapids) for its Taming the Wildcat Drain project in Three Rivers.

### **ACEC/M Small Firm of the Year**

FK Engineering (FKE) was launched in 2012 by professional engineer Fritz Klinger. Klinger has over 30 years of experience in civil engineering and underground construction and has quickly grown the firm to over 27 employees. Vice Presidents Joe Alberts and Zach Carr complete the leadership team and add more than 50 years of combined experience.

Although a small firm, FKE has tackled big projects including the Gordie Howe International Bridge, Little Caesars Arena, Detroit River Interceptor, and the Fraser emergency sinkhole repair.

FKE has been purposeful in its efforts to advance the consulting design profession through contributions to the ACEC/M scholarship and PAC funds and by participating in legislative outreach events.

FKE is very proud of their extensive community involvement since their founding, but particularly in the last several years. FKE has contributed charitably and actively participated in multiple Pure Oakland Water events and suicide prevention fundraisers.

The American Council of Engineering Companies of Michigan is the voice of Michigan's engineering industry. Council members – numbering over 100 firms throughout the state – are engaged in a wide range of engineering/architectural/surveying works that propel the state's economy

### **ACEC/M Large Firm of the Year**

In 1962, engineering veteran John E. Hiltz joined Melvin "Ernie" Orchard to form John E. Hiltz & Associates in Detroit, Michigan, with 15 employees. Their vision was a firm built on extraordinary relationships with

municipal clients, providing insightful engineering counsel, and delivering on a promise to Advance Communities.

Today OHM Advisors has more than 500 employees with offices in 3 states and is ranked #251 on the ENR 500 list. Current President John Hiltz, a past President of ACEC Michigan, leads the firm and remains focused on "advancing communities." Hiltz has been a state and national voice for greater investment in Michigan's aging infrastructure. OHM Advisors has long supported ACEC, and their leadership dates back more than 40 years ago when Ernie Orchard served as President of ACEC Michigan.

OHM Advisors stands out as a company that helps to advance the consulting design profession, is actively involved in the success and growth of ACEC/M, and continually gives back to the community.

*The American Council of Engineering Companies of Michigan is the voice of Michigan's engineering industry. Council members – numbering over 100 firms throughout the state – are engaged in a wide range of engineering/architectural/surveying works that propel the state's economy.*

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information and helping listeners identify with it and keep it top of mind, which is the goal of a toolbox talk. But don't forget that stories should follow the other guidelines above, so keep them brief, relevant and make sure they clearly demonstrate your point.

Follow these five guidelines to make your talks engaging, contribute to an improved safety culture and keep important safety topics fresh in employees' minds.

I will be sending out Toolbox Talk ideas on a regular basis to our Safety Directors email list. Keeping records of your training, such as having attendees sign an attendance sheet, is critical to being able to show MIOSHA your dedication to continuing education.

Please feel free to contact me with any questions, Toolbox Talk ideas, or to be added to our Safety Directors email list. You can email me at [gregbrooks@thinkmita.org](mailto:gregbrooks@thinkmita.org) or call the MITA office at 517-347-8336.

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we will move forward and as we do our roads and bridges will continue to deteriorate. As we look into the future, where do candidates stand on investing in our infrastructure? Do they have real solutions or just talking points?

Regardless of what candidates may or may not believe, it is always good to make contact with those elected officials. Getting involved in the political process can help gain perspective on the challenges that face our state.

# ARTBA TELLS FEDERAL COURT:

## *REJECT EFFORT TO FORCE UNIVERSAL COVID-19 SAFETY STANDARD ON OSHA*

Requiring the federal government to impose a single, emergency standard for coping with COVID-19 is misguided because workers are better protected from the virus by construction industry best practices rather than a rigid “one-size-fits-all” regulation. That is the central message the American Road & Transportation Builders Association (ARTBA) and industry allies delivered as part of a May 29 amicus brief filed in federal court.

ARTBA and the other groups are asking the U.S. District Court of Appeals in Washington, D.C., to stop the request by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), which is suing the Occupational Safety and Health Administration (OSHA) to force implementation of a universal safety standard. Specifically, these organizations want OSHA to implement within 30 days a universal “emergency temporary standard” for infectious diseases which would cover all employees and all industries in response to the current COVID-19 pandemic.

In their brief, ARTBA and other industry groups detail why a uniform standard is misguided, explaining that “guidance on how to maintain the spread of COVID-19 in the aviation industry would naturally be quite different from guidance directed at the banking industry, or the construction industry.”

“Given the vast range of industries operating in the United States, the best approach for OSHA to effectively provide logical and valuable guidance would be to issue specific guidance tailored to each industry or, at the very least, each natural grouping of industries,” the brief states.

ARTBA and industry allies note that at the very outset of the pandemic, the construction industry on its own adopted a plan that provides guidance and outreach to large and small contractors to address and minimize exposure to the virus. “This plan has been widely implemented throughout the industry and adopted by large and small contractors,” the brief states.

Established in 1902 and with more than 8,000 public and private sector members, the Washington, D.C.-based ARTBA advocates for strong investment in transportation infrastructure to meet the public and business community demand for safe and efficient travel.

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