

838

MEMORANDUM OF AGREEMENT

between the

North Carolina Department of Transportation

and the

Town of Nags Head

This Memorandum of Agreement (hereinafter, "Agreement") is made on the last date entered below between the North Carolina Department of Transportation (hereinafter, "NCDOT") and the Town of Nags Head (hereinafter, "Town") (collectively referred to hereinafter as "the Parties") for the emergency removal of debris 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.

WHEREAS, during a declared State of Disaster or Imminent Threat of Disaster which implements the North Carolina Emergency Operations Plan (hereinafter, "NCEOP"), NCDOT 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

WHEREAS, Town has requested that it be allowed the opportunity and responsibility to perform certain of those NCDOT 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 Town to assume these responsibilities;

NOW THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, the following definitions shall apply:
  - A. "Secondary Roads" shall mean those roads maintained by NCDOT that are identified by a four-digit SR number.
  - B. The term "Eligible Storm Debris" shall be such debris as shall be eligible for reimbursement by the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management (hereinafter, "DEM") or the Federal Emergency Management Agency (hereinafter, "FEMA") during a particular State of Disaster, Imminent Threat of Disaster or State of Emergency.
  - C. "FHWA Routes" shall mean those routes for which FHWA does provide NCDOT with reimbursement, generally Interstate routes, US-designated routes, NC-designated routes, and certain secondary routes within the Town eligible for FHWA reimbursement and listed on Attachment A.

- D. "Non-FHWA Routes" shall mean those routes for which FHWA does not provide reimbursement, generally rural secondary roads rights of way within the Town and those urban secondary roads within the municipalities within the Town. The non-FHWA routes are those routes within the Town, which are not listed on Attachment A.
2. 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 Town be responsible for removal of debris from the right of way of State System Roads, NCDOT shall issue to Town a written Notice to Proceed with debris removal.
  3. Town shall remove and dispose of (1) Eligible Storm Debris on all non-FHWA routes and (2) Eligible Storm Debris except woody debris and sand on FHWA routes. In so doing, Town shall comply with all FEMA and DEM requirements regarding storm removal and disposal including landfill quantity calculations and site disposal costs. Any debris contract between the Town and any other party must be reviewed and approved by DEM and FEMA.
  4. Town shall apply directly to DEM and/or FEMA for reimbursement in accordance with the rules, regulations and procedures of those agencies. Any reimbursement must be governed by the rules, regulations and procedures of those agencies, and NCDOT shall not be responsible for any portion of reimbursement to Town.
  5. Town is responsible for complying with all NCDOT rules and regulations including, but not limited to, safety, insurance, and traffic control in accordance with the Manual on Uniform Traffic Control Devices, and Town shall hold NCDOT harmless in all matters arising from or related to this Agreement. Further, Town shall be responsible for all damage or injury to persons or to private property occurring as a result of the debris removal activities pursuant to this Agreement, and Town shall hold NCDOT harmless in all matters arising therefrom.
  6. Town shall be responsible for repair of any damages to the state maintained right of way, which may be caused by debris removal operations undertaken pursuant to this Agreement. All repairs shall be made to the satisfaction of the Division Engineer of the Highway Division in which Town is located, and the Division Engineer's judgment in this regard shall be final.
  7. Town shall remove all Eligible Storm 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 done to the satisfaction of the Division Engineer of the Highway Division in which Town is located, and the Division Engineer's judgment in this regard shall be final.
  8. All work pursuant to this Agreement shall be completed by a date mutually agreed to by DEM, FEMA, NCDOT and Town.
  9. This Agreement may be terminated by either party upon submission of a thirty-day advance written notice of termination. No notice of termination shall be effective for debris removal pursuant to any Notice to Proceed already issued by NCDOT.

10. This Agreement may be amended at any time by mutual agreement of both parties as evidenced by a written Supplemental Memorandum of Agreement approved and signed by both parties.
11. 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. The Principal Representative of the NCDOT shall be Chief Engineer Operations or his designee. The Principal Representative of the Town shall be the Town Manager or his designee.

This Agreement shall be effective on the date of the last signature below.

IN WITNESS WHEREOF, the Parties have each executed this Agreement, this the 2nd day of February, 2009

DEPARTMENT OF TRANSPORTATION

WITNESS: Beth Smith  
(Print Name)

BY: [Signature]

Tom R. Gibson  
(Print Name)

STATE HIGHWAY ADMINISTRATOR  
TITLE

DATE: 2/2/09

TOWN OF NAGS HEAD

BY: [Signature]

M. Renée Cahoon  
(Print Name)

Mayor  
TITLE

DATE: 1/7/09



**ATTACHMENT A**

**SECONDARY ROADS ELIGIBLE FOR FHWA RELIEF FUNDS**

**DARE COUNTY**

NONE





STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

February 4, 2009

Town of Nags Head  
Post Office Box 99  
Nags Head, NC 27959

Dear Ms. Morris:

I have enclosed the new Memorandum of Agreement that will not require future annual renewals. The basic premise of the MOA remains the same – the ability of the Town to request release of certain secondary roads within the Town for the purpose of vegetative debris removal, the result of a federally declared event. The change basically makes this document open ended. It does include a provision to opt out at any time except during a period of release.

Activation of this MOA remains the same. Contact Jerry Jennings, Division Engineer for Division One, at 252-482-7977. Based on the agreed upon secondary routes to be released, the Town must fax a copy of the "Request Release of Secondary State Route Roads" to the division office. Fax number 252-482-8722. Mr. Jennings will sign the request thereby activating the MOA and fax the copy back to the Town. I have attached a copy of the "Request" form.

I have also attached an Attachment A which identifies state secondary routes that are part of the Federal Highway System. These roads can not be released and are the responsibility of NCDOT to remove vegetative debris.

This is a very successful program that provides you an additional resource in developing your comprehensive debris management plans. I appreciate your participation in this program.

Sincerely,

A handwritten signature in cursive script that reads "Don Aschbrenner".

Don Aschbrenner  
Disaster Recovery Manager, NCDOT

**MAILING ADDRESS:**  
NC DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
STATE ROADWAY MAINTENANCE  
1567 MAIL SERVICES CENTER

TELEPHONE: 919-733-3725  
FAX: 919-733-1838

WEBSITE: [WWW.DOH.DOT.STATE.NC.US](http://WWW.DOH.DOT.STATE.NC.US)

**LOCATION:**  
4809 BERYL ROAD  
RALEIGH, NC



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

LYNDO TIPPETT  
SECRETARY

November 21, 2008

Town of Nags Head  
Post Office Box 99  
Nags Head, NC 27959

Dear Ms. Morris:

The Memorandum of Agreement that was executed between the Town and NCDOT will expire December 31, 2008. I have enclosed a new Memorandum of Agreement that will not require future annual renewals. The basic premise of the MOA remains the same – the ability of the Town to request release of certain secondary roads within the Town for the purpose of vegetative debris removal, the result of a federally declared event. The change basically makes this document open ended. It does include a provision to opt out at any time except during a period of release.

This has been a very successful program by providing local governments an additional resource in developing their comprehensive debris management plans. I value the partnership that has developed between the Department of Transportation and the Town.

Please have the MOA signed by the designated person and return to me at:

NCDOT  
4809 Beryl Road  
Raleigh, NC 27606-1408

Attn: Don Aschbrenner

I will process the MOA and return a copy to you for your records. The process for activating the MOA remains the same. Should you have any questions, please don't hesitate to contact me at 919-733-3725.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Aschbrenner".

Don Aschbrenner  
Disaster Recovery Manager, NCDOT

**MAILING ADDRESS:**  
NC DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
STATE ROADWAY MAINTENANCE  
1567 MAIL SERVICES CENTER

TELEPHONE: 919-733-3725  
FAX: 919-733-1838  
WEBSITE: [WWW.DOH.DOT.STATE.NC.US](http://WWW.DOH.DOT.STATE.NC.US)

**LOCATION:**  
4809 BERYL ROAD  
RALEIGH, NC