

**COOPERATIVE AGREEMENT
BETWEEN
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND
WISCONSIN DEPARTMENT OF TRANSPORTATION**

June 1, 2020

PART ONE: Purpose and General Principles

1.1 Statement of purpose

The purpose of this cooperative agreement is to establish the overarching interdepartmental liaison procedures that the Department of Natural Resources (DNR) and the Department of Transportation (DOT) shall utilize to balance responsible environmental stewardship with transportation infrastructure needs. The DNR and DOT recognize that utilizing the tenets of this cooperative agreement will result in broader benefits such as coordinated planning efforts, synchronized reviews and overall gains in government process efficiencies. While the Wisconsin Legislature has charged DNR with the responsibility for protecting and enhancing the State's natural resources and DOT with the responsibility for furnishing the public with a safe and efficient transportation system, this agreement creates opportunities for agency collaboration for the overall benefit of Wisconsin's citizens. Our dedicated and professional employees have a shared obligation to serve the public interest and therefore agree to collaborate in a timely manner to assure our missions are considered and our mutual responsibilities are met.

1.2 Statutory authority

- a) Section 30.2022, Wis. Stats., provides transportation activities that are carried out under the direction and supervision of DOT are not subject to the prohibitions or permit or approval requirements of certain DNR regulatory authorities so long as the transportation activities are accomplished in accordance with the liaison procedures established by this agreement.
- b) Section 30.2022, Wis. Stats., does not extend to Chapter 283.33, Wis. Stats., which establishes DOT's responsibility to apply for, obtain and adhere to permit coverage requirements under the Transportation Construction General Permit (TCGP) and Transportation Separate Storm Sewer System General Permit (TS4) for storm water discharges under Wisconsin's Pollutant Discharge Elimination System Permit (WPDES) issued by DNR per the liaison processes described herein.

1.3 General principles of the cooperative agreement

- a) It is the intent of this agreement that the primary contacts work cooperatively and in a timely manner, consistent with project scoping, design engineering, construction and

maintenance schedules and the need for effective environmental protection.

- b) DNR Regions, DOT Regions, and the central offices of both agencies will maintain close communications to achieve the objectives of this agreement. Coordination is a priority to ensure decisions, including policies and procedures, reached at each agency's central office are communicated to staff statewide on a regular basis to ensure consistency.

1.4 Primary agency contacts

- a) The primary agency contacts for purposes of this agreement are DOT Region Environmental Coordinators (RECs) or DOT Region Storm Water Erosion Control Engineers (SWECEs), as appropriate, and DNR Transportation Liaisons (TLs).
- b) Other agency contact roles and responsibilities are described in separate portions of the agreement.
- c) DNR and DOT region staff shall meet at least semi-annually (spring and fall) to continually improve interagency cooperation. The purpose of these interagency team meetings is to build relationships, provide environmental and transportation-based learning, share corresponding agency updates and discuss high priority projects. These meetings shall also serve to foster engagement with key agency experts. Meeting agendas and minutes will be developed cooperatively by the DNR and DOT region staff.

PART TWO: Liaison Procedures for DOT Projects

2.1 Scope and applicability

- a) It is the intent that interagency review of transportation projects will result in mutual concurrence and stormwater coverage as required for DOT directed and supervised projects. This PART TWO describes the liaison procedures for DOT directed and supervised transportation facilities development process consisting of project scope, design engineering, construction, and maintenance to provide environmental protection at a level equivalent to the protection offered by the pertinent DNR regulatory authorities.
- b) This agreement applies to activities carried out under the direction and supervision of DOT in connection with highway, bridge, or other transportation project design, construction, reconstruction, maintenance, repair, special projects, harbors, airports, and railroads.
- c) DOT frequently directs and supervises transportation projects for counties, municipalities, and other local government units as part of its statutory responsibilities and therefore these projects are covered by this agreement. It is DOT's responsibility to communicate environmental commitments for these projects to the local government units and assure they are implemented appropriately.
- d) DOT may hire consultants to facilitate scoping, design engineering, and construction portions of the facilities development process. These consultants act as agents for DOT, utilizing the liaison procedures, but the ultimate responsibility for coordination and

decision-making authority with DNR rests with DOT.

- e) Projects directed and supervised by DOT but constructed by a county or other government unit under a Local Force Agreement, are covered by this agreement. The municipality, or its representative, act as agents for DOT utilizing the liaison procedures. The ultimate responsibility for coordination and decision-making authority with DNR rests with DOT.
- f) DNR and DOT may review certain utility projects under the liaison procedures set forth in this agreement. Only those areas and activities described in DT1553, the Application/Permit – Construct/Operate Utility Facilities on Highway Right-of-Way, and are directed and supervised by DOT may be covered through the agreement. For any utility work not directed and supervised by DOT, a utility company must contact DNR for the necessary permits and approvals.
- g) Both agencies encourage efforts to resolve interagency conflicts before the formal conflict resolution process begins, or to prevent such conflicts from occurring in the first place. If a conflict cannot be resolved by the primary agency contacts in PART ONE (1.4), either agency may initiate the conflict resolution process described in PART FOUR.

2.2 Project scoping and design engineering

- a) The primary points of contact between the agencies during scoping and design engineering are the DNR's TL and the DOT's Project Manager in coordination with the DOT's RECs and SWECEs. Generally, the project scoping and design engineering ends with the contract letting.
- b) DOT shall request that DNR serve as a Cooperating Agency for federal and state environmental impact statements and environmental assessments, as applicable. DOT shall provide DNR with other notices and documentation upon request.
- c) During project scoping, DOT shall evaluate potential environmental aspects prior to final scope certification. DOT shall request an initial review letter from DNR immediately following approval to begin preparation for an environmental document for the proposed project. A project location map, basic project information and reason for the proposed project should accompany this request. The DNR initial review may grant final project concurrence. DNR may delegate concurrence to DOT if projects meet established requirements.
- d) DNR shall review proposed transportation facility improvements and make the recommendations necessary to comply with applicable environmental and regulatory requirements. DNR, in making its review and recommendations, shall recognize that it is the policy of the state to provide a safe and efficient transportation system that minimizes negative environmental impacts and reflects the total public interest.
- e) DOT shall consider DNR recommendations incident to the location, design, construction and maintenance of facilities. If DOT determines that it is not feasible to implement the DNR recommendations, appropriate department staff shall meet and resolve any differences. In such circumstances, both departments shall keep in mind the public interest as well as the

specific needs that each agency is mandated to administer.

- f) DOT shall receive DNR final concurrence, by letter or delegation, prior to project construction and in accordance with scheduling needs identified by DOT. DOT shall not advance to construction until DNR provides final concurrence with the project. In rare circumstances where DNR final concurrence is not achievable prior to construction, the primary agency contacts shall agree to a timeline for achieving final concurrence. Any project that proceeds to construction before final concurrence as described herein is not accomplished in accordance with this agreement and the exemption under Section 30.2022, Wis. Stats., does not apply.
- g) Environmental commitments documented through the liaison procedures under this agreement shall be included in the construction contract documents.
- h) Both agencies encourage efforts to resolve interagency conflicts before the formal conflict resolution process begins, or to prevent such conflicts from occurring in the first place. If a conflict cannot be resolved by the primary agency contacts in PART ONE (1.4), either agency may initiate the conflict resolution process described in PART FOUR.

2.3 Post award and project construction activities

- a) The primary points of contact are the DNR's TL and the DOT's Project Leader in coordination with the DOT's RECs and SWECEs. Post award and project construction begin with DOT awarding the contract and ends with construction final closeout, including termination of coverage under the TCGP, if applicable.
- b) DOT shall monitor the activities of the contractor, and if necessary, take the appropriate correction action(s) as described in Section 2.4 to assure the environmental commitments, contract specifications, and regulatory requirements for the project are being met.
- c) Consistent with concepts and procedures outlined within this agreement and with the conditions of the TCGP and TS4 permit coverage, it is the intent of each agency to cooperate to the fullest to minimize or eliminate construction site erosion and address post construction storm water management on projects directed and supervised by DOT. When discrepancies arise between Chapter TRANS 401, Wis. Adm. Code and the conditions of the TCGP or TS4 permits, the permit conditions take precedence.
- d) DOT shall review the contractors initial and subsequent work schedules and Erosion Control Implementation Plan (ECIP) and all ECIP Amendments to ensure they satisfy the commitment requirements prior to approval. DNR shall be afforded the opportunity to review and comment on the ECIP per TRANS 401. Evidence of approval shall be kept in the DOT Project Leader's field office or other appropriate DOT office with a copy provided to the appropriate DNR TL.
- e) DNR shall consider actions taken by a contractor as an action taken by DOT, if the contractor's action is consistent with the approved initial and subsequent work schedules and ECIP. If the contractor begins implementation of an ECIP prior to DOT approval in consultant with the DNR, then said work is not accomplished in accordance with the

interdepartmental liaison procedures established by this agreement and therefore the exceptions under Section 30.2022, Wis. Stats., does not apply.

- f) Because there are safety issues associated with an active construction site, the DNR TL or other DNR representative shall attempt to inform the DOT Project Leader or their representative of their presence upon entering the construction site. If contact is made, the DOT Project Leader or their representative and the DNR TL or other DNR representative shall discuss and coordinate any project site access considerations.
- g) When the DNR TL or other DNR representative conducts a site visit, they shall communicate any deficiencies discovered with the Project Leader, SWECE, and/or REC as soon as possible.
- h) Both agencies encourage efforts to resolve interagency conflicts before the formal conflict resolution process begins, or to prevent such conflicts from occurring in the first place. If a conflict cannot be resolved by the primary agency contacts in PART ONE (1.4), either agency may initiate the conflict resolution process described in PART FOUR.

2.4 Construction and maintenance activities requiring corrective action(s)

- a) Construction and maintenance activities may result in the need for corrective action(s) when the following situations occur:
 - 1. activities are determined to be inconsistent with the environmental commitments, contract specifications, and regulatory requirements;
 - 2. urgent situations arise in which public health and/or environmental harm is likely to occur, has occurred, or may worsen unless immediate corrective action is order by DOT.
- b) When either situation in Section 2.4(a) occurs, both agencies will jointly evaluate:
 - 1. the extent of, or potential for, adverse impacts to public health or the environment;
 - 2. the features, activities, and attributes of the natural resources in question;
 - 3. the extent to which the contractor complied with project plans, satisfaction of environmental commitments, TCGP and TS4 permit conditions and the written orders of the DOT Project Leader.
- c) DNR and DOT agree to pursue the process prescribed in this section to resolve the onsite issue through corrective action(s) on a timeline commensurate with the severity and urgency of the situation.
- d) DOT shall prioritize the use of all available corrective actions to address situations that pose a threat to or have caused an impact to the environment and evaluate the effects such actions will have on resolving the site issue. Corrective actions include, but are not limited to, DOT issuing written orders, erosion control orders, suspending work until the issue is resolved, utilizing contract remedies, and authorities given to the DOT under the *Standard Specifications for Highway and Structure Construction*, as published by DOT and the contract special provisions.
- e) Both agencies encourage efforts to resolve interagency conflicts before the formal conflict resolution process begins, or to prevent such conflicts from occurring in the first place. If a

conflict cannot be resolved by the primary agency contacts in PART ONE (1.4), either agency may initiate the conflict resolution process described in PART FOUR.

2.5 Construction and maintenance activities requiring environmental enforcement

- a) Despite corrective actions and other efforts, pursuant to Section 30.2022, Wis. Stats., both agencies may agree contractor actions are substantially inconsistent with the environmental commitments, project plans, contract specifications, established regulatory requirements, and written orders of the DOT Project Leader and therefore do not meet the interagency liaison procedures established by this agreement. In such cases, the exemptions under Section 30.2022(1p), Wis. Stats., do not apply, and appropriate permits, approvals, or enforcement actions may be initiated to resolve the inconsistency.
- b) In this section, "taking an enforcement action" includes, but is not limited to the following, listed in no specific order: initiating a stepped enforcement process, issuing Notices of Noncompliance, issuing a Notice of Violation, holding enforcement conferences, executing consent orders, issuing administrative orders, issuing citations, initiating civil or criminal action, referring a matter to the Department of Justice, or referring a matter to the District Attorney.
- c) DNR and DOT shall establish a written agreement that the DOT contractor is operating outside of the interagency liaison procedures prior to any enforcement action being taken by the DNR. The written agreement shall be drafted by the DNR TL in consultation with the DOT REC or SWECE and provided to their respective supervisors, who will then secure signatures from the DNR Environmental Analysis and Sustainability Program Director and the corresponding DOT Region Director.
- d) The process of identifying when a DOT contractor shall be considered to be operating outside of the interagency liaison procedures established by this agreement includes an evaluation of the extent to which the contractor complied with environmental commitments, project plans, contract specifications, established regulatory requirements, and the written orders of the DOT Project Leader.
- e) Specific to storm water and erosion control issues DOT and DNR shall consider all the following factors to determine if the contractor is operating outside of the interagency liaison procedures established by this agreement:
 - 1. Whether the contractor operated within applicable permit requirements and implemented erosion control best management practices (BMPs) that were required by the Erosion Control Plan, ECIP, and all ECIP Amendments and/or were emphasized and documented during the pre-construction meeting or during site inspections conducted by DNR and/or DOT.
 - 2. Whether the contractor failed to properly install and/or maintain temporary BMPs adequately to prevent site release to waters of the state or natural resources or caused damage to other areas of public interest.
 - 3. Despite BMPs being properly installed and maintained, a storm event larger than the required design storm, or other unforeseen conditions occurred allowing a site release to waters of the state or natural resources or caused damage to other areas

of public interest.

- f) If the DNR TL and the DOT REC or SWECE have consulted with their supervisors and cannot reach an agreed enforcement action, they may utilize the conflict resolution process under PART FOUR.
- g) If the Secretaries are unable to agree on an enforcement action, the Secretary of the DNR may proceed with taking enforcement action that the Secretary of the DNR considers appropriate.

2.6 Transportation facility maintenance

- a) DOT shall coordinate with the DNR for routine maintenance projects/activities that have potential to impact environmental resources. Coordination shall be conducted in a manner subject to established procedures agreed to by both agencies.
- b) Management of storm water discharges and other storm water facilities shall follow the applicable requirements identified in the TCGP or the TS4 for a permitted storm water management area.

2.7 Emergency events

Emergency events may necessitate abbreviated liaison procedures. DOT will make all efforts to give as much advanced notice as possible. In emergency situations DNR shall submit its recommendations concerning the project to DOT on an expedited basis.

PART THREE: Statewide Policy and Planning

3.1 Development of statewide policy relative to execution of this agreement

- a) Each agency is responsible for the centralized development and regional distribution of statewide policy relative to execution of this agreement. The intent of this section is to cooperatively involve both agencies in the development of policy that affects the implementation of this agreement. Funding and programming decisions are under the sole purview of the individual agency and are not subject to this agreement.
- b) While staff in several areas of each department may be involved in any given issue, each agency shall assign one person to be the agency's primary point of contact. The DOT primary point of contact is the Section Chief of the Bureau of Technical Services – Environmental Services Section and the DNR primary point of contact is the Integration Services Section Chief.
- c) The primary points of contact shall establish at least semi-annual meetings to coordinate efforts to address policy issues raised by staff in either agency.
- d) Policy efforts under this agreement shall be established by agency point of contacts through a written agreement with established goals and deliverables, boundaries, agency

participants/sponsors, and deadlines for comments and timely completion. Final policy agreements shall be carried through and implemented statewide by all regions and reflected through updating all relevant manuals to assure consistent statewide implementation.

- e) An annual meeting shall occur between DOT and DNR personnel to share policy changes, process updates, program discussion, environmental and transportation-based learning, promote consistency, collaboration, and an overall spirit of cooperation and partnership.
- f) Both agencies encourage efforts to resolve interagency conflicts before the formal conflict resolution process begins, or to prevent such conflicts from occurring in the first place. If a conflict cannot be resolved by the primary agency contacts in PART ONE (1.4), either agency may initiate the conflict resolution process described in PART FOUR.

3.2 Agency planning

- a) Each agency shall look for opportunities to notify the other of planning actions that may impact transportation planning or a transportation facility. Similarly, each agency shall look for opportunities to notify the other of actions that may impact how the agencies coordinate under this agreement to address natural resources and corresponding public interests.
- b) The primary DOT point of contact is the Section Chief of the Bureau of Technical Services – Environmental Process & Documentation Section and the DNR primary point of contact is the Integration Services Section Chief.
- c) The primary points of contact shall establish at least semi-annual meetings to coordinate efforts to share planning information, discuss concerns, and identify next steps.

3.3 DNR land acquisition and encumbrances

DNR shall strive to provide advanced notification to DOT of proposed DNR actions including land acquisition and encumbrances that abut DOT right of way.

PART FOUR: Conflict Resolution

It is the intent of this agreement that conflicts be resolved by the primary agency contacts in a timely manner, consistent with project scoping, design engineering and construction deadlines and the need for effective environmental protection.

If either the DNR TL or the DOT REC/SWECE determines there is a conflict that cannot be resolved, the DNR TL and the DOT REC or SWECE shall work through their respective supervisors to resolve the conflict.

4.1 Formal conflict resolution process

If conflict between the DNR TL and the DOT REC or SWECE cannot be resolved by working through their respective supervisors, the formal conflict resolution process should be initiated as described in this section and consists of the following steps:

- a) One supervisor provides written notice to the other of their intent to initiate the conflict resolution process.
- b) Within 14 calendar days of receiving notice, the respective supervisors will prepare a written summary of the issues and remaining points of conflict and identify which agency desires to initiate the conflict resolution process. The written summary will be delivered to the DNR Regional Secretary's Director and the DOT Region Director.
- c) Within 14 days of receiving the written summary, the DNR Regional Secretary's Director in consultation with the Environmental Analysis and Sustainability Bureau Director and the DOT Region Director in consultation with the Technical Services Bureau Director will meet to resolve the conflict. If they are unable to reach agreement, they will jointly prepare a written summary of the remaining points of conflict which will be delivered to the appropriate Division Administrator(s) in their respective agencies.
- d) Within 14 days of receiving the written summary, the Division Administrators and up to two additional representatives from each agency, will meet to resolve the conflict. If the Administrators are unable to reach an agreement, they will notify their respective Secretary of the remaining points of conflict in writing.
- e) The Secretaries will meet to resolve the conflict and may appoint, at any time, a mutually acceptable mediator to assist in resolving the conflict. If the Secretaries decide to secure a mediator, the mediator will have no authority to impose a settlement on either agency. The cost, if any, of the mediator will be borne by the agency initiating the conflict resolution process. This step, whether a mediator is involved or not, is expected to be completed within 21 calendar days, unless extended by mutual agreement of the Secretaries. The Secretaries will either agree on a specific solution to the conflict or will agree that the issues will be resolved through alternative means (or processes).

PART FIVE: Amendments, Attachments, Review and Signature

5.1 Amendments and attachments to this agreement

- a) This agreement may be amended by any document that expressly states that it amends the agreement and is executed by the Secretaries of DNR and DOT. Both agencies shall include the most recent version of this agreement on their website. DOT shall maintain hyperlinks to this agreement in the DOT Facilities Development Manual. Both agencies shall also maintain copies of all amendments to the agreement per the conditions included in their agency's Records Retention and Disposition Authorization.
- b) This agreement includes a series of topical attachments that are necessary to further establish principles, practices, requirements and processes that the agencies have agreed are necessary to assure respective missions are upheld. These attachments may be subject

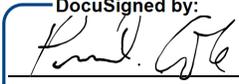
to change at a greater frequency than this agreement without affecting the execution date of this agreement and are attached through reference

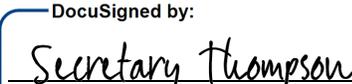
5.2 Review of this agreement

Both agencies agree to maintain a relevant and accurate agreement that is mutually beneficial to each agency to fulfill the statement of purpose under Section 1.1. DOT and DNR commit to meeting in person to cooperatively evaluate this agreement a minimum of every 5 years to determine aspects requiring update, correct provisions, and amendment agreement language as needed.

5.3 Signatures

This agreement supersedes the April 2019 Cooperative Agreement and shall remain in effect until amended or rescinded by the mutual concurrence of the secretaries of DNR and DOT.

DocuSigned by:
 01 June 2020
Preston B. Code, Secretary Date
Wisconsin Department of Natural Resources

DocuSigned by:
 01 June 2020
Craig Thompson, Secretary Date
Wisconsin Department of Transportation