

MDOT NO           

## MEMORANDUM OF AGREEMENT

### Historic Fort Wayne Mitigation

This MEMORANDUM OF AGREEMENT (MOA) is made and entered into on \_\_\_\_\_, between the Michigan Department of Transportation (MDOT) and the City of Detroit, a Michigan municipal corporation, acting by and through its General Services Department and Parks & Recreation Division (DPRD), to provide for environmental-mitigation activities at Historic Fort Wayne.

### RECITALS:

- A. In 2012, the State of Michigan and the Government of Canada entered into an agreement (Crossing Agreement) for the construction of a new international crossing, later named the Gordie Howe International Bridge (GHIB).
- B. During the environmental-review process for the GHIB project, MDOT entered into a Memorandum of Agreement, dated December 22, 2008, and incorporated by reference herein, with the Federal Highway Administration (FHWA) and the Michigan State Historic Preservation Officer (MSHPO) regarding the effect of the GHIB project on nearby historic properties as required under 36 CFR Part 800.
- C. The FHWA/MSHPO Memorandum of Agreement identified mitigation requirements for affected historic properties, including those for Historic Fort Wayne, located at 6325 W. Jefferson Ave., Detroit, MI 48209 (the Property).
- D. The Property is currently under the jurisdiction and control of the City of Detroit, through the DPRD, and MDOT is prepared to disburse certain funds to the DPRD in order to complete the Project (as defined herein).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficient of which is hereby severally acknowledged, the parties hereby agree as follows:

### TERMS:

1. **The Project.** The parties agree to undertake and construct the Project at the Property, as described in Exhibit A to this MOA, attached hereto and

incorporated herein by reference (Project).

2. **Project Cost and Project Funds.** In order for the DPRD to complete the Project, MDOT shall provide the DPRD a lump-sum amount of Two Million Three-Hundred Thirty-Thousand Dollars (\$2,330,000) (Project Funds).

- (a) The Parties estimate that the Project Funds are sufficient to cover the anticipated cost for the construction, engineering, and oversight directly necessary for the completion of the Project (Project Cost).
- (b) MDOT shall provide the DPRD with the Project Funds, in full, within thirty (30) days of the execution of this MOA.
- (c) MDOT shall provide the Project Funds solely using funds provided by Canada to MDOT in accordance with the Crossing Agreement. MDOT is not obligated to provide the DPRD any additional federal or state funds to complete the Project, or for any other reason under or related to this MOA.
- (d) Once it has received the Project Funds from MDOT, the DPRD shall be responsible for the use of all Project Costs to complete the Project, and shall be responsible for any Project Costs it incurs which exceed the available Project Funds.
- (e) Should the DPRD complete the Project without expending all the Project Funds, the DPRD shall use such surplus Project Funds solely for future preservation work at the Property.

3. **Project Completion.** The DPRD will complete all Project work within one calendar year of receiving the Project Funds from MDOT. MDOT may agree to extend this timeframe in writing for good cause shown.

4. **MDOT Oversight and Final Inspection.** MDOT may perform, at no charge against the Project Funds, such administration, oversight, and inspection of the Project covered by this MOA as is necessary to ensure that the Project satisfies MDOT's environmental-mitigation requirements under the FHWA/MSHPO Memorandum of Agreement.

- (a) MDOT's administration as referenced herein may include performing such review, legal, and any other Project related activities as are necessary to assist the DPRD in meeting applicable State requirements.

- (b) MDOT may conduct a final inspection of the Project to ensure the Project meets Federal and State requirements.
- (c) No charges will be made by MDOT to the Project for any inspection work or construction engineering. Any review or oversight undertaken by MDOT is for its own purposes and is not to nor does it relieve the DPRD of liability for any claims, causes of action, or judgments arising out of the design of the Project.
- (d) For the avoidance of any confusion, any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by MDOT pursuant to the terms of this MOA are done to assist the DPRD in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by MDOT shall not relieve the DPRD and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that MDOT is assuming any liability, control or jurisdiction. The providing of recommendations or advice by MDOT does not relieve the DPRD and the local agencies, as applicable, of their exclusive jurisdiction of the Property. When providing approvals, reviews and recommendations under this contract, MDOT is performing a governmental function, as that term is defined in MCL 691.1401 et seq. as amended, which is incidental to the completion of the Project.

5. **Contractor Selection and Award.** The DPRD will advertise and award a contract to complete the Project, but only after each of the following has occurred first:

- (a) MDOT provides an initial design for the Project;
- (b) DPRD reviews, revises, and ultimately approves the Project design.
- (c) The DPRD certifies to MDOT that the plans, specifications, and estimates for the Project will comply with applicable State laws, standards, and regulations.
- (d) The DPRD certifies to MDOT that the contracting procedures to be followed by the DPRD in connection with the solicitation of the construction contract for the Project will be based on an open competitive bid process. It is understood that the proposal for the

Project shall be publicly advertised and the contract awarded on the basis of the lowest responsive and responsible bid in accordance with applicable State statutes and regulations.

- (e) MDOT provides the DPRD with a “notice to proceed” with the award of the construction contract for the Project. The DPRD shall not authorize the recipient of the construction contract to proceed and begin work on the Project prior to receipt of MDOT’s notice to proceed.

**6. Construction Administration and State Laws.**

- (a) The DPRD will, at no cost to the Project Funds or MDOT, comply with all applicable State statutes and regulations, including, but not limited to, those specifically relating to construction contract administration and obtain all permits and approvals with railway companies, utilities, concerned State, Federal, and local agencies, etc., and give appropriate notifications as may be necessary for the performance of work required for the Project.
- (b) The DPRD agrees to comply with all applicable requirements of Part 91, Soil Erosion and Sedimentation Control of the Natural Resources and Environmental Protection Act, 1994 PA 451 as amended by 1995 PA 60 and 1996 PA 173, MCL 324.9101 et. seq., for all Project work performed under this MOA, and the DPRD shall require its contractors and subcontractors to comply with the same.
- (c) All work in connection with the Project will be performed in conformance with MDOT’s current Standard Specifications for Construction, special provisions, and the supplemental specifications and plans pertaining to the Project. All materials furnished and used in the construction of the Project shall conform to the aforesaid specifications. Any changes in the scope of work for the Project will require approval by MDOT.
- (d) The DPRD shall designate a project manager who shall administer the Project and ensure that the plans and specifications are followed, and shall perform or cause to be performed the construction engineering and inspection services necessary for the completion of the Project. Should the DPRD elect to use consultants for construction engineering and inspection, the DPRD shall provide a full-time project manager employed by the DPRD who shall ensure that the plans and

specifications are followed.

- (e) The DPRD shall require the contractor who is awarded the contract for the construction of the Project to provide, as a minimum, insurance in the amounts specified in and in accordance with the MDOT's current Standard Specifications for Construction, and to:
  - (1) Maintain bodily injury and property damage insurance for the duration of the Project.
  - (2) Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, MDOT and its officials, agents and employees, the DPRD, and any other party with jurisdiction for the Property, and their employees, for the duration of the Project and to provide copies of certificates of insurance to the insureds. It is understood that MDOT does not assume either ownership of any portion of the Project or jurisdiction the Property as a result of being named as an insured on the owner's protective liability insurance policy.
  - (3) Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current Standard Specifications for Construction and to provide copies of notices and reports prepared to those insured.

## **7. Record Keeping and Reporting.**

- (a) The DPRD shall establish and maintain adequate records and accounts relative to the Project Cost. Said records shall be retained for a period of three (3) years after completion of construction of the Project and shall be available for audit by MDOT.
- (b) The DPRD agrees that any Project Costs it reports to MDOT under this MOA shall represent only those items that are properly chargeable in accordance with this MOA.
- (c) In the event of a dispute with regard to allowable expenses or any other issue under this MOA, the DPRD shall continue to maintain the records at least until that dispute has been finally decided and

the time after all available challenges or appeals of that decision has expired.

- (d) The DPRD, within six (6) months of completion of the Project, will make a final reporting of the Project Costs to MDOT and certify that the Project has been constructed in accordance with the Project plans, specifications, and construction contract.
- (e) MDOT, or its representative, may inspect, copy, or audit the records at any reasonable time after giving reasonable notice.

7. **DPRD Affirmations.** At MDOT's request, the DPRD confirms here that it:

- (a) will be responsible for ensuring that the Project complies with all applicable provisions of the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.*
- (b) has read the MOA terms and has made itself aware of the applicable laws, regulations, and terms of this MOA that apply to the reporting of the Project Costs incurred.

8. **Hazardous Substances.** If, subsequent to execution of this MOA, previously unknown hazardous substances are discovered within the Project limits, which require environmental remediation pursuant to either State or federal law, in addition to reporting that fact to the Michigan Department of Environment, Great Lakes, and Energy, the DPRD shall immediately notify MDOT in writing of such discovery. Within thirty (30) days of DPRD's delivery of such notice, MDOT and DPRD shall convene a meeting to discuss whether such environmental remediation can be addressed within the available Project Funds. If the Project, including any required environmental remediation, cannot be completed with available Project funds, then DPRD will propose to MDOT what scope of the original Project (including any required environmental remediation) and any additional preservation work at the Property can be completed with available Project Funds and, if MDOT agrees with such proposal, then the scope of the Project shall be amended to align with such proposal. If MDOT does not agree with such proposal then MDOT and DPRD will work together in good faith to identify a mutually agreeable replacement Project at the Property on which the Project Funds will be used within sixty (60) days of DPRD's notification of the presence of hazardous substances to MDOT. In no event will MDOT be required to provide DPRD with additional Project Funds or otherwise be liable for the discovery of hazardous substances within the Project limits.

9. **Hazardous Remediation.** If any Project Funds are used to pay the cost of remediating any hazardous substances discovered after the execution of this MOA,



and if there is a reasonable likelihood of recovery, the DPRD, in cooperation with the Michigan Department of Environment, Great Lakes, and Energy and MDOT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, DPRD shall use such recovered costs solely for future preservation work at the Property.

10. **MDOT Jurisdiction.** MDOT, by executing this MOA, and rendering services pursuant to this MOA, has not and does not assume jurisdiction over the Property for any purpose. Exclusive jurisdiction over the Property rests with the DPRD and other local agencies having respective jurisdiction.

11. **DPRD Responsibility.** It is agreed that ultimate responsibility and control over the Project rests with the DPRD and local agencies, as applicable. Any material changes in the scope of work for the Project will require approval by MDOT, which such approval shall not be unreasonably withheld and shall be returned (or denied) within ten (10) business days.

12. **Liability.** Each party to this MOA will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. This MOA shall not be construed as an increase or decrease to either party's liability for or governmental immunity from tort claims. This MOA also provides neither party a right of indemnification, either by contract or by law, for claims arising out of the performance of this MOA.

13. **Default and Repayment of the Project Funds.** If DPRD does not complete the Project within the timeframe established in Paragraph 3, or otherwise fails to comply with the terms of this MOA as reasonably determined by MDOT, and fails to cure such failure to MDOT's sole but reasonable satisfaction within sixty (60) days of MDOT's delivery of notice of such failure to DPRD, then upon MDOT's written request following the expiration of such sixty (60) day cure period, DPRD shall return any unspent amount of the Project Funds to MDOT, and MDOT shall take all remaining actions necessary to achieve compliance with the FHWA/MSHPO Memorandum of Agreement.

14. **Nondiscrimination.** In connection with the performance of Project work under this MOA, the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in **Appendix A, attached hereto and made a part hereof.** The parties further covenant that they will comply with the Civil Rights Acts of 1964 being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

15. **Miscellaneous.** This MOA shall become binding on the parties hereto upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of any necessary resolution approving said MOA and authorizing the signatures thereto of the respective officials of the DPRD (the Effective Date). The DPRD shall return a fully executed copy of the MOA to MDOT, complete with a certified copy of any necessary resolution attached.

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[remainder of page intentionally left blank; signature page follows]

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<p><b>CITY OF DETROIT,</b> a Michigan municipal corporation,</p> <p>By: _____ Name: Crystal Perkins Its: Director – General Services Department</p> <p>Date: _____</p>	<p>MICHIGAN DEPARTMENT OF TRANSPORTATION</p> <p>By: _____ Title: <i>for</i> Department Director MDOT</p>
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