

## CHAPTER 6

### CONTRACTS & AGREEMENTS

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## 6-1.0 INTRODUCTION

### 6-1.01 PURPOSE

The Minnesota Department of Transportation (MnDOT) enters into contracts with private parties or other governmental entities when necessary to procure materials, equipment, or services. Generally speaking, all construction-type projects are administered by Construction, but Maintenance also uses contracts.

Maintenance contracts range from major maintenance projects to emergency activities and may include equipment rental; procurement of technical services; and the purchase of equipment and materials. The most commonly used contracts in Maintenance are those to procure materials and equipment. Examples include road salt, asphalt material production, snow plow trucks, repair parts, etc. Other types of maintenance contracts include contracts to maintain rest areas, provide building custodial services, repair automatic transmissions, and to maintain overlays, chip seals, etc. The Adopt-a-Highway program contract is another example of a contract MnDOT enters into with others.

A “contract” is an agreement between two or more parties which is legally enforceable because it contains the legal elements of “offer,” “acceptance,” and “consideration.” An agreement lacking one or more of these elements will not be enforced as a contract, but might still be legally enforced as a “quasi-contract”. Regardless of the term used, state law specifies that the state is not bound to any contract unless it is put in writing and signed by designated state officials.

### 6-1.02 SCOPE

This chapter is not intended to be an all-inclusive listing of the kinds of maintenance that can be accomplished under contracts. Neither is this chapter intended to be the definitive source as to how to prepare a contract or how to fill in a form. Rather, it is written to explain “why” and “when” contracts are required and to emphasize the importance of preparing and administering contracts properly. Step-by-step instructions as to “how” a contract is to be prepared and actual examples of contracts are instead referenced within this chapter to outside sources, such as web sites, and specialty offices.

When viewing this chapter on a computer monitor, words that are underlined and highlighted in blue are hot links. They can be clicked on and you will be automatically directed to the referenced web site for documents and other helpful information elsewhere in this manual. A listing of key words referenced to web sites is listed at the end of this chapter.

### 6-1.03 GENERAL ROLES AND RESPONSIBILITIES

The responsibility for initiating and identifying the scope of a contract has been decentralized to the Districts. District personnel are responsible for working with offices for development and execution of the final contracts:

- The MnDOT [Contract Management Section](#), provides general expertise and support on the decision making process regarding the most suitable type of contract required to meet the demands of the task at hand. They also provide technical assistance to MnDOT project managers and others involved in all types of contracts. Contract Management also provides oversight of all MnDOT contracts to assure that all contracts and contract processes comply with law and policy and promote and protect the public interest.
- The MnDOT [Office of Administration Emergency Management](#) Section facilitates approval for Emergency Orders which are documents that authorize emergency contracting procedures. Central Office Administration maintains a record of past emergency orders.
- The MnDOT [Office of Maintenance Operations Section](#) provides liaison with districts and Department of Administration on development of maintenance materials contracts for statewide purchasing and maintains a record of historic maintenance agreements.
- The MnDOT [Office of Maintenance Equipment Section](#) provides liaison with districts and Department of Administration on development of equipment purchasing, betterments and rental contracts for statewide equipment purchasing.
- The [Consultant Services Section](#) provides assistance with contracts for professional and technical services (“PT”) contracts.
- The MnDOT [Pre-letting Office](#) administers the bid and contracts selection process for both construction and larger maintenance projects.
- The MnDOT [Cooperative Agreements Unit](#) provides assistance and develops contracts for cooperative construction and maintenance agreements.

#### 6-1.03.01 GENERAL CONTRACT REQUIREMENTS

State contracts are strictly regulated by statute and rule to ensure the integrity of the state’s procurement process and accountability for the use of public funds. For example, state law requires that contracts be fully executed and funds encumbered before contractors are authorized to start work. In addition, the Code of Ethics for Employees in the Executive Branch ([Minnesota Statutes, Section 43A.38](#)) regulates certain conduct by employees in the procurement process when they may have a personal stake in its outcome. There can be serious consequences to MnDOT, as well as an employee involved in procurement, if the laws and rules are not followed.

State procurement laws also reflect economic and other societal value determinations made by the legislature. For example, state contractors and subcontractors are prohibited from engaging in discriminatory practices. All construction

and maintenance contractors must also comply with “Prevailing Wage” law and pay wages as specified by the Minnesota Department of Labor and Industry and the labor provisions of Division A of the standard project proposal. Information regarding prevailing wage requirements and how to administer these requirements can be found in the [MnDOT Contract Administration Manual](#), or by contacting the MnDOT Labor Compliance Unit of the Office of Construction and Innovative Contracting in the Central Office.

MnDOT employees involved in contracting should familiarize themselves with the legal rules, administrative procedures and requirements and with the specialty offices referenced previously that provide contracting assistance. All persons preparing contracts must have local purchase authority granted to them by MnDOT and follow all required administrative procedures and related contract requirements. While this manual provides a comprehensive overview of contract requirements, the laws, processes, and forms change with some regularity, so it is important to keep up-to-date on the latest developments.

The exact procedures to be followed and forms to be used depend on the type of contract needed. Detailed procedures for each type of contract are referenced in the applicable sections of this chapter. In general, though, there are four main activities that must occur to get a contract in place:

- Encumbrances
- Soliciting bids or proposals (for work which must be awarded competitively)
- Negotiating contract terms
- Getting the contract executed

Most contracts, however, do not need to be drafted from scratch. District files will contain samples of previous similar contracts which can be used as a model. It is always a good idea to have draft contracts reviewed by the appropriate specialty office or section especially if the model used is more than a year old. Typical examples include:

- Routine Maintenance Contract
- Frontage Road Contract
- Snow and Ice Contract
- Access Road Contract
- Bridge Repair Contract
- Bridge Replacement (Emergency Order)
- Cooperative Agreement for Maintenance of Common Alignment
- Cooperative Construction Contract
- Drainage Contract (Railroad)
- Equipment Lease - Bridge Snooper
- Engineering Contract
- Joint Powers Purchase Contract
- Lighting Contract
- Radio Maintenance

- Runway Repair Contract
- Sewer Connection Contract
- Traffic Signal Repair
- Utility Maintenance Contract
- Water Connection Contract
- Weather Advisory Service

If a template exists, please complete contract as per template requirements with follow-up review by the appropriate specialty office or section, the appropriate legal language can usually be transposed and modified to fit the requirements of the new contract.

If a contract template is not available, contact the [Contract Management Section](#).

If a sample is still not available, the district will need to initiate a new contract. Upon completion of a draft copy, the District will need to consult with the [Contract Management Section](#) to be sure the new contract is in the proper form and that the terms proposed are legal. Alternatively, the District can request contract drafting assistance from the [Contract Management Section](#).

For certain types of contracts, the scope of services and compensation will be negotiated with the selected vendor. In other cases, the work and material specifications will be published in a bid package, the contract will be awarded on a specified basis as per the solicitation (low bid, best value, etc.), and a standard-form contract will be used.

Once the contract is negotiated and written, the District must obtain the signatures of the authorized official of the firm or government entity (and must also obtain a resolution if contracting with a political subdivision). The District will see that the contract is submitted to the MnDOT [Contract Management Section](#) along with encumbering documents for payable contracts. The [Contract Management Section](#) will complete the approval and signature process.

The MnDOT [Contract Management Section](#) has been granted authority to sign most contracts on behalf of the Department of Administration.

#### 6-1.04 CONTRACT SPECIFICATIONS

Besides following the laws and regulations governing the processing of contracts, the writing of specifications and special provisions is perhaps the most important in terms of receiving exactly the product or service being requested at the best price. It is only with clear and concise specifications that MnDOT can be confident that it will receive the product or service intended at the best value to the state and with the least draw on available funds.

As referenced in the *Model Procurement Code for State and Local Governments (Chapter 4, R4-201.01)*, American Bar Association:

- “The purpose of a specification is to serve as a basis of obtaining a supply, service or construction item both adequate and suitable for [State’s] needs in a cost effective manner, taking into account, the costs of ownership and operation as well as initial acquisition costs.”
- “It is the policy of the [State] that specification permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the [State’s] requirements.”
- “Specifications shall, emphasize functional or performance criteria while limiting design or other detailed physical description to those necessary to meet the needs of the [State].”
- “It is the general policy of the [State] to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practical.”

The key to writing a good specification is to clearly define quality. The more the potential contractor knows about the deliverables that MnDOT expects, the more closely the contractor can meet that expectation and the more competitively they will be able to submit the best bid.

MnDOT’s general preference is for “performance” specifications, rather than “method” specifications. A performance specification essentially specifies the desired outcome, but leaves detailed “means and methods” to the contractor. A “method” specification is generally more prescriptive as to means and methods. Both types of specifications have their uses, so the specification writer will need to determine which is best for a particular project. In general, a method specification places more risk on the agency – a claim will arise if the contractor is unable to perform the work using the means and methods specified.

In construction contracts, there are well established engineering based specifications that can be cited that correlate quality with the end products. Examples are penetration tests for bituminous, slump tests for concrete mix, density tests for compaction, etc. These are qualitative and measurable by project engineers and inspectors.

In the case of contracts for materials or supplies, there are universally developed specifications, qualified products lists, etc. that can be cited.

The challenge is writing contracts for service work, which is often the case in contracting for maintenance work. The unavailability of defined quality standards and performance measures often leads to service work being contracted out based on quantitative specifications (as opposed to qualitative), i.e., number of lane miles seal coated, number of acres sprayed, number of square feet cleaned, number of sewers pumped, etc. Even more challenging are service contracts where, even though general

expectations are understood and even cited, the pay items are based on hours worked, quantity of material placed, miles treated, etc. In these cases, the profit motivators are on speed, efficiency, maximizing outputs, etc, even at the expense of quality. Service contracts which do not include clearly defined qualitative expectations, which are not clearly measurable, and that are not related to pay items are very difficult to manage. They are also most susceptible to unacceptable cost/benefit.

Quality expectations can often be written into contracts using special provisions clauses, like response time, delivery time, start/completion time, etc. In the case of equipment, special provisions may include parts availability, fuel consumption, filter supply, extended warranties, etc. An important key, however, is that the consequence of failing to meet special provision be clearly defined, ideally in terms of monetary terms, like penalty for failure to deliver units by a prescribed time, rental cost of replacement unit during downtime waiting for parts/breakdowns, etc.

The point is that writing service type contracts is a very difficult task and requires a very high understanding of the service being requested and takes a lot of lead time to do well. Maintenance managers and superintendents need to understand fully the pitfalls of assigning the task to a person unfamiliar with the product or task, writing incomplete specifications, writing specifications in a hurry, etc. Good contract managers know that competitive prices generally come from soliciting the most number of bids (as opposed to the least), that it will be difficult and time consuming to argue quality of results if the contract did not include clear and measurable performance measures, and that quality of product is derived most easily by tying expectation to the pay item.

Contrary to common thinking in government, it is not the low-bid system that leads to unsatisfactory products and services and difficult-to-administer contracts; it is inadequately written specifications.

## 6-1.05 CONTRACTING AUTHORITY

Our state constitution and laws provide for a form of “limited” government. This means that MnDOT cannot enter into a contract simply because it is a good idea to do so. MnDOT must have statutory authority to enter into a particular type of contract.

[Minnesota Statutes, Chapter 16C](#) provides the legal authority and laws governing state contracting in general. The Commissioner of Administration is responsible for all contracting by, for, and between state agencies, though the Commissioner may choose to delegate purchasing and contracting authority to agencies. MnDOT has generally been delegated broad authority for contracting, subject to oversight by the Department of Administration.

[Minnesota Statutes, Section 161.20](#) authorizes the Commissioner of Transportation to enter into contracts with political subdivisions as necessary to carry

out the Commissioner's responsibility to construct, maintain and operate the trunk highway system.

[Minnesota Statutes, Section 161.32](#) authorizes the Commissioner of Transportation to contract for construction and maintenance work on the trunk highways.

Other statutes also provide authority for specific types of contracts. For example [Minnesota Statutes, Section 165.07](#) authorizes contracts with other states to construct and maintain interstate bridges, and [Minnesota Statutes, Section 160.282](#) authorizes rest area service contracts with organizations employing needy elderly persons.

#### 6-1.06 CONTRACT SIGNATURE AUTHORITY

Contracts must be signed by persons with delegated authority for the specific type of contract. If there is a question regarding delegated authority, contact the [Contract Management Section](#). Signature authority for other types of contracts (e.g. grants) has been delegated to other managers throughout the department. Delegations are specific to the person, not the position, and must be rescinded and reissued as staff changes occur. Delegations are also at the discretion of the Commissioner and change from one administration to the next. The [Contract Management Section](#) should be contacted if questions about "who" can sign "what" documents. All contracts for goods and non-PT services must be signed by persons with Authority for Local Purchasing (ALP).

Certain personnel in the MnDOT [Contract Management Section](#) have been granted the authority to sign most contracts on behalf of the [Department of Administration](#).

### 6-2.0 CONTRACT CATEGORIES

MnDOT enters into many forms of contracts when it does not have the personnel or equipment to accomplish its tasks. These contracts range from maintenance projects to professional services to purchase of materials, equipment, and supplies. Contracts fall into three broad categories 1) payable, 2) receivable, and 3) no-cost contracts.

#### 6-2.01 PAYABLE CONTRACTS

Payable contracts are used to procure and pay vendors for equipment, materials, and services.

The most common of these are the routine maintenance contracts. In a routine maintenance contract, a political subdivision agrees to maintain the trunk highways within its corporate boundaries. MnDOT agrees to pay a negotiated price

commensurate with the time and effort required by the agency. The negotiated price may be lump sum annual, lump sum per mile or per item, or based on an hourly rate to perform the task. The contents of any specific contract should detail the conditions and requirements of the specific work or services to be provided. District staff is responsible for negotiating with applicable agencies and the specialty offices and can provide assistance as needed.

## 6-2.02 RECEIVABLE CONTRACTS

Receivable contracts provide for MnDOT to perform maintenance on transportation systems under the jurisdiction of other units of government in exchange for monetary payment; thus termed "receivable."

The most common receivable contracts are snow and ice control contracts. These are contracts with other units of government by which MnDOT agrees to remove snow from property which is under the jurisdiction of the local government. These contracts state that MnDOT will respond to the municipality's request for service only after trunk highways are open. MnDOT is paid at the rates set forth in the contract. These rates are for equipment and labor and include overhead and fringe benefit additives.

## 6-2.03 NO-COST CONTRACTS

No-cost contracts may be used to define the responsibilities of each party when the parties desire to exchange one good or service for another, rather than for cash. For example, it may be more efficient to have the state maintain a stretch of county road in exchange for the county maintaining a stretch of state highway.

### 6-2.03.01 NEW CONSTRUCTION PROJECTS

Typically, these contracts result from the construction on MnDOT right-of-way, of roadways and related features for the benefit of a local government unit (LGU). The LGU agrees to accept all or partial (routine) maintenance responsibility.

#### 6-2.03.01.01 WITH A COOPERATIVE CONSTRUCTION AGREEMENT

For new construction projects with a cooperative construction agreement, maintenance responsibilities should be addressed in such agreement. The Central Office [Cooperative Agreements Unit](#) currently writes cooperative construction agreements for state-let and local let cooperative projects with the District project manager initiating the agreement request.

Cooperative construction agreements follow the guidelines on maintenance responsibilities presented in MnDOT's [Policy and Procedures for Cooperative Construction Projects with Local Units of Government](#).

Currently District Maintenance involvement is to provide input on the maintenance provisions for the agreement draft. The key contact persons for incorporating Maintenance concerns into cooperative agreements are the Maintenance, Design, or State Aid project manager.

District Maintenance receives a copy of the executed agreement. An electronic copy is available in the Electronic Document Management System (EDMS) and may also be accessed through the Utilities and Municipal Agreement Reporting and Tracking (UMART) system.

#### 6-2.03.01.02 WITHOUT A COOPERATIVE CONSTRUCTION AGREEMENT

For new construction projects without a cooperative construction agreement maintenance agreements may be required and are written by the District with assistance of the [Cooperative Agreements Unit](#). Projects can be either local or state let.

These projects are the type most susceptible to being constructed without the necessary Maintenance responsibilities being defined by agreement. The key to prevent this is early identification of those projects where maintenance agreements are needed. Currently this need is identified by either the project manager or by Maintenance during Maintenance's involvement in scoping, layout review, or plan review.

#### 6-2.03.02 CONSTRUCTION AUTHORIZED BY AN ACCESS OR CONSTRUCTION PERMIT

In some cases a governmental unit, state agency, or some other entity will request and receive a permit to construct something on MnDOT right-of-way. A good example is a city wanting to construct landscaping on MnDOT right-of-way. The District Maintenance Permits Unit will issue the applicant a permit to perform the construction after a maintenance contract has been executed where the applicant will be responsible for all maintenance of those items permitted on MnDOT right-of-way. Maintenance contracts written for this purpose should have a provision requiring the agency receiving the permit to remove the permitted items and restore the right-of-way to a condition acceptable to MnDOT if the right-of-way is later needed for trunk highway use. Sometimes the permit language will suffice and a separate Maintenance Contract is not needed, however, it is important to include a copy of the permit in the same file(s) as the contracts so that it can be easily located in the future.

#### 6-2.03.03 INFORMAL CONTRACTS

There are many cases, perhaps over several years, where a city or county is providing maintenance services on MnDOT right-of-way based only on a verbal contract or handshake, i.e. without a written contract. This appears to occur most frequently at grade separated interchanges built by MnDOT where the local jurisdiction

crossroad is maintained by the city or county but the cooperative construction contract covering the interchange did not address Maintenance responsibilities.

It would be to the District's benefit to have the existing understanding incorporated into a binding contract. This can be difficult to accomplish since it can be time consuming to sort through all associated issues such as a municipal street or county road designation, future turnback plans, incomplete turnbacks, etc. Also the city or county may not be willing to enter into a binding contract when they are not obligated to do so without some incentive. They may prefer the status quo arrangement. Be aware that over time, turnover in personnel may complicate the perpetuation of verbal contracts.

Whenever the opportunity presents itself to negotiate and process a contract to cover these types of situations, it should be pursued. For example, say a City was making an application for a permit for landscaping on MnDOT right-of-way and there is a similar existing landscaping at the same or a different location within the City that is not covered by a contract. This is the perfect opportunity to cover both areas of landscaping in the same maintenance contract because it provides MnDOT with a negotiating position to do so and it is also a benefit to the City, who is making the request for new landscaping.

#### 6-2.03.04 CONSTRUCTION AUTHORIZED BY A LIMITED USE PERMIT

Limited Use Permits (LUP) are issued by District Right of Way Offices to allow specifically defined use of MnDOT right-of-way, generally by another state agency, or a local governmental unit. Section 5-491.810 of the [Right of Way Manual](#) describes the needed procedures for issuing an LUP. The permitted use must be for a "highway purpose" that is necessary in the public interest. An example of an appropriate use of an LUP is a pedestrian recreational trail that crosses the highway right-of-way. The LUP should specify that all maintenance associated with the permitted use is the responsibility of the permittee. LUPs cannot be used to authorize placement of a structure on trunk highway right-of-way. Contact the Office of Land Management for guidance on appropriate uses of an LUP. If a structure is needed (such as a pedestrian bridge over a highway), then a Cooperative Agreement should be used to define responsibilities for construction and maintenance of the structure. Construction of a locally-placed bicycle trail on MnDOT right-of-way is a good example where a LUP would most likely be required.

## 6-3.0 CONTRACTS WITH PRIVATE PARTIES

### 6-3.01 ROADWAY CONTRACTORS

#### 6-3.01.01 ROADWAY RELATED REGULAR BID LETTING

Major maintenance works such as resurfacing or concrete joint cleaning and resealing follows the format and process of construction contracts. All materials and

procedures used should conform to the requirements of the current [Standard Specifications for Construction](#).

The work must be identified, a plan must be developed, special provisions must be written, and a bid proposal must be prepared. The project is advertised a minimum of three (3) weeks before letting. This letting is usually on the department's regular letting day. In special cases a different letting date may be scheduled to meet the requirements of the planned project. Project supervision, inspection, and administration are identical to that of a construction contract.

In general, project contracts follow guidelines and procedures developed and managed by the MnDOT Office of Technical Support and the [Office of Construction and Innovative Contracting](#).

#### 6-3.01.02 ROADWAY RELATED NEGOTIATED CONTRACTS

[Minnesota Statutes, Section 161.32](#), Subdivision 2 provides that the Commissioner may enter into a contract for work through direct negotiation when the estimated cost of the work does not exceed \$150,000. This may be done by obtaining two or more quotations without advertising for bids or otherwise complying with the requirements of competitive bidding. However, all quotations must be kept on file for a period of one year from the date of their receipt.

Since MnDOT benefits from having free and open competition for contracts, this procedure should be used sparingly, and is generally recommended only for urgent situations. An example of an urgent situation would include work that doesn't rise to the level of an emergency (see the following section), but weather or other factors require the work to be completed sooner than the regular letting schedule (or even a special letting date) can accommodate.

The District Engineer may submit these projects, with the appropriate information in memo format to the Office Director of Technical Support.

The criteria for negotiated contract are:

- State funded projects
- No utilities conflicts
- All Right of Way requirements have been met (non-encroachment certificates).
- No new Right of Way required
- No agreements required
- No permits required (except NPDES)
- 8½" x 11" plans preferred
- State Pre-letting, Land Management, and State Design Engineer's signature not required. The designers signature is required (PE)

The full project turn-in package includes the following elements:

- Concurrence memo from District Engineer to State Design Engineer
- Turn-in memorandum
- Plan
- All Special Provisions including Time and Traffic in electronic format and hard copy

For additional information, consult the Office Director of Technical Support.

#### 6-3.01.03 ROADWAY RELATED EMERGENCY WORK

Emergency contracting authority is governed by the provisions of [Minnesota Statutes, Section 161.32](#), Subdivision 3. In an emergency, contracts may be let without advertising for bids if authorized by issuance of an Emergency Order. An emergency is defined as a condition, on a Trunk Highway right of way, that necessitates immediate work in order to keep the highway open to traffic.

In an emergency, the first and foremost obligation is to secure the area, protect public life and safety, prevent further damage to infrastructure, and then to restore mobility. At the earliest opportunity, contact the Office of Administration Emergency Management Section for issuance of an “Emergency Order” and assistance on proceeding with an emergency contract.

An Emergency Order is the document that authorizes MnDOT to enter into a contract without competitive bidding, so whenever practicable, it is important to have that document in hand prior to engaging a contractor. Although soliciting quotes from two contractors is advisable as time permits, emergency procedures permit proceeding with just one quote. It is the district’s discretion to determine how many, and which contractors to seek quotes from, based on availability and capability to perform the work. The District should document the decision that the price is fair and reasonable. The MnDOT Estimating Unit can assist with that determination.

It is possible that the Federal Emergency Management Agency (FEMA) or the Federal Highway Administration (FHWA) may reimburse MnDOT for some emergency-related expenses. Work closely with the Office of Administration Emergency Management Section to ensure that proper procedures are followed and documents maintained to be eligible for available reimbursement.

The Office of Construction and Innovative Contracting can assist with issuing a contract and a Notice to Proceed.

## 6-3.02 BUILDING CONSTRUCTION/REPAIR

### 6-3.02.01 BUILDING RELATED CONSTRUCTION CONTRACTS

This type of contract is one for the design, construction, alteration, improvement, repair or maintenance of buildings, including truck stations, salt sheds, rest areas, etc. The proposal package includes plans, specifications, and special provisions.

This process is managed in the Office of Maintenance, Building Services Section for projects up to \$1.5 million and through the Department of Administration for projects over \$1.5 million. The Building Services Section coordinates development of the bidding package.

### 6-3.02.02 LOW COST BUILDING RELATED CONTRACTS

Certain low-cost (up to \$50,000.00) repairs to MnDOT-owned buildings may be procured by District purchasing staff using the procedures outlined in “Appendix Q” of the [ALP Manual](#). See [Minnesota Materials Management Division](#) for more information.

### 6-3.02.03 BUILDING RELATED EMERGENCY CONTRACTS

Building repairs generally would not fall under the emergency authority for highway work. Urgent building repairs may, of course, be needed to protect the life, health, and safety of occupants or to prevent further accelerated damage to the building.

Contact the MnDOT [Office of Maintenance Building Services Section](#) and [Contract Management Section](#) for assistance in obtaining emergency approval from the Department of Administration. Continue to solicit bids while obtaining authority to enter into a contract.

## 6-3.03 CONSULTANT/ PROFESSIONAL AND TECHNICAL SERVICES CONTRACTS

This type of contract is for professional and technical services that are intellectual in character and that include consultation analysis, evaluation, prediction, planning or recommendation; and that result in the production of a report or the completion of a task. These contracts generally do not involve provision of supplies and materials.

Consultant Agreements are written and administered by MnDOT’s Consultant Services. Even if the contract exceeds \$5,000, competitive solicitation may not be required in many cases. The District Consultant Contract Coordinator will advise on options and help select the correct program. Providing as much lead time as

possible is important. While some contracts can be done in a matter of days, a contract requiring a full RFP process can take up to three months.

Do not authorize consultants to begin work early. Authorizing a consultant to begin work before funds are encumbered and a contract is fully executed is a violation of Minnesota law.

#### 6-3.03.01 EMERGENCY CONSULTANT CONTRACTS

There may be cases where a consultant's service is required urgently, for example to assess a bridge that has been struck by a truck. The following staff or departments should be contacted immediately including the District Consultant Contract Coordinator, Consultant Services Section or the [Contract Management](#) Section. They can provide information on the emergency authorization procedure under [Minnesota Statutes, Section 16C.05](#), Subdivision 2a. An emergency situation is generally defined as "a threat to public health, welfare, or safety that threatens the functioning of government, the protection of property, or the health or safety of people". When emergency authorization is granted by the Department of Administration, a consultant may be authorized to begin work prior to having a fully executed contract without incurring a violation of Minnesota law, although whenever practicable, some contract funds should be encumbered prior to authorizing work. When an emergency approval is granted, all reasonable actions should be taken to have a contract in place in 15 days.

#### 6-3.04 AUTHORITY FOR LOCAL PURCHASE (ALP)

##### 6-3.04.01 MATERIALS

Contact the authorized District Purchasing Agent regarding purchase of maintenance materials or non-professional-technical services.

##### 6-3.04.01.01 MATERIALS EMERGENCY CONTRACTS

For emergency acquisitions of supplies and materials (e.g. asphalt material, traffic control devices, etc.), contact the District's authorized purchasing agent for assistance. Some materials may already be available on MnDOT or Department of Administration contracts, and the authorized purchaser can purchase off of those contracts, or expedite emergency purchases through another process.

##### 6-3.04.01.02 MATERIAL PROCUREMENT CONTRACTS

Maintenance materials are purchased, by contract, in two different ways. They are purchased through statewide or district contracts as needed.

Many supplies and materials are available through statewide contracts bid out periodically by MnDOT or the Department of Administration. Examples include vests and other safety reflective clothing, pavement marking material, and crushed rock salt.

Materials are also acquired by request for bid purchased on an "as needed" basis. The purchases can be made any time of the year in large or small amounts.

When there is a need to acquire supplies or materials, contact the District's authorized purchasing agent for instructions and forms.

#### 6-3.04.02 EQUIPMENT PURCHASES AND RENTAL

All equipment purchases must come through the MnDOT Office of Maintenance Equipment Section. At that point a determination is made:

- If it needs a unit, asset, or project number
- If it's a betterment to an existing unit/asset/project
- If the purchase is straight forward and on contract the Equipment Section will give the district the information (contract, project number...) to cut the purchase order

If the purchase is more complex the Equipment Section will work with the Department of Administration to get a contract in place.

All equipment requiring registration must be ordered by the Equipment Section. The Equipment Section will process Rent-to-Own Equipment and the Districts are responsible to process short term rentals.

Generally, MnDOT purchases out of budgeted funds based on type of equipment, materials or non-professional technical services. Purchasing methods include contracts, requests for proposals, request for bids, phone quotes, etc. MnDOT follows the guidelines and procedures as documented in the ALP Manual prepared by the Department of Administration.

Depending on the type of equipment needed for purchase or rent, it may be available on an existing contract, or it may need to be purchased on a one-time basis. The District's authorized purchasing agent would be the source for forms and instructions. For information on available contracts, forms and procedures see the [Equipment Section](#) website.

#### 6-3.04.03 MAINTENANCE SERVICES

This type of contract is for any non-professional technical service as found in [Minnesota Statutes, Section 16C.02](#), Subdivision 19. This could include contracts for rubbish removal, parts washer, septic tank service, custodial services, etc. Requests for these types of services should be directed to the District's authorized purchasing agent.

### 6-3.05 UTILITY CONTRACTS

Performance of a maintenance project may impact utilities and require Gopher State One Call notification 48 hours prior to excavation. Additionally work may be required to relocate or protect a utility's facilities. Early coordination with the affected utilities and the Utility Agreements and Permits Unit in MnDOT's Office of Land Management is critical. The Utilities Engineer may issue a notice and order requiring the utility to relocate or protect its facilities. Depending on the nature and location of the facilities the utility owner may or may not be entitled to compensation for such actions. This type of contract is governed by [Minnesota Statutes, Section 161.45](#) and [Minnesota Statutes, Section 161.46](#) and [Minnesota Rules 8810.3100 through 8810.3600](#). Utility contracts are contracts between MnDOT and private or public utility companies to reimburse or recover the costs associated with relocation due to highway construction or maintenance. Utility Contracts are prepared by the Utility Agreements and Permits Unit in MnDOT's Office of Land Management.

### 6-3.06 RAILROAD CONTRACTS

If maintenance is being performed within a railroad right-of-way, the railroad may need to provide flaggers or more extensive traffic control for the protection of workers and the traveling public. The Railroad Section of the Office of Freight and Commercial Vehicle Operations prepares contracts with railroad companies to provide flaggers for maintenance projects in the railroad right-of-way, or to have the railroad perform maintenance of crossing surfaces.

### 6-3.07 STRUCTURAL AND LIVING SNOW FENCE CONTRACTS

Living Snow Fence Contracts involve negotiating a contract with an adjoining landowner for the planting of trees, shrubs and grasses or retention of unharvested cornstalk for the purpose of snow drift control.

Living Snow Fence Contracts are written and processed at the District level. Templates and a process checklist for preparing and executing Living Snow Fence contracts are available on line from the [Office of Environmental Stewardship](#).

## 6-4.0 CONTRACTS WITH GOVERNMENTAL ENTITIES

MnDOT may enter into maintenance-related contracts with other governmental entities. Usually such contracts are with local governments, but MnDOT also enters into contracts with other state agencies, and with other sovereign governments such as the federal government, another state or Tribal governments.

### 6-4.01 LOCAL GOVERNMENTS (TOWNSHIPS, CITIES, COUNTIES)

MnDOT may enter into maintenance-related contracts with political subdivisions of the State of Minnesota. Political subdivisions includes all levels of local government, such as counties, cities, towns, watershed districts, school districts, special districts, joint powers organizations, and the metropolitan council.

#### 6-4.01.01 ROADWAY REPAIR AND MAINTENANCE

##### 6-4.01.01.01 ROUTINE MAINTENANCE CONTRACTS

MnDOT enters into contracts with Local Governments to:

- Pay the local government to maintain a section of trunk highway within the local government's boundaries
- Receive money from the local government for MnDOT maintaining a local street
- Exchange maintenance of trunk highway and local street sections to facilitate more efficient operations

Maintenance contracts may be limited to snow and ice control, or may be for year-round maintenance. These contracts may also be limited to a specific purpose, e.g. guardrail replacement or repair of sign knock-downs. Most routine maintenance contracts are established on a biennial basis.

Routine maintenance contracts are the responsibility of the District to negotiate and develop, with assistance and oversight provided by the [Cooperative Agreements Unit](#). Templates and checklists are available online at the [Cooperative Agreements Unit](#).

##### 6-4.01.02 EQUIPMENT RENTAL AND SERVICE CONTRACTS

MnDOT may enter into contracts with Local Governments to share equipment, or to provide or receive services. Examples include borrowing trucks from the Department of Natural Resources, sharing salt sheds with local governmental agencies, exchanging winter sand and chemicals for use of front end loaders, etc.

Typically, many of these exchanges have been arranged on an unwritten "handshake" basis. These deals do, however, raise serious legal and financial concerns, that should be addressed through a formal written contract. These types of deals can be handled as joint powers contracts, partnership contracts or through a blanket partnership contract.

##### 6-4.01.03 COOPERATIVE CONSTRUCTION CONTRACTS

A major trunk highway maintenance project could be combined with an adjacent local road maintenance project and administered through a cooperative construction contract, as either a state or local project. Requests for cooperative construction agreements are initiated by the district, and agreements are prepared by

the [Cooperative Agreements Unit](#). For more information, see the [Cooperative Agreements Unit](#).

#### 6-4.01.04 JOINT POWERS CONTRACTS

A joint powers contract is with one or more local units of government, other states, or the federal government and is written to do work for each other, share resources, allow joint or cooperative execution of any power common to the contracting parties, or authorize one party to use its powers on behalf of another party. This contract may or may not involve exchange of money but if it derives income to MnDOT, the money is retained in the Trunk Highway Fund (as opposed to the District operating fund).

Examples of uses of joint powers contracts include:

- Sharing of equipment or other resources
- Joint acquisition of right-of-way
- Performance of extraordinary maintenance
- Contract with a watershed district

If the arrangement is that MnDOT will be receiving money from the other governmental entity, the likely recourse would be to consider using a partnership contract, in which case, the money is retained in the District operating fund.

#### 6-4.01.05 PARTNERSHIP CONTRACTS

This type of contract is governed by [Minnesota Statutes, Section 174.02](#) with either a governmental or a non-governmental partner to promote efficiencies in providing governmental services or to further the development of innovation in transportation for the benefit of the citizens of Minnesota. A partnership contract may involve services "in-kind" or an exchange of resources with a non-governmental party. The legislation requires that MnDOT annually report which partnerships were formed and how much money was involved. Partnership proposals must be approved in advance through the MnDOT Partnership Coordinator in the [Contract Management Section](#). Partnership Contracts are usually written by the [Contract Management Section](#) or the District, depending on complexity.

The key feature of this type of contract in contrast to a joint powers or interagency contract is that a dedicated receivables account can be set up to allow payments received from the other party to be appropriated back to the District or office budget. In contrast, receivables from non-partnership joint powers and interagency contracts are placed into the Trunk Highway Fund.

A non-governmental partnership template is not currently available, thus the [Contract Management Section](#) is the resource for assistance in ensuring this is the correct contract type for the situation and for assistance in writing and processing a partnership contract.

To request approval to establish a partnership contract, the Partnership Proposal Form needs to be submitted.

#### 6-4.01.06 STATE AID MASTER CONTRACTS

MnDOT's District State Aid Offices have established many "master contracts" with counties (and a few cities). These contracts allow Districts to enter into short work order contracts with local governments in a more expedited manner than a normal joint powers contract. Work orders under this program can be signed by the District Engineer. They can also generally be signed by the local government's engineer without board or council action.

These State Aid Master Contracts can cover the following topics:

- Performance of professional, technical or administrative services, such as design, right-of-way assistance or setting up public meetings.
- Letting a contract for and overseeing construction work.
- Performance of maintenance work such as repairing sign knock-downs, fixing damaged guardrails, or removing animal carcasses.
- Providing mutual aid in emergencies.

The third option may be particularly useful for locations that cannot be easily serviced from a MnDOT truck station, but where there are county or city crews readily available. These master contracts work both ways – MnDOT can be either the service-providing or service-receiving party. Some repetitive "cookie-cutter" services (such as lab tests) don't even require execution of a work order.

The master contracts and work orders are administered by the District State Aid Engineer.

#### 6-4.02 CONTRACTS WITH OTHER STATE AGENCIES

MnDOT may enter into maintenance-related contracts with other Minnesota State Agencies. These contracts can be used for a variety of purposes, for example, to provide for snowplowing at a state veterans home, to share equipment with the Department of Natural Resources, or to have a community college present mechanic training. These arrangements can be documented in either a regular interagency contract or an interagency partnership contract.

##### 6-4.02.01 "REGULAR" INTERAGENCY CONTRACTS

This type of contract is entered into between two or more state agencies, such as the Department of Natural Resources, the Department of Administration, or a MnSCU college (but not the University of Minnesota or Metropolitan Council).

This type of contract is virtually unlimited in purpose, duration, or dollar amount. It needs only to be in furtherance of the agencies statutory powers. Preparing and executing these contracts is fairly simple. The contract must provide a sufficiently defined scope of duties and payment details to ensure accountability for, and measurability of, results. Contracts must be signed by officials of each agency with properly delegated authority and also by MnDOT's [Contract Management Section](#). It is strongly advised that a draft of the contract reviewed by [Contract Management Section](#) is performed prior to routing for signatures.

#### 6-4.02.02 INTERAGENCY PARTNERSHIP CONTRACTS

MnDOT may enter into a “partnership” contract with another Minnesota state agency. This type of contract is used when a receivable is directed to a specific purpose, rather than going by default into the Trunk Highway Fund.

As each partnership has its own unique features, there is no template partnership contract. Contact the Partnership Coordinator in the [Contract Management Section](#) for information and directions on preparing a partnership proposal, and for assistance with drafting the partnership contract.

#### 6-4.03 CONTRACTS WITH OTHER SOVEREIGN GOVERNMENTS

MnDOT may enter into contracts with other sovereign governments, such as the federal government, governments of other states, Canadian provinces, and tribal governments. Contracting with other sovereign governments presents unique issues relating to enforceability of contracts, applicability of tort claims acts and other state laws, and handling of data under the Data Practices Act. Consult with [Contract Management Section](#) when drafting any contract with another sovereign government.

##### 6-4.03.01 TRIBAL GOVERNMENTS

MnDOT may enter into maintenance-related contracts and partnership contracts with Minnesota's tribal governments.

##### 6-4.03.01.01 HIGHWAY CONTRACTS WITH TRIBAL GOVERNMENTS

MnDOT, pursuant to [Minnesota Statutes, Section 161.368](#) may enter into cost sharing contracts with tribal governments for the purpose of providing maintenance, design, and construction to highways on tribal lands. This would include having MnDOT pay the tribe to perform such work. This is very similar to a Joint Powers Contract (see [6-4.01.04](#))\_except that the purposes of the contract are more constrained. The above-cited law has unique features relating to state court jurisdiction and immunity from suit. A draft must be reviewed by the [Contract Management Section](#) prior to routing it for signature.

#### 6-4.03.01.02 TRIBAL PARTNERSHIP CONTRACTS

MnDOT may enter into a partnership contract with a tribal government. This type of contract is governed by [Minnesota Statutes, Section 174.02](#) with either a governmental or a non-governmental partner to promote efficiencies in providing governmental services or to further the development of innovation in transportation for the benefit of the citizens of Minnesota. See [6-4.01.05](#) for more information on partnership contracts.

#### 6-4.03.02 CONTRACTS WITH OTHER STATES OR FEDERAL GOVERNMENT

MnDOT may, pursuant to [Minnesota Statutes, Section 471.59](#) and [Minnesota Statutes, Section 174.02](#), enter into joint powers contracts and partnership contracts with other states or the federal government. See section [6-4.01.04](#) for information on joint powers contracts and section [6-4.01.05](#) for more information on partnership contracts.

#### 6-4.03.02.01 BRIDGE CONTRACTS WITH ADJACENT STATES OR PROVINCES

MnDOT may, pursuant to [Minnesota Statutes, Section 165.07](#), enter into contracts with adjoining states for the construction and maintenance of interstate bridges. MnDOT may also, pursuant to [Minnesota Statutes, Section 165.08](#), enter into contracts with the Canadian government, or of a province thereof, for the construction, maintenance, operation and repair of such international border bridges.

Bridge contracts are prepared and administered by the Office of Bridges and Structures with assistance from the [Contract Management Section](#).

## INDEX OF LINKS

ALP Manual

<http://www.mmd.admin.state.mn.us/alpappendices.htm>

Consultant Services Section

<http://www.dot.state.mn.us/consult/index.html>

Contract Management Section

<http://www.dot.state.mn.us/contracts/>

Cooperative Agreements Unit

<http://ihub/projectdelivery/cooperative/index.html>

Department of Administration

<http://mn.gov/admin/>

Equipment Section

<http://www.dot.state.mn.us/maintenance/fleet.html>

Minnesota Materials Management Division

<http://www.mmd.admin.state.mn.us/>

Minnesota Rules 8810.3100 through 8810.3600

<https://www.revisor.mn.gov/rules/?id=8810>

Minnesota Statutes, Chapter 16C

<http://www.revisor.mn.gov/statutes?id=16C>

Minnesota Statutes, Section 160.282

<https://www.revisor.mn.gov/statutes/?id=160.282>

Minnesota Statutes, Section 161.20

<http://www.revisor.mn.gov/statutes/?id=161.20>

Minnesota Statutes, Section 161.32

<https://www.revisor.mn.gov/statutes/?id=161.32>

Minnesota Statutes, Section 161.368

<https://www.revisor.mn.gov/statutes/?id=161.368>

Minnesota Statutes, Section 161.45

<https://www.revisor.mn.gov/statutes/?id=161.45>

Minnesota Statutes, Section 161.46

<https://www.revisor.mn.gov/statutes/?id=161.46>

Minnesota Statutes, Section 165.07

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Minnesota Statutes, Section 165.08

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Minnesota Statutes, Section 16C.02

<https://www.revisor.mn.gov/statutes/?id=16C.02>

Minnesota Statutes, Section 16C.05

<https://www.revisor.mn.gov/statutes/?id=16C.05>

Minnesota Statutes, Section 174.02

<http://www.revisor.mn.gov/statutes/?id=174.02>

Minnesota Statutes, Section 43A.38

<https://www.revisor.mn.gov/statutes/?id=43a.38>

Minnesota Statutes, Section 471.59

<http://www.revisor.mn.gov/statutes/?id=471.59>

MnDOT Contract Administration Manual

<http://www.dot.state.mn.us/const/tools/conadminmanual.html>

Office of Construction and Innovative Contracting

<http://www.dot.state.mn.us/const/>

Office of Environmental Stewardship

<http://www.dot.state.mn.us/environment/livingsnowfence/>

Office of Maintenance Building Services Section

<http://www.dot.state.mn.us/maintenance/facilities.html>

Office of Administration Emergency Management

<http://ihub.dot.state.mn.us/security/>

Office of Maintenance Equipment Section

<http://ihub.dot.state.mn.us/maintenance/equipment/equip.html>

Office of Maintenance Operations Section

<http://ihub.dot.state.mn.us/maintenance/>

Policy and Procedures for Cooperative Construction Projects with Local Units of Government

<http://ihub.dot.state.mn.us/commissioner/feb112014/policytemplatecooperative.pdf>

Pre-letting Office

<http://www.dot.state.mn.us/bidlet/>

Right of Way Manual

[http://www.dot.state.mn.us/row/pdfs/RWManuals/RW\\_Manual2010\\_REV-03-15-2013.pdf](http://www.dot.state.mn.us/row/pdfs/RWManuals/RW_Manual2010_REV-03-15-2013.pdf)

Standard Specifications for Construction

<http://www.dot.state.mn.us/pre-letting/spec/2014/2014-Std-Spec-for-Construction.pdf>