

WINTER 2013

# CROSS SECTION

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## features

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# Executive Vice President

It was a busy 2012 at MITA, with staff working diligently on your behalf. This issue of Cross-Section has great articles that demonstrate the amount of topics MITA focuses on every day, including engineering, safety, legislative and much more. 2013 will be just as busy.

Chris Shea, our outgoing board president, writes on page 14 about how far we have come with our legislative efforts to obtain more transportation funding, and he encourages all of you to contact your legislators and ask them to support MITA's efforts to finally accomplish those ultimate goals. On page 12, Jim Urban of Butzel Long offers a detailed update regarding the prompt pay issue.

Glenn Bukoski, P.E., our vice president of engineering services, takes a look on page 30 at MITA's engineering accomplishments in 2012, including successful advocacy and negotiation for reasonableness regarding Buy America requirements. MITA's involvement on your behalf will continue in 2013 on this issue and many others.

On page 26, Rob Coppersmith, vice president of membership services, talks about the importance of leadership in your own company, and encourages you to enroll your key personnel in MITA's Future Leader Program. This program has been a success in the past, and we plan to continue it for many years to come.

Lance Binoniemi, vice president of government affairs, writes on page 31 about how critical the first six months of 2013 will be on our efforts to obtain increased infrastructure funding. In addition to discussing other legislative priorities, he asks all of you to contact your legislators and ask them to support increased transportation funding.

Feel free to contact us at any time during the New Year with your questions and concerns about any issue that arises. We are here to help you!



Mike Nystrom

**MIKE NYSTROM**  
Executive Vice President  
MITA  
mikenystrom@mi-ita.com



Michigan Infrastructure & Transportation Association

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Established in 1902, ARTBA represents the U.S. transportation design and construction industry before Congress, the White House, federal agencies, news media and general public.

## 2013 Transportation Construction Market Outlook: Modest Growth

By: Dr. Alison Premo Black, ARTBA Chief Economist

**T**he U.S. transportation construction infrastructure market is expected to show modest growth in 2013, increasing three percent from \$126.5 billion to \$130.3 billion. That's the key finding in ARTBA's annual economic forecast.

Growth is expected in highway and street pavements, private work for driveways and parking lots, airport terminal and runway work, railroads, and port and waterway construction. We predict the bridge market, which has shown substantial growth over the last 10 years, to remain flat in 2013.

The federal surface transportation program, combined with state and local government transportation investments, are the most significant drivers of the national transportation infrastructure construction market.

Let's take a closer look at the 2013 numbers.

### MAP-21's Impacts

The pavements market will be sluggish in 2013, growing 2.8 percent to \$58.4 billion. This includes \$47.7 billion in public and private investment in highways, roads and streets, and \$10.7 billion in largely private investments in parking lots, driveways and related structures.

With no new real federal funding in the 2012 MAP-21 surface transportation law, still recovering state and local tax collections and modest new housing starts, the pavements market will be uneven across the nation. Pavement work is anticipated to be down in 25 states. Growth above a five percent range is expected in 19 states. Major markets California and Texas will be down slightly from 2012, but will actually be returning to a normal baseline level after several major project awards over the past several years.

There are at least two developments related to MAP-21 that could lead to additional construction market activity in the sector in the short term and strengthen the market in 2013 and 2014.

First, the law's restructuring of the federal highway program offers state transportation departments more flexibility in their use of federal funds. This could result in slightly increased investment in highway, bridge and pavement work above the forecast in some states.

Second, MAP-21's expanded federal Transportation Infrastructure Finance & Innovation Act (TIFIA) loan program could also boost construction activity in some states.

### Hurricane Sandy

While the economic costs of Hurricane Sandy are still being calculated, it's fair to say that major reconstruction work along the East Coast in

states that were affected by Hurricane Sandy will also be a market factor in 2013 across all modes. Additional federal, state and local emergency funds for rebuilding this infrastructure will be a boost as projects get underway.

### Bridges & Tunnels

After a four-year run of significant market growth—reaching a record high \$28.5 billion in 2012—the bridge and tunnel construction market will cool off in 2013, likely remaining flat at about \$28.2 billion. Our forecast shows projects in eight states—California, Florida, Illinois, New Jersey, New York, Pennsylvania, Texas and Washington—will continue to account for about half of the U.S. market activity in this sector. With a number of major bridge projects on the horizon, however, the bridge and tunnel sector should rebound smartly in 2014.

### Ports & Waterways

One very bright spot will be U.S. port and waterway construction, which will jump nearly 25 percent to \$2.65 billion—driven largely by expanded sea trade expected with completion of the Panama Canal expansion project in 2015. Increased market activity is anticipated in California, Florida, Kentucky, Maryland, Massachusetts, Mississippi, New Jersey, New Hampshire, New York, Texas, Virginia and Washington.

### Airport Runways & Terminals

Airport runway and terminal construction is expected to show growth in 28 states, with sector growth overall of 4.5 percent, reaching \$12.5 billion. Market-driving states include: Alaska, Arizona, California, Florida, Illinois, New York, Ohio, Tennessee and Texas. Funding for airport projects is anticipated to increase over the next five years, largely tracking growth in passenger enplanements.

### Railroads, Light Rail & Subways

The U.S. railroad construction market, driven largely by private investment in Class 1 freight tracks and structures, is expected to grow just under five percent in 2013, reaching \$10.4 billion from \$9.9 billion in 2012.

The uncertainty caused by the 33-month long delay in passage of MAP-21 will be felt in the subway and light rail markets. Construction activity is projected to be down by eight percent. There will be some bright spots, however. Based on recent contract awards, these states will be moving forward on key transit projects: California, Florida, Georgia, Hawaii, Illinois, Kansas, Massachusetts, New York, Oregon, Pennsylvania, Texas and Washington.

Continues on pg. 7



# Underground Spotlight

## Legislation will release \$654 million

**A** long time initiative to improve our underground water and sewers in Michigan came to a completion during the lame duck session at the Capitol. Bills reflecting the recommendations from the State Revolving Fund Advisory Group, of which MITA was a participant, passed the Legislature and will open up much needed opportunities for improvements in our water and sewers. In addition to releasing the remaining \$654 million in bonds for projects, the legislation would also create grants for communities to develop asset management programs. These new grants will help shed light in many areas of the state so that future planning can be done to upgrade communities' underground systems.

This is in addition to the good news that the Department of Environmental Quality announced in late September that nearly \$93 million in

loans were awarded to fund wastewater or drinking water projects around the state. These programs will mean increased work throughout the state on much needed repairs to our underground infrastructure in the very near future.

Before these changes, several opportunities to improve our underground infrastructure were missed because certain projects were not covered under the original grant program. The new law would specifically include construction activities related to sewage treatment works, stormwater treatment, and nonpoint source projects among the activities eligible for a low-interest loan through the Strategic Water Quality Initiatives Loan Program, when identified through an asset management program or stormwater project plan designed to protect water quality.

## ARTBA News Continued from pg. 6

The overall subway and light rail market should rebound in 2014 with the federal funding certainty brought with enactment of MAP-21.

### "Wild Card"

A major wild card in this forecast: the so-called "fiscal cliff"—the dire financial situation that was set to occur at the beginning of 2013 if Congress and the President can't agree on tax and spending reforms. Although the "fiscal cliff" would not directly impact federal highway investment to the states, it could affect state and local finances, and thereby cause governments to pull back or delay projects. Such action in turn would have negative consequences on the highway construction market. Individual businesses may also delay capital and hiring decisions amid the uncertainty. As this issue goes to press, it remains to be seen if the two sides will jump or not.

The forecast uses an ARTBA econometric model that takes into account a number of economic variables at the federal, state and local level. It is measuring the public and private value of construction put in place, published by the U.S. Census Bureau. The ARTBA estimate of the private driveway and parking lot construction market is based on data from the U.S. Census Bureau's "Economic Business Census."

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# Productivity in Construction

Implemented in 2012; the Michigan Laborers' Training and Apprenticeship Institute has developed a Laborers' Productivity Training Course. In today's competitive environment it is critical that the highest level of productivity be achieved in all aspects of a project. The Michigan Construction Laborers' Union recognizes this need and is leading the way to a more productive workforce by including this training in our Apprenticeship Program and offering the class to our Journeymen as a skills enhancement course.



Kimberly Dohn completed the course recently and commented:

"I was fortunate to be among the first to participate in the Laborers' Productivity Training Course. I am very passionate about the training that was

offered and I feel that ALL laborers will benefit from participating in this course. The skills developed during training will aid them in their daily and future endeavors. I believe that the skills taught throughout this course are invaluable to a person with aspirations of bettering themselves and/or their position in life and it provides real tools to make those things happen.

I am currently employed in a management support position in the construction industry and I feel confident that the skills I learned from the Laborers' Productivity Training Course have prepared me to successfully deal with the challenges that occur on a daily basis. Since completing the course I feel more prepared and I know that the knowledge I acquired has improved my performance and ability to make a positive contribution on any job site."



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# you said it

## Letters to MITA

Dear Mike:

Thank you very much from myself and all here at S-L&H Contractors Inc., for your attention and response to our issues regarding Prompt Pay provision violations and MDOT.

We are very pleased with the outcome of our hearing to the point that what little funds we did have involved have at least been preserved for future contractor liability on our job.

It was certainly an enlightening experience working with you all and look forward to working together in the future. With my limited exposure to litigation, I have never seen professionalism such as I did witnessing the events leading up to as well as the actual hearing and leave this experience with renewed confidence in our system that ensures fairness to all.

Thank you again, Glenn and Mike, for allowing us into this suit and to Paul and Jim of Butzel Long for the expert work done to preserve our rights. MITA is a great asset to the industry.

Mike Sarrazin  
President, S-L&H Companies

Dear Rob:

Thank you again for your help in resolving my battle with Consumers Energy and proving the error of their ways. Your services have been greatly appreciated!

Brandon Kennedy  
Kennedy Excavating, Inc.

Continues on pg. 33



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## Prompt Payment Special Provision Update: MITA Compelled To Seek Injunctive Relief Against Change In Application Of Prompt Payment Special Provision

By Jim Urban  
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**M**any of you reading this article may recall an article published in the Fall, 2011 Edition of Cross-Section titled “The New Prompt Payment Special Provision: Another MITA Success Story”. In that article, we reported on the successful joint effort of MITA and MDOT to address the many problems with the original Prompt Payment Special Provision (PPSP). That joint effort between the Industry and MDOT resulted in a new version of the PPSP [12SP109 (A)] which reasonably and effectively preserved the right of Upper Tier Contractors to protect themselves by suspending payment to a Lower Tier Contractor when the Lower Tier Contractor had not fulfilled its subcontract obligations either by not paying its lower tier debts, by not providing required submittals or by breaching its performance obligations under the subcontract. At the same time, the new PPSP ensured compliance with the underlying requirement that those Lower Tier Contractors entitled to payment actually received that payment within 10 days of the Upper Tier Contractor receiving payment from the Department. The new PPSP was reviewed and approved by the FHWA prior to its implementation in September 2011.

Of particular relevance to this discussion is that portion of the new PPSP which specifically provides that “There may be circumstances where a prime contractor or subcontractor has a valid reason to withhold payment from a subcontractor or lower-tier contractor or supplier. Examples of such circumstances include but are not limited to ... a demonstrated breach of the subcontract by the subcontractor such as abandonment of the work, unacceptably tardy progress in the work resulting in delays to the project which may subject or have subjected the prime Contractor to liquidated damages ...”

That particular provision was expressly included in the PPSP in recognition of an Upper Tier Contractor’s contractual and common law right to withhold or “offset” payments otherwise due the Lower Tier Contractor against damages incurred or to be incurred by the Upper Tier Contractor as a result of the Lower Tier Contractor’s default in its performance obligations under the subcontract. This provision was particularly critical to Industry given the lack of any other practically available lower tier performance security on MDOT projects funded in whole or in part with federal funds.

You might be asking: Why was there (and why is there) no practically available lower tier performance security making the ability to withhold funds in the event of a lower tier default especially criti-

cal? As discussed in the article from September, 2011, the answer is, in part, Federal Regulation 49 CFR 26.29 which, as part of the regulations governing MDOT’s DBE program, provided for the elimination of retainage on MDOT contracts and which imposed the Prompt Payment requirements on all MDOT projects funded in whole or in part with federal funds.

Contractors naturally sought to replace that performance security (retainage) with reasonable alternatives. While various alternatives were considered, the alternatives most readily accepted by lower tier contractors was posting cash bonds Certificates of Deposit or Irrevocable Letters of Credit in specified amounts as security for the Lower Tier Contractor’s performance and project debt payment.

### Problem solved? Think again.

Shortly after the initial implementation of “Prompt Payment to Disadvantaged Business Enterprises” requirements, the local FHWA office issued a letter ruling dated July 25, 2007 prohibiting any form of lower tier performance security other than Performance and Payment Bonds, saying that “...if the guarantee is merely another form of a liquid asset (i.w. bank check, cashier’s check or an asset that can be readily cashed), then it is a form of retainage” and not acceptable. Taking it a step further, the FHWA had declared that Upper Tier Contractors were not allowed to exercise business judgment in requiring bonds only from those lower tier contractors viewed as presenting a performance risk if one of the lower tier contractors from whom a bond would be required happened to be a DBE. In that event, the Contractor was required to require bonds from every subcontractor on the project if bonds were to be required at all. When the real implications of this letter ruling are considered, the counterproductive nature of the ruling becomes apparent. First, while apparently seeking to protect and provide an advantage to smaller contractors, particularly DBEs, the ruling works to the direct disadvantage of smaller contractors and DBEs who cannot obtain performance and payment bonds. Second, the prohibition against requiring bonds only from those lower tier contractors viewed as presenting a performance risk and instead requiring that bonds be required from all subcontractors whether they pose a performance risk or not logically and unnecessarily escalates the cost of public works projects, diverting already scarce public funds away from building roads to paying for unnecessary bonds.

The provisions of the new PPSP somewhat alleviated that performance security concern by at least allowing payment attributable to work performed before a default occurs to be held to defray the damages resulting from a subsequent default and, for most situations, avoided a compelling need to require lower tier performance and payment bonds.



Following implementation of the new PPSP in September 2011, the application and enforcement of the new PPSP proceeded in accordance with its clear terms and as understood by Industry and MDOT. The right of Lower Tier Contractors entitled to payment for the proper performance of their subcontracts was protected and enforced and the right of Upper Tier Contractors to have payment held back by the Department as security for damages to be incurred by the Upper Tier Contractor for a Lower Tier Contractor's default of its contractual obligations was also protected and enforced. MDOT honored its commitment to enforce the PPSP as revised and, to the best of this writer's knowledge, contractors honored the requirements of the new PPSP.

### Problem solved? Think again.

FHWA has now weighed in with a change in the application of the new PPSP and, in particular, on the Upper Tier Contractor's right to have payment withheld when a Lower Tier Contractor has breached or abandoned its contract. The FHWA is now requiring MDOT to refuse to enforce the Upper Tier Contractor's right to have payment withheld from a defaulting Lower Tier Contractor. The change in application of the new PPSP prohibits MDOT from complying with an Upper Tier Contractor's request for suspension or reversal of payment when a Lower Tier Contractor defaults and now requires that payment for any quantity of work "satisfactorily completed" by a defaulting Lower Tier Subcontractor be issued to the Upper Tier Contractor thus forcing the Upper Tier Contractor to release that payment to the defaulting Lower Tier Contractor.

In a Construction Advisory issued and given immediate effect on October 3, 2012 (CA 2012-17) MDOT presented presumably FHWA driven "information and interpretation" which effectively eliminated one of the critical protections afforded Upper Tier Contractors in the new PPSP. The interpretation presented in the CA eradicates the Upper Tier Contractor's right to have payment suspended or reversed when a Lower Tier Contractor has defaulted on its subcontract stating, in pertinent part: "As an example, if the subcontractor installed 1000 lineal feet of guardrail in its entirety and it met the requirement of "satisfactory completion", then payment would be made for 1000 lineal feet of guardrail and the prime contractor would be required to pay the subcontractor for the work even if the subcontractor abandoned the project and left more work unfinished." (emphasis added). To completely understand the change in application of the PPSP, you need to complete the scenario. Assume that the subcontract was for 5,000 lineal feet of guardrail (any other pay item or combination of pay items will work just as well) at \$50.00 per lineal foot. Assume also

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# MITA Board President's Message

By Chris Shea  
P.K. Contracting, Inc.

**H**ere we are again. Another legislative term has come to a close and Michigan's infrastructure has been left behind without action being taken to correct the decades long problem of under investment. This continued inaction has allowed our system of roads and bridges to decay to a point where soon the problem will be measured in the 10s of billions of dollars. Oh, well, just another problem to pass on to future generations. With the Christmas season behind us, our infrastructure kind of reminds me of toys left behind at the Island of Misfit Toys in the Rudolph The Red-Nosed Reindeer Story. Another year goes by. We can only hope that 2013 will be the year.

The story sure seems to be a compelling one. Michigan's infrastructure is considered the second worst in the country. Only a few states spend less per capita on infrastructure than Michigan and that ranking has held true for decades. Thousands of injuries and fatalities occur every year in accidents caused by the conditions of our roads and bridges. Michigan is losing millions of dollars in asset value daily because of an unwillingness to maintain its infrastructure. On average a Michigan motorist wastes over \$350 per year in unnecessary repairs to their vehicles from driving on bad roads, not to mention the reduction in the value of their cars due to bent rims, worn out suspensions, cracked windshields, chipped paint jobs, etc. If every driver in Michigan contributed approximately \$200 per year in increased fees to fund their infrastructure, the return back to each and every driver would be five times that amount. Adding it all up, how is it possible that the infrastructure funding problem has not been taken care of? One last thing: our underground infrastructure is also at a crisis stage. Michigan is a great tourism state, filled with beautiful lakes and beaches. However, in southeast Michigan, our most popular public beach is often closed on the hottest summer days due to pollution created by a sewer system that can't handle the volumes it is forced to. It sure seems like a no brainer that these things should be taken care of. Why haven't they?

MITA, along with the increased involvement of its contractor members, has done a great job of educating our governmental officials on the problem facing Michigan's infrastructure. Most of them understand the problem, how severe it is, and the fact that it has to be dealt with sooner rather than later. The problem is that legislators are in the business to get elected and re-elected. Just as you and I want

to keep our jobs, they want to keep their jobs. The common theme heard when meeting with an elected official is that their constituents aren't telling them to fix the roads. They say, "I know our infrastructure has to be fixed, but you have to get the public on board."

The comment: "You have to get the public on board" has been told to us for years. We have been too hard headed to listen to it and act on it. In the end we have always relied on the standard plan of only lobbying elected officials and feeling our story and the litany of facts we can spew out will lead them to finally address the issue of our crumbling infrastructure. It's time to wake up and quit beating our heads against the wall.

It has been said by many that our industry has never done an adequate job of promoting itself. In fact, as it relates to the general public that promotion has been virtually non-existent. Consider an auto manufacturer, a fast food chain or a brewing company. They realize they must promote their products and advertise to get people to buy them. We, too, are selling a product and we must convince the consumer (the people of Michigan) to buy it. Not only that, but we have a more difficult set of circumstances. In the typical case, the manufacturer advertises in an attempt to influence a buyer to spend their money with the buyer realizing that the only way he is going to get the car, the burger or the beer is to buy it with his own money. In our case the buyer just assumes that the government is supposed to provide a good infrastructure with the money they are already providing it.

How do we solve this problem? We **MUST** be willing to promote our industry and the service we provide to the people of Michigan. They must be made to understand the importance of good infrastructure to the Michigan economy and their overall quality of life. They must be made to understand that investing in our state's infrastructure will actually put money in their pocket in the end. We can't rely on someone else to do it for us. We know the facts. We have the story. We have to be willing to invest our money to get the facts to the people so that they will tell their elected officials to take care of Michigan's infrastructure. Not taking care of our roads and bridges needs to become a reason a politician loses an election not wins one.

If you haven't already, you will soon be hearing of an industry plan to promote ourselves and what we do to the people of Michigan. Take the time to think about it and what it could mean, not only to your business, but to the health of our state for generations to come. Advertising and promotion is not cheap and once started, it needs to be constant. We will need to keep promoting the importance of a good infrastructure so that other forces don't look to repeal, reduce or raid the funding for it in the years to come. It's time to realize that in the end, the cost of promoting our industry is far less than the cost of not doing so.

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# Member Profile



**S**train Electric Co. in Grand Rapids has been serving Michigan for over 60 years as a premier commercial and industrial electrical services company.

The company was founded by Lester Strain in 1947. His son's Lee and Craig, took over the company 20 years later, and in the 70's they expanded into the public sector. In 2007 current company President Todd Strain took the reins.



In 2012 came the purchase of another company that doubled the staff, and brought a new division which is able to offer directional drilling, fiber optic splicing and OTDR testing. Strain Electric also is involved in commercial/industrial, new construction/maintenance, overhead installation/maintenance, underground electrical services and communication. Their staff provides services to both private and public entities from Lansing to Lake Michigan to the Mackinac Bridge.

"We are also well known



for drawbridge work," Todd said. "In fact, over the years we have retrofitted the majority of the drawbridges from St. Joseph to Cheboygan, and we continue to assist in the maintenance."

A recent project in the city of Walker involved installing over eight miles of fiber optic cable to tie together the police, fire and the Kenowa Hills School District. Strain Electric recently completed a project in conjunction with the city of Grand Rapids which involved the complete renovation of a traffic management center complete with a

LCD video wall system. On the heels of that project they also installed a radio loop system with four-foot diameter antennas on local area water towers, which serves as a private traffic communication network for the city.

In Muskegon County, Strain recently installed an advanced LED lighting upgrade at Heritage Landing, which was an abandoned brownfield on the Lake Michigan waterfront that was converted to an outdoor entertainment venue.

"We have been busy, but of course we could be busier," Todd said. "Our main challenges, besides the economy, have been the cost of materials and the "Buy America" SP. What we do involves so many components, and when you need step certification for each component as small as nuts, bolts and washers it is almost impossible to fulfill the requirements. The trouble is we have pushed so many manufacturers out of the country that it is going to take some time to get the manufacturing process back.

Todd worked closely with MITA staff on the problematic Buy America requirements, and he was extremely pleased with MITA's January 2013 success that resulted in reasonableness in the FHWA interpretation and requirements. He has commented that it is well worth being a member of MITA because MITA steps in and can assist when there are concerns and/or issues with state, county or local municipalities.

"We work hard to ensure that we have a level of trust with all our customers whether they are private or public." Todd said. "We are looking forward to the 2013 construction season. With the purchase of a larger facility to accommodate our expanding operations, it looks to be a promising year."

**Strain Electric Co.**  
www.strainelectric.com

3376 3 Mile Road NW  
Grand Rapids, Mich. 49534  
Phone: 616-453-2108  
Fax: 616-453-5729

**Todd Strain**  
President  
todd@strainelectric.com

**Brian Covey**  
Superintendent

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# Associate Member Profile



**2**012 was a year of top awards for HNTB Corporation, one of the nation's largest engineering firms, headquartered in Kansas City, Missouri, with Michigan offices located in East Lansing, Jackson and Detroit.

The firm was ranked among the largest employee-owned companies in the country, by the National Center for Employee Ownership. HNTB also topped the Roads & Bridges magazine go-to list of top design firms, was listed in the top three firms nationwide in all six categories, and made top honors in four of the six. The company was ranked as the No. 1 design firm in the categories of road and highway, bridge, design-build and mass transit. HNTB also placed second in airports and third in storm water. The magazine's ranking was based on a survey of over 10,000 government official readers, primarily departments of transportation. The readers were asked which design firm they prefer to work with on the jobsite.

"For nearly a century, HNTB Corporation has helped create infrastructure that best meets the unique demands of its environment," said Ken Graham, HNTB Infrastructure CEO. "With client relationships spanning decades, our employee owners have proven a commitment to the highest levels of performance. The results of this survey prove that clients recognized and appreciate HNTB's dedication to helping them complete their most important programs and projects."

HNTB is best known nationwide for transportation services, including roadway design, bridge design, traffic engineering and construction engineering, said Eric M. Morris, P.E., associate vice president. The company handles traditional design-bid-build delivery as well as design-build projects, with the latter becoming increasingly prevalent in mega-projects nationally. With 60 offices and 3,500 employees nationwide, HNTB's office in Detroit has 45 employees overlooking Hart Plaza. The company is among the passionate businesses that are dedicated to bringing the Motor City back to life, said Morris, who is a graduate of Michigan Tech with 10 years experience at HNTB.

HNTB is also passionate about being an active MITA member. Morris participates in MITA's quarterly MDOT meetings, and last year attended several MITA events, including the governor's barbeque, summer conference and golf outings. In addition, he works closely with the engineering staff on issues, and he supports the funding initiative with the legislative staff.

Bringing that same enthusiasm to projects, HNTB was recently the lead designer on the Ambassador Bridge Gateway Project, with MITA Member Walter Toebe Construction Company as the prime. Other recent Michigan road/bridge projects include the M-10 reconstruction project (MITA Member Dan's Excavating, Inc., prime); and the Blue Water Bridge project (MITA Member C.A. Hull Co, Inc., prime). Recent sports stadiums, handled by HNTB's boutique sports architecture department, include the Michigan State University Spartan Stadium expansion the University of Michigan Stadium expansion and Oldsmobile Park in Lansing.



## HNTB Michigan, Inc. [www.hntb.com](http://www.hntb.com)

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As far as future road/bridge and other infrastructure projects go in Michigan, the outlook is bright, Morris said.

"We finally have a governor who is paying attention to our infrastructure needs," he said. "We support his revenue package as well as his stand on the international bridge crossing, in which we hope to have a significant role. For Michigan to be relevant, we need to invest in our infrastructure. We have the human talent, and we are pounding the pavement to help the governor. We are very bullish about the future outlook."



## History of HNTB Corporation

HNTB can trace its roots to 1887 when Dr. John Alexander Low Waddell, the father of the 20th century bridge design, opened a consulting practice in Kansas City, Miss.

The company name was derived from the four professionals who gradually joined a separate company from Waddell between 1914 and 1928: Ernest Emmanuel Howard, Enoch Needles, Ruben Bergendoff and Henry C. Tammen.

In 1948 the firm secured the 118-mile New Jersey Turnpike Project, the first for which HNTB assumed a management role over other consulting firms. From this arrangement evolved the concept of a general engineering consultant. By the time the turnpike era reached its peak in the 1950s, HNTB had management turnpike projects in 15 states.

For more history of HNTB, visit an interactive timeline at [www.hntb.com/about/history](http://www.hntb.com/about/history).

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## Member Voice

From time to time we ask MITA members to comment on issues of importance to the industry. Some of the answers are published here.

### MITA Member Voice Survey: Mega Projects in Michigan

*Nationally, several mega projects (infrastructure projects in the \$500 million to over \$1 billion range) have been delivered with only mixed reviews from the local contractor community.*

*There is potential that three "mega projects" may be put out for bid in Michigan in the next couple of days. The method of project delivery for each project (i.e. single Design-Bid-Build project, single Design-Build project, segmented multiple Design-Bid-Build projects, segmented multiple Design-Build projects) has yet to be determined.*

*What are your concerns, thoughts, or feelings about these mega projects in Michigan being put out for bid by any of these specific project delivery methods?*

"Simply put, these mega projects do little or nothing for the midsize contractors already starving for jobs/funding in their markets. Let me know how we can help."

Richard M. Fons  
President, Fonson, Inc.

"My concern is that one, two or even three projects may be too large for the average MDOT contractor to bid. It may narrow the field to only two contractors. It would be nice if smaller packages could be let to provide more opportunity to all contractors, not only two prime bidders. I favor segmented multiple design-bid-build. It creates more potential opportunity for all MDOT contractors."

Blake Zapczynski  
President, Z Contractors, Inc.

"These mega projects are putting the "little" guys out. It is unfair to keep feeding the large contractors more work and letting the small to medium suffer. These mega projects should be broken into many, many smaller contracts, so that all can have a fair chance at bidding. We need to make Michigan's construction companies prosperous and strong again. The construction industry has taken a huge decline over the past three years, and we need many new opportunities for all in the upcoming year.

Jody Petit  
President  
Erie Construction LLC

While we are in favor of the Mega Project format, we would be in favor of any system that does not involve any objectivity in the selection process, i.e., a low-bid method would be the best. A segmented, multiple design-build system would be the most attractive of the options

Continues on pg. 41

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## MARCH

- 2 - 11 MITA MANAGEMENT CONFERENCE  
Fairmont Kea Lani, Maui, Hawaii
- 14 MITA MEMBER NIGHT OUT  
Location TBD, Grand Rapids  
6:00 p.m.
- 21 MITA MEMBER NIGHT OUT  
Location TBD, Metro  
6:00 p.m.
- 22 MITA EUROPEAN HUNT  
Hunter's Ridge, Oxford  
8:00 a.m.
- 28 MITA MEMBER NIGHT OUT  
Location TBD, Lansing  
6:00 p.m.

## APRIL

- 23 MITA BOARD MEETING  
MITA Office, Okemos  
1:00 p.m.

## MAY

- TBD WASHINGTON FLY-IN  
Washington D.C.

## JUNE

- 13 WESTERN MI GOLF OUTING  
Boulder Creek, Belmont  
9:00 a.m.
- 18 MITA BOARD MEETING  
Country Club of Lansing, Lansing  
8:30 a.m.

## JULY

- 18 SOUTHEASTERN MI GOLF OUTING  
Twin Lakes Golf Club, Oakland  
9:00 a.m.
- 24 - 28 MITA SUMMER CONFERENCE  
Grand Hotel, Mackinac Island

## AUGUST

- 20 MITA BOARD MEETING  
MITA Office, Okemos  
1:00 p.m.
- 22 CENTRAL MI GOLF OUTING  
Eagle Eye, East Lansing  
9:00 a.m.

## OCTOBER

- 22 MITA BOARD MEETING  
MITA Office, Okemos  
1:00 p.m.

## DECEMBER

- 13 MITA BOARD MEETING  
Country Club of Lansing, Lansing  
8:30 a.m.
- 13 CENTRAL MI HOLIDAY PARTY  
Country Club of Lansing, Lansing  
11:30 a.m. - 2:00 p.m.
- 17 WESTERN MI HOLIDAY PARTY  
McFadden's, Grand Rapids  
11:30 a.m. - 2:00 p.m.
- 19 SOUTHEASTERN MI HOLIDAY PARTY  
Location TBD  
11:30 a.m. - 2:00 p.m.

## 2013 MDOT BID LETTINGS

- January 11, 2013
  - February 1, 2013
  - March 1, 2013
  - April 5, 2013
  - May 3, 2013
  - June 7, 2013
  - July 12, 2013
  - August 2, 2013
  - September 6, 2013
  - October 4, 2013
  - November 1, 2013
  - December 6, 2013
- All bid lettings are downloaded at the MDOT building (Van Wagoner building on Ottawa St. in Lansing), second floor.

## MITA CALENDAR OF EVENTS

All dates are subject to change and additional events may be added. Please check out the electronic calendar regularly at [www.mi-ita.com](http://www.mi-ita.com).

## MITA Members Inducted in Ferris State Hall of Fame

Four MITA members were inducted last fall into the Ferris State University Construction Hall of Fame.

**Lawrence D. Clark**, founder of the Lansing-area Clark Companies, was honored for his significant contributions to the concrete foundation industry and leadership in Delta Township area development, where he pioneered poured-wall and tilt-up concrete construction. The Clark Companies include Lawrence Clark Concrete Construction, L.D. Clark Excavating, the L.D. Clark Building Company and Builders Aggregates.

Clark has served such professional organizations as the Concrete Foundation, Greater Lansing Home Builders, Michigan Concrete, Michigan Infrastructure and Transportation Association, Tilt-Up Concrete associations, as well as Associated Underground Contractors and Central Michigan Associated Builders and Contractors. Recognized for his service to Delta Township and nationally as a concrete innovator, Clark has received the Murray Parker Memorial Award, the Tilt-Up Achievement Award, eight separate



Lawrence D. Clark



Arthur J. Fisher



James O. Fisher



Ralph J. Fisher

Builder of the Year Awards, as well as special recognition from Dow Chemical, Owens Corning and Con/Steel.

Brothers **Arthur J.**, **James O.** and **Ralph J. Fisher** were honored for their development of the Fisher Companies: Fisher Contracting, Fisher Transportation, Central Concrete, Central Asphalt, Bay Aggregates and Midland Engine – from Fisher Sand and Gravel, the business their parents, Ralph “R.J.” and Zelda Fisher, began in Midland, Mich., in 1925. The Fisher Companies, grown by the brothers into a 400-employee operation with annual revenue of more than \$100 million, provide heavy civil contracting and a variety of other construction-related services across the Great Lakes region. Each brother serves in a variety of leadership positions within one or more company divisions.

The brothers are also known for their development of Mt. Pleasant’s popular Bucks Run Golf Club on the site of a former Fisher Sand and Gravel pit. Collectively, they have provided extensive service to multiple community and professional organizations: Asphalt Paving Association of Michigan, Associated Builders and Contractors, Associated General Contractors, the Michigan Infrastructure and Transportation Association, the Ready Mix Concrete

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Association, and both Michigan and national chapters of the Society of Professional Engineers.

Selection of Michigan Construction Hall of Fame inductees is based on nominees' technical, managerial and leadership achievements within construction and related industries, as well as service to the profession and community. Inductees are selected by a committee of professionals representing Associated Builders and Contractors, Associated General Contractors of Michi-

gan, the Construction Association of Michigan, the Michigan Association of Home Builders, the Michigan Infrastructure and Transportation Association, and Ferris State University's Construction Technology and Management programs. The Michigan Construction Hall of Fame is located in Ferris State University's Granger Center and serves as a permanent place for leaders of the Michigan construction industry to be recognized and appreciated. For more information, visit [www.ferris.edu/mchof](http://www.ferris.edu/mchof).

## MEMBER NEWS FEATURE

### Hart and Associates Construction LLC Presents Award to Cadillac Asphalt LLC [www.hartandassociates.net](http://www.hartandassociates.net)

**Hart & Associates Construction LLC** recently presented Cadillac Asphalt LLC with the 2012 Opportunity, Access and Resource Award(OAR). The award was given in recognition of Cadillac Asphalt's demonstrated excellence in assisting small businesses, such as Hart & Associates, succeed through the provision of access to opportunities and resources.

**Tiffany L. Hart**, owner of Hart & Associates, said the company was recognized for reasons including but not limited to:

- Cadillac Asphalt and Michigan Paving and Materials Company participating in the MDOT Mentor/Protégé Program, assisting small businesses in joining industry-related association(s);

- Providing opportunities for small businesses to work on MDOT road construction projects; and

- Incorporating principles of success for small business, such as prompt payment, problem resolution, lines of credit for material and bonding coverage.

"Your work with small businesses in the construction industry is a model recognized and acknowledged by industry experts, and we congratulate you on your continued success," Tiffany said in a letter to Alan Sandell of Cadillac Asphalt. "Thank you so much for your work in the industry and your passion to assist small businesses in succeeding."

Continues on pg. 24



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## Orion and MITA Members: Partners in Profitability

[www.orion5000.com](http://www.orion5000.com)

Orion Industrial, a MITA associate member, has been working with a select group of MITA members to help them reduce their diesel fuel costs while reducing emissions using its synthetic fuel lubricant Orion 5000-EL.

After months of testing, the results are in. Orion 5000-EL reduced diesel fuel costs significantly (see the fuel savings chart) and diesel emissions, especially carbon (see the emissions reduction chart).

### PROTECT YOUR PROFITABILITY

If your business is concerned about the effect of volatile fuel costs, then these results are particularly timely. What can you do

to protect your profitability and mitigate your

exposure to a ru-

mored future carbon tax? Reduce your fuel usage and your carbon emissions. What's the easiest way to do it? Orion 5000-EL.

### IMPROVE FUEL EFFICIENCY

MITA members using Orion 5000-EL experienced fuel efficiency gains of 6% to 9% in both over-the-road and non-road work environments. Using Orion 5000-EL is like saving twenty-seven cents (27 cents) a gallon after treating the fuel.



## CASE STUDY: EMISSIONS

### Emissions Results Using Orion 5000-EL Hydrocarbons 45% Lower. NOx 15% Lower

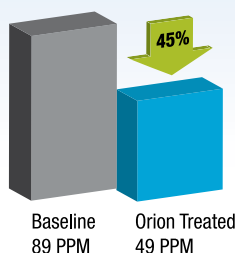
Over the course of its emissions test, MITA member E.T. MacKenzie reduced hydrocarbon and NOx emissions 45% and 15% respectively.

By adding Orion5000-EL to its diesel fuel, they efficiently reduced emissions to get them into a voluntary compliance position.

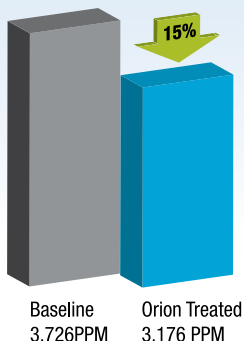
They've also positioned their business to reduce their exposure to a potentially costly carbon tax. And, adding Orion 5000-EL to the fuel was easy to implement.

### Orion 5000-EL Reduces Emissions

#### Hydrocarbons Reduced 45%



#### NOx Reduced 15%



■ Before Orion5000-EL

■ After Orion5000-EL

## CASE STUDY: FUEL USAGE

### Fuel Savings Results Using Orion 5000-EL, 9% or 27 Cents Per Gallon

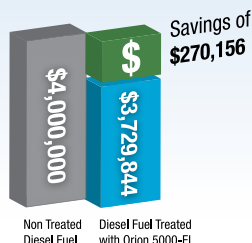
E.T. MacKenzie saved 8.84% on their fuel consumption measured during the study. By adding Orion 5000-EL to their diesel fuel, E.T. MacKenzie saved themselves 27 cents a gallon on diesel fuel.

What could saving 27 cents a gallon do for your organization? The chart below can help you get an idea of how much you could save.

#### How Many Gallons of Fuel Does Your Organization Use?

### Start Saving 27¢ Per Gallon Now

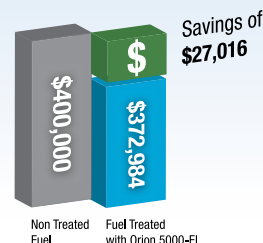
#### 1,000,000 Gallons Save \$270,000 Annually



A 9% fuel savings saves you \$270,156 in fuel expenses after the cost of Orion 5000-EL.\*

\*Based on fuel at \$4.00 per gallon

#### 100,000 Gallons Save \$27,000 Annually



A 9% fuel savings saves you \$27,016 in fuel expenses after the cost of Orion 5000-EL.\*

\*Based on fuel at \$4.00 per gallon



### What is Orion 5000-EL?

Orion 5000-EL is a synthetic fuel lubricant that helps companies in North America and Europe decrease their fuel expenditures and reduce their carbon footprint.

The synthetic lubricants in Orion 5000-EL improve fuel efficiency, reduce maintenance costs and lower annual fuel expenses without any costly retrofits.

Simply put, Orion 5000-EL is the easiest and most cost efficient solution to improve fuel efficiency and reduce carbon emissions.

### Synthetic Fuel Lubricant

When added to the fuel tank, the synthetic esters in Orion 5000-EL enable the fuel to burn more completely.

It reduces emissions like hydrocarbons (HC), nitrogen oxides (NOx), carbon monoxide (CO), and particulate matter (PM) caused by diesel combustion engines.

Using Orion 5000-EL will reduce your exposure to any future carbon tax protecting your profitability while making your company more environmentally friendly.

### TESTIMONIAL

#### Verplank Trucking Increased Fuel Savings 8%

Another MITA member, Verplank Trucking, experienced an 8% increase in fuel economy.

"Orion 5000 works, is easy to administer, and is saving us at least 3 to 5 cents a mile in fuel costs after paying for the product. We did the math. Orion simply works for us,"

Butch Brown  
Maintenance Supervisor  
Verplank Trucking Company



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Conestoga-Rovers & Associates is pleased to announce the acquisition of the remaining fifty percent of affiliate company Inspecsol Engineering Inc. Beginning in January 2013, Inspecsol Engineering Inc. will operate as Conestoga-Rovers & Associates (CRA). Michael Gentner and other Inspecsol staff will continue to provide responsive, cost-effective geotechnical engineering and inspection services based out of the CRA office in Plymouth MI.

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## Vice President of Membership Services



Rob Coppersmith

### Leader – What kind are you?

**A**re you a trusted leader or a dictator or somewhere in between? We all want to live in a democracy, even at work, where we at least live with the illusion that we can make a difference in the big decisions that affect us. But, when it comes to running a business or jobsites, we all have different leadership styles. MITA has invested in the ideal of developing future leaders for the heavy construction industry via the MITA Future Leadership Program. Leadership or the lack there of can make or break an organization. Some principles to consider when you think about how you lead will follow as I discuss both ends of the management spectrum understanding that many of our own styles fall somewhere in between.

There is no leader without followers, and following is completely voluntary. Effective leadership starts with trust, because people will only follow those in whom they have a strong sense of

trust or admiration. A person who communicates purpose and the goals to be accomplished on and off the jobsite develops trust for those they lead. Trusted leaders usually provide an atmosphere where employees are part of a project not just task performers. If employees feel that they provide input that can help reach project goals, they will have a greater sense of ownership over their area of work and more pride in it; thus, they will be a happier more productive employee.

While dictators usually operate from a position of fear, they are followed because followers are afraid not to do what the leaders want for fear of punishment. They obtain compliance by coercion and convincing others to go along because they don't want to make waves. This type of management leads to employees who only do what they are told, don't take care of problems or even bring them to management's attention; and, eventually projects with this type of leader fail or

Continues on pg. 45



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# Safety Update

## A Look Ahead and Behind

**M**any interesting things have occurred between MITA and MIOSHA in 2012. Far too often many focus on the appeals end of the relationship when many other issues are handled. For instance, in 2012 MITA worked with MIOSHA on several different fronts. One example of this is a MIOSHA CET grant to develop an on-line health and safety program. The website will allow any construction contractor to customize a safety program to their specific needs. The site will also provide the ability to modify any saved programs with the click of a mouse. As technology continues to expand on jobsites via use of laptops and smart phones, changes can be made to the programs and sent right to the field.

Rule changes are another area where MITA has been active on behalf of members. MITA has been involved in shaping Part 10 Lifting and Digging; Part 22 Signs, Signals and Barricades; as well as Part 601, Air Contaminants in Construction. MITA represented its members to ensure the changes being made fit with common construction practices and still provided a safe and healthy work place.

Part 10, Lifting and Digging standard now requires that most cranes be operated by Certified Crane Operators (CCO's), which will require passing written and practical exams. Additionally, anyone who gives

signals to a crane operator has to be a certified signal person. Also on the rigging side of the equation, workers involved in the movement of material will have to be approved as "qualified" by the employer and be trained to the level of knowledge necessary for the work at hand. MITA is working toward developing programs to ensure members meet the goals of these new standards. Please remember that many of these new requirements are a result of having to be as effective as federal OSHA rules; however, the scope of these new rules has been tempered due to MITA involvement.

MITA has worked diligently on Part 22, Signals Signs and Barricades. The issue regarding this standard involved the placement, removal and relocation of temporary traffic control. The changes MITA advocated for will allow workers more options when it comes to working off the back or side of a truck or platform when placing or picking up devices. The previous standard was difficult to be in compliance with, and in MITA's estimation the rules did not fit reality. Now they do. If you need training on the traffic placement rule, please call the office.

With Part 601, Air Contaminants in Construction, the issue of interest is silica dust in construction. Special interest groups wanted MIO-SHA to ban dry cutting of silica containing material. This would have

Continues on pg. 46

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**Mike Poggi**  
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# 2012 Year in Review







From jobsite to legislative visits, and all points in between, here is a sample of some of our active members taking part in all that we offer at MITA.

For a schedule of upcoming 2013 MITA events, see page 21.





## Vice President of Engineering Services



Glenn Bukoski, P.E.

### 2012 in Review ...

**A**s we close the books on 2012, I believe it is worthwhile and therapeutic to pause and reflect on some of the most noteworthy accomplishments we achieved in yet another challenging, but successful year. For our industry we have growing optimism about Michigan's recovery as we are seeing a rebirth of activity in the housing and private markets, and finally some renewed stability and a little growth in the public works arena. In maintaining our strong industry voice, and responding to the many interesting and dynamic challenges 2012 brought to our industry, we were able to achieve many significant successes and noteworthy accomplishments, which include:

- Successful advocacy and negotiation for "reasonableness" in the interpretations and implementation of the Buy America requirements on federally funded projects

let through MDOT. MITA's aggressive advocacy on this issue was far reaching and included consultation with MDOT leadership, FHWA Michigan Division leadership, US DOT leadership, ARTBA, various state legislators, and our Michigan congressional delegation. As MITA's success in getting the wanted "reasonableness" has not been fully realized to our satisfaction, we continue to work very aggressively toward that goal.

- Progressive collaboration with MDOT to advance and pilot various "e-business" initiatives with the goal of improving contracting and project delivery efficiencies. These initiatives included, the Design Deliverable Enhancement Project (DDEP) that significantly changed the plan-set format and for the first time provided electronic ".dgn" type design data files pre-bid;

Continues on pg. 47

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## First Six Months of 2013: Critical for Transportation Funding

Legislatively, 2012 went out with a bang with one of the most controversial pieces of legislation in recent memory gaining support during the lame duck session. The Republican-controlled Legislature had discussed the possibility of Right to Work legislation going through the legislative process for the entire 2011 – 2012 session. After the recent failure of Proposal 2 on the November ballot, they took their opportunity to pass the legislation. Gaining national media attention the Right to Work issue and its merits will be debated for generations to come and only time will tell whether or not this will actually benefit the economy in Michigan.

Pushed aside to be debated in another year was how Michigan adequately funds its transportation system. Although passage of increased funding by the \$1.4 - \$1.6 billion annually that the legislative work-group found to be needed didn't occur, there are some positive steps forward on the funding issue that we

can take from 2012.

Momentum from Governor Snyder's infrastructure message in late 2011 carried into 2012 resulting in legislation being introduced in both the House and Senate that would increase revenues by over \$1.2 billion and index those to rising gas prices. Continuing to be one of the most talked about issues at the state Capitol, the Senate formed a Transportation Task Force to go over the various topics dealing with our funding crisis.

That group, led by Senator Roger Kahn, held five individual hearings with various topics including; reforms and efficiencies for local road agencies, asset management programs, current revenue streams and their shortfalls, general conditions of the state's roads and bridges, potential benefits of increased funding and many more throughout the fall hearings.

MITA was heavily involved within all of the discussion throughout the hearings and gave testimony

Continues on pg. 49



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# FHWA Launches New Round of Every Day Counts Innovations

**T**he Federal Highway Administration has rolled out a new set of innovative technologies and processes under its Every Day Counts initiative that can help shorten the time needed to get highway projects finished and open to the public.

For the next two years, FHWA will work with transportation agencies and the design and construction industries to deploy the 13 innovations, which range from construction management techniques to paving machinery that uses GPS technology to build higher-quality, longer-lasting roads.

Every Day Counts, which began in 2010, is achieving significant results on the first round of technologies the initiative promoted. Every state trans-



*MDOT slope repair project on M-222 in Allegan County constructed using CMGC contracting process. Contractor: Millbocker & Sons, Inc. Photo courtesy of MDOT*



*Kent County Road Commission safety edge construction. Contractor: Rieth-Riley Photo Courtesy of MI-LTAP*

portation agency has applied one or more of the technologies, and many are now widely used. Here in Michigan some of the EDC technologies being implemented include Warm Mix Asphalt, Construction Manager-General Manager (CMGC) and Design-Build contracting, Prefabricated Bridge Elements, Safety Edge<sup>SM</sup>, and Adaptive Signal Control, and Programmatic Agreements.

In October the Michigan Statewide Innovation Council with members from MDOT, FHWA, MITA, CRAM, ACEC of MI, NACE of MI, LTAP, TTAP, and SEMCOG, participated in an EDC2 Summit held in Detroit to learn about the following technologies and processes:

**Programmatic agreements**, also part of the first round of Every Day Counts, have been used successfully in Michigan to

streamline routine environmental requirements. In EDC2, some of the newly developed agreements will be applied in additional states or expanded to include regions. The emphasis will be on continuing to increase the efficiency and effectiveness of the highway development process while maintaining appropriate consideration of the environment.

FHWA has developed a three-pronged strategy to help local public agencies navigate the complexities of the Federal-Aid Highway Program. **These strategies for locally administered Federal-Aid projects** include certification and qualification-type programs, indefinite delivery-indefinite quantity consultant contracts and stakeholder committees. Using these strategies can reduce the amount of oversight states need to provide and make it easier for local agencies to follow federal regulations and guidelines.

Although **3D modeling technology** has been widely used in other industries, its potential to increase productivity and efficiency in highway construction is just now being realized. GPS-enabled construction equipment, for example, can run all day and night with guidance from 3D model data and achieve accurate grades on the first pass, reducing waste and improving resource use.

**Intelligent compaction** is a modern approach to compaction of pavement materials, an important construction process that enhances pavement quality and performance. IC uses special vibratory rollers equipped with accelerometers, an integrated measurement system, GPS-based mapping and an onboard computer reporting system. Using IC can accelerate project delivery as well as improve quality.

**Accelerated bridge construction** technologies allow highway agencies to replace bridges faster, more safely and sometimes at lower cost. Three ABC technologies being promoted under EDC2 are prefabricated bridge elements and systems, in which structures or components are built off-site and moved into place in a matter of hours; slide-in bridge construction, in which a bridge is built next to an existing structure and slid into place after the old bridge is removed; and the geosynthetic reinforced soil integrated bridge system, which uses geosynthetic reinforcement and granular soils as a composite material to build enhanced abutments and approach embankments.

The **design-build** project delivery method allows the design and construction phases of a project to be combined in one contract, which can dramatically accelerate project completion over the traditional design-bid-build process, in which design and construction occur sequentially. MDOT has

Continues on pg. 50



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## Legal Issues

Continued from pg. 13

of \$10,000 per day. Assume that, upon completing the first 1,000 lineal feet of the guard rail work item, the Lower Tier Subcontractor abruptly abandons the project and does not respond to efforts to contact them to resume work. Assume that this default occurred in the middle of the construction season; that one week is expended finding and engaging a substitute subcontractor, and, that given the "drop and

run" nature of the engagement, the substitute subcontractor's price is \$80.00 per lineal foot. Finally, assume that the 7 day loss in work progress results in 5 days of penalty Lane Rental for failure to open the lane to traffic within the prescribed time. The math is simple. The Upper Tier Contractor, as the direct and sole result of the Lower Tier Contractor's default and abandonment of the project, will now pay \$120,000.00 more to complete the guardrail work item and will incur \$40,000.00 in Lane Rental penalty for a total of \$160,000 in damages clearly the responsibility of the defaulting Lower Tier Contractor. Under the current application of the PPSP, apparently premised on the assumption that Upper Tier Contractors are bottomless pits of

run" nature of the engagement, the substitute subcontractor's price is \$80.00 per lineal foot. Finally, assume that the 7 day loss in work progress results in 5 days of penalty Lane Rental for failure to open the lane to traffic within the prescribed time. The math is simple. The Upper Tier Contractor, as the direct and sole result of the Lower Tier Contractor's default and abandonment of the project, will now pay \$120,000.00 more to complete the guardrail work item and will incur \$40,000.00 in Lane Rental penalty for a total of \$160,000 in damages clearly the responsibility of the defaulting Lower Tier Contractor. Under the current application of the PPSP, apparently premised on the assumption that Upper Tier Contractors are bottomless pits of

Continues on pg. 34

## Letters to MITA

Continued from pg. 11

Dear Doug:

We sure received some nice feedback from you and Glenn as well as the MDOT people, which was really nice. Thanks again to you and Glenn for your support.

Tom Idema  
Distric Manager  
EJ

Dear Doug:

I just wanted to say thank you to you and the four contractors who attended yesterday's constructability meeting on Sugar Island. The meeting was extremely helpful to us as we evaluate and refine various options for this unique project. All four of the contractors had valuable input for us. We hope to be able to have such meetings on future projects in an effort to design contractor-friendly projects.

C. Douglas Parmerlee, P.E.  
Manager of Bridge Design for Michigan  
URS

Dear Doug:

I would like to thank you for helping us with our issue with this claim. Your preparation was excellent and your presentation was done very well. You handled yourself very professionally where it's hard for me to keep emotion out of it. You were very controlled and informed, and I believe helped them understand that we have a claim and are serious about resolving it however we can. Also, I am pleased with Eric, as I know that he did some legwork as well. I felt his research was critical to getting their attention. Plus, when they see another P.E. enter the room they realize that we are not just some disgruntled contractor with an axe to grind. Thank you.

Scott Bazinet  
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# Legal Issues

Continued from pg. 33

lectible, the Upper Tier Contractor is nevertheless forced to release \$50,000.00 in payment to the defaulting Lower Tier Contractor simply because it "satisfactorily completed" 20% of the work it agreed to perform under its subcontract before breaching it and subjecting

money and that defaulting Lower Tier Contractors who abandon their contracts are financially responsible and col-

the Upper Tier Contractor to \$160,000.00 in damages. In addition to simply eradicating the rights and remedies specified in most subcontracts and ignoring decades of well established common law, this change in application of the PPSP advances the completely absurd notion that those Lower Tier Contractors who blatantly breach their subcontracts should actually be rewarded for doing so.

With the first assertion of this change in application and after exhausting reasonable efforts to convince MDOT to reverse course, MITA was compelled to respond on behalf of the Industry. In a law-

suit commenced in the Ingham County Circuit Court, MITA and its then affected members sued MDOT seeking a declaratory judgment and injunctive relief against MDOT from the enforcement of this new application of the PPSP. The Ingham County Circuit Court has agreed with the Industry's position on the retroactive enforcement of the new application of the PPSP on all contracts let for bid prior to October 3, 2012 and has preliminarily enjoined MDOT from enforcing the change in application of the PPSP on those contracts. However, the court declined preliminary injunctive relief on a prospective basis and has not yet enjoined MDOT from enforcing the change in application of the PPSP presented in CA 2012-17 on contracts let for bid AFTER October 3, 2012. In the interim, Contractors must be aware that the change in application of the PPSP will be applied and enforced by MDOT on all contracts let for bid after October 3, 2012 unless the Court extends it injunctive relief to the prospective enforcement of the change. The action for declaratory judgment remains pending and will likely go to trial in 2013.

Where does this leave Contractors faced with performing MDOT contracts let for bid after October 3, 2012?

First, you do not have any retainage as security for Lower Tier Subcontractor performance. That has not changed.

Second, you are prohibited by the regulations and FHWA interpretation of those regulations from obtaining any sort of security for Lower Tier Contractor performance other than Performance and Payment Bonds. That has not changed.

Third, if one of the Lower Tier Contractors from whom you want a bond happens to be a DBE, you are prohib-

Continued on pg. 36

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## Legal Issues

Continued from pg. 34

to furnish bonds to secure their performance. If one of the subcontractors from whom you require a bond happens to be a DBE, you must unnecessarily escalate the cost of the project by requiring bonds from all subcontractors on the project. That has not changed.

Fourth, you must release payment to defaulting Lower Tier Contractors for the value of any "satisfactorily completed" quantities of work on the project regardless of whether that default has subjected you to tens of thousands of dollars in damages directly attributable to the default of that Lower Tier Contractor. This is a major change.

In summary, this change in application of the PPSP deprives Upper Tier Contractors of all traditional, established, and often contractually specified ways to secure the performance of Lower Tier Contractors on federally funded MDOT projects with the sole exception of Performance and Payment Bonds. The choice available to you as an Upper Tier Contractor on an MDOT federally funded project is a simple one - - - require Subcontract Performance and Payment Bonds from all subcontractors or be prepared to accept the losses resulting from subcontractor defaults in performance. Only you can make the determination whether you have an adequate post-breach remedy pursuing recovery of those damages in civil litigation from a

ited from exercising your good faith business judgment in determining which Lower Tier Contractors you will require

Lower Tier Contractor who has breached and abandoned its contract with you.

Contractors faced with the additional risks naturally flowing from application of this new interpretation of the PPSP would also be well advised to carefully review and structure their contracts with Lower Tier Subcontractors on MDOT federally funded projects to avoid any front loading of the lower tier contract revenue stream. Careful evaluation of front loaded subcontract pricing will be particularly important.

The long term effects of the current application and enforcement of the PPSP remain to be seen. If contractors follow the theoretically logical course of requiring Subcontract Performance and Payment Bonds, the effects should not be long in appearing. Many small contractors working in the MDOT arena cannot obtain Performance and Payment Bonds but that is the only security FHWA has said it will allow. The elimination of the payment suspension security, which was specifically included in the new PPSP, leaves requiring bonds as the only recourse left to contractors if they want to avoid incurring the damages resulting from Lower Tier Contractor defaults and spending time and money to pursue recovery against the likely uncollectible defaulting Lower Tier Contractor. Consequently, it logically follows that those small contractors who cannot obtain bonds will be forced out of the MDOT arena with the corresponding decrease in the number of contractors available to bid upon the work on MDOT projects.

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# Partner News

## ASCE Michigan Section Elects New President and Officers

The ASCE Michigan Section has selected Daniel G. Lewis, P.E., as its 2012-2013 president and has elected new officers for 2013.

Lewis received his bachelor's degree in civil engineering from Calvin College in 2001. Since 2001, he has worked for the Prein&Newhof Kalamazoo office as a project manager and designer on private development and municipal utility projects. One of the most notable projects he has been involved with, which is ongoing, is the redevelopment of the former GM stamping plant on Sprinkle Road in Kalamazoo into a thriving industrial/commercial business park known as Midlink Business Park. This project won the 2005 ASCE Outstanding Civil Engineering Achievement Award.

Founded in 1852, the American Society of Civil Engineers (ASCE) represents more than 144,000 members of the civil engineering profession worldwide and is America's oldest national engineering society. ASCE is the preeminent organization representing the civil engineering profession. ASCE facilitates the advancement of technology, provides the tools for lifelong learning, promotes professionalism, and advocates infrastructure and environmental stewardship. For more information about ASCE Michigan Section, contact the ASCE Michigan office at 517-332-2066. To learn more about the condition of Michigan's infrastructure, view the ASCE Michigan Infrastructure Report Card at [www.michiganreportcard.com](http://www.michiganreportcard.com).

### 2012-2013 ASCE Michigan Section Officers

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## Member Voice

Continued from pg. 20

offered because it might have the most opportunity for the local contractors to be involved.

Bruce Lowing  
*Hardman Construction, Inc.*

Any method other than segmented design-build or design-bid-build will likely result in the exclusion of Michigan prime contractors, leaving the work to be managed by national firms and Michigan contractors as subs. This wouldn't necessarily be a bad thing, but we are suffering from a lack of infrastructure work in Michigan. I would like to see MDOT take an approach that is sensitive to the needs of Michigan's contractors.

Brad Poggi  
*Pinnacle Insurance Partners*

If the projects are too big, then it will be difficult for any Michigan contractors, even if they form a joint or tri-venture to bid on these projects. Larger contractors from out of state tend to perform more work themselves and not subcontract out to the local contractors. We need to keep this work for Michigan contractors that currently have the capacity to do this work if the jobs are let accordingly. Probably contractors in the \$100-\$400 million range could be done with joint and tri-ventures with Michigan contractors. These projects will require long lead times to properly design and plan by the contractor. As we all know, there is currently not enough work for Michigan contractors and we need to encourage MDOT to keep these projects small enough so that more Michigan contractors can bid on the work. When the state of Colorado let their big T-Rex project several years ago, that was completed by Kiewit, they self performed a lot of the work and we do not want the same thing to happen here.

Jeff Ardelean  
*Interstate Highway Construction*

Continues on pg. 42



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# Member Voice

Continued from pg. 41

Why bring in out of state or out of country contractors, engineers, etc., when there are plenty in Michigan with time on their hands.

Tom Washabaugh  
*Northern Concrete Pipe, Inc.*

This size of project will severely limit the competition, resulting in an increase in cost to the taxpayer, as well as open up the door for national and international contractors to come to Michigan and take a huge amount of work from an already under-utilized construction market. These jobs should be bid in a manner to give Michigan contractors the most competitive advantage possible; and, if it means varying the contractor size from \$10-\$100 million each and adding a few extra years to complete, then we

feel that is what needs to be done.

Kenneth P. Nowicki  
*M & M Excavating, Co., Inc.*

I think it's time the state thinks about small business and the amount of jobs we need to get ourselves out of the hole! Mega projects will most likely bring large contractors in from other parts of the United States, and most small business and their employees will still be hurting.

Ron Bretz  
*Ron Bretz Exc., Inc.*

A single design-build or multiple design-build opportunities have proven to be cost effective, reduces time of completion, and tends to transfer more risk from the owner to the D/B team.

Marty Moravec  
*Kiewit*

These methods would eliminate all but the very largest contractors. It also has the potential of either stealing available workers from their normal jobs/companies, or importing workers from out of state leaving local workers without work to keep busy. These kinds of projects look good on paper, but I don't believe that they are any more cost effective.

James M. Cripps  
*President*

Unless you can handle \$50 million plus projects, it is troubling regardless of the delivery method. Also, it opens the door to out of state firms taking work from Michigan contractors.

Jim Zalud  
*Isabella Corp.*

Not many contractors in our state can bond that amount. This would open opportunity to out of state contractors to come in, get pre-qualified, and possibly take these projects from Michigan contractors, where profits go back to their home state to invest. Take more out of the mouths of the smaller contractor, where even our industry becomes a monopoly... sounds like a plan. With that, I personally oppose mega projects.

Frank A. Kramarz  
*Stante Excavating Company, Inc.*

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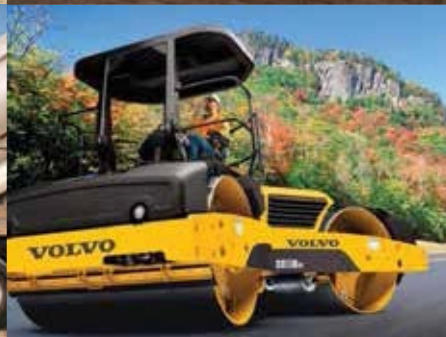




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## Vice President of Membership Services Comment Continued from pg. 26

experience problems on a regular basis.

The question becomes: how do I/we become better leaders on the jobsite? The answer exists in our own behavior and communication skills. These various tenets have been expounded on by many of MITA's keynote speakers over the years. I've put my own spin on many of the thoughts.

- Reward publicly and reprimand privately.
- Hire the best. Leaders do not fail because of a superior staff.
- Refuse to get upset. Be a part of the solution. Once you get upset you become part of the problem.
- Resist the blame game. When you're looking for blame, you are wasting time and not solving the problem at hand. You can go back to it later if need be.
- "If your crew sucks, it's because you suck. Be a better leader." *Larry Winget*
- "Never tell people how to do things. Tell them what to do and they will surprise you with their ingenuity." *General George S. Patton*
- Greet people that come onto your jobsite. Know as many of them as possible by name.
- Maintain eye contact when talking to others. Stop looking at your boots.
- Don't overreact too strongly to anything good or bad.
- Ask lots of questions instead of trying to prove how smart you are.
- Better to pay a good attorney than a bad employee.

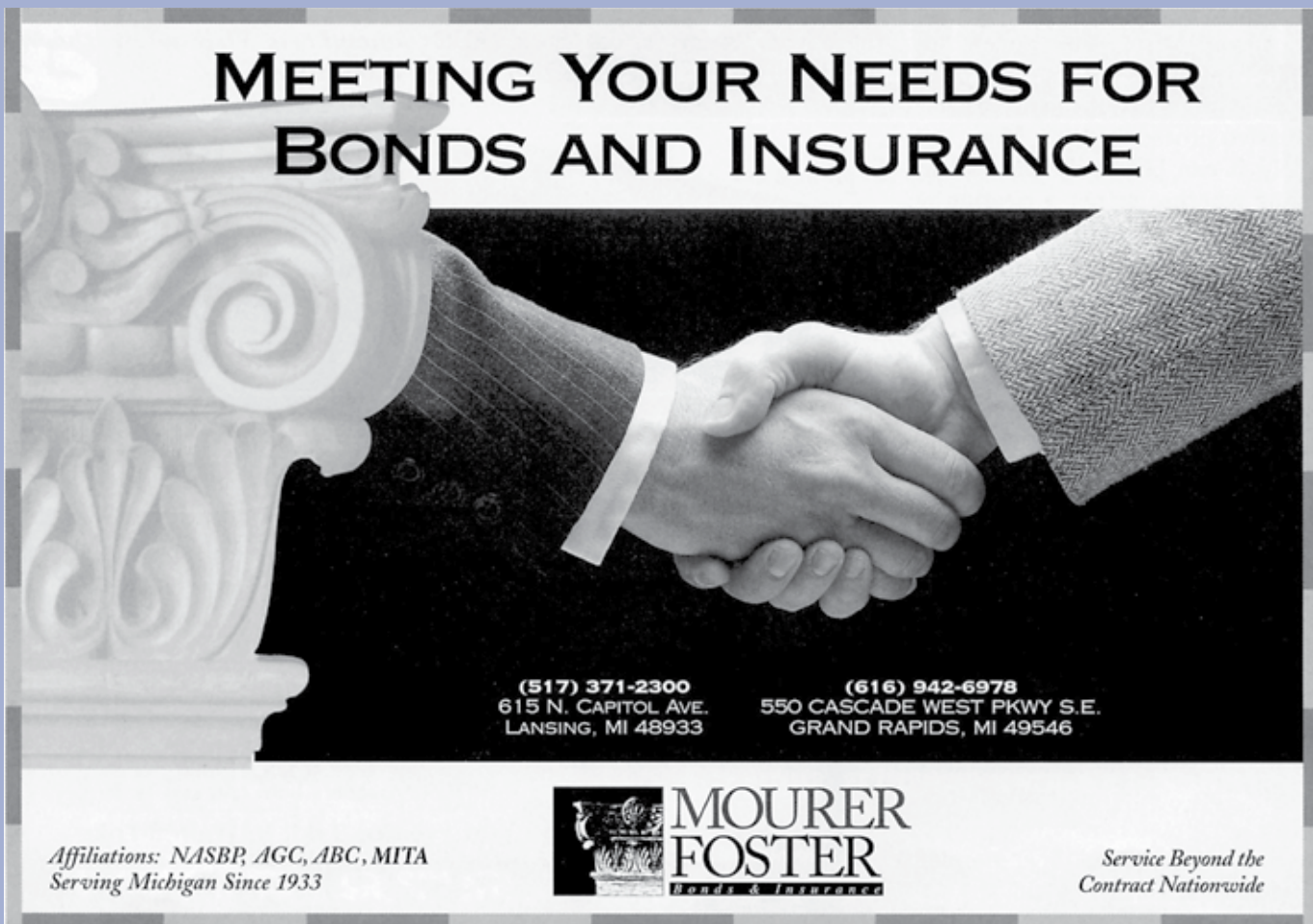
- Don't interrupt, even if you have to listen to something really stupid.
- If you want the best performance from someone, you need to treat them as people before employees. You know the difference. They will too.
- Mentor, coach, challenge, be consistent.
- Take responsibility for your results and hold people accountable for theirs.

The main principle to remember is that you have the best opportunity to impact how successful your organization is, how productive your employees are and it all comes down to how you lead and communicate. It's not surprising in a male dominated field that communication may be a problem and some days we can only operate in a dictator style of management. What everyone needs to do from time to time is determine if they've gotten into a rut in regards to how they manage. Remember it's not often what you say but how and when you say it that may be a problem.

Please consider enrolling your key personnel in the MITA Future Leaders Program. It will be an investment in your organization that I'm sure you won't regret.

To contact Rob Coppersmith, e-mail him at [roboppersmith@mi-ita.com](mailto:roboppersmith@mi-ita.com) or call the MITA office at 517-347-8336.

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## Safety Update

Continued from pg. 26

been a huge burden on MITA members. MITA was able to educate these groups on the negative effect the ban would have had on the construction industry and suggested various engineering controls that allow for dry cutting yet provide safety to workers.

MITA also hosted and participated in one of three strategic planning workshops to assist in the development of MIOSHA's next five-year plan. This was the first time industry had been asked to provide input to this critical process that sets the direction for MIOSHA enforcement and training activity.

With all that said, MITA still appealed over 400 MIO-SHA citations on behalf of members in 2012. To expedite but still provide proper oversight regarding appeals, MITA worked with MIOSHA to develop a new process which involves dealing directly with the enforcement division during the first appeal step in an effort to find resolution to less egregious citations. MIOSHA has designated a representative to work directly with MITA on these appeals. The process is working. However, it should be known that MITA has taken more citations to formal hearing than ever before. The best way to avoid the need to appeal is to train and demand compliance within your own organization. Don't wait for MIOSHA to provide the compliance component for you!

If you need training or a jobsite inspection, please do not hesitate to contact the MITA office.

Please contact Rob Coppersmith ([roboppersmith@mi-ita.com](mailto:roboppersmith@mi-ita.com)) or Patrick Brown ([patrickbrown@mi-ita.com](mailto:patrickbrown@mi-ita.com)) or call them at the MITA office (517-0347-8336) with any questions or comments.



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the Electronic Document Management System which requires the submittal of all contract field documents via an “electronic file cabinet” application; and the Electronic Contracting – Phase I initiative which provides all the contract documents to confirmed low bidders electronically through Bid Express.

- Successful launch of improved MITA DBE/MBE/WBE Solicitations website. This re-commissioned website incorporates enhanced interactive features that can improve your DBE solicitation efforts and results. In addition to its enhanced solicitation features, the website provides subscribing DBE companies automatic notifications when advertisements match their target work types. If you have not yet utilized MITA's DBE/MBE/WBE Solicitations as a part of your Good Faith Efforts, check it out now at [www.MITAdbe.com](http://www.MITAdbe.com).
- After years of aggressive advocacy for changes and transparency in the MDOT process for paying contractors for changes in contract work, MITA's efforts were finally rewarded when MDOT totally restructured the contract modification process. Key structural changes in the implementation of the new contract modification process were the resignations of approval authority by the State Administrative Board and the State Transportation Commission. In satisfying MITA's goal of timely payment to contractors the new contract modification process established very specific process steps, document content, approval thresholds, and action timeframes. To further expedite the contract modification processing timeframe MDOT incorporated an optional digital electronic signature feature. Experience to-date has shown that contract modifications processed using the “e-signature” feature result in payments to contractors as much as 4X faster than those processed using the traditional hand-signed hard copy method.
- Partnered with MDOT Bridge Field Services leadership to reinvigorate the historically successful industry “Bridge Committee” as the MITA/MDOT Bridge Operations Committee. The early successes of this collaborative effort include the publishing of MDOT's Field Manual for Pile Welding, and MDOT's agreement to include all geotechnical factual report data in the pre-bid electronic Reference Information Documents.
- Proactively facilitated a series of meet-

ings and discussions with MDOT leadership about their Metro Region's reconstruction and modernization plans in the I-94 and I-75 corridors ... the projects now commonly referred to as the “MDOT Mega Projects”. With estimated projects costs of \$1.5 billion and \$800 million respectively, MITA's interests in these early Mega Projects strategy discussions are that MDOT structure the project delivery approaches in ways that provide maximum opportunity for Michigan companies in the competitive bid process.

- Several significant successes in the “trucking” arena that include legislative fixes for lowboy trailer length issues and axle misload situations; MDOT permit policy changes that will incorporate “up to” language for permitted weight and dimensions and expanded allowances for the nighttime movement of construction equipment; and the Department of Licensing and Regulatory Affairs adoption of “site of work” and “de minimus” definitions and criteria that mirror the federal Davis-Bacon prevailing wage rules for truck drivers.

With the memories of these 2012 successes now in our minds, we look forward with much anticipation and optimism to the many opportunities 2013 will bring to our state and to our industry. Your MITA staff stands “at the ready” to help you navigate through the sea of challenges so that your company can grow and prosper from these opportunities!

To contact Glenn Bukoski, P.E., e-mail him at [glennbukoski@mi-ita.com](mailto:glennbukoski@mi-ita.com) or call 517-347-8336.

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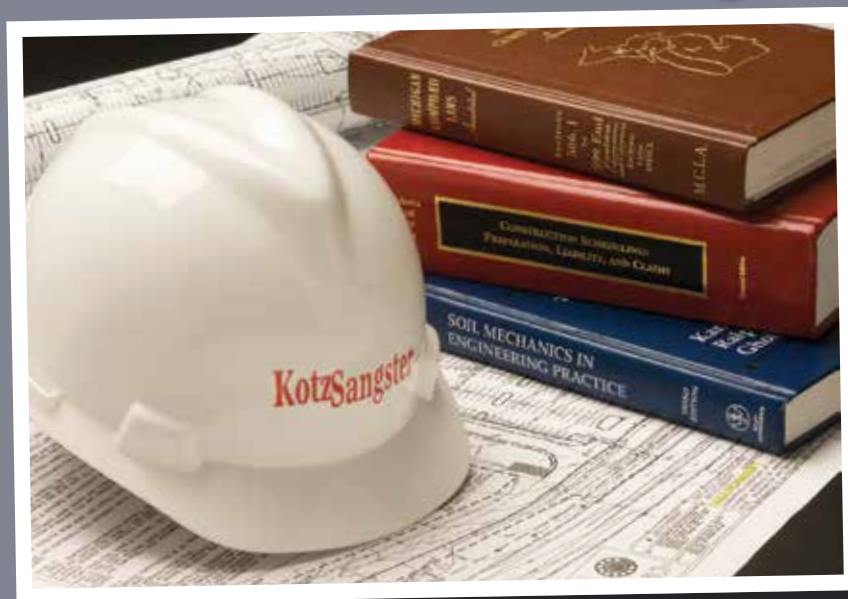
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## Vice President of Government Affairs Comment

Continued from pg. 30

in two of them. It was announced at the final hearing that the goal of the task force was to present to legislative leaders a recommendation of how to raise additional revenues to adequately fund Michigan's transportation system and have those ready for legislative action by early February 2013.

The first six months of the new year will be critical in accomplishing our goal of increased funding. We are putting together a media strategy for those first six months in hopes of engaging the public more on this debate. The increased presence on radio, television and in the print media will help grab the attention of elected officials as well in hopes that they understand how critical adequately funding our infrastructure is to the future of this state. Our members will also play a significant role in getting that message out to the public and elected officials. Any communication to your state representative or senator will go a long way in helping move the needle in Lansing on transportation funding.

There were several other items that MITA had been working on throughout the past year that we saw come to a completion before lawmakers went home for the holidays. One item that will help out the underground industry is the passage of legislation that frees up over \$650 million through bonds approved by voters in 2002. The new legislation will set up easier to access and lower interest loans for communities seeking to improve their underground water and sewers. For more information on the program, please see the Underground Spotlight on page 7.

On the trucking side, a change regarding how fines for misloaded equipment or materials are given moved through the Legislature on the final day of session. Currently under law if a commercial motor vehicle is over weight on a given axle by less than 4,000 pounds, a \$200 fine is automatically assessed through the local jurisdiction. The new law will do several things. First, it will give the local magistrate the option of whether or not to even assess the fine altogether. Secondly, it will only charge the fine for over weight loads on individual axles from 1,000 – 4,000 pounds, giving some leniency from 0 – 1,000 pounds. Next, the new law will calculate the penalty by pennies per pound over weight; and, if that calculation is less than \$200, the fine will reflect that level. Finally, when dealing with over weight loads on individual axles when a special permit is issued the fine will be \$200 if the load is less than 1000 pounds over on any given axle. In addition, the conditions of the special permit would remain valid.

We had heard from several members who were receiving fines for axle misloads when operating under a special permit, and the local law enforcement agencies were voiding the special permit and calculating the fine based off the legal load weight limits, which in some cases meant tens of thousands of dollars in fines. We will continue to watch how this new law will be enforced and seek additional changes if necessary.

Another positive item that passed during the lame duck session affects those members who do work on publicly owned projects. The new law deals with indemnity requirements in construction contracts with public entities. The law would specifically prohibit a public entity from requiring an architect, engineer or contractor to defend the public entity or any other party from liability claims or to indemnify the public entity or other party for an amount greater than the degree of fault of the architect, engineer or contractor. During the final stages of the legislative process, all higher education institutions were exempted from the legislation.

Contact Lance Binoniemi, Vice President of Government Affairs, at [lancebinoniemi@mi-ita.com](mailto:lancebinoniemi@mi-ita.com) or call him at 517-347-8336 with any questions or comments.

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## FHWA Innovations

Continued from pg. 32

fully implemented design-build as one method to accelerate project delivery.

In the **construction manager-general contractor (CMGC)** process, the project owner hires a contractor to provide feedback during the design phase. Once the design phase is complete, the contractor and project owner negotiate a price for the construction contract. MDOT has fully implemented the CMGC process that enables the contractor to offer suggestions during the design

phase on innovation use and best practices and enables MDOT to make informed decisions on costs and scheduling.

The use of **alternative technical concepts** gives contractors the opportunity to propose innovative, cost-effective solutions that are equal to or better than the state's design and construction criteria. This contracting approach promotes competition and allows highway agencies to choose design and construction solutions that offer the best value.

The following EDC2 initiatives will be introduced in the spring of 2013:

**High-friction surface treatment** involves applying high-quality aggregate with friction values far exceeding conventional pavement friction to existing or potential high-crash areas.

**Geometric intersection and interchange designs** such as roundabouts, diverging diamond interchanges and intersections with displaced left-turns or variations on U-turns are now available that reduce or move crossover, or conflict points in intersections to improve safety.

While most map-building applications at federal, state and local transportation agencies are housed internally, a new **geospatial data collaboration initiative** uses cloud-based geographic information system services to improve data sharing within agencies and among project delivery stakeholders leading to faster consensus building and improved decision support.

The EDC2 **quality environmental documentation initiative** is designed to improve the quality and reduce the size of National Environmental Policy Act documents developed for construction projects thus accelerating project delivery and achieving better environmental outcomes.

Crashes, disabled vehicles and road debris create unsafe driving conditions and cause about 25 percent of all traffic delays. A **first responder training initiative** will offer the first national, multidisciplinary traffic incident management process and training program. The initiative will promote shared understanding of the requirements for safe and quick clearance of traffic incidents, prompt and open communications, and motorist and responder safeguards.

For more information on the EDC2 initiatives please contact Ted Burch in the FHWA-MI Division at (517)377-1844 or go to [www.fhwa.dot.gov/everydaycounts/edctwo/index.cfm](http://www.fhwa.dot.gov/everydaycounts/edctwo/index.cfm).

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