

NORTH CAROLINA

**DISASTER RELATED DEBRIS REMOVAL
AGREEMENT**

CARTERET COUNTY

DATE: 3/31/2016

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

AND

WBS Element: N/A

TOWN OF EMERALD ISLE

THIS SPECIAL AGREEMENT, hereinafter referred to as "AGREEMENT" is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Emerald Isle hereinafter referred to as the "Municipality," collectively referred to hereinafter referred to as "the Parties."

WITNESSETH:

WHEREAS, this AGREEMENT is made on the last date signed below between the Department and the Municipality for the emergency removal of disaster related debris during a State of Disaster or Imminent Threat of Disaster and/or a State of Emergency declared pursuant to the North Carolina General Statutes, Chapter 14 and Chapter 166A; and,

WHEREAS, during a declared State of Disaster or Imminent Threat of Disaster which implements the North Carolina Emergency Operations Plan, hereinafter referred to as "the NCEOP", the Department may be called upon to perform certain functions, including the removal of debris from the right of way of public roads and streets, pursuant to the NCEOP; and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, herein referred to as the "Stafford Act", as it relates to this AGREEMENT; and,

WHEREAS, in certain instances, the Moving Ahead for Progress in the 21st Century Act, hereinafter referred to as "MAP-21," allows the Federal Emergency Management Agency, hereinafter referred to as "FEMA," to reimburse for debris removal on Federal Highway Administration, hereinafter referred to as "FHWA," routes; and,

WHEREAS, the Municipality has requested and the Department is in agreement that it be allowed the opportunity and responsibility to perform certain Department functions as set forth in the NCEOP, in order to assure that its citizens are served and protected; and,

WHEREAS, the Parties have conferred as to the best methods and practices to allow the Municipality to assume these responsibilities;

NOW, THEREFORE, the Parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

DEFINITIONS

1. For purposes of this AGREEMENT, the following definitions shall apply:
 - A. "State Routes" shall mean those roads maintained by the Department on the National Highway System, including US and NC Routes and Secondary Routes that are identified by a four-digit State Route (SR) number.
 - B. The term "disaster related debris" shall be such debris for which removal costs are considered eligible for reimbursement by FEMA during a particular State of Disaster, Imminent Threat of Disaster or State of Emergency.

DESCRIPTION OF WORK

2. The Municipality shall remove and dispose of disaster related debris on all released State Routes. In so doing, the Municipality shall comply with all State and Federal policies, guidance, and requirements regarding procurement, storm debris removal, monitoring and disposal including landfill quantity calculations and site disposal costs.
3. The Municipality shall remove all disaster related debris even if such removal requires multiple passes on a particular route and shall continue until the mutually agreed upon completion date. All work pursuant to this AGREEMENT shall be completed to the satisfaction of the Department's Division Engineer of the Transportation Division in which Municipality is located. The Division Engineer's decision as to the completeness of the work shall be final.

TIME FRAME

4. This AGREEMENT shall remain in effect for five (5) years from the date of execution included herein. This AGREEMENT may be extended for two (2) additional years, contingent upon the availability funds, if mutually agreed upon in writing by the Parties. On behalf of the Municipality, extensions may be authorized and executed by the City Manager or other official as designated without further resolution of the Municipality.
5. All work pursuant to this AGREEMENT shall be completed by a date mutually agreed to by the Division of Emergency Management (DEM), FEMA, the Department and Municipality.

REIMBURSEMENT FOR ELIGIBLE COSTS

6. The Municipality shall apply directly to FEMA for reimbursement of eligible debris removal costs in accordance with the rules, regulations and procedures of those agencies for such debris removal at that time. Any reimbursement must be governed by the current rules, regulations and procedures of those agencies for the specific State of Disaster, Imminent Threat of Disaster or State of Emergency, and the Department shall not be responsible for any portion of reimbursement costs whatsoever to Municipality.

PROCEDURES FOR REMOVAL OF DISASTER RELATED DEBRIS

7. During a State of Disaster or Imminent Threat of Disaster and/or a State of Emergency declared pursuant to Chapters 14 and 166A of the North Carolina General Statutes and upon a determination by the Parties that is desirable that Municipality be responsible for removal of debris from the right of way of State Routes, the Municipality shall submit a completed Request Release of State System Roads, Form SSR-01, (see Appendix A) to the Department's Division Engineer. This request, if approved, will release the identified State Routes to the Municipality for disaster related debris removal.
8. The Department will review the Municipality's *Request Release of State System Roads*, Form SSR-01 and respond in writing indicating whether the Department has approved or denied the request from the Municipality for removal of disaster related debris under the terms of this AGREEMENT. If approved, this action will be considered the Municipality's "Notice to Proceed" with the work.
9. When the Municipality is approved for the removal of disaster related debris on State Routes under the terms of this AGREEMENT, the Municipality will be responsible for complying with all Department rules, regulations and procedures including, but not limited to, safety, insurance, and traffic control in accordance with the Manual on Uniform Traffic Control Devices when undertaking the work.
10. The Municipality shall provide a written report to the Department's Division Engineer that includes a detailed description and quantities of the work accomplished for each Notice to Proceed issued by the Department within sixty (60) days of the completion of the work.
11. The Municipality shall be responsible for repair of any damages to the state maintained rights of way, which may be caused by debris removal operations undertaken pursuant to this AGREEMENT. All repairs shall be completed to the satisfaction of the Department's Division Engineer of the Transportation Division in which the Municipality is located. The Division Engineer's decision as to the completeness of the work shall be final.

PRINCIPAL REPRESENTATIVE

12. To provide consistent and effective communication between the Parties, each Party shall appoint a Principal Representative to serve as its central point of contact responsible for coordinating and implementing this AGREEMENT. Any notices required by this AGREEMENT shall be in writing and shall be personally delivered or sent by United States mail, First Class postage pre-paid to ensure delivery to the Parties, respectively, at the following addresses, unless a Party has been notified in writing by the other of a change of address:

To the Department:

Michael L. Holder, P.E.
Chief Engineer
North Carolina Department of Transportation
1501 Mail Service Center
Raleigh, North Carolina 27699-1501

To the Municipality:

Frank Rush, Town Manager
Town of Emerald Isle
7500 Emerald Dr.
Emerald Isle, NC 28594

ADDITIONAL PROVISIONS

13. This AGREEMENT may be amended at any time by mutual agreement of the Parties by a written Supplemental Agreement approved and signed by the Parties.
14. This AGREEMENT may be terminated by either Party upon submission of a thirty (30) day advance written notice of termination to the other Party, except in instances where there is active debris removal. In these instances where active debris removal is ongoing, the termination will be effective no sooner than thirty (30) days after the completion of all active debris removal already underway.
15. This AGREEMENT is solely for the benefit of the identified Parties to the AGREEMENT and is not intended to give any rights, claims, or benefits to third parties or to the public at large.
16. The Municipality shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.
17. It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency. By execution of this AGREEMENT, the

Municipality certifies, that neither it nor its agents or contractors performing work included in this AGREEMENT are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by a governmental department or agency.

18. The Municipality shall certify to the Department compliance with all State laws and regulations and ordinances that are applicable to the Municipality in connection with the work included in this AGREEMENT and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by the Agency or any entity performing work included in this AGREEMENT under contract with the Municipality.
19. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for the work included in this AGREEMENT. The Department is not responsible under this AGREEMENT for any expenses or obligations incurred for the work included in this AGREEMENT.
20. The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina for any and all claims for payment, damages and/or liabilities of any nature including damage or injury to persons or to private property occurring as a result of the debris removal activities asserted against the Department in connection with this AGREEMENT. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.
21. In compliance with state policy, the Municipality shall have a Conflict of Interest Policy for its employees, in addition to the statutory conflict of interest restrictions applicable to its directors.
22. All terms and conditions of this AGREEMENT are dependent upon, and subject to, the allocation of funds for the purpose set forth in the AGREEMENT and the AGREEMENT shall automatically terminate if funds cease to be available.
23. The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of the final payment, for inspection and audit by the Department's Financial Management Section, the Office of State Management and Budget, the FHWA, or any authorized representatives of the Federal Government.
24. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (http://www.whitehouse.gov/omb/circulars_default) and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The

- Municipality shall verify to the Department that the annual independent audit report has been completed within nine (9) months after the Municipality's fiscal year ends.
25. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this AGREEMENT to other parties or entities.
 26. In no way shall it be construed or implied that either the Department or the Municipality is by this AGREEMENT intending to abrogate its obligation and duty to comply with the regulations promulgated under Federal and state law.
 27. This AGREEMENT contains the entire agreement between the Parties and there are no understandings or agreements, verbal or otherwise, regarding this AGREEMENT except as expressly set forth herein.
 28. The Parties hereby acknowledge that the individual executing the AGREEMENT on their behalf is authorized to execute this AGREEMENT on their behalf and to bind the respective entities to the terms contained herein and that he has read this AGREEMENT, conferred with his attorney, and fully understands its contents.
 29. A copy or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of this AGREEMENT as binding as an original, and the Parties agree that this AGREEMENT can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the AGREEMENT.
 30. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).
 31. Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-55 *et seq.* requires that each vendor, prior to contracting with the State, certify that the contracting party meets the requirements of the Iran Disinvestment Act. The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

- By execution of this AGREEMENT each Party certifies that neither it nor its Agents or Contactors/Subcontractors 1) are on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran; 2) shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and 3) that the undersigned are authorized by the Parties to make this Certification.
- During the term of this AGREEMENT, should the Parties receive information that a person is in violation of the Act as stated above, the Department will offer the person an opportunity to respond and the Department will take action as appropriate and provided for by law, rule, or contract. Should this Act be voided by NC General Statute, this AGREEMENT will remain valid; however this certification will no longer be required.

IT IS UNDERSTOOD AND AGREED that the approval of the Work by the Department is subject to the conditions of this AGREEMENT.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

TOWN OF EMERALD ISLE

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:

Frank Rush, Town Manager

Town of Emerald Isle

7500 Emerald Dr.

Emerald Isle, NC 28594

DEPARTMENT OF TRANSPORTATION

BY: _____

(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____

Request Release of State System Roads

FEMA - _____ - DR - NC

Requesting Applicant: _____

In accordance with the Agreement on file between the NCDOT and the Requesting Applicant listed above; the local government is hereby requesting the NCDOT to release its authority for FEMA reimbursement for emergency services to the local government authority for the State System Roads listed below.

- I. Release of all State System Roads
or
- II. Selective State System Roads as Follows:

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Local Government Designated Agent: _____
Date: _____

North Carolina Department of Transportation	
Release by:	_____
Title:	_____
Date:	_____