

NORTH CAROLINA

WAKE COUNTY

**WAKE COUNTY EMERGENCY MANAGEMENT
MUTUAL AID AGREEMENT**

THIS AGREEMENT is entered into between the County of Wake (the “County”) and the Town of Apex a North Carolina Municipality (“Municipality”), and is effective upon the date of the last party to execute this Agreement;

WITNESSETH:

WHEREAS, Chapter 166A of the North Carolina General Statutes authorizes the development of mutual aid agreements for reciprocal emergency management aid and assistance between political subdivisions in North Carolina provided they are consistent with the State Emergency Management Programs and Plans; and

WHEREAS, mutual aid agreements may include but are not limited to the furnishing or exchange of supplies, equipment, facilities, personnel and services during emergencies as defined in Article 1A of North Carolina General Statute 166A; and

WHEREAS, North Carolina General Statute 166A-19.15 states that the governing body of each county is responsible for emergency management within the geographical limits of the county and all emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the County; and

WHEREAS, North Carolina General Statute 166A-19.72(c) authorizes the chief executive of each political subdivisions to enter into mutual aid agreements with other political subdivisions, with the concurrence of the subdivision’s governing body for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans; and

WHEREAS, it is the intent of emergency management programs to reduce vulnerability of people and property to damage, injury, and loss of life and property; prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons; provide for the rapid and orderly rehabilitation of persons and restoration of property; and provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response and recovery; and

WHEREAS, mutual aid agreements provide a mechanism to share public sector resources throughout the nation; and

WHEREAS, this Agreement is intended to complement the mutual aid agreement signed between the County of Wake and the State of North Carolina by setting forth the means of resource coordination and open communication between the County and the Municipality during emergencies; and

WHEREAS the statewide agreement effectually contemplates requests for mutual aid and assistance through county emergency management agencies; and

WHEREAS, the Town of Apex desires to render and receive assistance during disasters or emergencies; and

WHEREAS, pursuant to North Carolina General Statute 166A-19.60 all functions and activities performed under this Agreement are hereby declared to be governmental functions; and

WHEREAS, functions and activities performed under this Agreement are to be carried out for the benefit of the general public and not for the benefit of any specific individual or individuals; and

WHEREAS, all immunities provided by law shall be fully applicable as stated in North Carolina General Statute 166A-19.60 or otherwise as by law provided.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants expressed herein, the parties hereby enter into this mutual aid agreement and agree that the County of Wake and Town of Apex shall participate in coordinated sharing of resources for the purposes of providing protection of the community under the terms as more particularly set forth herein below:

SECTION I. DEFINITIONS

Agreement means this document, the Mutual Aid Agreement.

Aid and Assistance include, but shall not be limited to, personnel, equipment, facilities, services, supplies, and other resources.

Authorized Representative is an official of a party to this Agreement who has been authorized in writing by that party pursuant to the terms of this Agreement, to request, offer, or provide aid and assistance under the terms of this Agreement.

Disaster is any emergency which has been officially declared a “disaster” by gubernatorial or presidential executive order.

Emergency means any incident or situation that has occurred, is occurring, or will occur in the immediate future that poses a major threat to public safety and causes or threatens to cause loss of life, serious injury, significant damage to property, or major harm to public health or the environment, as a result of an occurrence or imminent threat of widespread or severe damage or loss of life or property, resulting from natural, technological, or man-made emergency situations, and which a local entity has declared as being beyond the capabilities of its local emergency response agencies.

Incident means an occurrence, natural or manmade, that necessitates a response to protect life or property. In this Agreement, the word “incident” includes planned events as well as emergencies and/or disaster of various kinds and sizes.

Planned Event means an incident that is a scheduled nonemergency activity including but not limited to elections, sporting events, concerts, parades, funeral coverage, or fairs.

Political Subdivision means Counties and incorporated cities, towns, and villages.

Provider is a party to this Agreement that has received a request to furnish aid and assistance to the party in need (“Recipient”).

Recipient is a party to this Agreement requesting or receiving aid and assistance from another party.

SECTION II. OBLIGATIONS OF THE PARTIES

A. Provision of Aid and Assistance – Pursuant to the terms and conditions set forth in this Agreement, the parties hereto may provide each other with aid and assistance in the event of a disaster, emergency, planned event, or incident. It is mutually understood that each party's foremost responsibility is to its own citizens within its own respective jurisdiction. This Agreement shall not be construed to impose an absolute obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party and;

1. Upon notification or request for resources, the Municipality agrees to make reasonable efforts to contact Wake County Emergency Management or Wake County Emergency Operations Center, if activated, prior to the deployment of said resources outside the geographical limits of the County;
2. If determined by the parties to be necessary, requests for additional resources will be jointly coordinated by Wake County Emergency Management and the authorized representative of the Municipality to other governmental entities, private sector agencies, and State Division of Emergency Management.

B. Procedures for Requesting Assistance – When Recipient obtains direct knowledge of or becomes affected by an emergency, incident, planned/unplanned event and deems its resources inadequate, it may request mutual aid and assistance by communicating the request to Provider, indicating the request is made pursuant to this Agreement. Such request may be made verbally, to be followed as soon as practicable, by a written confirmation of that request.

Required Information: Each request for assistance shall include the following information, in writing or by any other available means, to the extent known:

1. Identification of the services function(s) for which assistance is needed and the type of assistance needed;
2. The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;
3. Specifics regarding time and date, location, and a point of contact.

C. Equipment, Supplies, and Material use Guidelines – The guidelines for equipment, supplies, and material use ensure the safe and effective operation and use of the requested items.

1. Equipment Guidelines
 - a. Equipment must be used for its intended purpose and in accordance with the manufacturer's instructions.
 - b. Equipment must be maintained in good working condition and inspected regularly by the party in possession of the equipment to ensure that it is safe to use.
 - c. Equipment must be returned in the same condition in which it was received, with all parts and accessories intact.

- d. Any damage or malfunction of equipment must be reported immediately to the Provider.
- e. The Recipient is responsible for receiving any necessary training or instruction on the proper use of the equipment.
- f. The Recipient of the equipment is responsible for damages to the equipment and any costs associated with the repair or replacement of the equipment due to damage or loss, including loss of use and diminution in value, resulting from or during Recipient's use of the equipment.
- g. The Provider of the equipment reserves the right to refuse to provide equipment due to Provider's assessment of equipment availability relative to Provider's needs. Provider of the equipment reserves the right to refuse to provide to any Recipient who does not comply with this agreement.

2. Materials and Supplies Guidelines

- a. Materials and/or supplies should be used for their intended purpose and in accordance with any applicable laws and regulations.
- b. Materials and/or supplies should be stored in a safe and secure manner to prevent damage or loss.
- c. Materials and/or Supplies should be used in a manner that does not create a hazard to people or the environment.
- d. The Recipient is responsible for receiving the necessary training or instruction on the proper use of the materials and/or supplies.
- e. The Provider of the materials and/or supplies reserves the right to refuse to lend materials and supplies due to Provider's assessment of the availability of its materials and supplies relative to Provider's needs. Provider of the materials and supplies reserves the right to refuse to provide to any Recipient who does not comply with this agreement.

D. Designation of Authorized Representative – Each party to this Agreement shall designate an Authorized Representative. Such designation shall be communicated, in writing, to the Chief Executive Officer of the other party upon the execution of this Agreement. Such designation may be amended at any time by the Chief Executive Officer of a party upon timely written notice.

E. Traveling Employees – Unless otherwise specified by Recipient or agreed by the parties in writing, it is mutually understood that Recipient will provide for the needs and necessary expenses of the Provider's traveling employees. Recipient shall pay for all reasonable out-of-pocket costs and expenses of Provider's personnel, including, without limitation, transportation expenses for travel to and from the disaster area, food, and, if necessary, lodging. If Recipient cannot provide such food and/or lodging at or near the disaster area, the Recipient shall so advise the Provider, and shall specify in its request for assistance that only personnel who can provide for their own needs are requested.

F. Supervision and Control – The Provider shall designate supervisory personnel amongst its employees sent to render aid and assistance to the Recipient. Recipient shall provide necessary credentials

to the Provider's personnel authorizing them to operate on behalf of the Recipient. Recipient shall assign work tasks to Provider's supervisory personnel, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordination between Provider's supervisory personnel and Recipient.

Based upon such assignments set forth by Recipient, Provider's supervisory personnel shall:

1. Have the authority to assign work and establish work schedules for Provider's personnel. Further, supervisor shall retain direct supervision and control of Provider's personnel, equipment, and other resources. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;
2. Maintain daily personnel time records, material records, and a log of equipment hours;
3. Report work progress to Recipient at mutually agreed upon intervals.
4. In the event of a conflict between Recipient's and Provider's protocols and procedures, Provider's shall prevail as applicable to Provider's personnel.

G. Period of Service, Renewability, Recall – Unless agreed otherwise, the duration of the Provider's assistance shall be for an initial period of twenty-four (24) hours, starting from the time of arrival. Thereafter, assistance may be extended in increments agreed upon by the Authorized Representatives of Provider and Recipient. Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant, in the sole discretion of the Provider. Provider shall make a good faith effort to provide at least eight (8) hours advance notification to Recipient of Provider's intent to terminate such assistance, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

SECTION III. REIMBURSEMENT

Except as otherwise provided below, it is understood that Recipient shall pay to Provider all documented costs and expenses incurred by Provider as a result of extending assistance to Recipient. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with FEMA Public Assistance Guidelines in addition to the following provisions, unless otherwise agreed in writing by Recipient and Provider. Recipient shall be ultimately responsible for reimbursement of all eligible expenses. The provider may waive some or all requirements for reimbursement; however, such an agreement must be documented in the request and/or offer of assistance.

A. Personnel – During the period of assistance, Provider shall continue to pay its employees according to its then prevailing ordinances, rules, regulations, and agreements. The Recipient shall reimburse Provider for all direct and indirect payroll costs and expenses, including but not limited to travel and employee retirement benefits as provided by Generally Accepted Accounting Principles (GAAP). However, Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's personnel under the terms of the North Carolina Workers' Compensation Act (Chapter 97 of the North Carolina General Statutes).

B. Equipment – Recipient shall reimburse the Providers for the use of equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall

be determined in accordance with general policies for determining allowable costs which are established in CFR 200, subpart E, and including exceptions to these policies as allowed in 2 CFR 200, subpart E and 2 CFR 200.102 and as explained in 44 C.F.R. 206.228 or other applicable federal laws, regulations, and policies as may be in effect at the time the expenses are incurred. Provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition.

At the request of Provider, fuels, miscellaneous supplies, and minor repairs may be provided by Recipient, if practical. The total equipment charges to Recipient shall be reduced by the total value of the fuels, supplies, and repairs furnished by Recipient and by the amount of any insurance proceeds received by Provider.

C. Material and Supplies – Provider shall be reimbursed for all materials and supplies furnished, used, or damaged during the period of assistance. The Recipient shall not be responsible for reimbursing Provider for the costs of any damage caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of Provider's personnel. Provider's personnel shall use reasonable care always in rendering mutual aid and in the use and control of all materials and supplies used by them during the period of assistance. The measure for reimbursement for materials and supplies shall be determined in accordance with FEMA and North Carolina reimbursement policies. In the alternative, the parties may agree in writing that Recipient will replace the materials and supplies used or damaged, with materials and supplies of like kind and quality.

D. Record Keeping – Recipient shall provide information, directions, and assistance for record keeping to Provider's personnel. Provider shall maintain records and invoices for personnel time and costs as well as any reimbursement and cost which may be associated with the inspections of records.

E. Billing and Payment – Provider shall send an invoice for reimbursable costs and expenses, together with appropriate documentation as required by Recipient, as soon as practicable after said costs and expenses are incurred, but not later than forty-five (45) days following the end of the period of assistance. Recipient shall pay the invoice, or advise of any disputed items, not later than forty-five (45) days following the billing date.

SECTION IV. PROVIDER'S EMPLOYEES

A. Rights and Privileges – Pursuant to G.S. 166A-19.60 whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall remain the responsibility of the Provider and retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographic limits of the Provider.

B. Workers' Compensation - Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees under the terms of the North Carolina Workers' Compensation Act, Chapter 97 of the North Carolina General Statutes, due to personal injury or death occurring during the periods of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for the payment of workers' compensation benefits to its own respective employees, the parties agree to such distribution as permitted by G.S. 97-51.

SECTION V.
PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS FROM LIABILITY

To the extent permitted by law, each party (as Indemnitor) agrees to protect, defend, indemnify, and hold the other party (as Indemnitee), and its offices, employees, and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and nature arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of Indemnitor's negligence, acts, errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, if any, and in what amounts, it should carry. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement for any claims, whether insured or not.

Notwithstanding the foregoing, to the extent that each party does not purchase insurance and to the full extent permitted by law, no party shall be deemed to have waived its governmental immunity nor any other lawful and available immunity, defense, or remedy.

SECTION VI.
AMENDMENTS

This Agreement may be amended as necessary by written, joint agreement between the parties. Subsequent mutual aid agreements may be entered into between the parties and, if so, the subsequent agreement shall replace and supplement any prior agreements.

SECTION VII.
DURATION OF AGREEMENT

This Agreement shall continue in perpetuity, unless terminated upon at least ninety (90) days advance written notice by one party to this Agreement to the other party to this Agreement.

SECTION VIII.
HEADINGS

The headings of various sections and subsections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

SECTION IX.
SEVERABILITY

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. If parties to this Agreement have entered into other aid and assistance agreements, those parties agree that, to the extent a request for aid and assistance is made pursuant to this Agreement, those other aid and assistance agreements are superseded by this Agreement.

SECTION X.
EFFECTIVE DATE

This Agreement is effective upon the day and date of the last signature affixed hereto.

This Agreement does not encompass the entire understanding of the Parties on the issue of mutual aid activities. This Agreement does not invalidate other mutual aid agreements, either oral or written, that the Parties have with third parties.

IN WITNESS WHEREOF, Wake County and the Town of Apex execute this Agreement in its name and behalf by its Chief Executive Officer, who has signed accordingly and with concurrences of a majority of its governing board, on the date indicated below.

Name
City/Town Manager

Approved as to form:

_____, Town Attorney

COUNTY OF WAKE

David Ellis
County Manager
County of Wake

Darrell Alford
Director
Wake County Fire Services & Emergency
Management

Approved as to form:

Scott W. Warren, County Attorney