

**MEMORANDUM OF UNDERSTANDING AMONG
THE COUNTY OF VOLUSIA AND THE
MUNICIPALITIES OF VOLUSIA COUNTY, FLORIDA,
REGARDING DEBRIS REMOVAL**

This MEMORANDUM OF UNDERSTANDING (“MOU”), effective as of the date of the last signature below, is made among the COUNTY OF VOLUSIA, a body corporate and politic and a political subdivision of the State of Florida, with its principal address of 123 West Indiana Avenue, DeLand, Florida 32720 (the “County”) and the undersigned municipalities of Volusia County, Florida.

RECITALS

WHEREAS, the County and the undersigned municipalities may have experienced, or may in the future experience, significant damage due to the impact of a hurricane, severe weather, tornadoes, floods as well as other natural and/or manmade (manufactured) disasters; and

WHEREAS, the County and the undersigned municipalities find it in their best interest to have a MOU with the County regarding debris removal and clearance operations on County and city owned roads and right-of-ways; and

WHEREAS, the County recognizes that debris removal on County roads and right-of-ways are the responsibility of the County; and

WHEREAS, the undersigned municipalities recognize that debris removal on local city roads and right-of-ways are the responsibility of each respective municipality; and

WHEREAS, the County and the undersigned municipalities recognize that the County and city owned roads and right-of-ways often traverse jurisdictional boundaries; and

WHEREAS, the County and the undersigned municipalities recognize that prompt debris removal is essential to clear the roadways for restored traffic flow and power, while also performing the debris removal in compliance with all applicable regulations, including the Federal Emergency Management Agency (“FEMA”); and

WHEREAS, in an effort to effectively and efficiently respond to such disasters, a public entity may either be required to call upon another jurisdiction to perform debris removal work on the requesting jurisdiction’s road or right-of-way, or proceed to remove debris that is more efficiently removed immediately from another entity’s road or right-of-way, or that is later determined to have been located on the County or municipal land that was not its responsibility.

NOW, THEREFORE, in consideration of the above recitals, which are deemed true and correct and incorporated herein, and the covenants contained herein, the undersigned parties hereto agree as follows:

1. The County and the undersigned municipalities hereby agree to this MOU providing for compensation from the requesting entity, which is the local government either requesting services or resources from another government, or benefiting from the services or resources of another government (the "Requesting Entity") to the providing entity, which is the local government either providing services or resources from another government upon request, or providing such services or resources to another government (the "Providing Entity") in the event of a natural or manmade disaster for debris clearing and removal. The intent of this MOU is to have the Providing Entity receive compensation from the Requesting Entity when emergency debris clearing and removal are required for the benefit of public safety and welfare, and to enable the Requesting Entity to apply for reimbursement from FEMA. The emergency debris clearing and removal services, as contemplated herein, are not intended to replace a participating party's ordinary and customary debris removal program.

a. The Providing Entity is required to monitor and document each actual debris load, with specific documents to be included within the Requesting Entity's application for State or Federal reimbursement as set forth in subsection c. immediately below, compliance upon which reimbursement from the Requesting Entity will be conditioned.

b. The Requesting Entity shall in turn apply for potential reimbursement through available State or Federal emergency relief programs and meeting any required funding match. In doing so, the Requesting Entity shall claim the eligible costs of the Providing Entity, pursuant to the terms and conditions of the mutual aid agreement and the requirements of the FEMA Disaster Assistance Policy, DAP 9523.6, as amended, on its subgrant application, and agree to disburse the Federal share of funds to the Providing Entity.

c. In order to facilitate and ensure successful application to FEMA or other state or local governmental agencies for reimbursement, the County and all municipalities hereunder agree to use the FEMA-compliant forms set forth on:

Exhibit A: FORMS

- i. Exhibit-1: FEMA Force Account Labor Summary Record
- ii. Exhibit A-2: FEMA Force Account Equipment Summary Record
- iii. Exhibit A-3: FEMA: Materials Summary Record
- iv. Exhibit A-4: FEMA Contract Work Summary Record
- v. Exhibit A-5: FEMA Rented Equipment Summary Record
- vi. Exhibit A-6: FEMA Claim Total Cost Summary

Exhibit B: FEMA Equipment Rates and Fringe Benefit Rates

Exhibit C: Expense Tracking and FEMA Reimbursement Information

2. Before debris clearing or removal is rendered by one jurisdiction to another pursuant to this MOU, the Requesting Entity must request the service and the Providing Entity must notify the Requesting Entity's public works director or his/her designee or functional equivalent, that the Providing Entity will be providing debris clearing or removal services to the receiving or requesting entity. The Volusia County Emergency

Operations Center will, to the extent feasible, coordinate all resources used during an emergency situation. FEMA will not reimburse costs incurred by entities that “self-deploy” (deploy without a request for mutual aid assistance by a Requesting Entity) except to the extent those resources are subsequently used in the performance of eligible work at the request of the Requesting Entity or incident commander (ranking official in the field). All work hereunder shall be invoiced. If FEMA denies an application due to self-deployment because it was not requested by the Requesting Party in advance, then the parties hereto agree to honor such invoices and pay the other notwithstanding the FEMA denial. However, should FEMA deny eligibility of any payment for reason of failure to comply with FEMA’s debris management policies and guidelines (other than for the single exception in the immediately preceding sentence), then no payment shall be due to the Providing Entity and such invoice shall be deemed void.

3. The County and the undersigned municipalities will be responsible for monitoring debris removal per applicable FEMA and Federal Highway Administration (FHWA) standards and maintaining all required documentation in accordance with the current FEMA requirements and FHWA guidelines.

4. The County and the undersigned municipalities, in coordination with their respective debris contractors, will ensure load tickets have indicators (e.g., road segments) to differentiate between or among jurisdictional debris.

5. The Providing Entity may be reimbursed through the Requesting Entity. In these circumstances, pursuant to the terms and conditions of FEMA Disaster Assistance Policy No. 9523.6 regarding Mutual Aid Agreements for Public Assistance and Fire Management Assistance and the requirements of this MOU, the Requesting Entity should claim the eligible costs of the Providing Entity on its sub-grant application for State or Federal reimbursement.

6. The Requesting Entity is responsible for applying for potential reimbursement through available State or Federal emergency relief programs and meeting any required funding match or other conditions of reimbursement.

7. In circumstances where a Providing Entity is also an eligible applicant in its own right, the determination of eligible and ineligible costs will depend on the operating capacity in which the entity is incurring costs.

8. The eligibility of costs, wages, or salaries for reimbursement under this MOU shall be governed by and determined in accordance the applicable federal eligibility rules established pursuant to 44 CFR §§ 206.228(a)(4) and 204.43(c), as such rules may be amended or transferred over the term of this MOU.

9. When emergency debris removal or clearing services are provided, the labor force expenses of a Providing Entity will be treated as contract labor, with regular time and overtime wages and certain benefits eligible for reimbursement on the condition that labor rates are reasonable; however, the labor force expenses of the Providing Entity will not be treated as contract labor if the labor force is employed by the same local or State government as the Requesting Entity.

10. The straight or regular-time wages or salaries of a Requesting Entity's permanently employed personnel performing or supervising emergency work are not eligible costs, pursuant to 44 CFR § 206.228§ 204.43(c), even when such personnel are reassigned or relocated from their usual work location to provide assistance during an emergency. Overtime costs for such personnel are eligible and may be submitted as part of a sub-grant application.

11. Requesting and Providing Entities must keep detailed records of the services requested and received, and provide those records as part of the supporting documentation for a reimbursement request.

12. The Providing Entity will provide detailed invoices to the Requesting Entity that includes hourly labor rates, equipment rates, material costs and disposal fees, and shall use the applicable forms and equipment rates as set forth on Exhibit A and Exhibit B hereto.

13. A request for reimbursement of mutual aid costs must include, in addition to a copy of this MOU, a copy of any other mutual aid agreement between the Requesting and Providing Entities, which agreement is relevant to the reimbursement requested.

14. A request for reimbursement of mutual aid costs should include a written and signed certification by the Requesting Entity.

15. For the Public Assistance (PA) Grant Program only, reimbursement for equipment provided to a Requesting Entity will be based on FEMA equipment rates or, if FEMA has not established any applicable FEMA equipment rates, on rates deemed reasonable by FEMA.

16. For PA only, reimbursement for damage to equipment used in emergency operations will be based on FEMA Recovery Policy #9525.8, Damage to Applicant Owned Equipment.

17. The reimbursement for equipment purchased by a sub-grantee to support emergency operations will be based on FEMA Recovery Policy #9525.12, Disposition of Equipment, Supplies, and Salvaged Materials.

18. Each party to this MOU shall be separately liable for the performance of their respective obligations, duties, or responsibilities under this MOU. No part of this MOU shall be interpreted as requiring any party hereunder to indemnify, defend, or insure another party hereto for such other party's negligence or otherwise assume any liability for the other party's negligence in contravention of § 768.28(19), Florida Statutes (as amended).

19. This MOU shall commence and be effective as between and among the parties as executed by each, it being expected that additional local governments located within the County may sign at a future date and be bound prospectively thereupon. The MOU shall

remain in effect for a period of ten (10) years from the date first executed by the first party hereto.

20. Any party may terminate its individual participation in this MOU without cause or further liability to the other parties, upon written notice to the chief executive officer of each of the other local governments who are parties to this Agreement (e.g., County or City Managers, as appropriate), given no less than 90 days prior to the requested termination date, it being understood that termination of this MOU may result in the terminating party losing its ability to receive reimbursement from the other parties as contemplated herein. Such notice shall be delivered by certified mail, return receipt requested, and the date of the notice shall be the date on which the last party receiving notice signed the receipt therefore is signed by an employee, official, or representative of the other party. Termination shall be specific to the relationship created by this MOU between the terminating party and other parties to the MOU and shall not affect the obligations or duties of the other remaining participating parties to one another. Furthermore, termination of this Agreement shall not affect the applicability of this MOU to the terminating party's liability for any reimbursable expenses incurred by another party prior to the effective date of such termination, and this MOU shall survive termination for the purposes of administering any claims for reimbursement that arise from any reimbursable events or incidents occurring prior to the effective date of termination.

21. This MOU is intended to be interpreted in accordance with applicable federal, state, and local laws, rules, and regulations, including, but not limited to, applicable guidance and policies promulgated by FEMA. Should any part of this MOU be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this MOU shall not invalidate the remaining portions thereof, and such remaining portions shall continue in full force and effect to the extent feasible.

22. In no event shall any of the terms of this MOU confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages claimed against any of the parties to this MOU arising from the performance or non-performance of the obligations and responsibilities of the parties herein or for any other reason.

23. Any disputes concerning non-performance, or other aspects of this MOU for which either party initiates litigation to enforce its rights hereunder, shall be subject to the provisions of Chapter 164, Florida Statutes, the "Florida Governmental Cooperation Act."

24. Given the nature of this MOU and the number of parties hereto, this MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Memorandum of Understanding Among the County of Volusia and the Municipalities Of Volusia County, Florida Regarding Debris Removal has been duly executed by the parties subscribed below and is binding upon Volusia County and the requesting jurisdiction(s) signing below.

COUNTY OF VOLUSIA

By: _____
Jason P. Davis
County Chair
Date: _____

ATTEST:

By: _____
James T. Dinneen
County Manager
Date: _____

[Name of Local Government]

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____