

**NO FUNDING
DISASTER RELATED DEBRIS REMOVAL AGREEMENT
AGREEMENT ID # 13041**

AGREEMENT OVERVIEW

NORTH CAROLINA
HENDERSON COUNTY

DATE: 10/7/2024

PARTIES TO THE AGREEMENT:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

AND

CITY OF HENDERSONVILLE

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

SCOPE OF PROJECT ("Project"): Removal and disposal of disaster related debris on all released State Routes.

EFFECTIVE DATES OF AGREEMENT:

START: Upon full execution of this agreement

END: Five (5) years from the date of execution

This special **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 **City of Hendersonville**, hereinafter referred to as the **Local Government**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

**NO FUNDING
DISASTER RELATED DEBRIS REMOVAL AGREEMENT
AGREEMENT ID # 13041**

WHEREAS, this Agreement is made between the **Department** and the **Local Government** 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 **Local Government** 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 **Local Government** 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:

I. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

A. STATE ROUTES

"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. DISASTER RELATED DEBRIS

"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.

II. DESCRIPTION OF WORK

**NO FUNDING
DISASTER RELATED DEBRIS REMOVAL AGREEMENT
AGREEMENT ID # 13041**

A. REMOVAL OF DEBRIS

The **Local Government** shall remove and dispose of disaster related debris on all released State Routes. In so doing, the **Local Government** 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.

B. EXECUTION OF WORK

The **Local Government** 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 **Local Government** is located. The Division Engineer's decision as to the completeness of the work shall be final.

III. TIME FRAME

A. DURATION OF AGREEMENT

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 of funds, if mutually agreed upon in writing by the **Parties**. On behalf of the **Local Government**, extensions may be authorized and executed by the official as designated without further resolution of the **Local Government**.

B. COMPLETION DATE

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 **Local Government**.

IV. REIMBURSEMENT FOR ELIGIBLE COSTS

The **Local Government** 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 **Local Government**.

V. PROCEDURES FOR REMOVAL OF DISASTER RELATED DEBRIS

A. REQUEST RELEASE OF STATE SYSTEM ROADS

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 **Local Government** be responsible for removal of debris from the right of way of State Routes, the **Local Government** 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 **Local Government** for disaster related debris removal.

B. DEPARTMENT APPROVAL

The **Department** will review the **Local Government's** Request Release of State System Roads, Form SSR-01 (attached as Appendix A) and respond in writing indicating whether the **Department** has approved or denied the request from the **Local Government** for removal of disaster related debris under the terms of this Agreement. If approved, this action will be considered the **Local Government's** "Notice to Proceed" with the work.

C. COMPLIANCE WITH DEPARTMENT RULES

When the **Local Government** is approved for the removal of disaster related debris on State Routes under the terms of this Agreement, the **Local Government** 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.

D. WRITTEN REPORT

The **Local Government** 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.

E. RESPONSIBILITY FOR DAMAGES

The **Local Government** 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 **Local Government** is located. The Division Engineer's decision as to the completeness of the work shall be final.

VI. STANDARD PROVISIONS

A. TERMINATION OF AGREEMENT

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.

B. CERTIFICATION OF COMPLIANCE

The **Local Government** shall certify to the **Department** compliance with all State laws and regulations and ordinances that are applicable to the **Local Government** 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 **Local Government** performing work included in this Agreement under contract with the **Local Government**.

C. CONFLICT OF INTEREST POLICY

In compliance with state policy, the **Local Government** shall have a Conflict of Interest Policy for its employees, in addition to the statutory conflict of interest restrictions applicable to its directors.

D. COMPLIANCE WITH EXISTING LAW

In no way shall it be construed or implied that either the **Department** or the **Local Government** is by this Agreement intending to abrogate its obligation and duty to comply with the regulations promulgated under Federal and state law.

E. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.

F. ASSIGNMENT OF RESPONSIBILITIES

The **Department** must approve any assignment or transfer of the responsibilities of the **Local Government** set forth in this Agreement to other parties or entities.

G. AGREEMENT FOR IDENTIFIED PARTIES ONLY

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.

**NO FUNDING
DISASTER RELATED DEBRIS REMOVAL AGREEMENT
AGREEMENT ID # 13041**

H. OTHER AGREEMENTS

The **Local Government** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Local Government** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

I. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

J. FACSIMILE

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the 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.

K. AUTHORIZATION TO EXECUTE

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

L. DEBARMENT POLICY

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Local Government** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or **Department** and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

M. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Local Government** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns to the extent allowed by law, from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall

**NO FUNDING
DISASTER RELATED DEBRIS REMOVAL AGREEMENT
AGREEMENT ID # 13041**

not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Local Government's** negligence and/or responsibilities under the terms of this agreement.

N. AVAILABILITY OF FUNDS

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.

O. DOCUSIGN

The **Department** and **Local Government** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or **Local Government**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and **Local Government** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or **Local Government's** signature as if actually signed by **Local Government** in writing. The **Department** and **Local Government** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and **Local Government** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

P. GIFT BAN

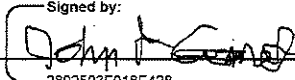
By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

**NO FUNDING
DISASTER RELATED DEBRIS REMOVAL AGREEMENT
AGREEMENT ID # 13041**

SIGNATURE PAGE

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

(DOCUSIGN ONLY)

Authorized Signer: 
Signed by:
2892503F018E428...

Print Name: John Connet

Title: City Manager

Date Signed: 10/15/2024

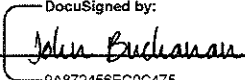
If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

CITY OF HENDERSONVILLE

FED TAX ID NO: 56-6001242

REMITTANCE ADDRESS:

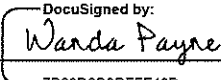
160 6th Avenue
Hendersonville, NC 28792

Finance Officer: 
DocuSigned by:
9A872456EC0C475...

Print Name: John Buchanan

Date Signed: 10/15/2024

DEPARTMENT OF TRANSPORTATION

BY: 
DocuSigned by:
7B68D2D9DFFF49B...

TITLE: Division Engineer

DATE: 10/15/2024

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 11/7/2024 (DATE)

**NO FUNDING
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AGREEMENT ID # 13041**

SIGNATURE PAGE

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

(INK SIGNATURES ONLY)

ATTEST: _____ Authorized Signer: _____
BY: _____ Print Name: _____
TITLE: _____ Title: _____
Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

CITY OF HENDERSONVILLE

FED TAX ID NO: 56-6001242

REMITTANCE ADDRESS:

160 6th Avenue
Hendersonville, NC 28792

Finance Officer: _____

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION (DocuSign)

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)