INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

2017 Annual Conference
October 14 –18, 2017
Scotiabank Convention Center
Niagara Falls, Ontario, Canada

Work Session VI: When Disaster Strikes

"PRACTICAL TIPS FOR DEALING WITH DISASTERS",

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Practical Tips: Dealing With Disasters

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By: Brian W. Head, City Attorney, Lee's Summit, Missouri

and

Deidra Penny, Deputy City Attorney & First Assistant City Attorney, Houston, Texas

Who is Joplin?

- Town of 51,300 in the southwest corner of the State of Missouri
- Located between U.S. Highways 71/I-49 and I-44
- Regional center for shopping, jobs, and medical care
- Daytime population of approximately 250,000 going as high as 500,000 during holiday season

What Just Happened?

- May 22, 2011, 5:41 p.m., a tornado touched down at the southwestern edge of the City.
- Tornado quickly grew to an EF-4 and then an EF-5 with winds in excess of 200 miles an hour, moving less than 10 mph at times, ½ to ¾ mile wide at certain points and six (6) miles long.
- 7,500 homes impacted, 4,000 were either extensively or catastrophically damaged and uninhabitable (35% of the City), 50% of the homes were in the City of Duquesne.
- 17,000 people impacted with 9,200 people displaced.
- 500 businesses damaged or destroyed – affecting 5,000 employees (3,500 now back on payroll through governmental programs and private employers).
- 2 fire stations and related fire trucks destroyed.
- Cunningham Park (Joplin's very first park) and Parr Hill Park were destroyed.
- Power lines, telephone, cell phone towers, and water service all down or reduced.
- 6 school buildings, including the high school, destroyed or damaged.

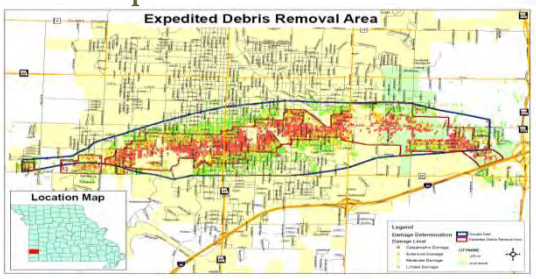
What Just Happened? (Cont.)

- St. John's Hospital was unusable.
- Wal-Mart, Academy, Home Depot, Dillon's Grocery, two Walgreens locations, numerous restaurants, and car dealerships heavily damaged or destroyed.
- Estimated 3,000,000 cubic yards of storm debris created by the tornado.





The Impact Zone



Where Is the City Attorney?









What Do We Do Now?

- Declare the emergency and let the rescue crews do their jobs. As an attorney, stay out of the way.
- City and MoDOT cleanup of streets – signals and stop signs – to allow for emergency response.
- Request FEMA assistance through State Emergency Management Agency.
- FEMA direct mission assigned the US Army Corps of Engineers to clean up the storm debris.
- Early coordination through the Missouri Department of Insurance with most of the insurance companies.

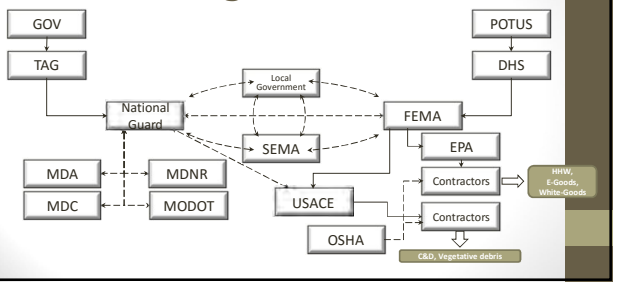
What Do We Do Now? (Cont.)

- Start the Cleanup. Self-Cleanup by residents.
- Get prepared for people who want to help:
  - Volunteers – as of August, 2014 – 182,044 registered volunteers; 1,542,353 hours of service.
    - TIP: Get a coordinator like AmeriCorps to help organize and track volunteers and equipment.
- Get prepared for people who want to give:
  - Setup a foundation for cash donations.
  - Prepare for clothing and food (warehousing and distribution).
- Get legal help – you cannot do it all.

Coalition of the Acronyms

- USACE, FEMA, MoANG, EPA, DNR, MDA, MDC, SEMA, CDC, AFOSI, BIA, ATF, DEA, DOD, ICE, KsARNG, NYPD, MSHP,SFPD, OSHA, JPD, JFD, METS, NCAD, JCSD, NCSD, PIO . . . etc.
- And all of the dozens of police departments, etc., that responded from around the country.

Debris Management Task Force



FEMA – Control your Destiny

- City:
  - Requests a "Clean Sweep" program like Tuscaloosa, AL.
  - Received a Presidential Declaration called "Expedited Debris Removal" – "EDR" for short.
  - Received a 90/10 cost share and the ability to go onto private property to clean up loose storm debris. This was a "pilot project".
- But. . . How do I get on private property?
  - Right of Entry or Nuisance Declaration
  - FEMA Disaster Assistance Policy DAP9523.13 – debris removal

Challenges to the Clean-Up Process

- Right of Entry form
- Indemnity of the U.S. Government and Contractors; State and City
- Insurance information
- Duplication of Benefits

FEMA DAP 9525.3

- Nuisance Declaration by the Director of Public Health
- Ability to abate nuisances comes from the police power of the City
- Missouri Statute - Section 67.398 provides specific authority for debris removal
- New City Ordinance

❖ TIP:
- Explicitly include trees and titled property like cars and boats.

EDR ended August 7, 2011

- **Final results:**
  - 1,462,044 cubic yards of debris was removed by Corps contractors.
  - 10,578 cubic yards of RACM (Regulated Asbestos Containing Material) was removed.
  - 1505 properties (either ROE or Nuisance) were abated by the Corps.
  - City let an additional contract for roughly 100,000 cubic yards of remaining material.

❑NOTE:
Citizens, through volunteers and private contractors also removed roughly 1.5M cubic yards of debris in the same time.

Financial Considerations

- **Impact on City Finances:**
  - Total debris mission $94M
    - Estimated cost to the City $24M
    - Donated resources - $17.7M
      - Region VII record
      - Used to offset City share
      - Additionally, 102,000 volunteers worked over 610,000 hours plus 12,000 donated equipment hours. Valued at $8.5M
      - City forces put in 23,500 overtime hours and 40,500 equipment hours
      - Result is that the City will have no direct financial impact

❑NOTE:
City revenues were up while people replaced items for their homes.

Recovery

- **Population has rebounded** – July 2015 population estimate 51,300 - 2010 Census population 51,175
- **Joplin Schools** – Mission Accomplished: Returned students to permanent facilities by September 2014
  - *September 2014:* Joplin High School/Franklin Technology Center opens
  - *August 2014:* St. Mary's Elementary opens in new location
  - *December 2013:* New Irving Elementary School, East Middle School & Soaring Heights Elementary School
- **New Public Library** - Spring 2017: Opening of new relocated Joplin Public Library - made possible with support of $20M grant awarded by the Economic Development Administration in May 2012, to assist in redevelopment of 20th Street area following the disaster
- **Housing**
  - *August 2014:* **J-HAP has provided $17.5M** of assistance for down-payment and/or closing costs to homebuyers, total of 578 homes to date. CDBG – Disaster Recovery Grant
  - *As of February 2017:* **Joplin Area Habitat for Humanity** has completed 108 houses
  - *April 2014:* **Joplin Homeowners Rehabilitation Program (J-HRP)** initiated to provide $775,000 funding to support single-family housing recovery. The program assists eligible homeowners located in the recovery area in repairing damage not covered by FEMA or insurance and to correct any other deficiencies in the home
  - *Feb. 2017:* 1,828 NEW houses built since 2011 disaster - estimated value $200M

Recovery (Cont.)

- **OTHER SOURCES:**
  - *June, 2013:* MDNR awarded $500,000 toward the planting of over 1,500 trees, helping offset the nearly 25,000 estimated to have been lost.
  - *March 27, 2013:* HUD announced an additional $113M in CDBG funding for community recovery and to support long-term disaster recovery efforts in areas with the greatest extent of "unmet needs."
  - *December, 2012:* Joplin City Council approved a plan to form a Tax Increment Financing (TIF) district that includes 19 major projects over 3,000 acres within Joplin.
  - *October, 2012:* HUD formally presented the City of Joplin $45M in CDBG funding. City's proposed budget for these funds includes more than $31M for housing; and $6.5M for infrastructure needs within the disaster area.
  - *May 22, 2013:* Economic Development Administration awarded $20M for revitalization of 20th St. Corridor and new public Library. *June, 2017*; the new library opens.
  - The Joplin Redevelopment Corporation, a Missouri Chapter 353, has aggregated over 50 acres of vacant parcels targeted for major redevelopment projects.
  - *March 2015:* New Mercy Hospital opened. Cost: Nearly $1billion.

Final Bits of Advice for Lawyers

- Don't be a lawyer for the first 48 hours.
- Assemble a team consisting of operations, finance and legal to ride herd on the big mission – in our case, debris.
- Expand the team to include experts in Federal grants to begin recovery.
- Don't be afraid to ask for more than you think you'll get.
- Don't be afraid to say "No".
- Don't be afraid to fight for your citizens even if it is the Federal Govt.
- Reach out to MML, IMLA, attorneys who have been through it before.
- Review your ordinances and statutes on emergency powers and who does what.
- As a lawyer, ask yourself questions about what you're requiring. Is it really necessary or just your sense of "perfection".
- Help your PIO – whether he/she is your own or not. They are your conduit to the citizens.
- Don't be afraid to ask for help personally – consider your EAP.









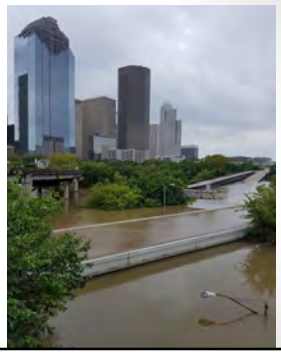


Who is Houston?

- 669 square miles
- Nation's 4th largest city (2.3M people in Houston proper and estimated 6.4M people in the metropolitan area)
- One of the most diverse cities in the nation
- Known as the energy capital, home to numerous industries including 26 Fortune 500 companies and the world's largest medical center

What Just Happened?

- Friday, August 25, 2017, Hurricane Harvey (category 4) made landfall in Texas
- Between August 25 – August 30, Harvey moved slowly over Texas, including the Houston area
- 51.66 average inches of rainfall fell in Houston during this time
- As of October 1, 2017, Houston has a new annual rainfall record
- Numerous homes, schools, businesses, and public buildings were damaged or destroyed



What Just Happened? (Cont.)



What Just Happened? (Cont.)



What Just Happened? (Cont.)



What Just Happened? (Cont.)

- Schools delayed start of the school year, with some school buildings still unopened.
- Houston Grand Opera damaged and relocating for the season.
- Damages to City of Houston public buildings could exceed $100 million.



What Just Happened? (Cont.)



Debris

- Estimates of more than 8 million cubic yards of debris caused by Harvey.
- Removal costs expected to exceed $250 million.
- Debris collected as of 9/30/17 would fill 254 Olympic size swimming pools or 6,240 buses.

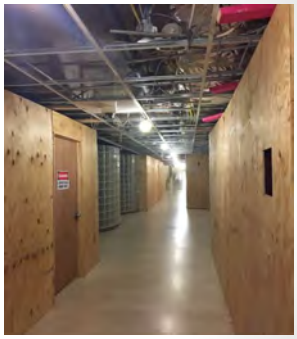


Practical Tips: Pre-Disaster Preparation?

- Duplicate copies of needed files (Cloud, email, thumb drive, hard copies)
- Communications plan and a backup plan(s)
- Prepare emergency declaration documents
- Disaster notebook
  - Authority for emergency powers and applicable laws, policies and emergency plans
  - Samples of frequently needed documents
- Who are you going to call for help?
  - Pre-positioned contracts (food, generators, cots, water, movers, electricians, traffic light equipment)
  - Mutual aid agreements
- Troubleshoot likely scenarios

Practical Tips: When Your Offices are damaged

- Relocation of staff
- Relocation of the governing body's meeting
- Rescheduling governing body's meeting
- Photograph and document

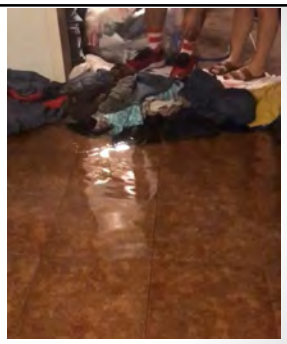


Practical Tips: Employee Compensation and Time Keeping

- Exempt employees -- overtime/disaster time, comp time or flex time
- Part time employees
- Check state law, city code, and collective bargaining/union agreements
- To do Now: review code and policies and update **before** the next disaster
- Follow your code and policy to maximize FEMA eligibility
- Tracking time of exempts post-disaster

Practical Tips: Employee Assistance

- Remember to ask
- Donated leave time
- Internal swaps/donations
- Separate non-profit fund
  - Eligibility ideas and equity
- Counseling and other resources



Practical Tips: Procurement

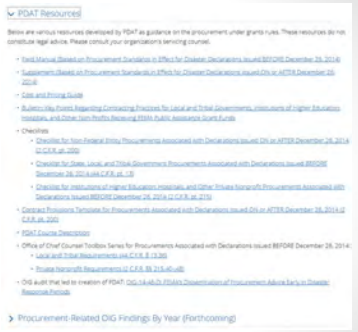
- Uniform Rules - 2 CFR Sections 200.317-.326
- Required contract clause and potentially curing amendments
- Debarment check – www.sam.gov
- Exigency/emergency exception/sole source - proceed with **extreme** caution
- Cooperatives, not all are created equal
- Document everything
- FEMA Fact Sheet – Public Assistant Contracting Requirements Checklist, available at https://www.fema.gov/media-library-data/1504297722520-a0cb83c53fd939647430c5f931ed158a/Public_Assistance_Contracting.pdf

Practical Tips: Private Property Debris Removal(PPDR)

- Public interest determination
- Notice letter
- Approval letter
- Right of Entry

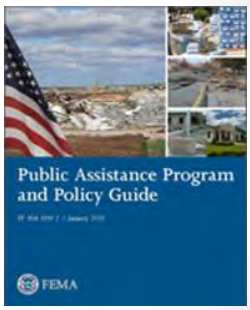
Practical Tips: Helpful Resources

- PDAT website - https://www.fema.gov/procurement-disaster-assistance-team



Practical Tips: Helpful Resources (Cont.)

- FEMA's Public Assistance Program Fact Sheets - https://www.fema.gov/media-library/assets/documents/90743
- FEMA's Public Assistance Program Guide - https://www.fema.gov/media-library/assets/documents/111781
- FEMA's OIG website and opinions
- Retain a FEMA consultant and legal expert
- Liaison with your state emergency office and FEMA



Practical Tips: Helpful Resources (Cont.)

- Bar association handbooks, such as tenant law and disaster manuals
- IMLA and similar municipal lawyer organizations
- Volunteer lawyer associations
  - Refer citizens to these resources, particularly for questions outside of municipal law
  - Organize co-location in shelters or other sites



Questions?

FEMA

FEMA-1980-DR-MO
Expedited Debris Removal

Overview

The Federal Emergency Management Agency (FEMA) is implementing an Expedited Debris Removal initiative to accelerate the removal of debris in the areas hardest hit by the devastating tornado that struck Missouri on May 22, 2011. The tornado left behind large swaths of destruction where virtually all structures within the swaths were destroyed leaving large amounts of debris. Expedited Debris Removal applies significant resources to removing debris from these areas in a rapid and comprehensive manner. Expedited Debris Removal allows public and private property debris removal (PPDR) in the high impact areas, as identified using geospatial imagery. The Expedited Debris Removal approach in these targeted areas will facilitate a speedier recovery of the community.

The President has authorized 90 percent Federal funding for the total eligible costs through August 7, 2011, for all eligible debris removed in the Expedited Debris Removal designated areas. FEMA is using geospatial imagery from the National Geospatial-Intelligence Agency (NGA) to identify the areas that are within or immediately adjacent to areas of "extensive" and "catastrophic" damage to designate areas as eligible for Expedited Debris Removal. FEMA, based on its authority to provide direct Federal assistance (DFA), can mission assign the U.S. Army Corps of Engineers (USACE) to remove the debris, or the State and/or local governments can remove the debris from the Expedited Debris Removal designated areas.

Funding for the removal of debris not included in the Expedited Debris Removal areas may be provided at 75 percent Federal funding. FEMA provides this and other assistance to the State and local governments under the Public Assistance Program in all of the areas designated by the major disaster declaration.

Frequently Asked Questions

What options does a local government have for debris removal related to Expedited Debris Removal?

Under this initiative, the eligible areas include both the public rights-of-way and private property. The work can be completed by the local government's force account labor and/or contractors, or by FEMA through a mission assignment to the U.S. Army Corps of Engineers (USACE). Local governments located in designated areas may choose, but are not required, to participate in Expedited Debris Removal.

Does the Federal cost share adjustment apply to other FEMA funding?

The 90 percent Federal cost share adjustment applies only to Expedited Debris Removal designated areas for removal of debris from public rights-of-ways and private property through August 7, 2011. After August 7, 2011, the Federal cost share will be at 75 percent. Areas not designated under Expedited Debris Removal and other Public Assistance Program activities are eligible for a 75 percent Federal cost share. Federal funds for Other Needs Assistance, under Federal Assistance to Individuals and Households (Section 408) and the Hazard Mitigation Grant Program (Section 404) will remain at the 75 percent Federal cost share, as required by law.

How are the eligible areas determined for Expedited Debris Removal?

FEMA utilizes the information supplied by the National Geospatial-Intelligence Agency (NGA) to identify those areas potentially eligible for Expedited Debris Removal through use of U.S. National Grid (USNG) coordinates. These coordinates identify the areas on a grid map.

FEMA will provide the State and local governments with the grid maps that delineate the boundaries of the high-impact swath of the tornado. All areas within the grid coordinates may be eligible for inclusion in Expedited Debris Removal as determined by the Federal Coordinating Officer (FCO). Additionally, the FCO may determine that areas immediately adjacent to these high-swath areas are also eligible for Expedited Debris Removal in order to facilitate the recovery of the community. FEMA will work with the State and local governments to obtain street addresses for properties that are eligible pursuant to the USNG coordinates.

What authorization and documentation is required?

The State or the appropriate local government must issue a finding of an immediate public health or safety threat as a result of the widespread and extensive debris which requires State or local government action. In accordance with 44 CFR 206.223(a)(3), in order to be eligible for Public Assistance Program funding, the local government must have the legal responsibility to remove debris from private property. The State or local government must confirm this legal responsibility in writing and cite relevant authority to enter upon private property and remove debris.

Local governments need to request private property debris removal through the State. The local government's request must include an indemnification for debris removal activity and must provide authorization for entry onto the property requested for debris removal. 42 USC 5173(b). This authorization may be provided through written rights-of-entry (ROE), State or local police powers, or condemnation ordinances.

Local jurisdictions should provide the Federal Coordinating Officer (FCO) copies of all ROEs or local government orders authorizing entry onto private property at least 72 hours prior to the commencement of debris removal in areas on the designated grid. If authorization is not provided, the affected property will not be cleared.

How will Expedited Debris Removal be implemented?

The process is as follows:

1. FEMA will designate Expedited Debris Removal areas using geospatial data provided by NGA;
2. FEMA and the State will meet with the local governments to discuss Expedited Debris Removal requirements as well as the Public Assistance Program's debris removal policies;
3. FEMA will provide the State and affected local governments a map of the designated Expedited Debris Removal areas;
4. FEMA will work with the State and local governments to identify individual properties and notify residents; and
5. In accordance with FEMA's Disaster Assistance Policy (DAP) 9523.13, *Debris Removal from Private Property*, local governments should submit a written request letter, through the State, to FEMA for private property debris removal approval. The request should include documentation required by DAP 9523.13. The FCO will consider the request and make a determination on approval.

How will property outside of the high impact swath be treated?

Local governments may conduct debris removal using their own force account labor or contractors. Eligible debris removal costs will be reimbursed by FEMA through the Public Assistance Program grant process with a 75 percent Federal and 25 percent non-Federal cost share.

Local governments, through the State, may also request direct Federal assistance (DFA) from FEMA, via mission assignment to the USACE, for debris removal outside of the Expedited Debris Removal areas. However, this will be implemented with a 75 percent Federal and 25 percent non-Federal cost share.

Will property owners be notified when the debris removal operation will begin so they have a chance to gather their personal effects?

A reasonable period of time (at least 72 hours) should be provided after obtaining ROEs or local government orders authorizing entry onto private property before the commencement of debris removal. The State or local government will confirm compliance with local notice

requirements. The State or local government will confirm that at a minimum, the following has been accomplished within a reasonable time prior to commencement of debris removal operations:

- Personal Notification
- Posting on the property if personal notification was attempted but was unsuccessful
- A media campaign undertaken by the State or local government with the assistance of FEMA External Affairs

Does the property owner have the right to refuse signing the ROE?

Yes. The property owner does not have to sign the ROE.

What responsibility does the property owner have in this process?

The property owner shall indemnify and hold harmless the local government, the State, the Federal government, and any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers in the ROE.

What if the property owner has insurance coverage for debris removal?

The local government will be responsible for obtaining insurance information (coverage, proceeds, and settlements) from private property owners and will provide the information to the State and FEMA. All rights of entry will include a statement requiring the property owner to report any insurance coverage or insurance settlements made for debris removal. The property owner will submit any insurance proceeds as directed by the local government. For areas where direct Federal Assistance (DFA) is authorized, FEMA will pursue appropriate private insurance settlements for debris removal to reimburse Federal costs to the fullest extent of the law.

In order to maximize recovery of private property debris removal insurance proceeds, FEMA will engage the State Insurance Commissioner on development of a collection plan.

Is debris removal from commercial property eligible?

It may be eligible if FEMA and State officials determine that debris removal from those properties serves a legitimate public service and is in the public interest. The proximity of commercial property to residential property and the level of destruction are factors that FEMA will consider when determining the eligibility of debris on commercial property. If approved, local jurisdictions will be responsible for obtaining insurance information from the commercial property owners and will be responsible for pursuing the commercial property owner for any

insurance reimbursement for debris removal. The insurance settlement for debris removal will reimburse Federal costs to the fullest extent of the law.

How will environmental and historic preservation requirements be addressed?

FEMA and the State will establish a protocol for the consideration of environmental and historic preservation issues associated with this operation. The protocol should leverage emergency provisions in the various Federal environmental and historic preservation laws, executive orders, and regulations applicable to this action. The protocol should address how expedited reviews would occur for:

- Presence of and impacts to historic properties (including archeological resources),
- Location of temporary staging areas for debris,
- Suitability of final disposition site, and
- Appropriate disposal of hazardous debris such as asbestos containing materials, materials with lead-paint, and household hazardous wastes.

Will the USACE recycle debris? If so, what is the process?

Yes. USACE will segregate the debris and recycle it to the extent possible. Debris that cannot be recycled will be disposed of in accordance with all applicable environmental statutes and regulations.

What about debris in Expedited Debris Removal areas that is eligible for removal under other Federal agencies' authority?

FEMA may not duplicate assistance or provide assistance that is under the authority of another Federal agency. FEMA will work with other Federal agencies, as well as the State and affected local governments, to determine where removal of certain debris is not eligible for Expedited Debris Removal or Public Assistance Program funding.

If temporary reduction sites or temporary staging areas for debris are established, who is responsible for the restoration of the temporary sites?

When the site operations are complete, the property must be restored to its original condition before returning the site to the property owner. Restoration of a site involves removing all traces of the operations and possible remediation of any contamination that may have occurred during the operations. The site must be brought back to its environmental state, prior to it being returned to the owner. If the site is owned or leased by a FEMA mission assigned agency (USACE), the mission assigned agency is responsible for ensuring that the operation complies with all federal and state environmental statutes and regulations.

Is demolition included in Expedited Debris Removal?

No. Demolition of damaged structures is not authorized under the Expedited Debris Removal initiative. Demolition can be considered an emergency protective measure under Public Assistance Program Category B, for which the cost share adjustment for Expedited Debris Removal does not apply. FEMA defines the removal of slabs as a demolition activity, and therefore is not eligible as part of the Expedited Debris Removal operation.

RESOLUTION NO. 2011-006

A RESOLUTION making appropriate findings, representations, and authorizations for certain debris removal related to the May 22, 2011 tornado.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. That the City of Joplin, Missouri is a Constitutional Home Rule City organized pursuant to Article VI, Sections 19 and 20 of the Constitution of the State of Missouri and as such, has all powers of self-government and all powers possible for any city to have under the constitution and laws of the state of Missouri and all powers which the legislature of the state of Missouri or the people of the City of Joplin would be competent to grant as described in Section 1.04 of the Charter of the City of Joplin, except as may otherwise be prohibited.

Section 2. That the City of Joplin Director of Public Health and Welfare, pursuant to the Charter of the City of Joplin and Section 54-41 of the Municipal Code of the City of Joplin, has declared that residential tornado-caused debris located on private property resulting from the storm on May 22, 2011 is a danger in its continuance to the public health and is a public nuisance as defined by Section 67.398 RSMo. The Director further declared that it is in the public interest to eliminate such immediate threats to life, public health and safety. A copy of such order being attached hereto and incorporated herein by reference as Exhibit "A".

Section 3. That the City of Joplin certifies that under the authority provided by local and state law, it has the authority to enter onto private property for the purpose of abating nuisances and removing debris declared as such. More specifically, public nuisance abatement is provided for by Section 67.398 RSMo. 2010 and the Code of Ordinances of the City of Joplin, Missouri Sections 54-31 through 54-41 as well as the general police powers of the City. The Council finds that such nuisance abatement will protect the public health, safety and welfare and that a public purpose will be served thereby.

Section 4. That based upon Sections 2. and 3. above, and all other applicable facts and circumstances, the City has determined that in order to protect the public health, safety and welfare, it is necessary to exercise this authority to enter onto private property in order to abate the declared public health nuisance and safety emergency by removal of the tornado-generated debris and shall do so.

Section 5. The City certifies that before the City initiates removal, it shall have satisfied all the legal processes and received all legal permissions to carry out these actions of debris removal on private property through the use of Rights of Entry with indemnity clauses signed by the property owner or use of the City's Municipal Code process for condemnation or nuisance abatement.

Section 6. That the City shall utilize the process described in the City Code Sections 54-42 and Article X of Chapter 26 for nuisance abatement and demolitions as the case may be. The City certifies that it has a process to determine which properties will require this process to

protect the public safety. In all but emergency circumstances, a reasonable waiting period of at least seventy-two (72) hours will be required for public notification before private property debris removal will commence.

Section 7. The City will recognize and be mindful of all laws and regulations that concern historic preservation and environmental protection.

Section 8. The City agrees that if it determines that aggregating titled personal property such as cars, trucks, recreational vehicles and boats in order to clear streets and make properties accessible for short and long term housing is necessary, the City will certify that it has taken all appropriate action to declare so called "junk cars" a nuisance, whether they are on public or private property, and will provide a safe and secure location for storage.

Section 9. As required by, and only to the extent required by, §407(b) of the Stafford Act (42 U.S.C. §5173(b)), the City of Joplin hereby agrees, to the extent allowed by state and federal law, that it shall indemnify and hold harmless the federal government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal, to the extent such debris removal was authorized by the City. The City of Joplin hereby acknowledges that in accordance with §305 of the Stafford Act (42 U.S.C. §5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

Section 10. That during this disaster, the Mayor and Manager have executed certain cooperative agreements, requests for assistance, rights of entry for City property and other documents related to the emergency as provided by Sections 38-41 and 38-43 of the Joplin City Code. Such agreements, requests for assistance, rights of entry and other related documents are hereby ratified and approved by the Council of the City of Joplin, Missouri.

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 23rd day of June, 2011.

Michael R. Woolston

Michael R. Woolston, Mayor

ATTEST:

Barbara Gollhofer

Barbara Gollhofer, Assistant City Clerk

APPROVED AS TO FORM:

Brian W. Head

Brian W. Head, City Attorney

RIGHT-OF-ENTRY PERMIT AND AGREEMENT **PERMIT NO. _____**

Property Address/Description (include County): _____

Mailing Address	Insurance Information
Name (Owner/Tenant): _____	**Please supply the following insurance information:**
Mailing Address: _____	This property (__is __is not) insured. (check one)
City/State: _____	Insurance Company: _____
Date: _____	Agent Name: _____
Phone/Cell: _____	Agent Phone #: _____
E-mail: _____	Policy #: _____
Drivers License No. _____	

1. **Grant of Right of Entry:** I certify that I am the owner, or the owner's authorized agent, of the property described above (the "Premises) I grant freely and without coercion, the right of access and entry to said property to the City of Joplin for removal of tornado debris for a period of ninety (90) days from the date written below. I hereby grant the City of Joplin, Missouri (the "City"), the State of Missouri, and the United States Government, their respective officers, employees, agents, contractors and subcontractors, a right-of-entry to enter upon Premises for the purpose of providing removal and clearing of any and all storm debris from the above described private property (curbside and/or streets), subject to all licenses, easements, encumbrances, and claims of title affecting the Premises upon the terms and conditions set forth in this Agreement. (*See the reverse of this page) It is fully understood that this Agreement does not create any obligation on the City, the State of Missouri, or the United States Government to perform debris clearance. Owner acknowledges that debris removal is subject to the approval of the City.

2. **Duplication of Benefits**: Most homeowner's policies have coverage to pay for removal of storm-generated debris. I understand that Federal law (42 U.S.C. Sect. 5155) requires me to reimburse City the cost of removing storm-generated debris to the extent covered by any other source including FEMA, Small Business Administration (SBA), private insurance, Other Needs Assistance or any other public assistance program.

PLEASE READ CAREFULLY THE TERMS ON THE REVERSE OF THIS PAGE

I HAVE READ AND AGREE WITH THE TERMS OF THIS RIGHT OF ENTRY AND UNDERSTAND THAT BY SIGNING THIS AGREEMENT I AM RELINQUISHING AND WAIVING CERTAIN LEGAL RIGHTS I OTHERWISE WOULD HAVE. I ENTER INTO THIS AGREEMENT VOLUNTARILY AND KNOWINGLY ON THIS ____ DAY OF _____, 2011.

OWNER(S): _____ WITNESS: _____

_____ _____
Print Name

_____
Print Name(s)

Special Considerations: _____
(i.e. gates, locks, major cross streets, and special directions contractors will need for site access):

3. **Private Insurance Coverage:** Owner understands that federal law may require the Owner to reimburse the City for the cost of removing tornado-generated debris to the extent covered in Owner's insurance policy. Owner shall provide a copy of all homeowners insurance policies to the City within thirty (30) days of signing this agreement. If Owner has received payment, or when Owner receives payment, for debris removal from Owner's insurance company, or any other source, Owner shall notify and send payment and proof/statement of loss to City within thirty (30) days. Owner understands that all disaster related funding, including that for debris removal from private property, is subject to audit. If Owner indicates that Owner does not have such insurance, Owner certifies under penalty of perjury that there was no insurance in effect at the time of the tornado, which provided coverage for debris removal. Owner will report, for the Premises, any insurance settlements to Owner or Owner's family for debris removal that has been performed at government expense.

4. **Hold Harmless**: The Owner agrees that the City, State of Missouri, and the United States Government shall not be liable for damages sustained by the Owner as a result of debris removal activity authorized in this Agreement. The Owner shall indemnify and hold harmless City, the United States Government, the Federal Emergency Management Agency (FEMA), the State of Missouri, and any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers, against any and all claims, damages of any type whatsoever either to the Premises or persons situated thereon, deductibles, self-insured, retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, personal injury, charges or costs of any kind of character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to actions arising out of any activities or this Agreement and hereby release, discharge and waive any Claims and action, in law or equity, arising therefrom.

5. **No City, State of Missouri, or United States Government Assumption of Liability**: In consideration of the assistance City, **State of Missouri, and the United States Government** is providing to Owner under this Agreement, at no cost to Owner, City **State of Missouri, and the United States Government** assume no liability or responsibility, and Owner shall not seek to recover from City, the United States Government, the Federal Emergency Management Agency (FEMA), the State of Missouri, and any of their officers, agencies, agents, contractors, subcontractors, employees and volunteers, the cost of any remediation of damages to the Premises incurred due to actions taken pursuant to this Agreement.

6. **Purpose**: The parties acknowledge that this Agreement is for the sole purpose of the removal of tornado debris on private property subject to the approval of the City for a specifically designated tornado event.

Please return signed Agreement to:

Department of Public Works
City of Joplin
602 S. Main St.
Joplin, MO 64801

COUNCIL BILL NO. 2011-018 **ORDINANCE NO.** 2011-078

AN ORDINANCE authorizing the City of Joplin to collect insurance proceeds from homeowner(s) when government-funded contractors remove tornado-related debris from residential private property to ensure no duplication of benefits between government cleanup efforts and insurance coverage as required by Federal Law; and containing an emergency clause.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, a devastating EF5 Tornado struck the City of Joplin and surrounding areas on May 22, 2011; and

WHEREAS, the President of the United States has authorized the Expedited Debris Removal (EDR) initiative utilizing government-funded contractors to remove tornado-related debris from residential private properties with extensive or catastrophic damage; and,

WHEREAS, Federal Law (42 U.S.C. 5155) requires that the City provide an assurance that there is no duplication of benefits received pursuant to the EDR Program by private properties receiving Federally funded debris clean-up and insurance proceeds; and,

WHEREAS, the City of Joplin wishes to establish a process whereby residential private property owners participating in the EDR Program will not receive a duplication of benefits; and,

WHEREAS, the City of Joplin obtained locals bids for loose debris removal in non-disaster related areas, as well as insurance estimates and local historical information, the City has established a 3-tier cost structure for the EDR Program.

NOW THEREFORE, IT IS ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

Section 1. Residential private property owners without specific insurance coverage for debris removal will not receive a duplication of benefits and therefore, will not be required to remit any insurance proceeds to the City for participation in this program.

Section 2. For property with a lot size of 0 to 10,000 square feet, the private property owner or insurer thereof shall remit the lesser of the amount allowed under the insurance policy for debris removal or One Thousand Five Hundred Dollars ($1,500.00) upon receipt of an invoice from the City of Joplin.

Section 3. For property with a lot size of 10,001 square feet to ½-acre, the private property owner or insurer thereof shall remit the lesser of the amount allowed under the insurance policy for debris removal or Two Thousand, Five Hundred Dollars ($2,500.00) upon receipt of an invoice from the City of Joplin.

Section 4. For property with a lot size of ½-acre or greater, the private property owner or insurer thereof shall remit the lesser of the amount allowed under the insurance policy for debris removal or Four Thousand Dollars ($4,000.00) upon receipt of an invoice from the City of Joplin.

Section 5. An invoice shall not be sent by the City of Joplin until such time as residential private property owners have sufficient time to demolish house, if needed, to allow for the separation of debris removal and demolition insurance proceeds as may be set forth in individual insurance policies.

Section 6. Any person, insurer of any person or agent thereof in disagreement with the amount of the billing may appeal such determination to the City of Joplin, Director of Finance for review and adjustment within thirty (30) days of receiving such billing.

Section 7. In the event, a residential property owner has already expended a portion, or, all of the amount allowed under the insurance policy, the residential property owner shall provide proof of this payment for said debris removal to the City of Joplin. Such amount already paid shall be credited against the amounts described above. The insurer for the property or residential property owner shall remit the difference, if any, between the amount allowed under the insurance policy for debris removal and the amount set for such lot size as described above.

Section 8. That the City of Joplin declares that this ordinance relates to the preservation of public peace, property, health, safety or morals and is an emergency within the meaning of Section 2.12(1) of the HOME RULE CHARTER of the City of Joplin, Missouri, and the Council hereby declares that this ordinance shall be in full force and effect from and after its passage.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 20th day of June, 2011, by a vote of 9-0.

Michael R. Woolston, Mayor

ATTEST:

Barbara L Hogelin, City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

RIGHT-OF-ENTRY
TORNADO DISASTER ASSISTANCE
DR-1980-MO – UNITED STATES GOVERNMENT

WHEREAS, on May 22, 2011, the City of Joplin was struck by an EF-5 tornado resulting in catastrophic damage; and,

WHEREAS, as a result of the tornado, large amounts of debris were generated; and,

WHEREAS, such debris has been declared a public health nuisance by the Director of the Department of Health for the City of Joplin Missouri (See Exhibit "A" of Exhibit "1" attached hereto); and,

WHEREAS, on July 7, 2011, the Council of the City of Joplin Missouri conducted a number of hearings related to such debris continuing to be upon various properties in the City; and,

WHEREAS, at the conclusion of that Hearing, the Council of the City of Joplin found such debris to be a nuisance and ordered it abated (See Exhibit "2").

The City of Joplin, a municipal corporation in the counties of Jasper and Newton, State of Missouri, (hereinafter referred to as the "City") acting by and through Mr. R. Mark Rohr, City Manager, and Mr. Mike Woolston, Mayor for the City of Joplin, Missouri, in participation with the United States Government in the removal of debris in connection with the Joplin May 22, 2011 Tornado Event under the Federal Response Plan, Public Law 93-288 (Stafford Act), as amended, does hereby certify that the City is vested with sufficient right to enter onto the properties described in Exhibit "2" attached hereto for the purpose of abating nuisances related to the May 22, 2011 tornado. The City does hereby grant to the United States, its officers, employees, agents, successors and assigns and the federal government contractors, their officers, employees, agents, successors and assigns, an irrevocable right to enter in, onto, and upon the properties described in the attached Exhibit "2" for a period of one (1) year from the date of signing.

The City agrees to expressly and fully release and forever discharge the United States Government, including but not limited to FEMA, USACE, EPA, and OSHA, and any other Federal agencies along with its agents, employees and assigns, to hold harmless and free from all liability for any and all damage done or caused to be done pursuant to accomplishing the debris clearance, removal and disposal effort. The City hereby further agrees to waive any and all actions and to hold and save said Government, along with its agents, employees and assigns, free and harmless from any and all claims and demands whatsoever for any damage to the properties described as provided in Exhibit "2" attached hereto, or to any improvements or to personal property thereon, as well as any damages to public property, resulting from said operations. The agreement to hold harmless extends to the Federal government; it does not extend to claims against the Federal government contractors or subcontractors conducting the debris clearance, removal and disposal work to the extent damages are due to negligence of such contractors or subcontractors or their employees. The City of Joplin retains its sovereign immunity against third

parties and nothing herein shall be construed by any non-government third-party to in any way abrogate or waive such sovereign immunity.

The City agrees and certifies that it has complied with all state and local laws, ordinances and civil procedures in obtaining the right to enter upon private property for the purpose of abating the nuisances described in Exhibit "2", a true and accurate copy is attached hereto and incorporated herein by reference.

The City also certifies that it has the legal authority pursuant to its laws and ordinances to allow the Federal government to enter upon private property for debris removal as restated in City of Joplin Resolution 2011-006, attached hereto and incorporated herein by reference. See Exhibit "1".

IN WITNESS WHEREOF, the City located in Jasper and Newton Counties, State of Missouri caused its corporate name to be hereunto signed by the City Manager of the City, the Mayor of the City, attested to by the City Clerk, approved as to form by the City Attorney, and the corporate seal of said City, State of Missouri to be affixed hereto to execute this agreement this 14th day of July, 2011.

R. Mark Rohr,
City Manager

Michael R. Woolston,
Mayor

ATTEST:

Barbara J. Golhofer,
Deputy City Clerk

Brian W. Head,
City Attorney

CITY OF JOPLIN MISSOURI

Office of the Director of Health
321 East 4th Street
Joplin, MO 64801
(417) 624-0820 Ext. 282
(417) 624-6453 (Fax)

June 22, 2011

SEMA
Attn: Paul Parmenter
P O Box 116
Jefferson City, MO 65102

Re: Declaration of Public Health Nuisance
May 22, 2011 EF-5 Tornado

Dear Sir:

I am writing to notify you that as a consequence of the EF-5 tornado on May 22, 2011, in the City of Joplin, Missouri, a public health emergency exists and has existed since May 22, 2011, and is continuing in areas impacted by the tornado. Further, debris caused by the tornado is an immediate threat to the public's health and safety.

Jasper and Newton counties, including the City of Joplin, were added to the May 9, 2011 Major Disaster Declaration for Missouri (DR-1980- MO) by the Federal Emergency Management Agency Administrator on May 23, 2011. This designation included Public Assistance – for debris removal, emergency protective measures – and Direct Federal Assistance.

In this Declaration of Public Health Nuisance, I specifically refer to debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are, or are likely to become, a menace to the public health.

Wherever such debris exists, it constitutes a nuisance menacing public health and should be abated. I have made this determination pursuant to the authority vested in me under Joplin City Code, Ordinance §54-41, and other laws of the State of Missouri.

Very truly yours,

Daniel A. Pekarek,
Director of Health
City of Joplin

PCE/DAP:ab

June 22, 2011

SEMA
Attn: Paul Parmenter
P O Box 116
Jefferson City, MO 65102

Re: Declaration of Public Health Nuisance
May 22, 2011 EF-5 Tornado

Libby Turner
Federal Coordinating Officer
FEMA JFO (DR-1980 MO)
1512 Heriford Rd.
Columbia, MO 65202

Col. William Ward
National Guard

COUNCIL BILL NO. 2011-016 **ORDINANCE NO.**2011-080

AN ORDINANCE amending Chapter 54, Environment, Article II, Nuisances, to enact a new section, Sec. 54-42, Administrative Abatement Process", to provide for an expedited nuisance abatement procedure due to the large amount of debris generated by the May 22, 2011 tornado that constitutes a public health emergency; and, containing an emergency clause pursuant to Section 2.12 (1) of the Home Rule Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, as follows:

WHEREAS, the damage from the May 22, 2011 tornado has been declared part of a federal disaster by the President of the United States.

WHEREAS, the tornado generated debris consisting of dead or infected animals or animals acting as vectors of disease; debris causing buildings, yards, premises or places to be, or become, menaces to the public health; debris containing insanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are, or are likely to become, a menace to the public health.

WHERAS, the City of Joplin Health Director has declared that a public health emergency exists because of the large amount of tornado generated debris in a letter dated June 15, 2011.

WHEREAS, the large amount of tornado generated debris constitutes an immediate threat to the health, safety and welfare of the general public.

WHEREAS, because this debris is an immediate danger to public health, safety and welfare, and is a public nuisance by law and definition, an expedited nuisance abatement process is necessary.

WHEREAS, due to the estimated 7,000 homes that were damaged or destroyed as a result of the May 22, 2011 tornado, personal service and service by certified mail is impractical given the health emergency that exists.

WHEREAS, given the summary abatement powers of the City Health Director in Section 54-41 of the Code, and the requirement of a seven (7) day notice under RSMo Section 67.398, notice by publication that gives property owners seven (7) days notice provides the necessary due process under federal and state law.

Section 1. That Chapter 54, Environment, Article II, Nuisances, be amended by enacting a new section, Sec. 54-42, Administrative Abatement Process., of the Joplin City Code, to read as follows:

"Sec. 54-42. Administrative Abatement Process.

a. Pursuant to the authority of the City Charter, Missouri Constitution, and Revised Missouri Statute Section 67.398, and in light of the declared emergency in the City of Joplin as a result of the May 22, 2011 tornado, the City hereby enacts an Administrative

Abatement Process due to the amount of debris and waste throughout the City of Joplin that constitutes a danger to the public health, safety and welfare of the citizens of Joplin. The procedures are herein enacted under the emergency powers of the Director of Public Health and Welfare in Sec. 54-41. The notice and hearing procedures in this section shall supersede the notice and hearing procedures as outlined above. All other ordinances relating to nuisance abatement shall apply, as set forth immediately above, to the extent they are not in conflict with the procedures outlined below.

b. Notice Procedure. Notice of the nuisance violation shall be effectuated by publication in the local newspaper giving no less than seven (7) days notice of a public hearing on the nuisance violation. Said notice will indentify the physical address of the property on which the nuisance violation exists.

c. Hearing. A hearing shall be held on the nuisance violation by the Joplin City Council. If a hearing determines that a nuisance exists, the Council shall order the owner to abate such nuisance within seven (7) days of receiving notice that the nuisance has been ordered removed or abated. If the owner fails to pursue the removal or abatement without unnecessary delay in the time specified in the order, the Mayor or his designee shall cause the condition which constitutes the nuisance to be removed or abated. Any person aggrieved by the decision of the Joplin City Council must file a Notice of Appeal with the City within seven (7) days of receiving notice of the order to abate the nuisance. Notice by publication as described in subsection b of this section 54-42 shall be deemed sufficient do to the impracticability of providing actual service due to the disaster.

d. Costs. The costs and expenses incurred by the City for abating a nuisance shall be a personal debt of the property owner and a first lien on the real estate until paid. A tax bill shall be assessed against the real estate."

Section 2. That this Ordinance, dealing with the preservation of public health and safety, is an emergency within the meaning of Section 2.12 (1) of the Home rule Charter of the City of Joplin, Missouri, and, as such, shall be in full force and effect immediately from and after its adoption and approval.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this 23rd day of June, 2011, by a vote of 8-0-1.

Michael R. Woolston, Mayor

ATTEST:

Barbara Gollhofer, Assistant City Clerk

APPROVED AS TO FORM:

Brian W. Head, City Attorney

EXHIBIT "2"

BEFORE THE CITY COUNCIL OF THE CITY OF JOPLIN

In Re The Matter Of:

1201 LITTLE
1207 ROLAND
1211 ROLAND
1212 ROLAND
1217 LITTLE CT
1218 MONTANA
1218 ROLAND PL
1220 MONTANA PL
1220 ROLAND
1224 ROLLAND AVE
1227 MONTANA
1230 MONTANA PL
1236 MONTANA
1325 E 24TH
1520 E 19TH ST
1521 MASSACHUSETTS
1601 S ST LOUIS
1623 DELAWARE
1624 -1630 CONNECTICUT
1631 W 26TH
1632 - 1638 CONNECTICUT AVE
1701 CONNECTICUT
1710 S ST LOUIS
1716 -1722 CONNECTICUT AVE
1716 -1722 CONNECTICUT AVE
1721 DELAWARE
1721 S CONNECTICUT
1728 -1730 CONNECTICUT
1732 S ST LOUIS
1805 S HIGHVIEW
1808 NEW HAMPSHIRE AVE
1809 NEW HAMPSHIRE AVE
1811 KANSAS
1812 DELAWARE
1814 CONNECTICUT AVE
1814 TEXAS
1815 S KANSAS
1817 S HIGHVIEW
1819 TEXAS
1820 NEW HAMPSHIRE AVE
1822 TEXAS AVE
1823 S HIGHVIEW
1824 CAROLYN PL
1824 KANSAS
1825 CAROLYN
1830 CAROLYN PL
1830 DELAWARE
1831 CAROLYN PL
1831 S KANSAS
1901 CAROLYN
1901 CHRIS LN
1901 INDIANA
1901 KANSAS AVE
1901 VERMONT AVE
1902 CAROLYN PL
1903 CHRIS LN
1906 NEW HAMPSHIRE
1911 CHRIS LN
1915 MICHIGAN
1915 S HIGHVIEW
1918 E 18TH
1927 E 18TH
1930 E 19TH
1931 TEXAS-2802 E 19TH
1931 S MICHIGAN
1941 E 18TH
2001 ARIZONA
2003 MISSISSIPPI
2005 S OZARK
2006 -2008-2112 DELAWARE
2010 HIGHVIEW
2014 DELAWARE AVE
2016 DELAWARE
2016 S HIGHVIEW
2017 DELAWARE
2017 S FLORIDA
2018 S FLORIDA AVE
2019 & 2021 MARYLAND

EXHIBIT "2"

2019 DELAWARE
2020 S HIGHVIEW
2021 S OZARK
2023 MARYLAND
2024 MARYLAND
2024 S FLORIDA AVE
2025 MARYLAND
2026 ARIZONA
2027 ALABAMA
2028 MISSISSIPPI
2028 TEXAS
2029 - 2031 S PATTERSON
2029 ARIZONA
2029 MISSISSIPPI
2029 S FLORIDA
2030 S HIGHVIEW AVE
2032 ARIZONA
2033 TEXAS
2035 S OZARK
2036 S OZARK
2044 MISSISSIPPI
2044 S HIGHVIEW
2101 ALABAMA
2102 ALABAMA
2102 TEXAS
2102 S BROWNELL
2103 PARK PL
2103 S FLORIDA AVE
2106 ALABAMA
2106 S OZARK
2106 S PATTERSON
2107 S OZARK
2107 S PATTERSON
2109 PARK PL
2110 PARK PL
2111 DELAWARE
2111 S BROWNELL
2115 DELAWARE
2116 DELAWARE
2117 S FLORIDA AVE
2118 S FLORIDA
2120 MISSISSIPPI AVE
2120 S BROWNELL
2123 S BROWNELL
2124 DELAWARE
2127 S PATTERSON AVE
2131 S FLORIDA
2131 S OZARK
2133 MISSISSIPPI
2134 MISSISSIPPI
2134 S BROWNELL
2207 S PATTERSON AVE
2214 ILLINOIS
2226 WISCONSIN
2232 ILLINOIS
2233 ILLINOIS
2244 WISCONSIN
2301 E 20TH
2302 ILLINOIS
2303 INDIANA
2309 INDIANA
2311 WISCONSIN
2314 WISCONSIN
2315 INDIANA
2318 E 20TH
2320 WISCONSIN
2321 ILLINOIS
2403 ILLINOIS AVE
2403 WISCONSIN
2408 ILLINOIS
2415 ILLINOIS
2421 INDIANA
2427 INDIANA
2503 INDIANA
2508 ILLINOIS
2515 ILLINOIS
2520 E 20TH
2601 E 20TH
2636 E 20TH
2712 E 20TH
2810 E 19TH
2818 E 18TH
2822 E 18TH
2826 E 16TH
2827 E 19TH
2829 E 17TH

EXHIBIT "2"

2832 E 19TH
2833 E 18TH
2838 E 18TH
2845 E 18TH
2901 E 18TH
2907 E 18TH
2915 E 17TH
2915 E 18TH
2916 E 16TH
2918 E 17TH
2920 E 16TH
2921 E 22ND
2926 E 17TH
2927 E 18TH
2929 E 16TH
1609 S ST LOUIS
1722 DELAWARE
1801 DELAWARE
1822 TEXAS AVE
2017 GRAND
2020 E 22ND
2021 GRAND
2101 GRAND
2101 PENNSYLVANIA
2101 VIRGINIA
2105 GRAND
2105 PENNSYLVANIA
2106 VIRGINIA AVE
2109 VIRGINIA
2110 VIRGINIA
2114 GRAND
2115 PENNSYLVANIA
2116 GRAND
2117 VIRGINIA
2120 VIRGINIA
2124 KENTUCKY
2126 GRAND
2127 KENTUCKY
2129 KENTUCKY & 409 E 22ND
2129 PENNSYLVANIA
2143 S BROWNELL
2202 IOWA
2202 Missouri AVE
2204 VIRGINIA
2205 GRAND
2205 KENTUCKY
2205 VIRGINIA
2206 VIRGINIA
2209 GRAND
2212 GRAND
2214 MISSOURI
2214 W 29TH
2215 MISSOURI
2215 PENNSYLVANIA
2216 PENNSYLVANIA
2217 VIRGINIA
2219 VIRGINIA
2222 GRAND
2222 IOWA
2222 MISSOURI AVE
2224 VIRGINIA
2227 GRAND
2301 & 2303 S KENTUCKY
2301 VIRGINIA
2302 KENTUCKY
2302 VIRGINIA
2302 S HARLEM
2303 S KENTUCKY
2305 S PEARL
2309 S MOFFET
2310 KENTUCKY
2314 S KENTUCKY
2315 KENTUCKY AVE
2316 IOWA
2317 PENNSYLVANIA
2317 KENTUCKY
2319 MURPHY
2324 PENNSYLVANIA
2325 VIRGINIA
2326 PENNSYLVANIA
2327 KENTUCKY
2339 MISSOURI
2401 MISSOURI
2402 MURPHY AVE
2404 IOWA
2405 OHIO

EXHIBIT "2"

2406 ANNIE BAXTER
2407 PENNSYLVANIA
2407 S PICHER
2411 MINNESOTA
2412 KENTUCKY
2415 KENTUCKY
2419 BIRD
2419 VIRGINIA
2420 PENNSYLVANIA
2421 MINNESOTA
2424 BIRD
2424 MISSOURI AVE
2425 OHIO
2427 MINNESOTA
2430 KENTUCKY
2430 PENNSYLVANIA
2430 VIRGINIA
2431 S MINNESOTA
2437 IOWA
2447 GRAND AVE
2448 MINNESOTA
2449 IOWA
2501 KENTUCKY
2502 INDIANA
2502 PENNSYLVANIA
2505 OHIO
2506 PENNSYLVANIA
2508 VIRGINIA
2510 IOWA
2514 KENTUCKY
2518 OHIO AVE
2520 GRAND
2527 MISSOURI
2534 N KINGSDALE
2549 MINNESOTA
2609 VIRGINIA
2610 GRAND
2610 PENNSYLVANIA
2610 VIRGINIA AVE
2614 -16-16 1/2 VIRGINIA
2614 PENNSYLVANIA
2620 GRAND
2621 & 2625 VIRGINIA
2624 KENTUCKY
2625 KENTUCKY
2626 GRAND AVE
2627 S MONROE
2628 GRAND
2628 KENTUCKY AVE
2629 KENTUCKY
2629 VIRGINIA
2631 PENNSYLVANIA
2634 MISSOURI
2720 S KENTUCKY
2801 VIRGINIA
2808 VIRGINIA
2819 VIRGINIA
2831 VIRGINIA
2905 JEFFERSON AVE
3014 EILER AVE
3025 W SUNSET
3102-3104 ADELE
830 E 24TH
902 E 24TH
2001 & 2007 & 2011 26TH
2017 W 26TH ST
2026 W 26TH ST
2223 W 26TH
2227 W 27TH
2315 W 29TH
2331 W 26TH
2401 W 29TH
2408 WILLARD
2507 S KINGSDALE RD
2509 W 29TH
2525 W 29TH
2526 W 29TH
2531 ROOSEVELT
2531 WILLARD
2532 WILLARD
2534 W 29TH
2601 W 29TH
2602 MONROE ST
2603 S ADELE
2607 W 29TH
2618 S MONROE

EXHIBIT "2"

2637 S WINFIELD
2706 ADELE
2709 ADELE
2711 S WINFIELD AVE
2712 JEFFERSON
2715 S OLIVER
2723 S MONROE
2725 S OLIVER AVE
2726 -2728 S ADELE
2804 S MONROE
2805 S MONROE
2809 S WINFIELD
2818 JEFFERSON
2824 JEFFERSON
2829 S MINA AVE
2829 S MONROE
2910 MCCLELLAND ST
2948 & 2952 APT C & D MCCLELLAND BLVD
3001 SUNSET DR
3007 JENNIFER AVE
3010 EILER AVE
3011 EILER AVE
3018 SUNSET W DR
3020 IRON GATES RD
3026 S MONROE
3030 W 27TH
3061 S DAY RD
3101 W SUNSET DR
3102 S TYLER
3107 S DAY RD
3113 S JEFFERSON
3118 S ABIGAIL LN
3418 SUNSET DR
1018 W 26TH
2205 S WALL
2206 S JOPLIN
2207 S WALL
2209 -2211 S JOPLIN
2217 MURPHY
2221 -2223 S JOPLIN
2303 S HARLEM
2305 CONNOR
2305 S BYERS
2306 S BYERS
2307 S PEARL
2310 S HARLEM
2310 S JOPLIN
2311 S WALL
2312 S MOFFET
2314 S PEARL
2315 S PEARL
2316 CONNOR
2317 BIRD
2319 S CONNOR
2320 S SERGEANT
2328 S PORTER
2329 S CONNOR
2329 S JOPLIN
2402 -04 ANNIE BAXTER
2402 BIRD
2402 S CONNOR
2406 CONNOR
2407 S WALL
2409 S PEARL
2410 BIRD
2410 S JOPLIN
2412 S CONNOR
2414 S CONNOR
2416 WALL
2420 ANNIE BAXTER
2423 S JOPLIN
2424 EMPIRE
2427 S JOPLIN
2428 ANNIE BAXTER
2428 S JOPLIN AVE
2428 S WALL
2429 MURPHY
2501 EMPIRE
2502 EMPIRE
2514 BIRD AVE
2514 S JOPLIN
2515 EMPIRE
2515 S BIRD
2520 MURPHY
2520 S CONNOR

EXHIBIT "2"

2521 S WALL
2531 EMPIRE
2604 S PEARL
2611 MOFFET
2614 S SERGEANT
2616 S CONNOR
2620 CONNOR
2621 S CONNOR
2626 S PEARL AVE
2628 MOFFET
2630 S WALL
2632 S MOFFETT AVE
2706 S WALL
2711 CONNOR
2714 SERGEANT
2728 S SERGEANT AVE
2731 BIRD
2802 WALL
2807 S SERGEANT
3218 OAKRIDGE (Newton County)
414 W 26TH
811 W 25TH
902 W 26TH
2620 S JOPLIN
2628 S JOPLIN
2702 S WALL
2706 JOPLIN AVE
2716 S JOPLIN AVE
2718 S JOPLIN
2722 S WALL
2731 S JOPLIN
2805 S JOPLIN
2811 S JOPLIN
2828 S WALL

HEARING DATE: JULY 6, 2011

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW ON THIS 6th day of July, 2011, this matter comes on for hearing in accordance with the procedures of Section 54-42, Administrative Abatement Process, of Chapter 54 of the Code of Ordinances of the City of Joplin. The City Council finds due notice of the pendency of these proceedings has been given by a Notice and Declaration of Nuisance to all interested parties, pursuant to §54-42, by Publication in the Joplin Globe which ran on June 28, 2011.

NOW, after holding such hearing, and having heard the testimony of the Code Enforcement Official(s) and other interested parties, and after having reviewed the evidence submitted and admitted into evidence, the Council makes the following findings of fact regarding the properties identified above:

FINDINGS OF FACT

Pictures of the above-described properties were authenticated by the Code Enforcement Official(s) and entered into evidence as Exhibit's 1(a) through (e), and Exhibits 6 and 7. The photos showed and illustrated the presence of some or all of the following on the properties: debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing,

bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water ("debris") which are a menace to the public health.

The Affidavit of Publication from the Joplin Globe was received into evidence as Exhibit 3. It provides that the above-described properties have been identified and declared a "public nuisance", and notified of today's hearing.

The Joplin Health Director issued a declaration of nuisance in a letter dated June 22, 2011 wherein he declared that debris generated from the May 22, 2011, that includes debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are a menace to the public health. This debris is a public nuisance and a safety and health hazard for the City of Joplin. A copy of the letter was accepted into evidence as Exhibit 3 and made a part of the record. The Joplin Code of Ordinances was accepted into evidence as Exhibit 4 and made a part of the record.

Testimony was accepted from City of Joplin employees and code enforcement officers Rich Boucher, Gina Simmons, Nathan Turner, Jason Cummins and Scott Buffer regarding the pictures they took of the properties and the presence of debris on the properties described above. The code enforcement officers offered professional opinions regarding the properties; specifically, that the properties contained various debris that constitute a nuisance as defined by Joplin City Code Section 54-35, Enumeration.

CONCLUSIONS OF LAW

Based on the factual findings and evidence immediately stated above, the properties identified above violate Sections 54-31 through 54-42 of the Code in that a nuisance exists on the property due to the existence of tornado and storm debris on the property.

*A copy of Sections 54-31 through 54-42 is attached hereto and incorporated herein.

IT IS THEREFORE DECLARED AND DETERMINED that the properties identified above are in violation of the Joplin City Code Section 54-35 in that a nuisance exists on the property.

EXHIBIT "2"

IT IS THEREFORE, ORDERED that the owner of the properties described above shall abate and remove within seven (7) days the storm and tornado debris that includes: debris containing dead or infected animals or animals acting as vectors of disease; debris creating harborage and breeding area for vectors of disease including rodents and mosquitoes and harborage for stray domestic and wild animals; debris causing buildings, yards, premises or places to be or become menaces to the public health; debris including weed cuttings, cut or fallen trees and shrubs, rubbish and trash, lumber, rocks or bricks, tin, steel, broken furniture, debris containing unsanitary clothing, bedding, furniture, vehicles, containers, receptacles, buildings with one (1) wall or less still standing, appliances and equipment; and debris containing unwholesome or decayed or infected meat, fish, fruits or other food or food stuffs, medicines, drugs, beverages or drinking water which are a menace to the public health.

IT IS FURTHER ORDERED that in the event said nuisance on the property is not abated or removed within seven (7) days of this Order, the City shall proceed to abate and remove said nuisance violation in accordance with Sections 54-31 through 54-42 of the Joplin City Code, the cost of the same to be a Special Tax Bill against the subject property and a personal debt of the owner in accordance with the provisions of said section.

Dated: July 7, 2011.

JOPLIN CITY COUNCIL

By: Michael R. Woolston
Mike Woolston, Mayor

I. TITLE: **Debris Removal from Private Property**

II. DATE: JUL 18 2007

III. PURPOSE:

This policy describes the criteria that the Federal Emergency Management Agency (FEMA) will use to evaluate the eligibility of debris removal work from private property under the Public Assistance Program.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for FEMA personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403(a)(3)(A), 407, and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b, 42 U.S.C. 5173, 42 U.S.C. 5192, and 44 CFR 206.224.

VI. BACKGROUND:

A. Sections 403(a)(3)(A) and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173, respectively, provide FEMA authority to fund debris removal from private property provided that the State or local government arranges an unconditional authorization for removal of the debris, and agrees to indemnify the Federal government against any claim arising from the removal.

B. The regulations implementing Sections 403 and 407 of the Stafford Act at 44 CFR 206.224 establish the requirement that debris removal be in the "public interest" in order to be eligible for reimbursement. "Public interest" is defined as being necessary to:

1. eliminate immediate threats to life, public health, and safety; or

2. eliminate immediate threats of significant damage to improved public or private property; or

3. ensure economic recovery of the affected community to the benefit of the community-at-large.

C. Generally, debris removal from private property following a disaster is the responsibility of the property owner. However, large-scale disasters may deposit enormous quantities of debris on private property over a large area resulting in widespread immediate threats to the public-at-large. In these cases, the State or local government may need to enter private property to remove debris to: eliminate immediate threats to life, public health, and safety; eliminate immediate threats of significant damage to improved property; or ensure economic recovery of the affected community to the benefit of the community-at-large. In these situations, debris removal from private property may be considered to be in the public interest and thus may be eligible for reimbursement under the Public Assistance Program (44 CFR 206.224).

VII. POLICY:

A. Definitions.

1. Disaster-generated debris: Any material, including trees, branches, personal property and building material on public or private property that is directly deposited by the disaster.

2. Improved property: Any structure, facility, or equipment that was built, constructed, or manufactured. Examples include houses, sheds, car ports, pools, and gazebos. Land used for agricultural purposes is not improved property (44 CFR 206.221(d)).

3. Legal responsibility: A statute, formally adopted State or local code, or ordinance that gives local government officials responsibility to enter private property to remove debris or to perform work to remove an immediate threat (44 CFR 206.223(a)(3), 44 CFR 206.221(c), and 44 CFR 206.225(a)(3)).

4. Private property: Land and structures, to include contents within the structures, built on land that is owned by non-governmental entities (44 CFR 206.224(b)).

5. Private road: Any non-public road for which a subdivision of the State is not legally responsible to maintain. Private roads include roads owned and maintained by homeowners associations, including gated communities, and roads for which no entity has claimed responsibility. Local police, fire, and emergency medical entities may use these roads to provide services to the community (44 CFR 206.224(b)).

B. Approval for FEMA Assistance. FEMA will work with states affected by a disaster to designate those areas where the debris is so widespread that removal of the debris from private property is in the "public interest" pursuant to 44 CFR 206.224, and thus is eligible for FEMA Public Assistance reimbursement on a case-by-case basis.

1. Any State or local government that intends to seek reimbursement to remove debris from private property within a designated area will, prior to commencement of work, submit a written request for reimbursement to, and receive approval from, the Federal Coordinating Officer (FCO). The written request will include the following information:

a. Public Interest Determination (44 CFR 206.224(a)):

i. Immediate Threat to Life, Public Health, and Safety Determination. The basis of a determination by the State, county or municipal government's public health authority or other public entity that has legal authority to make such a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, and safety; or

ii. Immediate Threat to Improved Property Determination. The basis of the determination by the State, county, or municipal government that the removal of disaster-generated debris is cost effective. The cost to remove the debris should be less than the cost of potential damage to the improved property in order for the debris removal to be eligible; or

iii. Ensure Economic Recovery of the Affected Community to the Benefit of the Community at Large Determination. The basis of the determination by the State, county, or municipal government that the removal of debris from commercial properties will expedite economic recovery of the community-at-large. Generally, commercial enterprises are not eligible for debris removal.

b. Documentation of Legal Responsibility (44 CFR 206.223(a)(3)).

A detailed explanation documenting the requesting State or local government's authority and legal responsibility at the time of disaster to enter private property to remove debris, and confirmation that all legal processes and permission requirements (e.g., right-of-entry) for such action have been satisfied.

i. The eligible applicant requesting assistance must demonstrate the legal basis as established by law, ordinance, or code upon which it exercised or intends to exercise its responsibility following a major disaster to remove disaster-related debris from private property. Codes and ordinances must be germane to the condition representing an immediate

threat to life, public health, and safety, and not merely define the applicant's uniform level of services. Typically, solid waste disposal ordinances are considered part of an applicant's uniform level of services.

States and local governments ordinarily rely on condemnation and/or nuisance abatement authorities to obtain legal responsibility prior to the commencement of debris removal work. There may be circumstances, however, where the State or local government determines that ordinary condemnation and/or nuisance abatement procedures are too time-consuming to address an immediate public health and safety threat. In such circumstances, applicants do not have to precisely follow their nuisance abatement procedures or other ordinances that would prevent the State or local government from taking emergency protective measures to protect public health and safety (44 CFR 206.225(a)).

ii. The applicant's legal responsibility to take action where there is an immediate threat to life, public health, and safety must be independent of any expectation, or request, that FEMA will reimburse costs incurred for private property debris removal. In addition, legal responsibility is not established solely by an applicant obtaining signed rights-of-entry and hold harmless agreements from property owners.

c. Authorization for Debris Removal from Private Property (44 CFR 206.223(a)(3)). Confirmation that a legally-authorized official of the requesting applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area in order to remove/reduce threats to life, public health, and safety threat via debris removal.

d. Indemnification (44 CFR 206.9). The requesting entity indemnifies the Federal government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

2. The FCO will approve or disapprove in writing each written request submitted by the State or local government for FEMA to designate areas eligible for private property debris removal. After receiving approval from the FCO, the State or local government may begin identifying properties and the specific scope of work for private property debris removal activities and apply for supplemental assistance through the Public Assistance Program.

C. Duplication of Benefits (44 CFR 206.191). FEMA is prohibited by Section 312 of the Stafford Act from approving funds for work that is covered by any other source of funding. Therefore, State and local governments must take reasonable steps to prevent such an occurrence, and verify that insurance coverage or any other source of funding does not exist for the debris removal work accomplished on each piece of private property.

1. When debris removal from private property is covered by an insurance policy, the insurance proceeds must be used as the first source of funding. Public Assistance grant funding may be used to pay for the remainder of the costs of debris removal from private property.

2. If FEMA discovers that a duplication of benefits from any other source of funding has occurred, FEMA will de-obligate funds from the Grantee in the amount that such assistance duplicates funding that the property owners received from other sources.

D. Eligibility of Debris Removal Work from Private Property (44 CFR 206.224(b)).

1. Eligible debris removal work from private property includes removal of:

a. Large piles of disaster-generated debris in the living, recreational, and working areas of properties in urban, suburban, and rural areas, including large lots.

b. Disaster-generated debris obstructing primary ingress and egress routes to improved property.

c. Disaster-damaged limbs and leaning trees in danger of falling on improved property, primary ingress or egress routes, or public rights-of-way.

i. Hazardous tree removal is eligible only if the tree is greater than six inches in diameter (measured at diameter breast height) and meets any of the following criterion: more than 50% of the crown is damaged or destroyed; the trunk is split or broken branches expose the heartwood; or the tree is leaning at an angle greater than 30 degrees and shows evidence of ground disturbance.

ii. Hazardous limb removal is eligible only if the limb is greater than two inches in diameter measured at the point of break.

d. Debris created by the removal of disaster-damaged interior and exterior materials from improved property.

e. Household hazardous wastes (such as household cleaning supplies, insecticides, herbicides, etc.)

f. Disaster-generated debris on private roads, including debris originating from private property and placed at the curb of public or private rights-of-way, provided that the

removal of the debris is the legal responsibility of an eligible applicant, on the basis of removing an immediate threat to life, public health, and safety.

2. Ineligible debris removal work on private property includes the removal of:

a. Debris from vacant lots, forests, heavily wooded areas, unimproved property, and unused areas.

b. Debris on agricultural lands used for crops or livestock.

c. Concrete slabs or foundations-on-grade.

d. Reconstruction debris consisting of materials used in the reconstruction of disaster-damaged improved property.

E. Debris Removal from Commercial Property. The removal of debris from commercial property is generally ineligible for Public Assistance grant funding. It is assumed and expected that these commercial enterprises retain insurance that can and will cover the cost of debris removal. However, in some cases as determined by the FCO, the removal of debris from private commercial property by a State or local government may be eligible for FEMA reimbursement only when such removal is in the public interest (44 CFR 206.224(a) and (b)).

Industrial parks, golf courses, commercial cemeteries, apartments, condominiums, and mobile homes in commercial trailer parks are generally considered commercial property with respect to Public Assistance funding.

F. Environmental and Historic Review Requirements. Eligible debris removal activities on private property must satisfy environmental and historic preservation compliance review requirements as established by 44 CFR Parts 9 and 10, the National Historic Preservation Act, the Endangered Species Act, and all other applicable legal requirements.

VIII. ORIGINATING OFFICE: Disaster Assistance Directorate (Public Assistance Division)

IX. SUPERSESSION: This policy supersedes Recovery Policies 9523.13 and 9523.14, dated October 23, 2005, and all previous guidance on this subject.

X. REVIEW DATE: Three years from date of publication.

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

FEMA

Duplication of Benefits – Non-Government Funds

Disaster Assistance Policy 9525.3

I. **TITLE:**Duplication of Benefits – Non-Government Funds

II. **DATE:** July 24, 2007

III. **PURPOSE:**
This policy clarifies the duplication of benefit issues related to grants and cash donations from non-Federal third parties for emergency and permanent work under the Public Assistance Program and the Fire Management Assistance Grant Program. Disaster Assistance Policy DAP9525.2, Donated Resources, addresses donated labor, equipment, and materials.

IV. **SCOPE AND AUDIENCE:**
This policy is intended for Federal Emergency Management Agency (FEMA) personnel in making eligibility determinations for the Public Assistance Program and the Fire Management Assistance Grant Program. It is applicable to all eligible emergency and permanent work done under Public Assistance Program grants, and all eligible emergency work done under Fire Management Assistance Grant Program grants.

V. **AUTHORITY:**
Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, Section 312; 44 CFR 13.24, 206.226(a), and 204.62(a).

VI. **BACKGROUND:**

A. Communities and private non-profit institutions often look for assistance from the general public, private institutions, and Federal and State agencies to help rebuild their infrastructure following a disaster. This assistance may come in the form of donations, insurance proceeds, volunteer work, or grants. With multiple entities providing assistance, it is possible for different sources to allocate funds to repair the same project. This action may constitute a duplication of benefits.

B. Section 312 (a) of the Stafford Act, as amended states that no entity will receive assistance for any loss for which financial assistance has already been received from any other program, from insurance, or from any other source. The use of Federal and/or State funds granted for the same purpose clearly constitutes a duplication of benefits. Grant or cash donations provided by a third party also may constitute a duplication of benefits.

C. Part 13.24 of 44 CFR allows, *but does not require*, applicants to use the credit of third party donations, such as cash and grants, designated solely for eligible work, to reduce the non-Federal share of project costs. Designated third party funding that is not used towards reducing the non-Federal share will be considered a duplication of benefits and will be used to reduce total project cost.

VII. **POLICY:**

A. **Grants and cash donations designated for specific eligible work.**

1. Grants and cash donations from non-Federal sources designated for the same purpose as Federal disaster funds generally are considered a duplication of benefit. However, these funds may be used for the non-Federal cost-share. All costs to be applied to the non-Federal cost-share must be for eligible work under the program.
2. If the grants and cash donations from non-Federal sources designated for specific eligible work exceed the amount of the non-Federal obligation, they should be used to reduce the total project cost. FEMA headquarters will provide the methodology for calculating the adjusted project cost and adjusted Federal and non -Federal share.

B. **Grants and cash donations not designated for specific eligible work.** Unless otherwise prohibited, grants and cash donations received for unspecified purposes (e.g., "for disaster recovery/relief efforts"), or for work not eligible for FEMA assistance, do not constitute a duplication of benefits.

C. **Insurance.**Disaster assistance will not be provided for damages covered by insurance. Disaster assistance provided by FEMA is intended to supplement assistance from other sources; therefore, insurance proceeds should be an applicant's first alternative for disaster assistance. For further guidance, refer to Disaster Assistance Policy Fact Sheet DAP9580.3, Insurance Considerations for Applicants.

D. The retention of duplicated funds is illegal. Duplicated funding received from FEMA must be returned to FEMA (Section 312).

VIII. **RESPONSIBLE OFFICE:** Disaster Assistance Directorate (Public Assistance Division).

IX. **SUPERSESSION:** This policy supersedes Recovery Policy RP9525.3 Duplication of Benefits - Non-Government Funds, published October 30, 2000.

X. **REVIEW DATE:** Three years from date of publication.

//signed//
Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate

Disaster Assistance Policy 9525.3 - Duplication of Benefits – Non-Government Funds(PDF 989 KB)

Duplication of Benefits

An applicant may not receive funding from two sources for the same item of work. This is called a **Duplication of Benefits**. If an applicant can obtain assistance for a project from another Federal agency, then FEMA cannot provide funds for that project (see **Other Federal Agencies**).

Grants and cash donations received from non-Federal sources designated for the same purpose as public assistance funds are generally considered a duplication of benefits. However, these funds may be applied towards the non-Federal cost share. Grants and cash donations that are received for unspecified purposes or ineligible work do not constitute a duplication of benefits.

A duplication of benefits most commonly occurs with insurance settlements. If a damaged facility is insured, FEMA is required to reduce the amount of the grant by any insurance proceeds that the applicant anticipates or receives for the insured facility, even if the applicant has not completed negotiations with the insurer. The applicant is required to provide information concerning insurance recoveries to FEMA, including copies of all applicable policies. FEMA will review the insurance information and determine whether the settlement appears proper in terms of the provisions of the policy (see **Insurance**). The retention of duplicated funds is illegal and duplicated funds must be returned to FEMA.

References: Section 312 of the Stafford Act
44 CFR §206.226(a)(1)
Duplication of Benefits – Non-Government Funds, FEMA Policy 9525.3, dated July 24, 2007
Public Assistance Guide, FEMA 322, pages 41-42

Educational Facilities
higher education schools.
institution is a day or resi
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- They admit as stud
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- They are legally au
  secondary level
- They award a bach
  as full credit towar
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Eligible components
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support purposes. Build
for religious purposes o

References: Sections 102(9)
44 CFR §206.22
Public Assistanc

Lynn Iliff Onstot
Public Information Office
602 S. Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 204
lonstot@joplinmo.org
www.joplinmo.org

Joplin, Missouri hit by EF-5 Tornado on May 22, 2011

March 1, 2017

GENERAL INFORMATION

- Joplin population has grown to approximately 51,300 (July 2015) from 50,175 (2010 Census)
- Daytime population approximately 240,000
- Located in Southwest Missouri along I-44 and I-49 (formerly U.S. Highway 71)
- EF-5 Tornado initially ½ mile, expanding to ¾ mile wide, traveled on ground approximately 13 miles
- Tornado touched down at edge of western city limits, traveled on the ground 6 miles throughout all of City to eastern city limits and continuing into the City of Duquesne and rural Jasper and Newton Counties
- Tornado winds estimated at 200 mph + ; NWS indicates it moved as slowly at 10 mph in some places
- Storm affected homes and businesses in both Jasper and Newton Counties in Missouri
- 161 lives lost due to tornado

Recovery Efforts & Statistics:

- *Spring 2017:* Opening of **new Joplin Public Library relocated to 20th & Connecticut,** made possible with support of $20 million grant awarded by the Economic Development Administration in May 2012, to assist in redevelopment of 20th Street area following the disaster. As an 80/20 matching grant from EDA, City will fund an additional $5 million for the project, which includes the land value of property that the City owns at 20th and Connecticut. Groundbreaking event was held in September 2015.
- *Feb. 2017:* 1,828 NEW houses have been built since 2011 disaster, with an estimated value of $200 Million.
- January 2017 marked the largest month in almost 4 years with nearly $50 million in value of projects started.
- Over $1.4 billion in total construction has occurred since May 22, 2011.
  - Commercial permits total more than $1.1 Billion
  - Residential permits over $200 Million
- *February 2017:* **Joplin Area Habitat for Humanity** has completed 108 new houses following the tornado, have 5 currently under construction, 8 planned for 2017. Through *"A Brush With Kindness"* program, more than 80 light, exterior repairs completed for homeowners who cannot do the work themselves. Habitat's ReStore continues to grow through its mission of providing construction items, household furnishings, appliances, and more that are donated and resold at discounted prices to the public. Funds provide the opportunity to build more Habitat homes
- *Jan. 2017:* **Joplin Homeowners Assistance Program (J-HAP) has provided $17.5 million** of assistance for down-payment and/or closing costs to homebuyers of 578 homes since program's inception in August 2013. Of these homebuyers, 31% or 183 of them are from outside Joplin, and 82% or 475 were renting prior to this home purchase. **J-HAP** offers funding to individuals and families pursuing a home purchase in the recovery area. By assisting eligible homebuyers with down-payment and/or closing costs while supporting single-family housing recovery. Funding assistance provided by U.S. Department of Housing and Urban Development, through a Community Development Block Grant – Disaster Recovery (CDBG-DR) award.

Recovery Efforts & Statistics: *(continued from page 1)*

- *October 2016:* **20th Street Overpass** completed and opens 20th Street to traffic since closure in May '16. Provides safer and more efficient travel for traffic traveling over railroad crossing. Project costs = $5.5 million. Funded through the Transportation Investment Generating Economic Recovery, or **TIGER** Discretionary **Grant** program offered by the U.S. Department of Transportation. Was final project of 5 in 2012 TIGER grant focusing on vehicular and pedestrian safety in Joplin.
- *August 2016:* **Mercy Park opens!** Built on 16 acres donated to City by Mercy Hospital, this passive park is located on the southeast corner of 26th & Cunningham Avenue. Construction began in August 2015. HUD's Community Development Block Grant – Disaster Recovery (CDBG-DR) program funded approximately $4.7 million to build trails, a small lake, a pavilion, restrooms, and educational signage of natural plantings.
- *March 2016:* **Groundbreaking for Kansas City University of Medicine and Biosciences (KCU)** College of Osteopathic Medicine**.** In March 2015, University officials announced opening a medical school at the former location of Mercy Joplin's temporary facility. Scheduled to open in Fall 2017, the University is estimated to have 150 students per class, with a total of 600+ for the Joplin Campus by 2020, with indications of significant economic impact and future development in the area. This campus will be the first new medical school location in Missouri to open in 44 years. The College of Osteopathic Medicine is the largest medical school in Missouri and 10th largest medical school in the country.
- *May 2016:* **NEW houses** – Joplin has averaged building just short of **ONE NEW HOUSE PER DAY** since May 22,2011, with a total of 1,657 houses to date.
- *May 2016:* Total construction cost for all permits November 2015 to mid-May 2016 ($96,112,637) has surpassed the total construction cost of ALL of 2015. ($92,803,693)
- *May 2016:* **Building Permits = More than $1.4 Billion in total construction cost since May 22, 2011**. Commercial permits total more than $950 million and residential permits equal nearly $250 million since 2011. In 2011, total building permits totaled $207 million. *(see chart on page 4 for details.)*
- *Feb. 2016:* According to the **Joplin Area Chamber of Commerce, more than 300 new businesses have opened** since May 2011. As of May 2015, these businesses provided new jobs* for 960 full-time employees and 717 part-time employees. *(*waiting for updated employee numbers)*
- *July 2015*: Council and City staff complete the **capital project prioritization process of the $158 million** awarded by **HUD through the Community Development Block Grant – Disaster Recovery program**, Projects are focused Infrastructure & Environment; Housing & Neighborhoods; Schools & Community Facilities; and Economic Development. In reviewing critical needs of the community, consideration also was given to funding criteria that had to be met according to CDBG-DR regulations. *See www.joplinmo.org/cdbg-list for project details.*
- *July 2015:* **U.S. Census Bureau** provides data that shows **Joplin has surpassed its previous population** of 2011 (51,142) and now has a population of 51,316.
- *March 2015:* **Mercy Hospital Joplin** opens new medical center and offices in new location of 50th Street and Hearnes Boulevard. The hospital and temporary offices held during construction cost nearly $1 billion.
- *December 2015:* Walmart Neighborhood Market opens in area of 26th Street & Maiden Lane.
- *September 2014:* Groundbreaking held at **Joe Becker Stadium for a $4.7 million renovation** of the historic facility built in 1913. The Joplin Blasters, a franchise in the American Association Independent Professional Baseball league, will have their game opener on May 21, 2015 in the 4,200 capacity stadium.
- *September 2014:* **Joplin Schools** reach goal of returning students to permanent facilities by September 2014 with the opening of Joplin High School / Franklin Technology Center.
- *August 2014* : **St. Mary's Elementary** opens in new location of 32nd Street & Central City Road; original structure at 25th & Moffet was destroyed, as was St. Mary's Church; their large cross remains standing.

Recovery Efforts & Statistics: *(continued from page 2)*

- *April 2014:* **Joplin Homeowners Rehabilitation Program (J-HRP)** initiated to provide $775,000 funding to support single-family housing recovery. The program assists eligible homeowners located in the recovery area in repairing damage not covered by FEMA or insurance and to correct any other deficiencies in the home.
- *March 2014:* **Joplin Tornado First Response Fund** allocated **nearly $1 million** since disaster. Includes 41 grants to 27 various agencies for diverse needs, including home construction and repairs, housing, furnishings and appliances, emergency weather radios, wheelchairs, storm shelters, playground equipment, children's services addressing behavioral and emotional disorders from trauma of tornado, and staffing of growing services needed by survivor.
- *December 2013 to date:* **Environmental Protection Agency (EPA) Region 7** has provided funds to allow for lead and cadmium testing of residential yards and city parks that were heavily affected by the May 2011 tornado. In these areas where soil disturbance occurred due to property destruction, and lead or cadmium levels are found above recommended levels, EPA funds can be utilized to excavate the contaminated yards and replace the soil with soil free of these contaminants. To date, EPA has awarded $8.5 million toward this effort.
- *December 2013:* **Joplin Fire Department Station #2 and #4 opens in new locations.**
- *December 2013:* **Joplin Schools** - new Irving Elementary School, East Middle School & Soaring Heights Elementary School open
- *September, 2013:* **Parr Hill Park** reopens after a major post tornado renovation
- *August 2013:* City launched **Joplin Homeowners Assistance Program (J-HAP)** to offer funding to individuals and families pursuing a home purchase in the recovery area. Details provided above in May 2016 listing.
- *June, 2013:* **Missouri Department of Natural Resources** awards $500,000 toward stormwater improvements & planting of over 1,500 trees, helping offset the estimated 25,000 that were lost.
- *May 22, 2013:* **Economic Development Administration** awarded a $20 million grant to help revitalize the 20th Street commercial corridor, an area that was severely impacted by the tornado. This includes the relocation of the Public Library.
- *May 22, 2013:* TKF Foundation provides a portion of $585,000 grant to Joplin for creation of open space in recovery &healing, aka **Butterfly Garden & Overlook Project,** Cunningham Park.
- *March 27, 2013:* HUD announced an additional $113 million has been allocated to the City of Joplin to help the community recover. This grant was part of $514 million allocated among nine states nationwide and provided through HUD's **Community Development Block Grant (CDBG) Program** to support long-term disaster recovery efforts in areas with the greatest extent of 'unmet need.'
- *December, 2012:* Joplin City Council approves plan to form Missouri's largest Tax Increment Financing (TIF) district that includes 19 major projects over 3,000 acres within Joplin including disaster area. Each project will follow standard process of development, allowing public to comment prior to Council's consideration.
- *October, 2012:* U.S. Department of Housing and Urban Development (HUD) formally presents the City of Joplin $45 million in **Community Development Block Grant** funding. City's proposed budget for these funds includes more than $31 million for housing; and $6.5 million for infrastructure needs within the disaster area.
- *July, 2012:* City Council approves predevelopment agreement with Wallace Bajjali, a development firm from Sugarland, Texas to serve as the master developer in recovery efforts.
- *April, 2012:* City provides 4,000 NOAA Weather Radios to citizens in Joplin.

Recovery Efforts & Statistics: *(continued from page 3)*

- **Economic Development Administration** awarded funds to the City of Joplin for a disaster recovery coordinator position.
- The **Joplin Redevelopment Corporation,** a Missouri Chapter 353, has aggregated over 50 acres of vacant parcels targeted for major redevelopment projects
- More details of recovery projects are listed on City's website, www.joplinmo.org/thrivein5

Joplin Recovery – Building Permits:

As of January, 2017

- 1,828 NEW houses have been built with an estimated value of $200 Million.
- January 2017 marked the largest month in almost 4 years with nearly $50 million in value of projects started.
- Over 1.4 billion in total construction has occurred since May 22, 2011.
  - Commercial permits total more than $1.1 Billion
  - Residential permits over $200 Million

Building Permits through the Years - City of Joplin, Missouri

Fiscal Year	Number of Residential Permits	Construction Value	Number of Commercial Permits	Construction Value	Total Building Permits	Total Construction Value
2011	4,100	$115,000,000	739	$91,193,215	4,839	$206,193,215
2012	2,125	$74,174,662	383	$482,550,677	2,508	$556,725,339
2013	1,023	$31,608,284	257	$219,237,801	1,280	$250,846,085
2014	988	$26,745,810	284	$68,708,135	1,272	$95,453,945
2015	968	$29,495,921	253	$63,307,772	1,224	$92,803,693
2016	1,061	$28,463,709	283	$116,503,618	1,344	$144,967,327
2017 YTD	173	$5,750,236	47	$53,597,062	220	$59,347,298

History of Building Permits

- On June 20, 2011, City Council passed a building hiatus in the EDR area to allow for a safe operation of debris removal that required large trucks to move through the area efficiently.
- Prior to completion of debris removal, on July 28, 2011 City announced Building Permits available for entire storm-damaged area (rolled out two areas prior to entire area being opened for building: West of Picher Ave opened July 8, 2011; West of Main Street opened July 22, 2011)

Joplin Recovery – Temporary Housing:

- *As of June 9, 2013* - **586 households (100%) have moved out** of FEMA temporary housing and into longer term or permanent housing.

Volunteers, through January 30, 2014:

- 182,044 volunteers, including those registered through AmeriCorps and from other organizations who have reported hours to them.
- Over 1.5 MILLION hours of service from all reporting organizations/agencies with a total of 1,542,353 hours. This equals more than 176 years' worth of service at a 24/7 pace since 5/22/11.
- Volunteer Information Line established for those interested in volunteering during disaster.

Recovery Efforts & Statistics: *(continued from page 4)*

Residential Structures Damaged in Tornado:

- Total of 7,500 residential dwellings in the City were damaged or destroyed by storm
- More than 17,000 people affected by tornado
- Of the 7,500 dwellings, approximately 4,000 homes were destroyed , causing an estimated 9,200 people to be displaced

Debris stats:

- Tornado generated nearly 3 million cubic yards of residential debris throughout the disaster area
- FEMA managed the Expedited Debris Removal initiative (EDR) that addressed debris removal in areas of extensive and catastrophic damage. This initiative allowed government-funded contractors to remove loose tornado debris from private property within a designated tornado-damaged area, and offered 90% federal match to a 10 % local and state match for costs incurred. Missouri Gov. Nixon announced state would pick up the 10% match.
- FEMA mission-assigned the U.S. Army Corps of Engineers to execute the debris removal for the City. The Missouri National Guard proved state oversight to the process.
- EDR area was cleared by August 7, 2011.City worked toward this deadline to ensure a quick and efficient cleanup of the disaster.
- Many property owners used insurance proceeds to hire contractors for debris removal; and/or utilized the 100,000 + volunteers who have been active in the cleanup of the City.

Demolition Process:

- City rolled out Demolition Plan with 3 options for property owners on, August 8, 2011:
  - Do It Yourself – if owner has insurance
  - Skilled volunteers affiliated with the Voluntary Organizations Active in Disaster (VOAD) carry out the demolition of residential structures and/or foundations on behalf of home or property owners.
  - Dangerous, tornado-damaged structures and/or foundations that are ***not*** removed another way will be processed through the dangerous structures provision of the Joplin City Code, starting with the Building Board of Appeals process.

Medical Services:

- By 5-23-2011 Joplin and Jasper County Health Dept. medical services staff worked with local health partners to administer tetanus vaccines to residents and workers in the debris area to provide protection from this disease often associated with debris injuries. The plan included stationary and roving vaccine distribution locations moving throughout tornado affected neighborhoods.
- On 5-24-2011 tetanus vaccinations began and in following weeks over 17,000 tetanus vaccinations were administered by many medical partners in community.
- 14 area health departments along with other local medical partners aided the local tetanus administration effort including over 125 staff.

Animal Control statistics:

- 1,308 pets displaced by tornado picked up and taken to emergency pet shelter by animal control staff
- 529 pets returned to owners from emergency pet shelter operated by ASPCA & Joplin Humane Society
- ASPCA placed remaining tornado displaced animals at end of emergency sheltering operation in new homes through an “Adopt-a-thon” and other placement activities.

Recovery Efforts & Statistics: *(continued from page 5)*

- Pet "co-location" shelter with human American Red Cross shelter opened by Joplin Animal Control within few hours of tornado.
- Within hours of the tornado, Joplin Animal Control and Joplin Humane Society opened temporary pet triage clinic to provide emergency medical care for animals transported to the emergency pet shelter.
- Within 24 hours, Humane Society of Missouri was on scene working with Joplin Animal Control for planning animal rescue operations. Within 2 days these operations began.
- ASPCA arrived the day after the storm to handle the emergency pet sheltering operation, working with the Joplin Humane Society.

FEMA Assistance *(as of May 15, 2013 unless otherwise noted)***:**

Information represents Jasper and Newton counties as a whole, including cities of Joplin and Duquesne.

- **More than 13 federal agencies supported critical emergency needs** and functions for Jasper and Newton counties. At peak staffing, **more than 820 FEMA employees** worked the Joplin response and recovery efforts.
- **FEMA and state officials immediately established four joint task forces** to manage the largest recovery priorities – Housing, Debris Removal, Schools and Critical Infrastructure. These task forces included numerous other local, state and federal agencies – all with the goal of bringing an experienced, comprehensive approach to recovery in these key areas.

Information represents Jasper and Newton counties as a whole, including cities of Joplin and Duquesne.

Individuals and Businesses:

10,746 Missourians in Jasper and Newton counties registered for state and federal disaster assistance.

- **More than $21 million in grants** has been approved for eligible Missourians in the two counties to help pay for home repairs, temporary housing and other critical disaster-related needs through FEMA's Individuals and Households Program.
- FEMA provided direct, temporary housing to **586 households** occupying temporary housing units, among **15** sites throughout the metro Joplin area. *As of June 9, 2013* - **586 households (100%) have moved out** of FEMA temporary housing and into longer term or permanent housing.
- Disaster Unemployment Assistance was provided to help workers whose employment was impacted by the tornado but who did not qualify for regular unemployment aid. In the two counties, **541 claims totaling $353,943** were paid.
- A grant of **more than $5.3 million** from the FEMA Disaster Case Management Program was awarded to the Missouri Department of Economic Development to fund disaster case managers to work directly with survivors. The case managers, from agencies such as Catholic Charities of Southern Missouri, American Red Cross, Salvation Army and Lutheran Social Services, also have been assisting with developing individual disaster recovery plans that may include referrals, monitoring of services and advocacy, as needed.
- FEMA has provided more than **$4.8 million** to help fund crisis counseling services through community-based outreach and short-term interventions. The services help disaster survivors review their recovery options, discuss their reactions and learn coping strategies.

Recovery Efforts & Statistics: *(continued from page 6)*

- The U.S. Small Business Administration (SBA) has approved more than **$43.4 million** in low-interest disaster loans for **521** tornado-impacted individuals, businesses and not-for-profits. SBA provides these loans to help cover property losses. In addition, SBA provides economic injury loans (working capital) for eligible businesses.
  - 417 low-interest disaster loans to homeowners for $26.8 million
  - 100 low-interest disaster loans to businesses for $16.4 million
  - low-interest disaster loans to not-for-profits for $256,400
- **FEMA recovery specialists** helped the Joplin community establish a citizen-based, long-term recovery effort known as the Joplin Area Citizens Advisory Recovery Team (CART). With input from a broad cross-section of the community, CART developed a long-term recovery strategy, the implementation of which is underway.
- FEMA continues to work with a **local Long-Term Recovery Committee,** representing more than 50 voluntary agencies. To date, the committee has handled more than **1,500 cases** of unmet, disaster-related needs.

FEMA Assistance *(as of May 15, 2013, unless otherwise noted):* *continued from previous page*

Information represents Jasper and Newton counties as a whole, including cities of Joplin and Duquesne.

Public Assistance:

- FEMA provides grants to local, state and federal governmental entities, tribal nations and certain not-for-profit organizations to help reimburse eligible costs to remove debris, provide emergency protective measures and to repair or replace damaged public infrastructure and facilities.

- FEMA expects to spend **nearly $150 million*** in both counties to help remove debris, provide emergency protective measures and to permanently repair or replace public buildings and infrastructure damaged or destroyed by the tornado. **About $20 million** of this amount will help fund eligible recovery costs for the City of Joplin; about **$2.5 million** for the City of Duquesne. So far, about **$97.5 million** has been paid to the State of Missouri for disbursement to **25** eligible entities, including local governments, school districts and critical facilities such as hospitals.

  ** Funding subject to change based eligibility review process and potential insurance proceeds. Does not include costs for U.S. Army Corps of Engineers Debris Removal operations.*

- FEMA provided **more than $341,000** to the Corporation for National and Community Service for assistance from AmeriCorps to support local and state authorities. About **350 AmeriCorps** members from seven states worked **more than 76,000 hours** in Joplin on various recovery projects, including **2,723** homeowner assistance requests, coordinating donations, removing volumes of debris, including damaged trees and stumps, building a recreational train at FEMA's community housing sites, planting more than 900 new, donated trees for homeowners and helping more than 150 Joplin homeowners and renters in moving from temporary living situations to more permanent housing. AmeriCorps' efforts, which lasted **18 months**, also helped Joplin earn an offset towards the cost-share of some of its local recovery costs.

- Federal, state and local officials teamed up with **The Independent Living Center** in Joplin and other disability organizations to serve as a resource for individuals with disabilities, access and other functional needs -ensuring that people with disabilities, seniors and those with low English proficiency had the same opportunity as others to access and understand disaster assistance.

Recovery Efforts & Statistics: *(continued from page 7)*

City Property Receiving Damage:

- Emergency Management — Emergency Sirens
- Fire — Two Fire Stations - No. 2 & No. 4 completely destroyed
  Permanent facilities completed in December 2013.
  Fire Station #2 relocated to 2825 West Junge Boulevard – Opened in December 2013
  Fire Station #4 relocated to 3402 South Hearnes Boulevard – Opened in December 2013
- Fire — Fire Apparatus
  Permanent replacement vehicles in place
- Parks — Senior Citizens Center
- Parks — Cunningham Aquatic Center & Park
- Parks — Parr Hill Park
- Parks — Garvin Park
- Parks — Mohaska Park
- Parks — Ewert Park
- Police — South Police Branch (minor damage)
- Public Works — MAPS Trolley shelters (multiple)
- Public Works — Curb, Streets and Sidewalk, Lights, Signs and Signals
- Public Works — Building structure located at 20th & Connecticut
- Information Systems — CISCO Aironet blown off

Information from Joplin Area Chamber of Commerce, as of April 1, 2014

- 553 businesses destroyed or severely damaged
- 4,500-5,000 employees affected
- Approximately 3,000 were kept on payroll in some capacity
- 500 businesses have reopened or are in the process of reopening
- 30 businesses have indicated that they will not rebuild/reopen
- Approximately 150 new businesses have opened since May 22, 2011*

*This count does NOT include contractors/builders that have set up local offices since tornado

Cost of Disaster*:

Provided by Missouri Department of Insurance, Financial Institutions, and Professional Registration

Line of Business	Claims Received	Claims Expected	Losses Paid	Losses Incurred
Commercial Property	2,142	2,159	$986,829,440	$1,320,220,325
Residential Property	8,647	8,784	$535,724,886	$554,388,779
Commercial Auto	309	309	$4,377,076	$4,783,049
Private Auto	6,982	7,117	$47,898,047	$51,084,766
Other Commercial	313	315	$15,031,287	$19,210,900
Total	**18,393**	**18,683**	**$1,589,860,736**	**$1,949,687,819**
County Mutuals	1,477	1,516	$61,789,887	$67,876,781
Total	**19,870**	**20,199**	**$1,651,650,623**	**$2,017,564,600**

**Figures as of October 31, 2012*

CITY OF HOUSTON

Sylvester Turner
Mayor

P.O. Box 1562
Houston, Texas 77251-1562

Telephone – Dial 311
www.houstontx.gov

August 24, 2017

The Honorable Greg Abbott
Governor of Texas
c/o State Coordinator
Division of Emergency Management
P. O. Box 4087
Austin, Texas 78773-0001

Dear Governor Abbott:

The City of Houston, Texas, is facing imminent threat of widespread and/or severe damage, injury, and/or loss of life or property from substantial flooding, wind, and other weather expected to be caused by Hurricane Harvey beginning on or about August 24, 2017. It is my belief that the damage to homes, businesses, public works and utility systems due to the severity and magnitude of the substantial flooding and other weather expected to be caused by Hurricane Harvey, beginning on or about August 24, 2017, pose a public health and safety hazard beyond the City of Houston's capability to recover without supplementary State and/or Federal assistance.

Pursuant to § 433.001, *et seq.* of the Texas Government Code, I am requesting that you declare a state of emergency for the City of Houston, Texas. This request is necessary to preserve and protect life and property. Accordingly, I am requesting that you issue reasonable directives to deal with the emergency. A state of emergency must be declared immediately so that appropriate measures to deal with the substantial flooding and other weather expected to be caused by Hurricane Harvey, on or about August 24, 2017, can be implemented. Furthermore, I am asking that successive proclamations be issued and remain in effect until the damage, destruction, injury, and/or loss of life or property is contained.

Your immediate assistance in response to this emergency is appreciated.

Mayor of the City of Houston, Texas

Council Members: Brenda Stardig Jerry Davis Ellen R. Cohen Dwight A. Boykins Dave Martin Steve Le Greg Travis Karla Cisneros
Robert Gallegos Mike Laster Larry V. Green Mike Knox David W. Robinson Michael Kubosh Amanda Edwards Jack Christie
Controller: Chris Brown

PROCLAMATION DECLARING A LOCAL STATE OF DISASTER BY THE MAYOR FOR THE CITY OF HOUSTON

Whereas, the City of Houston beginning on the 24th of August, 2017, expects to suffer severe damage, destruction, injury, and/or loss of life or property (or there is imminent threat of same) resulting from flooding and other related weather due to Hurricane Harvey; and

Whereas, the Mayor of the City of Houston has determined that emergency measures must be taken to either prepare for or respond to a disaster in order to prevent or minimize the loss of life and the destruction of property, and is empowered to take the actions described in this proclamation pursuant to the Texas Disaster Act of 1975, as amended, Texas Government Code, Chapter 418, "Emergency Management" (the "Texas Disaster Act"), **NOW THEREFORE,**

BE IT PROCLAIMED BY THE MAYOR OF THE CITY OF HOUSTON, TEXAS:

Section 1. Declaration of Local State of Disaster. A local state of disaster is hereby declared by the Mayor for the City of Houston and all surrounding incorporated areas pursuant to §418.108(a) of the Texas Disaster Act.

Section 2. Duration of Local State of Disaster. Pursuant to §418.108(b) of the Texas Disaster Act, the local state of disaster issued in this proclamation shall continue until revoked but in no event will it exceed a period longer than seven days of the date hereof, unless continued or renewed by the consent of the City Council of the City of Houston.

Section 3. Publicity and Filing. Pursuant to §418.108(c) of the Texas Disaster Act, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary.

Section 4. Activation of the City Emergency Management Plan. Pursuant to §418.108(d) of the Texas Disaster Act, this declaration of a local state of disaster activates the City of Houston's Emergency Management Plan.

Section 5. This proclamation shall take effect immediately upon its issuance by the Mayor of the City of Houston.

ORDERED this the 24th day of August, 2017.

Mayor of the City of Houston, Texas

APPROVED BY THE CITY LEGAL DEPARTMENT AUGUST 24, 2017

CITY OF HOUSTON

Executive Order

Subject:	**Exercise of Mayor's Emergency Authority during a Local State of Disaster**	E.O. No. **1-25 Revised**
		Effective Date: **Upon Approval**

1. AUTHORITY

1.1 Pursuant to the Texas Disaster Act of 1975, as amended, chapter 418 of the Texas Government Code, and by Executive Order RP32 by the Governor of the State of Texas.

1.2 This Executive Order is cumulative of all relevant state and federal laws, City ordinances, and the City Emergency Management Plan. No provision of this order shall be construed to excuse compliance with any law.

2. PURPOSE

2.1 Implementation of the Mayor's emergency powers during a local state of disaster.

3. OBJECTIVES

3.1 To provide the Mayor with the means and authority to enact emergency measures necessary to respond efficiently and quickly to a disaster that has already occurred or where the occurrence or threat of a disaster is imminent.

4. DEFINITIONS

4.1 Disaster - The occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or emergency.

4.2 Local state of disaster – A proclamation made by the Mayor pursuant to the Texas Disaster Act when the Mayor finds that a disaster has occurred or that the occurrence or threat of disaster is imminent. The proclamation activates the City's Emergency Management Plan as well as the Mayor's emergency authority.

4.3 Emergency authority/power - Those powers given to the Governor of Texas by the Texas Disaster Act that were delegated to the Mayor of the City of Houston through Executive Order RP32 to enact emergency measures necessary to respond to a local state of disaster.

4.4 Emergency Management Plan - A manual drafted by the city which delineates the procedures by which the city mitigates, prepares, responds, and recovers from a disaster.

4.5 Office of Emergency Management - The division within the City of Houston which is responsible for dealing with a disaster that either affects of has the potential to affect the City of Houston.

4.6 Unconditional authorization - Authorization from an affected corporation, organization, or individual that allows for the removal of debris or wreckage from the affected entity's private property and indemnifies the municipality against any claim arising from removal.

5. SCOPE

5.1 This order and the Mayor's emergency powers herein described shall apply to all departments of the City of Houston.

6. RESPONSIBILITIES

6.1 The director of each City department shall ensure that his/her department carries out its duties pursuant to this order as delegated by the Mayor and the Office of Emergency Management in response to a local state of disaster.

6 2 Each employee or individual that is assigned a function or responsibility shall solemnly swear or affirm to support and defend the Constitution of the United States, laws of the State of Texas, and Ordinances of the City of Houston.

6.3 This order is an exercise by the City of its governmental functions for the protection of the public peace, health, and safety, and neither the City of Houston, the agents and representatives of said City, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any agents thereof, in good faith carrying out, complying with or attempting to comply with, any procedure promulgated pursuant to the provisions of this ordinance shall be liable for any damage sustained to persons or property as a result of said activity.

7. PROCEDURES

7.1 Each City Department is hereby authorized to implement its emergency services responsibilities as specified in the City's Emergency Management Plan, which includes, but is not limited to, ensuring the following:

7.1.1 The Houston Police Department ("HPD") is hereby authorized to recommend the evacuation of all or part of a population in an affected area. This area is to be determined through the Office of Emergency Management ("OEM").

7.1.2 The HPD is hereby authorized to impose a curfew and/or blockades as they are determined through the OEM.

7.1.3 The Public Works and Engineering Department (PWED) is hereby authorized to impose limitations on utility use as determined through the OEM.

7.1.4 The PWED is hereby authorized to remove debris without an unconditional authorization upon determination that receiving same is not practicable and further delay would created a greater risk to public health or safety.

7.1.5 The OEM is hereby authorized to establish wage and price controls as necessary.

7.1.6 The PWED is hereby authorized to use public and private resources as are necessary and as determined through the OEM.

7.1.7 The HPD is hereby authorized to suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles as determined through the OEM.

7.2 If any portion of this order shall, for any reason, be declared invalid, such invalidity shall not affect the remaining provisions thereof. All orders or ordinance, or parts therein, or resolutions in conflict herewith are expressly repealed. At all times when this order shall be in effect, it shall supersede and override al existing ordinances, orders, rules, and regulations, insofar as the latter may be inconsistent therewith. This order shall not be construed so as to conflict with any State or Federal statute or with any military or naval order, rule, or regulation.

A

City of Houston, Texas, Ordinance No. 2017-665

AN ORDINANCE AUTHORIZING THE MAYOR OF HOUSTON TO EXTEND OR CONTINUE A PROCLAMATION OF A LOCAL STATE OF DISASTER FOR THE CITY OF HOUSTON BEYOND THE SEVEN-DAY PERIOD AFTER THE PROCLAMATION WAS ISSUED, MAKING CERTAIN FINDINGS RELATED THERETO, AND DECLARING AN EMERGENCY.

Whereas, on August 24, 2017, the Mayor, pursuant to the Texas Disaster Act of 1975, as amended, Texas Government Code Annotated, Chapter 418, (the "Texas Disaster Act") issued a proclamation declaring a local state of disaster for the City of Houston resulting from substantial flooding and other weather related events expected to occur due to Hurricane Harvey;

Whereas, the conditions necessitating the proclamation of a local state of disaster are ongoing and continue to exist; and

Whereas, the Texas Disaster Act provides that a local state of disaster may not be continued for a period in excess of seven days without the consent of the governing body of the political subdivision, **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. Extension of Local State of Disaster. The City Council, as the governing body of the City of Houston, hereby authorizes the Mayor of Houston to extend or continue a proclamation of a local state of disaster beyond the seven day period following the issuance of the proclamation.

Section 2. Executive Orders. All executive orders, proclamations or regulations issued by the mayor after the proclamation declaring a local state of disaster will continue to have the force and effect of law until rescinded by the mayor or until the local state of disaster is terminated pursuant to Section 3 of this ordinance.

Section 3. Termination of Local State of Disaster. The local state of disaster issued by the Mayor for the City of Houston shall continue until terminated by order of the City Council of the City of Houston or upon executive order by the Mayor when such threat or danger which initiated the proclamation has passed or has been dealt with in such a manner that it no longer exists.

Section 4. Administration. The Mayor, as Emergency Management Director for the City of Houston, shall retain all the powers given to him by the Texas Disaster Act, Executive Order RP32, and the City of Houston Emergency Management Plan necessary to deal with the presence of imminent occurrence of a disaster as it is defined in the Texas Disaster Act.

Section 5. Applicability. If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be severable for that purpose.

Section 6. Notice of Meeting. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time

required by law preceding this meeting, as required by the Open Meetings Law, Texas Government Code Annotated, Chapter 551; and that this meeting was open to the public as required by law at all times during which this ordinance and the subject matter thereof was discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 7. Effective Date. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 30th **day of** August, **20**17.

APPROVED this 30th **day of** August, **20**17.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

(Prepared by Legal Dept. Deidra Penny)
(DJP:dp 08/27/17) First Assistant City Attorney
(L.D. File No. _____)

CAPTION PUBLISHED IN DAILY COURT REVIEW DATE: SEP 07 2017

NOTICE OF SPECIAL EMERGENCY ITEMS

OF THE

CITY COUNCIL OF THE CITY OF HOUSTON

Because of substantial flooding, other severe weather, and hazardous conditions (including numerous street and highway closures) caused by Hurricane Harvey, an emergency, urgent public necessity, and imminent threat to public health and safety exists requiring immediate action of the City Council of the City of Houston. Pursuant to Government Code, Sections 551.041 and 551.045, **NOTICE** is hereby given of the following Special Emergency Items to be considered by the City Council of the City of Houston at the City Council meeting to be held **WEDNESDAY, AUGUST 30, 2017**, at 9:00 a.m. in **Room 360, at the George R. Brown Convention Center, located at 1001 Avenida de las Americas**, Houston, Texas, for the purpose of considering the following three items:

(A) ORDINANCE authorizing the Mayor of Houston to extend or continue a proclamation of a local state of disaster for the City of Houston beyond the seven-day period after the proclamation was issued; making certain findings related thereto; and declaring an emergency.

(B) ORDINANCE amending Ordinance No. 2015-509 to rename the "2015 Flood Disaster and Recovery Fund" to the "Disaster Recovery Fund" (the "Fund"); modifying the sources and uses of the funds therein to aid in disaster relief and recovery; making various findings and provisions related thereto; and declaring an emergency.

(C) ORDINANCE appropriating the sum of $20,000,000 out of the Budget Stabilization Fund, transferring that sum to the Disaster Recovery Fund, and authorizing expenditures related to Hurricane Harvey and recovery for the City of Houston; declaring the City's intent to seek reimbursement from the Federal Emergency Management Agency (FEMA) and other eligible sources for such expenditures; containing provisions relating to the subject; and declaring an emergency.

WITNESS my official signature this the **29th** day of August, 2017.

Anna Russell

City Secretary

by permission

EMERGENCY NOTICE OF CHANGE IN MEETING SCHEDULED

FOR THE

CITY COUNCIL OF THE CITY OF HOUSTON

Pursuant to Government Code, Sections 551.0411 and 551.045, **NOTICE** is hereby given that a Regular Meeting of the City Council of the City of Houston that was previously and properly noticed under Chapter 551 of the Government Code (the Texas Open Meetings Act) for **TUESDAY, AUGUST 29, 2017, at 1:30 p.m., will be postponed to and convened on WEDNESDAY, AUGUST 30, 2017, at 9:00 a.m.,** with the reading of the descriptions, captions or titles of the agenda items by the City Secretary to begin not earlier than 60 minutes before the scheduled commencement, in **Room 360, at the George R. Brown Convention Center, located at 1001 Avenida de las Americas**, Houston, Texas for the purpose of conducting the regular business and affairs of the City of Houston and to consider the previously posted Agenda and the special emergency items (ordinances to (a) extend or continue the City's proclamation of a local state of disaster; (b) amend Ordinance No. 2015-509 to rename the "2015 Flood Disaster and Recovery Fund" to the "Disaster Recovery Fund" (the "Fund") and modify the sources and uses of the funds therein; and (c) appropriate $20,000,000 out of the Budget Stabilization Fund, transfer that sum to the Disaster Recovery Fund, and authorize expenditures therefrom related to Hurricane Harvey and recovery for the City and declare the City's intent to seek reimbursement from the Federal Emergency Management Agency (FEMA)) which items were added pursuant to Section 551.045, due to the following:

Hurricane Harvey has caused catastrophic flooding, other severe weather, and hazardous conditions (including numerous street and highway closures) in the City of Houston that has prevented the governmental body of the City of Houston from convening or conducting its open meeting.

WITNESS my official signature this the 29 day of AUGUST, 2017.

Anna Russell

City Secretary

by permission CMG

City of Houston, Texas, Ordinance No. 2016-377

AN ORDINANCE TERMINATING A LOCAL STATE OF DISASTER FOR THE CITY OF HOUSTON, MAKING CERTAIN FINDINGS RELATED THERETO, AND DECLARING AN EMERGENCY.

Whereas, on April 18, 2016, the Mayor, pursuant to the Texas Disaster Act of 1975, as amended, Texas Government Code Annotated, Chapter 418, (the "Texas Disaster Act") issued a proclamation declaring a local state of disaster for the City of Houston resulting from substantial flooding caused by rain and other weather related events; and

Whereas, pursuant to Ordinance No. 2016-326, the City Council extended such proclamation for a period in excess of seven days, as provided by the Texas Disaster Act; and

Whereas, the conditions necessitating the proclamation of a local state of disaster have ceased to exist; and

Whereas, the Texas Disaster Act provides that a local state of disaster may be terminated by the governing body of the political subdivision or by executive order by the Mayor; and

Whereas, the City Council desires to terminate the local state of disaster extended by Ordinance No. 2016-326 and to terminate any other local states of disaster previously extended by ordinance, **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. Termination of Local State of Disaster. The City Council, as the governing body of the City of Houston, hereby terminates the proclamation of a local state of disaster described in the preamble hereto.

Section 2. Termination of all Previous Local States of Disaster Extended by Ordinance. The City Council, as the governing body of the City of Houston, hereby terminates the proclamations of all previous local states of disaster in addition to the state of disaster described in the preamble hereto.

Section 3. Applicability. If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be severable for that purpose.

Section 4. Notice of Meeting. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Texas Government Code Annotated, Chapter 551; and that this meeting was open to the public as required by law at all times during which this ordinance and the subject matter thereof was discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 5. Effective Date. A public emergency exists requiring that this ordinance be passed formally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall take effect immediately upon its passage and approval by the Mayor; provided, however, that if the Mayor fails to sign this ordinance within five days after its passage and adoption, it shall take effect in accordance with HOUSTON, TEX., CITY CHARTER, art. VI, §6.

PASSED AND ADOPTED, this 25th **day of** May, **20** 16.

APPROVED, this _____ **day of** _____, **20**____.

Mayor of the City of Houston, Texas

Pursuant to HOUSTON, TEX., CITY CHARTER, art. VI, §6, the effective date of the foregoing ordinance is MAY 3 1 2016.

City Secretary

Prepared by Legal Dept.
MPB:mpb 05/03/16

Senior Assistant City Attorney

CAPTION PUBLISHED IN DAILY COURT REVIEW DATE: MAY 3 1 2016

City of Houston, Code of Ordinances -
https://library.municode.com/tx/houston/codes/code_of_ordinances?nodeId=COOR_CH13EMMA

Chapter 13 - EMERGENCY MANAGEMENT[1]

Footnotes:

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Editor's note— Ord. No. 2007-490, § 1, adopted April 18, 2007, amended Ch. 13 in its entirety to read as herein set out. Formerly, said chapter pertained to similar subject matter and derived from Ord. No. 04-682, § 10, adopted 6-23-04 and Ord. No. 2002-258, § 14k.

Sec. 13-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disaster means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or human cause, including but not limited to fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action.

Emergency management coordinator means the person designated by the mayor to supervise all activities of the office of emergency management.

Office means the office of emergency management.

(Ord. No. 07-490, § 1, 4-18-07)

Sec. 13-2. - Creation of office.

There is hereby created the Office of Emergency Management of the City of Houston, which shall be an office in the office of the mayor or in a department as assigned by the mayor.

(Ord. No. 07-490, § 1, 4-18-07)

Sec. 13-3. - References in this Code.

Any reference to the "department of civil defense" or the "civil defense department" within this Code or in any other ordinance shall be construed to mean the "office of emergency management." Any reference to the "civil defense director" or "director of civil defense" within this Code or any other ordinance shall be construed to mean the 'emergency management coordinator.

(Ord. No. 07-490, § 1, 4-18-07)

Sec. 13-4. - Official duties.

(a) The mayor may authorize the emergency management coordinator to conduct the city's emergency management program.

(b) The office shall, in cooperation with the state and the federal government, establish a disaster preparedness program for the city that will enable city government to react promptly and effectively to protect lives and property before, during and after a disaster. To effect this general purpose, the office shall:

(1) Prepare an emergency management program for the city.

(2) Survey and establish the availability of personnel, equipment, supplies and services that could be used in implementing the emergency management program.

(3) Maintain effective liaison and coordination with other governmental units and emergency management services organizations in developing the emergency management program.

(4) Maintain a secure facility to carry out the basic functions of city government during a disaster.

(5) Maintain an emergency communications system for use during a disaster.

(6) Establish a method to conduct city-wide warnings or other public announcements and disseminate emergency public information during a disaster.

(7) Coordinate, in time of war, all city functions in support of the Armed Forces of the United States. In connection with this responsibility, the office may assemble and authorize volunteer units to assist the armed forces and to deny the resources of the city to the enemy.

(8) Cooperate in inter-jurisdictional disaster emergency management planning and operations with other political subdivisions having contracts therefor with the city, if any.

(9) Assist and coordinate with the mayor and other city officers and departments in carrying out their responsibilities during periods of declared disaster emergency.

(Ord. No. 07-490, § 1, 4-18-07)

Sec. 13-5. - Emergency management volunteer units.

The emergency management coordinator may organize emergency management volunteer units and prescribe qualifications for volunteers to staff the units. Volunteers may be dismissed by the emergency management coordinator at any time, shall receive no salary, wage, or other compensation whatsoever, shall not be entitled to any pension rights, local or state civil service rights, or other rights and privileges of employees of the city, and shall not for any purpose be deemed employees of the city. The emergency management coordinator may cause members of the volunteer units to be given such instruction and training as will ensure that each unit is well organized and coordinated to protect life and property in the city in the event of a disaster. The emergency management coordinator may delegate certain functions of his or her office to volunteers. The emergency management coordinator shall ensure that each volunteer meets all qualifications required by state or federal law and takes the oaths required by state and federal law, if any, before entering upon his duties.

(Ord. No. 07-490, § 1, 4-18-07)

Sec. 13-6. - Interference with emergency management activities, etc.

(a) The following acts shall be unlawful:

(1) Failure to comply with lawful orders issued by authority of the city during a declared state of disaster.

(2) Any act that endangers the lives, or obstructs, hinders or delays the activities of authorized emergency management personnel, emergency management volunteers, or other authorized city personnel in their efforts to respond to/recover from a disaster;

(3) Any act that adversely contributes to the extent or intensity of a disaster.

(4) The wearing, carrying or displaying of any emblem, insignia or any other means of identification as a member of the office, unless authority to so do has been granted to such person by the emergency management coordinator.

(5) The operation of a siren or other device so as to simulate a warning signal, or the termination of a warning, without express written authorization of the emergency management coordinator.

(b) Violation of any of the provisions of subsection (a), upon conviction, shall be punished as provided by section 1-6 of this Code. Subsection (a) is not to be construed so as to infringe upon the constitutional freedom of the press.

(Ord. No. 07-490, § 1, 4-18-07)

Sec. 13-7. - Mayor's authority under proclamation declaring local state of disaster.

(a) A proclamation of a local state of emergency issued by the mayor pursuant to Chapter 418, Texas Government Code, authorizes the mayor to issue such executive orders as the mayor reasonably deems necessary to protect public health and safety from conduct and conditions directly related to the circumstances that are the subject of the proclamation.

(b) An executive order issued pursuant to this section shall remain in force and effect until:

(1) The proclamation is rescinded, terminated, or expires by operation of law;

(2) The executive order is rescinded by the mayor; or

(3) The executive order is terminated by an ordinance passed and approved by the city council.

(c) An executive order issued pursuant to this section may declare to be unlawful conduct reasonably deemed by the mayor to constitute a threat to public health and safety under the circumstances that are the subject of the proclamation.

(d) Unless a different penalty is provided elsewhere in this Code, a person violating an executive order issued pursuant to this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $200.00 nor more than $2,000.00. Each day a violation continues shall constitute a separate offense.

(e) A person violating an executive order issued pursuant to this section may be issued a criminal citation enforceable in municipal court. The citation may be issued by any employee of the city so authorized in writing by the chief of police, the fire chief, the director of public health or the directors of the departments of neighborhoods, parks and recreation, or public works and engineering.

(Ord. No. 2011-792, § 2, 9-14-2011; Ord. No. 2015-820, § 11, 8-26-2015)

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ORDER SETTING CURFEW

BY

THE MAYOR OF THE CITY OF HOUSTON

WHEREAS in accordance with Section 418.108 of the Texas Disaster Act of 1975, Government Code of Texas, ("Texas Disaster Act") the Mayor of the City of Houston finds and declares an enhanced state of disaster and emergency exists in the City of Houston as a result of the impact of the disaster associated with Hurricane Harvey ("Disaster") as made the subject of the Proclamation Declaring a Local State of Disaster dated August 24, 2017; and

WHEREAS, the City of Houston has suffered severe damage as a result of the Disaster and remnants and continuing flooding and other weather resulting from the Disaster could cause widespread and severe damage, injury, and loss of property and life, and potentially expose many businesses and residences to looting, vandalism and the natural elements, thus necessitating immediate protection against further loss. The curfew is for the safety and well-being of the residents of Houston during a time that could require extraordinary measures to alleviate the suffering of people and to protect and rehabilitate property; and

WHEREAS, a curfew between the hours of 12:00 A.M. and 5:00 A.M. preventing persons without proper authority from being upon the public streets or rights-of-way located within the City of Houston will greatly assist law enforcement in protection against further loss; and protection of the health, safety and welfare of the City of Houston;

NOW THEREFORE, I, MAYOR OF THE CITY OF HOUSTON, HEREBY FIND AND ORDER:

SECTION 1: That the findings and recitations set out in the preamble to this ORDER are found to be true and correct and they are hereby adopted and made a part hereof for all purposes.

SECTION 2: That it shall be unlawful for any person, without proper authority, to be upon, remain, or travel on the public streets or rights-of-way located within the City of Houston between the hours of 12:00 A.M. and 5:00 A.M., beginning August 30, 2017, until further Order.

SECTION 3: The curfew stated in Section 2 shall not apply to a person (a) authorized by the City of Houston Chief of Police or his designee, the Emergency Management Coordinator of the Houston Office of Emergency Management or his designee, or the Chief of the Houston Fire Department, to assist with the health, safety, or welfare of the public; (b) who is at work, (c) reporting to or returning from work or official disaster relief sites, (d) traveling for the purpose of performing work or volunteer related activities, (e) seeking medical attention or shelter, (f) travelling though the City of Houston to a destination outside the city limits, or (g) who remains or travels upon private property which is owned by him or her or upon which the person has been invited.

SECTION 4. The Director of the Houston Office of Emergency Management or his designee is hereby authorized to provide, or cause to be provided, all arrangements, provisions and means he deems necessary and proper to effect coordination of relief and aid programs, and property restoration and rehabilitation programs, for the protection, preservation, and improvement of life and property within the City during the state of local disaster. The Chief of Police of the Houston Police Department is hereby

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authorized to designate areas as restricted access and to restrict access, ingress and egress to those areas, as warranted by circumstances.

SECTION 5. That it shall be unlawful for any person, without proper authority, to be in an affected area that has been designated with limited or denied access, ingress, or egress.

Section 6: Violation of any provision of this ORDER is an offense punishable under Sections 13-6 and 1-6 of the Houston Code of Ordinances which provide for a fine not exceeding $500 for each separate offense.

SECTION 7. That this ORDER shall expire upon the order of the Mayor.

SECTION 8. That, in accordance with the Texas Disaster Act, this declaration shall take effect immediately at 12:00 A.M.

SO DECLARED AND ORDERED this the 30th day of August, 2017.

Approved as to Form

DocuSigned by:
Ronald C. Lewis
01B8EE0AC120491...

Ronald C. Lewis
City Attorney

Sylvester Turner
Mayor, City of Houston

ATTEST/SEAL:

City Secretary

ORDER TO RESCIND THE CURFEW

BY

THE MAYOR OF THE CITY OF HOUSTON

WHEREAS, on August 24, 2017, the Mayor of the City of Houston, pursuant to Government Code Chapter 418 (the Texas Disaster Act of 1975), declared an enhanced state of disaster and emergency existed in the City of Houston as a result of the impact of the disaster associated with Hurricane Harvey ("Disaster") as made the subject of the Proclamation Declaring a Local State of Disaster dated August 24, 2017, which Proclamation was extended by Ordinance Number 2017-665; and

WHEREAS, the City of Houston suffered severe damage as a result of the Disaster and remnants and continued flooding and other weather resulting from the Disaster which caused widespread and severe damage, injury, and loss of property and life, and potentially exposed many businesses and residences to looting, vandalism and the natural elements, thus necessitating immediate protection against further loss; and

WHEREAS, on August 30, 2017, the Mayor of the City of Houston ordered a curfew between the hours of 12:00 A.M. and 5:00 A.M. beginning August 30, 2017 until further ordered; and

WHEREAS, on September 5, 2017, the Mayor of the City of Houston issued a first amended order setting curfew, which terminated the citywide curfew and ordered a curfew between the hours of 12:00 A.M. and 5:00 A.M. in the Curfew Area defined as the area west of Gessner, east of Highway 6, south of IH 10/Katy Freeway, and north or Briar Forest, excluding any part of Bunker Hill Village, until further ordered; and

WHEREAS, the causes for the implementation of the curfew are no longer a concern and the Mayor of the City of Houston has determined that the curfew is no longer necessary.

NOW THEREFORE, I, MAYOR OF THE CITY OF HOUSTON, HEREBY FIND AND ORDER:

SECTION 1. The findings and recitations set out in the preamble to this Order are found to be true and correct and made a part hereof for all purposes.

SECTION 2. The curfew in the Curfew Area is hereby terminated and rescinded.

SECTION 3. All ORDERS or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 4. That, in accordance with the Texas Disaster Act, this declaration shall take effect immediately at 12 PM 9/15/17.

SO DECLARED AND ORDERED this the 18th day of September, 2017.

Approved as to Form

Ronald C. Lewis
City Attorney

Sylvester Turner
Mayor, City of Houston

ATTEST/SEAL:

City Secretary

ORDER OF MANDATORY EVACUATION FOR FLOODED HOMES IN WEST HOUSTON ABUTTING BUFFALO BAYOU

BY

THE MAYOR OF THE CITY OF HOUSTON

WHEREAS in accordance with Section 418.108 of the Texas Disaster Act of 1975, Government Code of Texas, ("Texas Disaster Act") the Mayor of the City of Houston finds and declares an enhanced state of disaster and emergency exists in the City of Houston as a result of the impact of the disaster associated with Hurricane Harvey ("Disaster") as made the subject of the Proclamation Declaring a Local State of Disaster dated August 24, 2017 that was extended by Ordinance of the City Council of the City of Houston on August 30, 2017; and

WHEREAS, the City of Houston has suffered severe damage because of the Disaster and remnants and continuing flooding and other weather resulting from the Disaster could cause widespread and severe damage, injury, and loss of property and life, and potentially expose many businesses and residences to further damage from the natural elements, thus necessitating immediate protection against further loss; and

WHEREAS, severe overflow of various bayous, reservoirs, dams, levees, and other water repositories is anticipated to cause severe flooding that presents an imminent threat of widespread and severe damage, injury, and loss of life and property and severe economic and social disruption and other public calamity resulting therefrom, requiring emergency action; and,

WHEREAS the imminent threat of severe flooding requires the City to take immediate action to save lives, prevent injuries, protect property, public health, the environment and public safety to lessen or avert the threat of disaster; and,

WHEREAS, the Mayor of the City of Houston has determined that extraordinary measures must be taken to alleviate the suffering of people and to protect or rehabilitate property; and,

WHEREAS, the public was previously asked to voluntarily evacuate homes, including apartment buildings, west of Gessner, east of Highway 6, south of IH 10/Katy Freeway, and north or Briar Forest (the "Evacuation Area") that currently are experiencing dangerous and substantial water infiltration or flooding (the "Affected Property"); and,

WHEREAS, Texas Government Code Sections 418.108(f) and 418.185 authorize the mayor of a municipality to ORDER the evacuation of all or part of the population from a stricken or threatened area under the mayor's jurisdiction when the mayor considers it necessary for the preservation of life, disaster mitigation, response, or recovery; and

NOW THEREFORE, I, MAYOR OF THE CITY OF HOUSTON, HEREBY FIND AND ORDER:

SECTION 1. That the findings and recitations set out in the preamble to this ORDER are found to be true and correct and they are hereby adopted and made a part hereof for all purposes.

SECTION 2. That there is an imminent danger to persons and Affected Property in the Evacuation Area by flood waters within the area described as the Evacuation Area;

SECTION 3. That it is necessary to evacuate the Affected Properties within the Evacuation Area to preserve life, mitigate the damage that will be caused thereby, and to protect the public's health, safety and welfare.

SECTION 4. That all persons in Affected Properties in the Evacuation Area are **ORDERED** to **IMMEDIATELY EVACUATE**.

SECTION 5. That failure to obey this **ORDER** may result persons being compelled to leave as well as criminal penalties and civil liability as provided by law, including but not limited to penalties and liabilities provider for under Texas Government Code Section 418.185 and Sections 1-6, 13-6, and 13-7 of the City of Houston Code of Ordinances

SECTION 6. That this declaration shall be filed promptly with the City Secretary, and shall be given prompt and general publicity.

SECTION 7. That this declaration shall take effect immediately at 5:30 P.M. on Saturday, September 2, 2017.

SO DECLARED AND ORDERED this the 2nd day of September, 2017.

Approved as to Form

Ronald C. Lewis
City Attorney

Sylvester Turner
Mayor, City of Houston

ATTEST/SEAL:

City Secretary

FEMA

Fact Sheet

PUBLIC ASSISTANCE: DEBRIS REMOVAL FROM PRIVATE ROADS DR-4332-TX

FEMA developed a Fact Sheet *Public Assistance: Private Property Debris Removal DR-4332-TX* to simplify the process for private property debris removal. FEMA is further simplifying the process for debris removal from private roads when the public has unrestricted access (no locks, gates, or guards) and frequently uses the private road. Private roads are those that are not formally adopted by a local, county, tribal, state, or federal entity (including orphan roads).

FEMA considers removal of debris from public roads and rights-of-way, including debris placed curbside by residents, to be in the public interest because the area is accessible by the general public and causes an immediate threat to the health and safety of the public. Due to the significant and widespread amounts of debris caused by Hurricane Harvey throughout the State of Texas, FEMA has determined that removal of such debris from private roads where the public has unrestricted access (no locks, gates, or guards) and when the public frequently uses the road, is in the public interest. This includes removal of debris on the roadway, its rights-of-way, and debris placed curbside by residents. However, this does not include removal of debris on private resident's property or debris removal from private roads in areas with restricted access (roads behind locks, gates, or guards). For these areas, the justification and documentation described in the *Public Assistance: Private Property Debris Removal DR-4332-TX* Fact Sheet needs to be provided.

FEMA will accept the following as documentation that supports the Applicants' legal authority to remove the debris:

- An ordinance (ordinance citation should be provided) that allows for such private road debris removal under such emergency circumstances, accompanied by an assertion that the ordinance was properly activated prior to the start of the incident period (August 23, 2017); or
- A formal pre-existing agreement with the owners of the private road (if owned) to provide services to residences/facilities along the road to accomplish regular road maintenance, trash/garbage pickup, or fire and other emergency services (documentation needs to include evidence that debris was removed from such road under the agreement in previous, similar circumstances without a federal emergency or disaster declaration); or
- Documentation to support that the Applicant has legal responsibility to remove the debris, has completed all legal processes, and has agreements to indemnify and hold harmless the Federal Government.

FEMA

Fact Sheet

PUBLIC ASSISTANCE: PRIVATE PROPERTY DEBRIS REMOVAL DR-4332-TX

The Federal Emergency Management Agency (FEMA) Public Assistance (PA) Program provides supplemental assistance to states, tribes, and local governmental entities, as well as certain private non-profit organizations (hereinafter referred to as applicants). FEMA's *Public Assistance Program and Policy Guide* (http://www.fema.gov/public-assistance-policy-and-guidance) provides comprehensive information regarding FEMA assistance and the requirements that applicants must meet in order to receive the assistance. The purpose of this Fact Sheet is to provide key information to consider when planning debris removal from private property.

Private property debris removal (PPDR) is generally not eligible for reimbursement under the PA Program. In limited circumstances, based on the severity of the impact of an incident, FEMA may determine that debris removal from private property is eligible under the PA Program. In making its determination, FEMA evaluates whether the impacts of debris on private property affect the general public in that community and whether the Applicant has legal authority to perform the work.

If debris on private property is so widespread that it threatens public health and safety or the economic recovery of the community, FEMA may provide PA funding for debris removal from private property. This debris removal must be in the public interest, not merely benefiting an individual or a limited group of individuals within the community.

In such cases, FEMA works with the state, territorial, tribal, and local governments to designate specific areas where debris removal from private property, including private waterways, is eligible.

Approval for PPDR

Traditionally, FEMA requires written approval prior to starting work. FEMA requires this to ensure that applicants have followed all legal processes and provided documentation to support that removal of the debris is in the public interest. Due to the magnitude of DR-4332-TX, FEMA is simplifying the process. Applicants must provide a written notice through the State to FEMA identifying the areas where it will be conducting PPDR (including identification of any orphaned roads, gated or ungated communities, or commercial property). Once submitted, the Applicant does not need to wait for FEMA approval to start work. However, FEMA approval is required to receive reimbursement and FEMA can only approve it if the Applicant documents how the removal is in the public interest.

The Applicant must provide the following information prior to receiving reimbursement:

- A public interest determination;
- Documentation supporting the Applicant's legal authority to remove the debris; and
- Indemnification.

The Applicant must provide confirmation that it has satisfied all legal processes and obtained permission requirements from the property owners (rights-of-entry or other unconditional authorization) and agreements to indemnify and hold harmless the Federal Government.

Debris Removal from Commercial Property

Removal of debris from commercial properties, such as industrial parks, golf courses, cemeteries, apartments, condominiums, and trailer parks, is generally ineligible because commercial enterprises are expected to retain insurance that covers debris removal. In very limited, extraordinary circumstances, FEMA may provide an exception.

Duplication of Benefits

The Applicant should work with private property owners to pursue and recover insurance proceeds and credit FEMA the Federal share of any insurance proceeds received. In some circumstances, FEMA may provide assistance to individuals through the Individual Assistance (IA) Program for debris removal; consequently, FEMA PA staff will coordinate closely with IA staff to ensure FEMA does not fund the same work under both programs.

PPDR WRITTEN REQUEST: ELEMENTS

- **Public Interest Determination**
  - Provide the basis for the determination that removing the debris from the private property requested is in the public interest. The determination must be made by the state, territorial, tribal, county, or municipal government's public health authority or other public entity that has legal authority to make a determination that disaster-generated debris on private property in the designated area constitutes an immediate threat to life, public health, or safety, or to the economic recovery of the community at-large.
  - Submit the established, specific legal requirements for declaring the existence of a threat to public health and safety.
- **Legal Authority and Responsibility**
  - Provide documentation to confirm the Applicant's legal authority and responsibility to enter private property and remove disaster-related debris. This includes:
  - Citation of the law, ordinance, code, contractual arrangement, or emergency powers under which it is exercising its legal authority to remove debris from private property. The authority cited must be applicable to the condition representing the immediate threat and not merely the Applicant's uniform level of services. Typically, solid waste disposal ordinances are part of the Applicant's uniform level of services and not a justification for entering private property to remove disaster-related debris.
  - Confirmation that a legally authorized official of the Applicant has ordered the exercise of public emergency powers or other appropriate authority to enter onto private property in the designated area to remove debris to address immediate threats to life, public health, and safety.
- **Indemnification**
  - The Applicant must indemnify the Federal Government and its employees, agents, and contractors from any claims arising from the removal of debris from private property.

General Environment and Historic Preservation Concerns – Conditions for Implementation of PPDR

PPDR will have no effect or limited effect on natural resources or historic properties if implemented as specified in this guidance. FEMA Environmental and Historic Preservation will not need to review the PPDR location prior to the start of debris removal if these general guidelines are adhered to.

The Applicant may remove and collect debris, including the transport and disposal of such waste to existing licensed solid waste facilities or landfills. This includes any temporary, and Texas Commission of Environmental Quality (TCEQ) pre-approved location to establish and/or the expansion of existing non-hazardous debris staging, reduction, and disposal areas at licensed transfer stations, or new or existing hard-topped or graveled surface (e.g. parking lots, roads, athletic courts). This does not include or allow the creation of new and/or temporary access roads to support removal operations.

The Applicant may remove debris from private property provided that physical structures, including those damaged structures, are not affected; ground disturbance is minimal and in-ground elements, such as driveways, walkways, swimming pools, and tree root balls, are left in place. Heavy equipment should be limited to existing rights-of-way or hardened surfaces wherever possible.

PPDR is prohibited in areas designated as federally protected critical habitat for any threatened or endangered species. Consultation with FEMA prior to initiation of any debris activities that may cause harm or take of any listed threatened or endangered species requires consultation and approval from FEMA, prior to initiating activities, if any of these situations exist.

PPDR and/or any debris removal action is prohibited from any waterways, lakes, streams, ponds or other natural or manmade water feature without prior consultation and approval from FEMA. PPDR should not occur in marine or beach-front environs or on sand dunes or other areas seaward of the vegetation line. PPDR should not occur in coastal areas within designated Coastal Barrier Resource Units without prior consultation and approval from FEMA.

The following debris removal best practices should be utilized when possible:

- Minimize ground disturbance (i.e. tire rutting, scraping, mechanized debris removal).
- Use of vehicles with rubber wheels or tracks to minimize ground disturbance.
- Limit work with the potential to cause subsurface impacts in extremely saturated soil conditions or areas inundated with standing water.
- Loading, vehicles and equipment should be staged and conducted on paved or otherwise previously disturbed or hard-top surfaces when safety isn't a concern.

NOTICE TEMPLATE

FEMA-DR-4332-TX SUGGESTED FORM

INTENT TO CONDUCT PRIVATE PROPERTY DEBRIS REMOVAL

APPLICANT LETTER

[THROUGHOUT THIS DOCUMENT, PLEASE REMOVE AND REPLACE ALL RED "EXPLANATORY" TEXT AS APPROPRIATE]

[LOCALITY LETTERHEAD WITH ALL CONTACT INFORMATION]

[September XX, 2017]

Mr. Kevin L. Hannes
Federal Coordinating Officer
Federal Emergency Management Agency
FEMA-4332-DR-TX Joint Field Office
11000 N. Interstate Highway 35
Austin, TX 78773-0220

Through:

Mr. W. Nim Kidd
Chief, Texas Division of Emergency Management
State Coordinating Officer FEMA-DR-4332-TX
5805 North Lamar Blvd.
PO Box 4087
Austin, TX 78773-0220

Subject: FEMA-4332-DR-TX, Notice of Intent to Conduct Debris Removal from Private Property in [TOWN/CITY/COUNTY]

Dear Federal Coordinating Officer Hannes:

Pursuant to the terms and conditions of the Stafford Act, 42 U.S.C. Section 5121 et seq., FEMA Regulations as published at 44 CFR Sections 206.222 - 206.224, the *Public Assistance Program and Policy Guide* FP 104-009-2 and in conformity with the Public Assistance Fact Sheet entitled "Private Property Debris Removal DR-4332-TX," dated September 11, 2017, the [TOWN/CITY/COUNTY] is providing formal notice of intent to remove debris from private property in [TOWN/CITY/COUNTY].

Given the unprecedented impacts of Hurricane Harvey, the authorized representatives of the [TOWN/CITY/COUNTY] have determined, as the legally responsible entity, that the significant and widespread debris left by the hurricane is an immediate public health risk and find it is in the public interest to remove such storm-generated debris from private property as soon as possible. We understand that the final public interest determination for reimbursement eligibility will be made by FEMA. Private property in the following areas are subject to this notice:

[LIST ALL AREAS, NEIGHBORHOODS OR STREETS, SPECIFICALLY IDENTIFYING ORPHANED ROADS, GATED OR UNGATED COMMUNITIES, AND COMMERCIAL PROPERTY]

Before removal begins, we will have satisfied all legal processes and obtained permission requirements from the property owners in the form of rights-of-entry or other unconditional authorizations and we will be mindful of the conditions relative to the environmental and historic preservation conditions set out in the above-mentioned Private Property Debris Removal Fact Sheet.

While we cannot wait to begin this critical recovery function, we immediately will begin the process to obtain formal approval of our actions through submittal of a letter documenting our actions, the grounds for the public interest determination, and our legal responsibility and authority to take such actions. Our letter will include agreements to indemnify FEMA and to make all reasonable efforts to prevent duplication of benefits accruing to private property owners. From the onset and as we progress, we will carefully record and photograph our operations.

We look forward to working with you and the FEMA Public Assistance Texas Harvey Debris Removal Task Force on this critical matter.

Sincerely,

S/_____
[AUTHORIZED REPRESENTATIVE]

APPROVAL TEMPLATE

FEMA-DR-4332-TX SUGGESTED FORM

REQUEST FOR PRIVATE PROPERTY DEBRIS REMOVAL APPROVAL

APPLICANT LETTER

PRIVATE PROPERTY DEBRIS REMOVAL APPROVAL REQUEST WHEN USING PRIVATE CONTRACTOR, FORCE ACCOUNT, OR DIRECT FEDERAL ASSISTANCE

[THROUGHOUT THIS DOCUMENT, PLEASE REMOVE AND REPLACE ALL RED "EXPLANATORY" TEXT AS APPROPRIATE]

[LOCALITY LETTERHEAD WITH ALL CONTACT INFORMATION]

[September XX, 2017]

Mr. Kevin L. Hannes
Federal Coordinating Officer
Federal Emergency Management Agency
FEMA-4332-DR-TX Joint Field Office
11000 N. Interstate Highway 35
Austin, TX 78753

Through:

Mr. W. Nim Kidd
Chief, Texas Division of Emergency Management
State Coordinating Officer FEMA-DR-4332-TX
5805 North Lamar Blvd.
PO Box 4087
Austin, TX 78773-0220

Subject: FEMA-4332-DR-TX, Debris Removal from Private Property in [TOWN/CITY/COUNTY]

Dear Federal Coordinating Officer Hannes:

Pursuant to the terms and conditions of the Stafford Act, 42 U.S.C. Section 5121 et seq., FEMA Regulations as published at 44 C.F.R. Sections 206.222 - 206.224, the FEMA *Public Assistance Program and Policy Guide* FP 104-009-2, and the FEMA Fact Sheet, "Public Assistance: Private Property Debris Removal DR-4332-TX, September 11, 2017," the [TOWN/CITY/COUNTY]

hereby requests FEMA approve [IF DFA IS REQUESTED, ADD "AND ARRANGE FOR"] the removal of debris from private property in [TOWN/CITY/COUNTY].

Determination of Public Interest

[TOWN/CITY/COUNTY] has determined that it is in the public interest to have debris removed from private property in order to [INSERT: "ELIMINATE IMMEDIATE THREATS TO LIFE, PUBLIC HEALTH AND SAFETY," AND/OR "TO ELIMINATE THREATS OF SIGNIFICANT DAMAGE TO IMPROVED PROPERTY," AND/OR "TO ENSURE THE ECONOMIC RECOVERY OF THE AFFECTED COMMUNITY TO BENEFIT THE COMMUNITY AT LARGE"]. We understand that the final public interest determination will be made by FEMA. Due to the severity and extent of the damage from Hurricane Harvey, [TOWN/CITY/COUNTY] is unable to perform [IF DFA IS REQUESTED, ADD "OR CONTRACT TO PERFORM"] this work in a timely manner.

Documentation of Legal Responsibility

In accordance with 44 C.F.R. Section 206.223(a) and Public Assistance Program and Policy Guide FP 104-009-2, in order to be eligible for FEMA Public Assistance funding, we understand that the [TOWN/CITY/COUNTY] must have the legal authority and responsibility to perform the work at issue in the public interest, in this case, the removal of hurricane-generated debris from private property. As noted above, the damage caused by the disaster in [TOWN/CITY/COUNTY] was extensive. As a result of [CHOOSE APPROPRIATE: "MY EXECUTIVE ORDER AS {OFFICIAL TITLE} DATED MONTH XX, 2017" OR "A MEETING OF THE {TOWN/CITY/COUNTY COUNCIL/BOARD OF SUPERVISORS/ETC.} ON MONTH XX, 2017"] (Attachment A), the following determinations have been made:

1. Removal of hurricane-related debris from residential private property is necessary and in the public interest to eliminate immediate threats to life, public health and safety as determined by [THE GOVERNOR OR STATE/LOCAL DEPARTMENT OF PUBLIC HEALTH'S] Declaration of a "Debris-Related Public Health Emergency," dated [MONTH XX, 2017] (Attachment B).

2. Under the local ordinances of the [TOWN/CITY/COUNTY CODE], specifically [INSERT APPROPRIATE SECTION] and/or the power granted to localities by Texas Statutes [INSERT CITATION] and/or the discussion of local powers in one or more opinions of the Texas Attorney General [INSERT CITATION], the [TOWN/CITY/COUNTY] has the legal responsibility, duty and authority to remove such hurricane-generated debris from private property in the public interest (Attachment C).

3. Based upon "1" and "2" above, [HERE AND THROUGHOUT, INSERT: "I" IF EXECUTIVE ORDER; OR "WE" IF COUNCIL/BOARD] have determined to exercise these authorities to enter onto private property.

4. [I/WE] certify that [IF USING PARAGRAPH 5, BELOW, INSERT "TO THE EXTENT FEASIBLE,"] before we initiate such debris removal on these private

properties, we will have unconditional authorization to do so, either through satisfying all the legal processes as provided in our nuisance abatement and/or condemnation ordinance(s) and/or through obtaining all legal permissions to carry out these actions through the use of Rights of Entry with indemnity and prevention of duplication of benefits clauses signed by each property owner.

5. [OPTIONAL PARAGRAPH] There may be circumstances however, where, because of the immediate urgency of the situation, the procedures of obtaining a Right of Entry or pursuing a condemnation proceeding, as set out in paragraph "4" above, may be too time consuming. [I/WE] then will act under the auspices of the above-mentioned and attached opinion from the State of Texas Attorney General (Attachment C) and the [THE GOVERNOR OR STATE/LOCAL DEPARTMENT OF PUBLIC HEALTH'S] Declaration of a "Debris-Related Public Health Emergency" (Attachment B), which together confirm the legal basis for the [TOWN/CITY/COUNTY] to remove the debris on these private properties utilizing its police power. [I/WE] certify that we have a process to regularize and determine which properties will require these extraordinary procedures to protect the public safety. In these circumstances, a reasonable period of time will be afforded for public notification before private property debris removal will commence.

6. We will not remove titled personal property such as cars, trucks or boats. In addition, we will not remove any debris generated as a result of reconstruction.

7. The [TOWN/CITY/COUNTY] will recognize and respect all laws and regulations that concern historic preservation and environmental protection.

8. The subject private property in the following areas are the subject of this debris removal approval request: [SPECIFY THE AREAS, NEIGHBORHOODS, OR STREETS. THE MORE SPECIFIC, THE FASTER THE FEMA PUBLIC ASSISTANCE DEBRIS TASK FORCE TEAM CAN INSPECT AND MAKE A PUBLIC INTEREST DETERMINATION AS TO ELIGIBILITY].

Indemnification

As required by section 407(b) of the Stafford Act (42 U.S.C. § 5173(b)), the [TOWN/CITY/COUNTY] hereby agrees that it shall indemnify and hold harmless the Federal Government and its respective employees, agents, contractors, and subcontractors from any claims arising from debris removal. The [TOWN/CITY/COUNTY] hereby acknowledges that in accordance with section 305 of the Stafford Act (42 U.S.C. § 5148), the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Stafford Act.

Duplication of Benefits

To avoid duplication of benefits pursuant to section 312 of the Stafford Act (42 U.S.C. § 5155),

the [TOWN/CITY/COUNTY] will obtain from the subject private property owners information and documentation relating to insurance coverage, proceeds and settlements and provide this to the Texas Division of Emergency Management. The [TOWN/CITY/COUNTY] point of contact for this request is [NAME] who may be contacted at [PHONE NUMBER AND/OR EMAIL ADDRESS] if you require additional information.

Proper Procurement

The [TOWN/CITY/COUNTY] affirms that any contract entered into for debris removal will comply with the requirements of 2 C.F.R. Sections 200.318-200.336 and understands that a failure to comply with any required federal, state and local laws, regulations and permits necessary for lawful performance of debris removal could jeopardize FEMA funding.

By affixing my signature hereto, I represent that I am duly authorized as [TITLE THAT GIVES AUTHORITY IN INDIVIDUAL CAPACITY OR ON BEHALF OF CITY/COUNTY COUNCIL/ BOARD OF SUPERVISORS] to make this request.

Sincerely,

S/_____
[APPLICANT'S AUTHORIZED REPRESENTATIVE]

S/_____
[STATE OFFICIAL AUTHORIZED TO CONCUR: EITHER SIGNS HERE OR SUBMITS A SEPARATE LETTER OF CONCURRENCE TO FEMA FCO]

ROE No.	PRIVATE CONTRACTOR/FORCE ACCOUNT DEBRIS REMOVAL/DEMOLITION Texas 2017 FEMA-4332-DR-TX Address: Tax ID Block/Lot: Federal/Texas/Tribal Landmark [Y/N]: ___

RIGHT OF ENTRY ONTO PRIVATE PROPERTY FOR DEBRIS REMOVAL AND/OR DEMOLITION DISASTER ASSISTANCE (FEMA-DR-4332-TX)

Ownership Interest and Grant of Right of Entry for Debris Removal or Demolition Activities

The undersigned hereby certifies they/he/she are/is (check):
_____ The owner(s) with authority to grant access to the property at (address)_____.
_____ The authorized agent of the Property Owner at above address.

The Property Owner(s)/agent authorize(s) the City/County of _____, the State of Texas, and the United States of America, their respective agents, successors and assigns, contractors and subcontractors (collectively, the "Governments/Contractors") to have the right of access and to enter the property above specified for purposes of performing debris removal as it is a public health and safety threat OR for demolishing structures local authorities have determined to be unsafe due to the declared major disaster FEMA-DR-4332-TX.

Governments/Contractors will perform the following work (check):
1. _____ Remove debris from the Property.
2. _____ Demolish the unsafe and condemned structure on the Property and remove the demolition debris.

If for Demolition: Mortgage and Insurance Adjuster Information

_____ The Property Owner/agent certifies that no mortgage exists on said property.
_____ The Property Owner/agent certifies that a mortgage does exist on said property.
_____ The Property Owner/agent certifies that an adjuster for any insurance policy has inspected the property.

If for Demolition: Other Liens/Encumbrances on the Property

_____ The Property Owner/agent certifies that no other liens or encumbrances exist on said property.
_____ The Property Owner/agent certifies that (type lien[s]) _____ does/do exist on said property.

Government Not Obligated; No Expense Except For Insurance Proceeds

The Property Owner/agent understands that this Right-of-Entry does not obligate the Governments/Contractors to perform debris removal or demolition. Governments/Contractors will access the property under this ROE if the work has been determined necessary in accordance with Federal, State, or local regulations. The Property Owner(s) will not be charged for the work conducted by Governments/Contractors. However, if the Property Owner receives insurance proceeds or compensation from other sources for debris removal or demolition, the Property Owner's obligation is set out in the section below, entitled "Avoidance of Duplication of Benefits:…."

Government Indemnified and Held Harmless

The Property Owner(s)/agent agree(s) to indemnify and hold harmless the Governments/Contractors for any damage of any type whatsoever to the above described property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the property, and hereby releases, discharges and waives any and all actions, either legal or

equitable, which the Property Owner(s) has/have, or ever might or may have, by reason of any action taken by Governments/Contractors to remove debris or demolish unsafe structures.

Avoidance of Duplication of Benefits: Reporting Debris Removal/Demolition Money Received

Property Owner/agent has an obligation to file an insurance claim if coverage is available. Property Owner/agent understands and acknowledges that receipt of compensation or reimbursement for performance of the aforementioned activities from any source, including Small Business Administration, private insurance, an individual and family grant program or any other public or private assistance program could constitute a duplication of benefits prohibited by federal law. If the Property Owner/agent receives any compensation from any source for debris removal or demolition activities on this property, the Property Owner/agent will report it to the City/County Department of _____ at (address & phone) _____.

Release of Insurance Information

If insured, the Property Owner/agent authorizes its insurer, (Company) _____, to release information relating to coverage and payments for debris removal/demolition activities (Claim #_____, Policy #_____) to the City/County identified herein and/or to the State of Texas.

Acknowledgment of Prohibition on Fraud, Intentional Misstatements

The Property Owner/agent understands that an individual who fraudulently or willfully misstates any fact in connection with this agreement may be subject to penalties under state and federal law, including civil penalties, imprisonment for not more than five years, or both, as provided under 18 USC § 1001.

Signature(s). Witnesses Only if Demolition
Property Owner(s) or Authorized Agent and Mortgage/Lien Holder(s)

For the considerations and purposes set forth herein, I/we hereby set my/our hand(s) and seal(s) this _____ day of _____, 2017.

Witness 1 _____

Witness 2 _____

Privacy Act Statement: The Property Owner/ Owner's Authorized Agent acknowledge(s) that information submitted will be shared with other government agencies, federal and non-federal, and contractors, their subcontractors and employees but solely for purposes of disaster relief management to meet the objectives of this Right-of-Entry. This form is signed to allow access to perform debris removal and/or demolition operations on the above-mentioned property, to authorize the release of insurance policy/claim information and to notify any lien-holder of demolition.

Property Owner/Authorized Agent
Sign_____

_____

Print: Property Owner(s)/Authorized Agent
Current Address and Telephone No.: _____

_____

IF DEMOLITION: Lien Holder
Sign_____

_____

Print: Mortgage Holder/Authorized Agent Current Address and Telephone No.: _____

_____

Sign_____

_____

Print: **Other Lien Holder**/Authorized Agent
Current Address and Telephone No.: _____

_____

FREQUENTLY ASKED QUESTIONS: SOLE SOURCING IN EXIGENCY OR EMERGENCY CIRCUMSTANCES

What is the exigency or emergency exception?

The Federal procurement standards allow procurement by noncompetitive proposals (commonly known as sole sourcing) under certain circumstances, including when a local or tribal government or private non-profit (non-State applicant) determines that the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. FEMA defines an "*emergency*" as an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. FEMA defines an "*exigency*" as something that is necessary in a particular situation that requires or demands immediate aid or action. An emergency will typically involve a threat to life, public health or safety, improved property, and/or some other form of dangerous situation, whereas an exigency is not necessarily so limited.

When can I use the exigency or emergency exception?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Once the exigent or emergency circumstances cease to exist, the local or tribal government or private non-profit is expected to transition to a more appropriate method of contracting using full and open competition.

How should I document this in my contract file?

In order to justify using the emergency or exigency exception, the non-State applicant must include a justification in its contract file. Attachment A provides a template for justification for a noncompetitive procurement. For a debris removal requirement, the non-State applicant could alternatively obtain and provide documentation from its public health authority explaining any public health threat posed by debris from the disaster, the location of such threat, and include the anticipated duration of such threat.

Do any of the Federal procurement standards still apply if I am sole sourcing my contract under emergency or exigent circumstances?

Yes, for non-State applicants (local or tribal governments or private non-profits), you still must comply with the following requirements:

1. Your contact must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II);
2. Your contract must include the Federal bonding requirements, if the contract is for construction or facility improvement (2 C.F.R. § 200.325);
3. You must award to a responsible contractor (2 C.F.R. § 200.318(h));
4. You must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable (2 C.F.R. § 200.323(a) and (b));

5. You may not use cost-plus-percentage-of-cost contracting (2 C.F.R. § 200.323(d)).

What if I want to use a pre-awarded or pre-existing contract in an exigency or emergency that may not comply with the Federal procurement standards?

If your pre-awarded or pre-existing contract is not in compliance with the Federal procurement standards (e.g. you did not fully and openly compete the requirement or follow the six affirmative socioeconomic contracting steps), you may likely still use your contract for the duration of the exigency or emergency. FEMA recommends that you review the list above and assess whether you can modify your pre-awarded or pre-existing contract or add additional documentation to your contract file to address the pre-awarded or pre-existing contract's non-compliance issues.

What if I have further questions?

Additional questions on this topic may be directed to your State (or Tribal, if applicable) Public Assistance Officer. However, you should consult your attorney throughout this entire process.

ATTACHMENT A

Justification for Noncompetitive Procurement Template

1. Insert a brief description of the product or service you are procuring, including the expected amount of the procurement.

2. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) you are relying on for your noncompetitive procurement.

3. Explain why it is necessary to contract noncompetitively.

    - A justification based on public exigency or emergency should explain the nature of the public exigency or emergency, including why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan does not justify noncompetitive procurement based on public exigency or emergency.)

4. State how long you will need to use the noncompetitive procurement, and the impact it will have on your community if you are not able use the noncompetitive procurement for that amount of time (e.g., how long do you anticipate the exigency or emergency will continue; how long will it take to identify your requirements and award a competed procurement; or how long would it take another contractor to reach the same level of competence).

5. Describe the results of any market survey or research conducted to help you determine whether you could have used full and open competition consistent with applicable law (or, if you did not conduct a market survey or research, explain why not).

6. Describe the results of any conflicts of interest and organizational conflict of interest reviews you conducted (or, if you did not complete a conflict of interest and organizational conflict of interest review, explain why not).

7. Include any other points you think are necessary for the justification.