



MEMORANDUM

Missouri Department of Transportation
Director's Office
Central Office

TO: Distribution

FROM: Pete Rahn
Director

Rich Tiemeyer
Chief Counsel

DATE: October 16, 2006

SUBJECT: Policy and Procedure for Acceptance of MHTC Liability

This letter supercedes the letter of April 18, 2001, from Henry Hungerbeeler and Rich Tiemeyer regarding MHTC/MoDOT procedure for liability acceptance.

Compliance with this revised policy and mandatory procedure will expedite completion of projects and minimize the risk a project will be delayed by untimely consideration of liability issues.

General Rule and Common Types of Liability Acceptance: The general rule is that MHTC will not accept the liability of another person or organization and that MoDOT's standard indemnification language must appear in all agreements and permits when there is a possibility that MHTC would be liable for personal injury, property damage and/or economic loss caused by another person or organization. The standard indemnification language is notice to a contractor or other person working on MHTC property of a requirement to indemnify and save harmless MHTC from any damages which may result from the work performed under the terms of the document.

Common examples of acceptance of liability includes such things as: (1) agreeing that MHTC will indemnify or save harmless another person or organization; (2) deleting MoDOT's standard indemnification clause in an agreement; (3) or the like.

While these are the most common examples of the types of liabilities MHTC has been asked to assume in the past, there are and will continue to be other instances. Therefore, you must consider potential liabilities for MHTC in all contracts for which there is no approved chief counsel office format.

Existing Blanket Exceptions to the General Rule Approved by MoDOT Management: See Attachment.

Procedure for Exception: The following procedure is to be followed when a division director or district engineer recommends that MHTC accept liability:

- (1) **Written Request:** the division director or district engineer submits a written request to the chief counsel (with a copy to the chief engineer and chief financial officer) indicating the reasons the division or district wants MHTC to accept liability. The request must also include: (A) the pros and cons of the risks to be accepted; (B) an estimate of the potential costs and savings from the proposal; and (C) a copy of the draft agreement, permit, job special provision, request for proposal or other relevant document.
- (2) **Chief Counsel Review:** The chief counsel shall review the request and provide written comments, including his assessment of the risks, to the division director and district engineer (with a copy to the chief engineer and chief financial officer) within 5 calendar days.
 - (A) **Concurs:** If the chief counsel concurs in the request, the matter is resolved and this process ends.
 - (B) **Does Not Concur:** If the chief counsel does not concur in the request, the division director or district engineer: (A) may withdraw the request and the matter is resolved and this process ends; or (B) may forward the request, the chief counsel's comments, and his/her recommendations to either the chief engineer or chief financial officer, as appropriate, for his/her approval or disapproval.
- (3) **Chief Engineer or Chief Financial Officer Review:** The chief engineer or chief financial officer should act on the request within 5 calendar days and return it to the division director or district engineer with a copy to the chief counsel.
- (4) **Appeal to Director:** The chief counsel may appeal the decision to the department director within 5 calendar days.
- (5) **Director's Decision:** The department director should rule on the appeal within 5 calendar days.

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Division Directors
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