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 restoration to be promptly constructed in a manner so as to reduce, to the greatest extent feasible, the cost of permanent repair work,

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

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

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 roadway or rural minor collectors, shall be implemented in accordance the following stipulations.

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

I. Emergency restoration and permanent repair work shall be clearly identified and separated on the Detailed Damage Inspection Report (DDIR).

II. Order of Precedence
Where documents conflict, this shall be the order of precedence:

   Laws
   Regulations
   FHWA Order 5182.1
   FHWA Emergency Relief Manual
   Emergency Relief Programmatic Agreement

III. ER Program Coordination
A. Delegations and Internal Controls
MnDOT will provide FHWA with an updated organizational chart identifying key contacts in Administration, Operations, State-Aid for Local Transportation (SALT), and other relevant units
involved in the ER process. MnDOT will identify its staff with authority to request ER event eligibility.

For each ER event, MnDOT will provide a list of contacts along with the request for an event declaration. The list will identify the staff from each District and from Central Office who are authorized to perform the following actions:

1. Sign DDIRs to request site eligibility approval from FHWA.
2. Provide prior verbal approval for initiation of permanent repairs done concurrently with emergency restoration.

FHWA and MnDOT will provide regular training to these employees so that declarations, eligibility determinations, and ER processes are consistent. MnDOT is developing a set of Guidelines to describe certain processes that are special to ER projects in Minnesota. The Guidelines will be the foundation of any routine or ad hoc training.

B. Event Declaration
The process outlined in the FHWA Emergency Relief Manual shall be followed. In cases where the President’s Disaster Declaration and the Governor’s Emergency Executive Order are not consistent, MnDOT and FHWA shall come to agreement on the event date and geographic extent.

It shall be the practice of MnDOT to request a quick release of ER funds based on the estimated amount of damage caused by the event. It is expected that the amount of funds requested will be obligated, expended and reimbursed in the Federal fiscal year of the event or as otherwise required by the quick release funding letter. When an event occurs near the end of the Federal Fiscal Year (which is September 30th) such that it is impractical to obligate all the funds needed in that same fiscal year, MnDOT will clearly indicate an estimate of funds that can reasonably be expended, obligated and reimbursed in each Federal fiscal year.

C. Program of Projects
At the beginning of each potential ER event, MnDOT Emergency Management Representative (EMR) will develop a spreadsheet of sites damaged by the event. For the purposes of the ER program, this spreadsheet can be used to track estimated emergency restoration and permanent repair costs to support a request for ER event declaration. As sites are more formally defined, MnDOT will maintain a list of projects for each ER event and update this list as projects are closed out and ER funds are re-allocated.

D. ER Processes and Training
MnDOT and FHWA will continue efforts to improve the ER Guidelines, develop ER training, and streamline the processes of both agencies.

IV. ER Project Coordination
A. Delegations and Internal Controls
1. FHWA will clearly indicate whether an ER project will be administered as a Project of Division Interest (PODI) at the time of site visit or DDIR approval. Unless so indicated,
MnDOT will proceed with the expectation that an ER project will be State- or Locally-administered, following delegations per the Stewardship and Oversight Agreement (SOA) and Memorandum of Understanding (MOU).

2. For sites with total estimated repair costs less than $150,000, when MnDOT chooses to perform permanent repairs concurrently with emergency restoration, MnDOT (Assistant District Engineer (ADE) / District State Aid Engineer (DSAE) or designee) is delegated the authority to give approval to perform the permanent repairs concurrently with emergency restoration and has the responsibility to assure approvals are documented, and the appropriate environmental clearances have been obtained prior to beginning the permanent repairs. MnDOT will ensure that emergency restoration and permanent repairs are properly categorized on the DDIR.

B. Ineligible Work
The following are examples items ineligible for ER reimbursement:
• Measures to prevent damage before the event occurs.
• Heavy maintenance or repairs of pre-existing conditions.
• Work reimbursed by FEMA.
• Sites with less than total costs of $5000.
• Damage to sites at which bridge projects have already been programmed in the approved STIP.

C. FHWA Site Inspection
A site is defined as an area of damage due to the emergency event. Areas of damage within a half mile of each other, with similar damage, may be combined into one larger site. Areas of damage farther away from each other than one half mile should be treated as individual sites.

All sites where the estimated total damage exceeds $150,000 require an FHWA site inspection visit. Other sites with unique issues may also be visited by the FHWA. The process is as follows:
1. ADE Maintenance or the Local Public Agency Engineer (LPA) shall fill out an FHWA Site Inspection Visit request form. This form is to be used as a discussion tool for the site owner and the FHWA to determine appropriate repairs and contracting methods for larger scale damaged sites or sites with other unique issues.
2. Trunk Highway site inspection forms shall be forwarded from the District Office to the Central Office Emergency Management Representative (EMR). The EMR will submit these forms to FHWA via Minnesota.FHWA@dot.gov.
3. Local Agency site inspection forms shall be forwarded from the DSAE, to SALT, and SALT will forward to the Central Office Emergency Management Representative. The EMR will submit these forms to FHWA via Minnesota.FHWA@dot.gov.

FHWA may choose to visit other damage sites, which have less damage, as well. FHWA and the EMR will coordinate and prioritize the site inspection schedule.

D. Detailed Damage Inspection Report (DDIR)
The eligibility of all work is contingent on the 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)). The purpose of the DDIR is to document damage estimates at individual sites. The DDIR defines scope of repairs, location, and preliminary cost estimate.

A DDIR should be completed as soon as possible and must be submitted to FHWA within 12 weeks (at Minnesota.FHWA@dot.gov) of the date of the event, or the site will not be eligible for ER funds. Signature on the DDIR by FHWA indicates approval of the site and the work as proposed, it is not Fiscal Authorization see Section VII.

The total site cost estimate shall include all estimated emergency restoration and permanent repair costs, necessary ROW costs, and engineering costs associated with that site. Emergency restoration debris removal and permanent repair debris removal should be included even if it might be reimbursed by Federal Emergency Management Agency (FEMA), because it is part of the scope of work that is evaluated for site eligibility.

MnDOT and/or the local agency will complete all DDIRs, and MnDOT will submit them to FHWA for eligibility concurrence within twelve weeks of the event date. Updated DDIRs will be submitted to FHWA for re-approval if cost estimates increase by more than 20% from the initial estimate, prior to authorization.

1. Trunk Highway DDIRs shall be signed by the person filling out the DDIR, an ADE, and the FHWA Representative. Following the signature by the ADE, the DDIR shall be forwarded to the Central Office Emergency Management Representative. The EMR will include the site in a summary spreadsheet for the emergency event. The EMR will submit these forms to FHWA via Minnesota.FHWA@dot.gov. FHWA will approve or comment on the DDIR and return it to the EMR for deposit in the central DDIR repository, and to provide a copy to the District Representative.

2. Local Agency DDIRs shall be signed by the County Engineer or designee, the DSAE, and the FHWA. Following signature by the DSAE, the DDIR shall be forwarded to SALT. Then SALT will forward to the EMR. The EMR will include the site in the summary spreadsheet for the emergency event. The EMR will submit to FHWA at Minnesota.FHWA@dot.gov. FHWA will approve or comment on the DDIR and return it to the EMR for deposit in the central DDIR repository, and to provide a copy to the DSAE, SALT and the LPA.

E. Permanent Repairs Concurrent with Emergency Restoration

For sites with total damage estimated at less than $150,000, it is permissible for permanent repairs to be completed concurrently with emergency restoration only if the following conditions are met:

1. The roadway owner justifies in writing that it is in the public interest to complete the permanent repairs concurrently with the emergency restoration.
2. All proposed repair work is within existing right of way.
3. The proposed repair will restore the site to the pre-event condition of the transportation facility: No improvements, additions, or widening.
4. The work can be completed within 180 days of the event date.
5. The following environmental clearances must be obtained prior to beginning construction of the permanent repairs:
   - Section 106 (historic impacts)
   - Section 7 (Endangered Species Act) and
   - Any necessary consultation and clearances with the Army Corps of Engineers.

6. The National Environmental Policy Act (NEPA) document must be completed prior to federal construction authorization of permanent repair costs concurrent with emergency restoration.

Because both emergency restoration and permanent repairs will be performed on the same project, it is especially important to keep track of what work is emergency restoration and what work is permanent repairs.

If conditions 1-6 above cannot be met, then the work must be delivered in traditional ER sequence, as a project for emergency restoration followed by a project for permanent repairs.

F. Emergency Restoration
   The intent of emergency restoration is to restore essential traffic to the roadway until permanent repairs can be completed in accordance with all Federal regulations and procedures. Emergency restoration minimizes damage, protects facilities from further damage, or restores essential traffic. Prior approval from the Federal Highway Administration (FHWA) is not required to complete Emergency Restoration. Work must be accomplished within 180 days after the event date. Emergency restoration may be reimbursed in an amount equal to 100 percent of the costs. (See 23 CFR 668.107(a)).

Work to restore the roadway to normal traffic is considered permanent repair.

G. Permanent Repair
   1. Permanent repair work is any work beyond emergency restoration that will remain in place upon the completion of the project.
   2. Work completed more than 180 days after the event date is considered “permanent repair”.
   3. Permanent repair work not completed concurrently with emergency restoration should follow the normal Federal-aid Authorization processes (except no STIP programming is needed). NEPA must be completed prior to construction Authorization.
   4. Reimbursement for Permanent Repair is based on the type of Federal-aid highway that is being repaired. For Indian Reservation 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.

V. National Environmental Policy Act (NEPA)
Emergency restoration defined in Section IV.E. and F. shall be considered a Categorical Exclusion in accordance with 23 CFR 771.117(c)(9). Preliminary Engineering work shall also be considered a Categorical Exclusion in accordance with 23 CFR 771.117(c)(1). The signed DDIR will be used to document the scope of work for the MnDOT or SALT NEPA decision document for emergency restoration (several sites with DDIR’s can be bundled into one decision document.)

Permanent repairs completed concurrent with emergency restoration, defined in Section IV.E., do not need NEPA approved at the time of construction. However, clearance for the following issues must be obtained, prior to beginning construction of the permanent repairs: Section 106 (historic impacts), Section 7 (Endangered Species Act) and any necessary consultation and clearances with the Army Corps of Engineers. The NEPA document for the permanent repairs must be approved prior to construction authorization by FHWA.

Permanent repairs (not completed concurrently with emergency restoration), right-of-way, and construction engineering all require an approved NEPA document, prior to construction authorization. Follow normal NEPA processes to determine the NEPA document type needed.

VI. Contracting Method
The ER Program is part of the Federal-aid Highway Program, and therefore ER projects must meet all the contracting rules for a normal FHWA project. The facility owner must use a contracting method approved in state statute and allowed by Federal regulations. The facility owner should determine the best contracting method for each site.

For permanent repairs, if a non-competitive contract method, such as the use of MnDOT or local forces, is selected for permanent repairs, the reason for using that method rather than competitive bidding must be justified on the DDIR.

VII. Fiscal Authorization of the Project
Fiscal authorization is an action taken by the FHWA to formally approve funding for the project. Fiscal authorization must occur within two years from the date of the event or it is not eligible for ER funding. Note: Approval of the DDIR is not fiscal authorization.

Only emergency restoration work and concurrent permanent repairs may be completed prior to the authorization of Federal funds.

Emergency Relief work must be listed in MnDOT’s project planning system, e.g. PPMS/CHIMES for fiscal authorization, but it is not required to be in the STIP.

Preliminary engineering, if seeking Federal reimbursement, should be authorized as soon as possible after the need is identified.
VIII. Preliminary Engineering, Construction Engineering, and Right of Way
Preliminary engineering (PE), bridge inspection and site monitoring, construction engineering (CE), and right-of-way (ROW) work may be eligible expenses for ER funding of permanent repairs.

All estimated PE, CE and ROW costs must be included on the DDIR to be eligible. Appropriate record keeping and necessary documentation must support the reimbursement requests. All engineering and right of way costs will be reimbursed at the permanent repair rate.

A. Preliminary Engineering (PE) (for Permanent Repairs Only)
Estimated PE expenses must be noted on the DDIR for each site where they are desired to be reimbursed with Federal funds. Site monitoring or other special studies necessitated by an emergency event shall be considered PE work and expenses are not eligible for reimbursement if they occur prior to the PE authorization. All normal Federal regulations for consultant selection must be followed, including having Disadvantaged Business Enterprise (DBE) goals set, and adherence to the Brooks Act. PE expenses shall be based on actual documented costs and reimbursed at the permanent repair rate.

B. Construction Engineering (CE)
Estimated CE expenses for bridge inspection, site monitoring, or construction oversight must be included on the DDIR for each site. CE will be authorized with the emergency restoration or with the permanent repair work. Follow normal Federal-aid process to request reimbursement of CE costs. All normal Federal regulations for consultant selection must be followed. CE expenses shall be based on actual documented costs and reimbursed at the permanent repair rate.

C. Right-of-Way (for Permanent Repairs Only)
Right-of-way expenses shall be based on actual documented costs and reimbursed at the permanent repair rate. The FHWA ER Manual lists four criteria for ROW to be eligible. If these criteria are met, follow normal Federal-aid processes to request reimbursement of right-of-way costs, including completion of the NEPA process.

Signed by:

[Signature]
MnDOT Commissioner

3-20-18
Date

[Signature]
FHWA Minnesota Division Administrator

3/24/18
Date