

EMERGENCY RELIEF PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION, MINNESOTA DIVISION,
AND THE MINNESOTA DEPARTMENT OF TRANSPORTATION

WHEREAS, the Federal Highway Administration (FHWA), Minnesota Division, is the federal agency with statutory responsibilities for administering the Emergency Relief (ER) program under Title 23 U.S.C.—125 Highways,

WHEREAS, 23 CFR 668.105(c) requires the expenditure of ER funds for emergency repairs to be promptly constructed in a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work,

WHEREAS, the FHWA ER Manual permits permanent repairs to be performed concurrently with emergency repairs in situations where immediate completion of the permanent work is determined to be more economical or practical,

WHEREAS, the signatories to this agreement desire to streamline work processes and expedite the project delivery of emergency and permanent repairs including performing permanent repairs concurrently with emergency repairs,

NOW, THEREFORE, the FHWA Minnesota Division, and the Minnesota Department of Transportation (MnDOT), pursuant to 23 CFR 668, agree that the ER program for federal-aid highways, these being public highways other than those functionally classified as local roads or rural minor collectors, shall be implemented in accordance with the following stipulations.

STIPULATIONS

The FHWA shall ensure that the following stipulations are carried out:

I. Emergency Repairs

a. Eligibility

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved ER program of projects (23 CFR 668.109(a)). A detailed explanation of emergency repairs is found in Section D(1) of Chapter II of the FHWA ER Manual (<http://www.fhwa.dot.gov/reports/erm/>). The Detailed Damage Inspection Report (DDIR) is the document the FHWA uses to determine eligibility. DDIRs for emergency repair projects are normally approved/completed after the work is completed.

The Emergency Contract method shall only be used when the condition of federal-aid roads necessitates immediate work in order to keep such roadways open for travel or to implement a detour for a closed roadway. LPAs and MnDOT should use every means possible to use either the Competitively Bid Contract or a Negotiated Contracting method.

Negotiated Contract

A Negotiated Contract may be used when the total contract cost does not exceed \$150,000. The standard requirement of competitive bidding and three-week advertisement for bids is waived. A Negotiated Contract involves preparation of a bid package/proposal, receipt of publicly available bids, issue of a contract, and procurement of bonds. While these projects need not be advertised, at least three contractors must be invited to submit a quote.

Standard Competitively Bid Contract

This method has a required three week (minimum) advertisement period for a project. The project must be in the STIP. A Plans, Specifications, and Estimates (PS&E) package must be developed and approved. Shorter advertisement periods may be approved by the FHWA Division Administrator in special cases when justified and pursuant to State and local laws.

Force Account

The term Force Account means the direct performance of highway construction work by an LPA or MnDOT by use of labor, equipment, materials, and supplies furnished directly by the owner and used under their direct control. Due to the emergency character of the work, a considerable portion of the emergency repairs may be performed by 1) MnDOT's own forces, 2) an LPAs own forces, or 3) by an existing or negotiated material and/or equipment rental contract.

Although 23 CFR 635.204(b) states that a formal finding for Force Account work for emergency repairs is not required, LPAs and MnDOT should use every means possible to use either the Standard Competitively Bid Contract or a Negotiated Contracting method.

DDIRs must be completed and approved prior to the work and within 180 days of the initial day of the actual occurrence of the natural disaster or catastrophic failure.

b. Contracting Method

Permanent repairs shall be performed only by the Standard Competitively Bid Contract unless the MnDOT (or LPA with MnDOT State Aid concurrence) adequately demonstrates that some other method is more cost effective (23 CFR 668.105(i)). Exceptions to the Standard Competitively Bid Contract method for permanent repairs, not addressed in Section II of this programmatic agreement, shall be approved by the FHWA Division Administrator on a project-by-project basis. All applicable federal requirements, including form FHWA-1273, must be physically incorporated into all contracts as well as appropriate subcontracts. This includes, but is not limited to: the Davis-Bacon Act, Buy America, DBE, ADA, EEO, Convict Labor, and Use of Suspended or Debarred Contractors.

Obtaining MnDOT Emergency Contracting Authority is a step in the State process. It does not satisfy all federal regulatory requirements and therefore does not guarantee federal eligibility or funding.

c. Federal Share

The federal share is based on the type of federal-aid highway that is being repaired. For Indian Reservations Roads, the federal share is 100 percent. For Interstate highways, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share is 80 percent.

d. DDIR Approval

MnDOT may approve DDIRs for sites with \$150,000 or less in total estimated damage (combined total of permanent and emergency repairs). FHWA will approve DDIRs for all other sites. All MnDOT-approved DDIRs shall be made available to the FHWA Division Office. MnDOT will provide FHWA with an updated list of MnDOT employees who have authority to approve DDIRs. FHWA will provide regular training to these employees.

e. Prior FHWA Approval

Prior DDIR approval, National Environmental Policy Act (NEPA) approval, and FMIS authorization is required for permanent repairs not performed concurrently with emergency repairs (23 CFR 668.109(a)(2)). FMIS authorization and reimbursement will be completed in accordance with the FHWA-approved MnDOT ER process.

IV. Contracting Methods

Emergency Contract

Under the Emergency Contract method, an LPA or MnDOT may select one contractor without competitively bidding the contract. The LPA or MnDOT will provide the contractor a scope of work/plan and issue the notice to proceed.

methods listed above best suited to protect the public health or safety is deemed cost effective. LPAs and MnDOT will limit their use of non-competitively bid contracting methods (Emergency Contract and Force Account). Permanent repairs valued at greater than \$150,000 are to be accomplished by the Standard Competitively Bid Contract method. Any contract expenditure exceeding the \$150,000 limit will be the responsibility of the contracting agency unless approved by FHWA. Exceptions to the requirement to utilize the Standard Competitively Bid Contract, for permanent repairs performed concurrently with emergency repairs over \$150,000, shall be approved in advance by the FHWA Division Administrator on a project-by-project basis.

Obtaining MnDOT Emergency Contracting Authority is a step in the State process. It does not satisfy all federal regulatory requirements and therefore does not guarantee federal eligibility or funding.

c. Federal Share

The federal share for the permanent work is based on the type of federal-aid highway that is being repaired. For Indian Reservations Roads, the federal share is 100 percent. For Interstate highways, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share is 80 percent.

d. DDIR Approval

MnDOT may approve DDIRs for sites with \$150,000 or less in total estimated damage (combined total of permanent and emergency repairs). FHWA will approve DDIRs for all other sites. All MnDOT-approved DDIRs shall be made available to the FHWA Division Office. MnDOT will provide FHWA with an updated list of MnDOT employees who have authority to approve DDIRs. FHWA will provide regular training to these employees.

e. Prior FHWA Approval

Prior DDIR approval and FMIS authorization is not required for permanent repairs performed concurrently with emergency repairs (23 CFR 668.109(a)(2)). FMIS authorization and reimbursement will be completed in accordance with the FHWA-approved MnDOT ER process.

III. Permanent Repairs Not Performed Concurrently with Emergency Repairs

a. Eligibility

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved ER program of projects (23 CFR 668.109(a)). A detailed explanation of permanent repairs can be found in Section D(2) of Chapter II of the FHWA ER Manual. The DDIR is the document the FHWA uses to determine eligibility. DDIRs for permanent repair projects must be approved by MnDOT or FHWA before the projects are authorized. FHWA authorization is required prior to project advertisement.

authorization and reimbursement will be completed in accordance with the FHWA-approved MnDOT ER process.

*\$150,000 is based on the Federal Acquisition Regulation, Simplified Acquisition Threshold and Minnesota threshold on Negotiated Contracts.

II. Permanent Repairs Performed Concurrently with Emergency Repairs

a. Eligibility

The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved ER program of projects (23 CFR 668.109(a)). A detailed explanation of emergency repairs is found in Section D(1) of Chapter II of the FHWA ER Manual. The DDIR is the document the FHWA uses to determine eligibility. DDIRs for permanent repair performed concurrently with emergency repair projects are normally completed/approved after the work is completed. MnDOT will complete and/or approve all DDIRs for permanent repairs performed concurrently with emergency repair projects within twelve weeks of the completion of the emergency repair work.

The FHWA permits permanent repairs to be-performed concurrently with emergency repairs within 180 days after the actual occurrence of the natural disaster or catastrophic failure in accordance with Section D(2)(a) of the FHWA ER Manual. The initial day of the actual occurrence of the natural disaster or catastrophic failure serves as the beginning date of ER eligibility unless a different date is approved by FHWA. All work performed after the first 180 days shall be considered as a permanent repair. A detailed explanation of permanent repairs is found in Section D(2) of Chapter II of the FHWA ER Manual.

b. Contracting Method

The FHWA permits permanent repairs performed concurrently with emergency repairs to use the same contracting methods as emergency repairs. The work may be accomplished by Emergency Contract, Negotiated Contract, the Standard Competitively Bid Contract, or LPA or MnDOT force account methods as determined by the LPA or MnDOT as best suited to protect the public health and safety (23 CFR 668.105(i)) and as allowed by Minnesota Statute. All applicable federal requirements, including form FHWA-1273, must be physically incorporated into all contracts as well as appropriate subcontracts. This includes, but is not limited to: the Davis-Bacon Act, Buy America, DBE, ADA, EEO, Convict Labor, and Use of Suspended or Debarred Contractors. Davis-Bacon requirements do not apply to state or local government agency employees who perform emergency repairs or construction work on a force account basis. Davis-Bacon requirements also do not apply where emergency contract work is only for the removal of debris and related clean up.

Permanent repairs and emergency repairs performed concurrently must have a total site cost of not more than \$150,000 (full value of total contract work). Any of the identified contracting

MnDOT will complete and/or approve all DDIRs for emergency repair projects within twelve weeks of the completion of the emergency repair work.

b. Contracting Method

Emergency repair work may be accomplished by Emergency Contract, Negotiated Contract, the Standard Competitively Bid Contract, local public agency (LPA) or MnDOT force account methods as determined by the LPA or MnDOT as best suited to protect the public health and safety (23 CFR 668.105(i)) and as allowed by Minnesota Statute. All applicable federal requirements, including form FHWA-1273

(<http://www.fhwa.dot.gov/programadmin/contracts/1273.pdf>), must be physically incorporated into all contracts as well as appropriate subcontracts. This includes, but is not limited to: the Davis-Bacon Act, Buy America, Disadvantaged Business Enterprise (DBE), Americans with Disabilities Act (ADA), Equal Employment Opportunity (EEO), Convict Labor, and Use of Suspended or Debarred Contractors. Davis-Bacon requirements do not apply to state or local government agency employees who perform emergency repairs or construction work on a force account basis. Davis-Bacon requirements also do not apply where emergency contract work is only for the removal of debris and related clean up.

Obtaining MnDOT Emergency Contracting Authority is a step in the State process. It does not satisfy all federal regulatory requirements and therefore does not guarantee federal eligibility or funding.

c. Federal Share

The federal share payable for emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the initial day of the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof (23 CFR 68.107(a)). The initial day of the actual occurrence of the natural disaster or catastrophic failure serves as the beginning date of ER eligibility unless a different date is approved by FHWA.

For costs of all repairs incurred after the first 180 days, the federal share is based on the type of federal-aid highway that is being repaired. For Indian Reservations Roads, the federal share is 100 percent. For Interstate highways, the federal share is 90 percent. For all other federal-aid highways, the maximum federal share is 80 percent.

d. DDIR Approval

MnDOT may approve DDIRs for sites with \$150,000* or less in total estimated damage (combined total of permanent and emergency repairs). FHWA will approve DDIRs for all other sites. All MnDOT-approved DDIRs shall be made available to the FHWA Division Office. MnDOT will provide FHWA with an updated list of MnDOT employees who have authority to approve DDIRs. FHWA will provide regular training to these employees.

e. Prior FHWA Approval

Prior DDIR approval and Fiscal Management Information System (FMIS) authorization is not required for emergency repairs and preliminary engineering (23 CFR 668.109(a)(1)). FMIS

EXECUTION of this Programmatic Agreement shall constitute conclusive evidence that the FHWA, and MNDOT agree to be bound by the foregoing conditions and to perform the obligations herein set forth.

Any agency to this Programmatic Agreement may terminate their participation by providing thirty (30) days written notice to the other agency provided that the agencies will consult during the period before termination to seek agreement on amendments or other action that would avoid termination.

This document was prepared and reviewed by the MnDOT State Aid Division, the MnDOT Operations Division, the MnDOT Engineering Services Division, the MnDOT Modal Planning and Programs Management Division, and the FHWA Minnesota Division Office.

Signed by:



MnDOT Commissioner

3/19/02

Date



FHWA Minnesota Division Administrator

3/22/2012

Date