COVID-19

ISSUES FOR UNIVERSITY CITIES

IMLA 2020 Virtual University Cities Summit
July 27, 2020

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COVID-19 Issues For University Cities

I. Introduction

Local governments across the county continue to face a myriad of legal, financial, and operational challenges as the COVID-19 pandemic continues. Many jurisdictions have been under local and gubernatorial state of emergency declarations for months. States remain under presidential major disaster declarations. The FEMA incident period for COVID-19 began on January 20, 2020 and is still ongoing. Counties and cities with university campuses in their jurisdictions face unique challenges with the start of the fall academic semester. As campuses wrestle with reopening decisions ranging from in-person versus virtual classes to maintaining social distancing and requiring students to wear face coverings, university-cities must plan for the impact of those decisions on their communities.

This paper provides supplemental material accompanying the author's live presentation at the IMLA 2020 Virtual University Cities Summit (July 27, 2020). Section II discusses local government emergency powers; Section III provides examples of Mutual Aid Agreements.

II. Local Government Emergency Powers

Most local governments are familiar with the extent of their emergency powers exercised during a more "typical" disaster event such as a hurricane, wildfire, flooding, ice storm, tornado, or other natural disaster. During a "typical" disaster, the need for emergency restrictions such as curfews, evacuations, and limited reentry tend to be short-lived. In responding to the every-changing situation created by COVID-19, however, local governments have wrestled with applying these familiar legal authorities to an entirely new and unfamiliar type of emergency over an extended period of time.

Reprinted on the following pages is a blog post from the UNC School of Government's Coates' Canons Local Government Law Blog which discusses how county and city emergency authorities under North Carolina state law can be exercised to implement "Stay at Home" orders. While some of the analysis is based on North Carolina law, it offers an example of how local governments can reexamine and exercise their emergency powers in a new yet legally valid manner to protect public health and safety during a pandemic. The case law discussed in the blog is not entirely specific to North Carolina and provides a general framework for analyzing the legal validity of local emergency restrictions.

Coates' Canons Blog: Can Counties and Cities Order "Stay-at-Home"?

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This entry was posted on March 23, 2020 and is filed under Emergency Management, Emergency Ordinances, Emergency Restrictions, Featured Posts Related To COVID-19, Public Health, State of Emergency[1]

As state and local government officials across the country struggle to respond to the rapidly escalating coronavirus pandemic, some are exploring the need for increasingly stringent measures, including what are being referred to as "stay- at-home" restrictions (I'll address the important point of how this term is defined below – see this blog for discussion of why the term "shelter-in-place" should not be used in this context). Do local governments in North Carolina have the legal authority to impose "stay-at-home" restrictions? *Because the quarantine and isolation authorities of local health directors may not be used to restrict the movement of entire populations* (see my colleague Jill Moore's blog post), the answer to this question calls for a careful analysis of the authorities granted counties and cities under the North Carolina Emergency Management Act (G.S. Chapter 166A) to impose restrictions and prohibitions under a locally declared state of emergency. This blog discusses the scope of those authorities and offers a framework for analysis in determining whether "stay-at-home" restrictions (or for that matter, any other restrictions and prohibitions cities and counties in our state might impose) are both legally authorized and imposed and enforced in a legally valid manner. This blog does not offer any opinion on whether "stay-at-home" restrictions *should* be imposed. That decision must be made by local officials in their determination, based on guidance from public health officials, of what best serves the public health and safety needs of their communities. Instead, this blog offers a summary of county and city emergency authorities under Chapter 166A, and a framework for analyzing emergency restrictions based on judicial interpretations of the scope of these authorities.

As discussed in my previous blog post addressing emergency restrictions on gaming and sweepstakes establishments, counties and cities are granted broad authorities under Chapter

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166A to impose designated restrictions and prohibitions under a locally declared state of emergency (violations of which are a Class 2 misdemeanor). There is no language in Chapter 166A specifically authorizing "stay-at-home," nor is that term defined within the Act. This lack of definition is significant; without a clear grant of authority to impose "stay-at-home," or even a definition of what "stay-at-home" actually is, counties and cities must examine the other restrictions and prohibitions they are authorized to impose under existing law. If "stay-at-home" is deemed necessary by local officials, counties and cities would then impose a combination of the restrictions and prohibitions authorized under Chapter 166A in a manner that, taken together, results in "stay-at-home." Under this approach, the county or city is not actually ordering "stay-at-home." Instead, a county or city must impose a combination of restrictions or prohibitions in such a manner that the combined limitations on the public's movements result in "stay-at- home."

Specifically, the following restrictions and prohibitions authorized under G.S. 166A-19.31(b) could be imposed in some manner that collectively results in "stay-at-home":

- Restricting or prohibiting the movement of people in public places;
- Imposing curfews;
- Controlling ingress and egress of an emergency area and the movement of persons within the area (the "emergency area" is the geographical area within the county or city to which a local state of emergency applies; unless specifically limited in the declaration, by default the emergency area is the entire geographic area over which the county or city exercises general police powers ordinance authority (G.S. 166A-19.22(b)(1));
- Restricting or prohibiting the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate; and
- Imposing restrictions or prohibitions upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

If "stay-at-home" is deemed necessary by local officials, counties and cities must impose a *combination* of the restrictions and prohibitions described above in a manner that, taken together, results in "stay-at-home." For example, by imposing curfews, restricting access to public places, closing all non-essential businesses, prohibiting all non-essential gatherings and limiting the number of persons at essential gatherings, prohibiting all non-essential travel, limiting entry into the jurisdiction, and other similar restrictions, the result will be that, by and large, residents will be left with little choice but to remain in their homes except for circumstances or activities allowed under the restriction.
However, a "stay-at-home" restriction imposed under the statutory authorities outlined above will be legally valid ONLY IF:

1. The restriction clearly falls within the scope of county and city emergency authorities and is imposed in a legally valid manner by an official with clear legal authority to do so (In other words, the county or city must have clear legal ***authority*** to impose the restriction); and
2. The restriction, as imposed, is reasonably necessary to respond to the public health or safety threat posed, is based in fact, is not vague or overbroad, and is not imposed in bad faith or with a pretextual motive (In other words, the restriction itself must be ***reasonable***).

Appellate courts in our state and across the county have consistently granted broad deference to local officials in emergency situations.[2] By far the most common situations where emergency restrictions have been challenged are appeals of criminal convictions for curfew violations. While a curfew may be just one of a broader set of restrictions which could be imposed to result in "stay-at-home," these cases nonetheless provide a framework for analyzing whether emergency restrictions and prohibitions of any nature, including the combination of those that result in "stay-at-home," are imposed with proper legal ***authority*** and are ***reasonable***.

FRAMEWORK FOR ANALYSIS

I. The County or City Must Have Clear *Authority*

The first question to ask is whether the county or city has clear legal authority to impose "stay-at-home" restrictions. Without proper authority, an emergency restriction or prohibition will not be legally valid. Courts in other states have struck down curfew restrictions where the local official who imposed the curfew did not have the legal authority to do so[3] or where such authority was preempted by state law.[4] In North Carolina, the provisions of Chapter 166A vesting emergency powers to counties and cities have been held a valid and constitutional delegation of the State's police powers.[5]

While Chapter 166A grants counties and cities authority to declare a local state of emergency and impose designated restrictions and prohibitions under that declaration, that authority must be exercised in the manner prescribed in Chapter 166A. Three procedural requirements must be

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[2] *United States v. Chalk*, 441 F.2d 1277 (1971).

[3] *Municipal Court, Ft. Lauderdale v. Patrick*, 254 So.2d 193 (1971) (invalidating curfew imposed by Mayor where city's charter did not grant Mayor this authority).

[4] *Walsh v. River Rouge*, 385 Mich. 623, 189 N.W.2d 318 (1971) (invalidating curfew imposed by Mayor where state law grant of authority to governor preempted local authority).

[5] *State v. Allred*, 21 N.C. App. 229, 204 S.E.2d 214 (1974); *State v. Dobbins*, 277 N.C. 484, 178 S.E.2d 449 (1971).

satisfied for a city or county to exercise that power. If these requirements are not satisfied, the county or city has not legally imposed the designated restrictions or prohibitions, thus rendering them unenforceable. I outlined these requirements in a previous blog but I will repeat them here for the reader's convenience:

1. The restrictions and prohibitions authorized under Chapter 166A must be included in the jurisdiction's local ordinance. G.S. 166A-19.31(a) authorizes counties and cities to "enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.22." There is *direct* grant of authority under Chapter 166A to impose local emergency restrictions or prohibitions; these restrictions and prohibitions *must* be authorized by the jurisdiction's ordinance.
2. A local state of emergency must be declared by the county or city official authorized to do so under the jurisdiction's local ordinance. Emergency restrictions and prohibitions included in the local ordinance can be imposed only pursuant to a lawfully declared state of emergency. G.S. 166A-19.31(a) specifically states that the restrictions and prohibitions authorized under the local ordinance may be imposed "during a state of emergency declared pursuant to G.S. 166A-19.22." No state of emergency exists unless one has been declared, and only those county and city officials delegated authority in the jurisdiction's ordinance to declare a state of emergency may do so. Without delegation, by default the authority rests with the governing board. Typically, local ordinances delegate this authority to the Chair of the County Board of Commissioners (for counties) and the Mayor (for municipalities).
3. The restriction or prohibition must be specifically stated in the local declaration. While a lawfully declared state of emergency triggers the *authority* to impose restrictions and prohibitions under the jurisdiction's local ordinance, the specific restrictions or prohibitions deemed necessary in response to the circumstances of the emergency are actually *imposed* under the state of emergency declaration itself. This means specifically describing the restrictions or prohibitions being imposed in the text of the declaration (or as amendments to a declaration already in effect).

County and city officials can confirm that the restrictions and prohibitions imposed under a local state of emergency declaration comply with these statutory requirements by answering the following questions:

- Does the ordinance include all the restrictions and prohibitions authorized under G.S. 166A-19.31(b)?
- Does the ordinance properly delegate authority to declare a local state of emergency to an identified official such as the Board Chair or Mayor?

- Did the county or city actually declare a state of emergency and was that declaration issued by the official authorized to do so in the ordinance?
- Does the declaration specifically state the restriction(s) or prohibitions(s) imposed?
- And finally, are the specific restrictions and prohibitions stated in the declaration within the scope of authorities under the local ordinance and consistent with state law?

If the answer to *each* of these questions is "yes," the county or city has established legal authority to impose restrictions or prohibitions under a local state of emergency, including the combination of restrictions or prohibitions which, taken together, result in "stay-at-home."

II. The Restriction or Prohibition Must Be *Reasonable*

Even if the county or city has established its legal authority to impose "stay-at-home" as discussed above, that does not end the analysis of whether the restrictions (or in the case of "stay-at-home," *combination* of restrictions or prohibitions) imposed are, in and of themselves, legally valid. Despite the breadth of local government emergency powers described above and the deference generally given by courts to the judgment of local officials in a time of crisis, the courts also have ruled that these authorities are not unlimited or beyond judicial review.[6] Because emergency measures such as curfews, mass gathering bans, and travel restrictions have the effect of infringing on constitutional rights, courts have noted the need to strike a balance between infringement of those rights and the legitimate needs of public officials to preserve order and protect public health and safety during an emergency. Where the actions taken by government officials are reasonable in light of the circumstances, courts have generally upheld those actions even where they infringe on constitutional rights.[7]

What does it mean for government actions to be "reasonable?"

Courts have held that emergency restrictions and prohibitions must be reasonably necessary to address the public health or safety need presented. While the "reasonableness" standard is not as rigid as the "strict scrutiny" standard of review that courts employ when considering governmental infringements on constitutional rights in other circumstances, the "reasonableness" standard does require local officials to have some basis in fact for imposing the designated restrictions or prohibitions and that they take these actions in good faith and without

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[6] *Raynor v. Commissioners for Town of Louisburg,* 220 N.C. 348, 17 S.E.2d 495, 498 (1941).

[7] *Chalk*, 441 F.2d at 1283; see also, *Zemel v. Rusk*, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965). Note that this analysis does not include discussion of recent court options issued during COVID-19. Most opinions have been issued at the trial court level with few appellate decisions, most of which involve rulings on temporary restraining orders or other temporal motions.

pretextual motive.[8]

The reasonableness analysis includes review of the actual language used in imposing the designated restrictions or prohibitions. *The state of emergency declaration must describe the restrictions and prohibitions with enough specificity to put the public on notice of what is and is not prohibited and ensure uniform and non-discriminatory enforcement.* This is especially important in North Carolina in that violations are punishable as a Class 2 misdemeanor. Courts in other states have struck down restrictions or prohibitions that are vague or overbroad, or which are subject to arbitrary enforcement. For example, a curfew imposed from "dusk to dawn," is vague and overbroad; a curfew imposed from "9:00p.m. to 7:00a.m." is sufficiently clear.[9]

While the cases described above involve challenges of curfews, the legal principles articulated apply to any restrictions or prohibitions imposed under a state of emergency, include those which, combined together, result in "stay-at-home." Emergency restrictions or prohibitions must be:

- Reasonably necessary to preserve order or protect public health and safety in response to an identified threat;
- Based in fact;
- Imposed in good faith and without pretextual motive; and
- Sufficiently clear to give notice to the public and avoid arbitrary or capricious enforcement (in other words, not vague or overbroad).

Meeting these standards in the case of a combination of restrictions and prohibitions resulting "stay-at-home" is challenging. The restrictions or prohibitions imposed must sufficiently describe, even define, both what is prohibited and what is still permitted. For example, instead of merely allowing "travel for essential activities," it must define what those "essential activities"

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[8] *Chalk*, 441 F.2d 1277 (1971); *State v. Allred*, 21 N.C. App. 229, 204 S.E.2d 214 (1974); *State v. Dobbins*, 277 N.C. 484, 178 S.E.2d 449 (1971).

[9] *Ruff v. Marshall*, 438 F.Supp. 303 (1977) (curfew allowing "activity of necessity" held vague and overbroad); *Hayes v. Municipal Court of Oklahoma City*, 1971 OK CR 274, 487 P.2d 974 (1971) (curfew prohibiting "loitering and wandering" from "midnight to dawn" held vague and overbroad); *City of Portland v. James,* 251 Or. 8, 444 P.2d 554 (1968) (curfew prohibiting being on streets "without having and disclosing a lawful purpose" held vague and overbroad); *City of Seattle v. Drew,* 70 Wash.2d 405, 423 P.2d 522 (1967) (curfew prohibiting being "abroad under suspicious circumstances" held vague and overbroad); *Shreveport v. Brewer,* 225 La. 93, 72 So.2d 308 (1954) (curfew requiring persons on streets to have a "satisfactory explanation" held vague and overbroad).

are. If “essential businesses” are to remain open, those businesses must be specifically defined. If “non-essential businesses” are to be closed, “non-essential businesses” also must be defined. The restriction cannot merely apply to “residents” but must define who a resident is and consider and address situations such as persons residing in the jurisdiction whose legal residence is outside the jurisdiction (assuming legal residence is the definition of a “resident”), and persons who are homeless. It must consider and address circumstances involving people passing *through* the jurisdiction and under what conditions such through-travel will be allowed or restricted. These are but a few of the considerations that must be addressed clearly in the local state of emergency declaration.

Because achieving the result of “stay-at-home” involves imposing a *combination* of restrictions and prohibitions, *each* must be analyzed to determine if the county or city has the legal *authority* to impose it and if so, whether it is *reasonably necessary*.

Finally, if “stay-at-home” is imposed in response to the current COVID-19 emergency, the combinations of restrictions or prohibitions which, taken together, produce this result must be based on valid public health determinations that this degree of restrictions is reasonably necessary to protect public health and safety. This author is not a public health expert, so I am in no position to offer an opinion, nor should this blog in any way be construed to do so, on whether “stay-at-home” is a valid public health measure to mitigate against COVID-19. That determination must be left to qualified public health officials. However, should any city or county officials, based on advice from public health officials, reach the difficult conclusion that “stay-at-home” is necessary, this blog offers a framework for structuring and imposing these restrictions in a legally valid manner.

III. Mutual Aid Agreements

Mutual aid agreements (MAAs) are a common means by which jurisdictions and entities memorialize legal and operational relationships for providing resources and assets to assist each other in emergency events. In North Carolina, all counties and cities are parties to a statewide MAA with the NC Division of Emergency Management (NCEM). By entering into the statewide MAA, local jurisdictions avoid the necessity of having individual MAAs with each other (although many have MAAs in place with other local entities such as volunteer fire departments). Similarly, the University of North Carolina and NCEM have in place a MAA that covers all 17 constituent institutions of the UNC system. On the following pages are the NCEM statewide MAA and the NCEM-UNC MAA.



NORTH CAROLINA STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT REVISION 2017

FOR THE

Select JURISDICTION NAME

THIS AGREEMENT IS ENTERED INTO BETWEEN THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, AND ITS DIVISION OF EMERGENCY MANAGEMENT OF THE STATE OF NORTH CAROLINA AND BY EACH OF THE ENTITIES THAT EXECUTES AND ADOPTS THE UNDERSTANDINGS, COMMITMENTS, TERMS, AND CONDITIONS CONTAINED HEREIN:

WHEREAS, the State of North Carolina is geographically vulnerable to a variety of natural disasters;

WHEREAS, Chapter 166A of the North Carolina General Statutes, entitled the North Carolina Emergency Management Act, recognizes this vulnerability and provides that its intended purposes are to:

1. Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;

2. Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;

3. Provide for the rapid and orderly rehabilitation of persons and restoration of property;

4. Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery;

WHEREAS, in addition to the State, the Federal Emergency Management Agency (FEMA) has recognized the importance of the concept of coordination between the State and local governments;

WHEREAS, under Chapter 166A and other chapters of the North Carolina General Statutes, entities entering into mutual aid and assistance agreements may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel and services; and

WHEREAS, the entities which have chosen to become signatories to this Agreement wish to provide mutual aid and assistance amongst one another at the appropriate times;

THEREFORE, pursuant to G.S. 166A-19.72, these entities agree to enter into this Agreement for reciprocal emergency management aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

SECTION I. DEFINITIONS

"Agreement" means this document, the North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement.

"Aid and assistance" includes personnel, equipment, facilities, services, and supplies.

"Authorized Representative" means a party's employee who has been authorized, in writing by that party, to request, to offer, or to otherwise provide assistance under the terms of this Agreement. The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be the authorized representative.)

"Disaster declaration" means a gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a Type I, II, III disaster as defined in G.S. 166A-19.21(b)

"Emergency" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property, resulting from any natural or man-made accidental, military, or paramilitary cause.

"Local Agency" means a county agency charged with coordination of all emergency management activities for its geographical limits pursuant to G.S. 166A-19.15.

"Party" means a governmental entity which has adopted and executed this Agreement.

"Provider" means the party which has received a request to furnish aid and assistance from another party in need (the "Recipient").

"Recipient" means the party setting forth a request for aid and assistance to another party (the "Provider").

SECTION II. INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this is a reciprocal contract, it is recognized that any party to this Agreement may be requested by another party to be a Provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when aid and assistance have been requested, a party may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the party setting forth the request.

Given the finite resources of any jurisdiction and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage

each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.

Pursuant to G.S. 166A-19.60 and as elaborated upon in Section X of this Agreement, all functions and activities performed under this Agreement are hereby declared to be governmental functions. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section X of this Agreement.

SECTION III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within the stricken area are deemed inadequate by Recipient. When Recipient becomes affected by a emergency and deems its resources inadequate, it may request mutual aid and assistance by communicating the request to Provider, indicating the request is made pursuant to this Agreement. The request shall be followed as soon as practicable by a written confirmation of that request, including the transmission of a proclamation of local state of emergency under G.S. 166A-19.22, and a completed form describing recipient's projected needs in light of the emergency. All requests for mutual aid and assistance shall be transmitted by the party's *Authorized Representative* or to the *Coordinator of the Local Agency* as set forth below.

A. METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE: Recipient shall set forth requests as follows:

(i) REQUESTS ROUTED THROUGH THE RECIPIENT'S LOCAL AGENCY: Recipient may directly contact the Local Agency, in which case it shall provide the Local Agency with the information in paragraph B of this Section (Section III). The Local Agency shall then contact other parties on behalf of Recipient to coordinate the provision of mutual aid and assistance. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to Section VII of this Agreement.

(ii) REQUESTS MADE DIRECTLY TO PROVIDER: Recipient may directly contact Provider's authorized representative, setting forth the information in paragraph B of this Section (Section III). All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VII of this Agreement. Provider and Recipient shall be responsible for keeping Local Agencies advised of the status of response activities, in a timely manner.

(iii) RECORD OF REQUESTS TO BE PROVIDED: A record of the request for assistance shall be provided by the Recipient to the Director of the Division of Emergency Management in the NC Department of Public Safety, in a timely manner.

B. REQUIRED INFORMATION: Each request for assistance shall include the following information, in writing or by any other available means, to the extent known:

1. Stricken Area and Status: A general description summarizing the condition of the community or emergency area (i.e., whether the emergency and/or disaster declaration is imminent, in progress, or has already occurred) and of the damage sustained to date;

2. Services: Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;

3. Infrastructure Systems: Identification of the type(s) of public infrastructure system for which assistance is needed (water and sewer, storm water systems, streets) and the type of work assistance needed;

4. Aid and Assistance: The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;

5. Provider's Traveling Employee Needs--Unless otherwise specified by Recipient, it is mutually understood that Recipient will provide for the basic needs of Provider's traveling employees. Recipient shall pay for all reasonable out-of-pocket costs and expenses of Provider's traveling employees, including, without limitation, transportation expenses for travel to and from the stricken area. Further, Recipient shall house and feed Provider's traveling employees at its (Recipient's) sole cost and expense. If Recipient cannot provide such food and/or housing at the emergency area, Recipient shall specify in its request for assistance that the Provider’s traveling employees be self-sufficient.

6. Facilities: The need for sites, structures, or buildings outside Recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and

7. Meeting Time and Place: An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: Recipient shall be responsible for coordinating requests for state or federal assistance with its (Recipient's) Local Agency.

SECTION IV. PROVIDER’S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by the Recipient/Local Agency, Provider's authorized representative shall assess Provider's own local situation in order to determine available personnel, equipment, and other resources. If Provider's authorized representative determines that Provider has available resources, Provider's authorized representative shall so notify the

Recipient/Local Agency (whichever communicated the request). Provider shall complete a written acknowledgment, whether on the request form received from Recipient or on another form, regarding the assistance to be rendered (or a rejection of the request) and shall transmit it by the most efficient practical means to the Recipient/Local Agency for a final response. Provider's acknowledgment shall contain the following information:

1. In response to the items contained in the request, a description of the personnel, equipment, and other resources available;

2. The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section [Section VI] of this Agreement.)

3. The estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Requesting Party; and

4. The name of the person(s) to be designated as Provider's supervisor (pursuant to the "Supervision and Control" section [Section V] of this Agreement.)
Where a request has been submitted to the Local Agency, the Local Agency shall notify Recipient's authorized representative and forward the information from Provider. The Recipient/Local Agency shall respond to Provider's written acknowledgment by signing and returning a copy of the form to Provider by the most efficient practical means, maintaining a copy for its file.

SECTION V. SUPERVISION AND CONTROL

Provider shall designate one of its employees sent to render aid and assistance to Recipient as a supervisor. As soon as practicable, Recipient shall assign work tasks to Provider's supervisor, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's supervisor and Recipient. Recipient shall provide necessary credentials to Provider's personnel authorizing them to operate on behalf of Recipient.

Based upon such assignments from the Recipient, Provider's supervisor shall:

1. Have the authority to assign work and establish work schedules for Provider's personnel. Further, supervisor shall retain direct supervision and control of Provider's personnel, equipment, and other resources. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;

2. Maintain daily personnel time records, material records, and a log of equipment hours;

3. Report work progress to Recipient at mutually agreed upon intervals.

SECTION VI. LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

Unless otherwise provided, the duration of Provider's assistance shall be for an initial period of seven days, starting from the time of arrival. Thereafter, assistance may be extended in daily or weekly increments as the situation warrants, for a period agreed upon by the authorized representatives of Provider and Recipient.

As noted in Section II of this Agreement, Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of Provider's intent to terminate mission, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

SECTION VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that Recipient shall pay to Provider all documented costs and expenses incurred by Provider as a result of extending aid and assistance to Recipient. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by Recipient and Provider. Recipient shall be ultimately responsible for reimbursement of all eligible expenses.

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

B. Equipment-- Recipient shall reimburse the Providers for the use of equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228. Provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition. At the request of Provider, fuels, miscellaneous supplies, and minor repairs may be provided by Recipient, if practical. The total equipment charges to Recipient shall be reduced by the total value of the fuels, supplies, and repairs furnished by Recipient and by the amount of any insurance proceeds received by Provider.

C. Materials And Supplies—Recipient shall reimburse Provider for all materials and supplies furnished and that are used or damaged by Recipient during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor, and supplies, which shall be included in the equipment rate established in subsection B of this

section (Section VII), Recipient will not be responsible for costs where such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of Provider's personnel. Provider's personnel shall use reasonable care under the circumstances in the operation and control of all materials and supplies used during the period of assistance. The measure of reimbursement shall be determined in accordance with 44 C.F.R. 206.228. In the alternative, the parties may agree that Recipient will replace, with like kind and quality as determined by Provider, Provider's materials and supplies used or damaged in a reasonable time. If such an agreement is made, it shall be reduced to writing and transmitted to the North Carolina Division of Emergency Management.

D. Record Keeping-- Recipient and North Carolina Division of Emergency Management personnel shall provide information, directions, and assistance for record-keeping to Provider's personnel. Provider shall maintain records and submit invoices for reimbursement by Recipient or the North Carolina Division of Emergency Management using the format used or required by FEMA publications, 2 C.F.R. Part 200 and applicable Office of Management and Budget (OMB) Circulars.

E. Payment; Other Miscellaneous Matters as to Reimbursements-- The reimbursable costs and expenses with an itemized notice shall be forwarded as soon as practicable after the costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 C.F.R. part 206. Recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing signed by both parties by mutual agreement. This shall not preclude Provider or Recipient from assuming or donating, in whole or in part, the costs and expenses associated with any loss, damage, or use of personnel, equipment, and resources provided to Recipient.

F. Contracting – If recipient or provider contracts with a third party to perform any aid or assistance under the provisions of this agreement, then the entity shall follow any applicable local, state, or federal contracting requirements.

SECTION VIII. RIGHTS AND PRIVILEGED OF PROVIDER'S EMPLOYEES

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

SECTION IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKER'S COMPENSATION POLICY

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

the payment of workers' compensation benefits to its own respective employees pursuant to G.S. 97-51.

SECTION X. IMMUNITY

Pursuant to G.S. 166A-19.60 all activities performed under this Agreement are hereby declared to be governmental functions. Neither the parties to this Agreement, nor, except in cases of willful misconduct, gross negligence, or bad faith, their personnel complying with or reasonably attempting to comply with this Agreement or any ordinance, order, rule, or regulation enacted or promulgated pursuant to the provisions of this Agreement shall be liable for the death of or injury to persons or for damage to property as a result of any such activity.

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

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

SECTION XII. ROLE OF THE DIVISION OF EMERGENCY MANAGEMENT

Pursuant to GS 166A-19.12(19) and under this agreement, the responsibilities of the North Carolina Division of Emergency Management are: (1) to serve as the central depository for executed Agreements, to maintain a current listing of entities with their authorized representatives and contact information, and to provide this listing to each of the entities on an annual basis; (2) to coordinate the provision of mutual aid and assistance to a requesting party, pursuant to the provisions of this Agreement; (3) to keep a record of all requests for assistance and acknowledgments; (4) to report on the status of ongoing emergency or disaster-related mutual aid and assistance as appropriate; and (5) if the parties so designate, to serve as the eligible entity for requesting reimbursement of eligible costs from FEMA and provide information, directions, and assistance for record keeping pursuant thereto.

SECTION XIII. AMENDMENTS

Manner-- This Agreement may be modified at any time upon the mutual written consent of

the Recipient and Provider.

Addition of Other Entities--Additional entities may become parties to this Agreement upon: (1) acceptance and execution of this Agreement; and (2) sending an executed copy of the Agreement to the North Carolina Division of Emergency Management.

SECTION XIV. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This Agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days advance written notice by a party as set forth below. Thereafter, this Agreement shall continue to be binding upon the parties in subsequent years, unless canceled by written notification served personally or by registered mail upon the Director of North Carolina Division of Emergency Management, which shall provide copies to all other parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been sent by the Director of the North Carolina Division of Emergency Management to all other parties. A party's withdrawal from this Agreement shall not affect a party's reimbursement obligations or any other liability or obligation under the terms of this Agreement incurred prior to withdrawal hereunder. Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining parties.

SECTION XV. HEADINGS

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

SECTION XVI. SEVERABILITY: EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

In the event that parties to this Agreement have entered into other mutual aid and assistance contracts, for example pursuant to Chapter 160A of the North Carolina General Statutes, those parties agree that to the extent a request for mutual assistance is made pursuant to this Agreement, those other mutual aid and assistance contracts are superseded by this Agreement.

SECTION XVII. EFFECTIVE DATE

This Agreement shall take effect upon its approval by the entity seeking to become a signatory to this Agreement and upon proper execution hereof.

IN WITNESS WHEREOF, each of the parties have caused this North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement to be duly executed in its name and behalf by its Chief Executive Officer, who has signed accordingly with seals affixed and attested with concurrence of a majority of its governing board, as of the date set forth in this Agreement.

DIVISION OF EMERGENCY MANAGEMENT
DEPARTMENT OF PUBLIC SAFETY

BY:

Erik A. Hooks, Secretary

Department of Public Safety

Date:

BY:

Michael A. Sprayberry, Director

Division of Emergency Management

Date:

BY: _____ WITNESS: _____

Chief Executive Officer/Local Government

Name:

Title:

Name of Unit:

Date:

APPROVED AS TO PROCEDURES:

BY:

Office of General Counsel

Department of Public Safety

Date:



List of Authorized Representatives to Contact for Emergency Assistance

For the Select JURISDICTION NAME

Mailing Address:

Date:

Primary Representative

Name:

Title:

Day Phone: Night Phone:

Cell Phone: Fax:

First Alternate Representative

Name:

Title:

Day Phone: Night Phone:

Cell Phone: Fax:

Second Alternate Representative

Name:

Title:

Day Phone: Night Phone:

Cell Phone: Fax:

UNIVERSITY OF NORTH CAROLINA STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT

THIS AGREEMENT IS ENTERED INTO BETWEEN THE UNIVERSITY OF NORTH CAROLINA, THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, AND THE NORTH CAROLINA DIVISION OF EMERGENCY MANAGEMENT, EACH ENTITY HAVING AGREED TO AND ADOPTED THE UNDERSTANDINGS, COMMITMENTS, TERMS, AND CONDITIONS CONTAINED HEREIN:

WHEREAS, the State of North Carolina is vulnerable to a variety of natural and man-made emergencies which can result in all levels of disasters; and

WHEREAS, Chapter 166A of the North Carolina General Statutes, entitled the North Carolina Emergency Management Act, recognizes this vulnerability and provides that its intended purposes are to:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;

(2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;

(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and

(4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery; and

WHEREAS, while the University of North Carolina is not an agency included within the definitions under Chapter 166A, the University is a state agency and, as such, is vested with the general authority to enter into contracts and other agreements; and

WHEREAS, pursuant to N.C.G.S. §116-11(13) and UNC Code Section 403, the University of North Carolina Board of Governors has delegated authority to the individual campus Board of Trustees and Chancellors to manage a wide array of campus functions deemed to be necessary or prudent to enable the institution to function in a proper and expeditious manner; and

WHEREAS, pursuant to N.C.G.S. § 116-212 and University of North Carolina Code Appendix 1, Section XV the President of the University of North Carolina has delegated authority for health and safety concerns, including the authority to enter into a mutual aid agreement, to the chancellors; and

WHEREAS, inherent in maintaining campus safety and security is ensuring proper emergency planning, mitigation, response and recovery capabilities, which is the essence of emergency management; and

WHEREAS, entities entering into emergency mutual aid and assistance agreements may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel and services.

THEREFORE, these entities agree and enter into this Agreement for reciprocal emergency management aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

SECTION I. DEFINITIONS

"Agreement" means this document, the University of North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement.

"Aid and assistance" includes personnel, equipment, facilities, services, supplies, and other resources.

"Authorized Representative" means a party's employee who has been authorized, in writing by that party, to request, offer, or otherwise provide assistance under the terms of this Agreement. The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified the presumption will be that the successor to that position will be the authorized representative.)

"Emergency" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property, resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause.

"Local Agency" means a county agency charged with coordination of all emergency management activities for its geographical limits pursuant to G.S. 166A-19.15.

"Party" means a governmental entity which has adopted and executed this Agreement.

"Provider" means the party that has received a request to furnish aid and assistance from another party in need ("Recipient" or "University Recipient"). For the University of North Carolina, "Provider" means the individual unit, constituent institution or affiliated entity of the University of North Carolina which has received a request to furnish aid and assistance from another party in need ("Recipient" or "University Recipient").

"Recipient" means the party in need setting forth a request for aid and assistance to another party ("Provider" or "University Provider"). For the University of North Carolina, "Recipient" means individual unit, constituent institution or affiliated entity of the University of North Carolina which has set forth a request for aid and assistance to another party ("Provider" or "University Provider").

"University of North Carolina" means the consolidated University of North Carolina, including constituent institutions and affiliated entities.

SECTION II. INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this is a reciprocal contract, it is recognized that any party to this Agreement may be requested by another party to be a Provider. It is mutually understood that each party's foremost responsibility is to its own community. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when aid and assistance have been requested, a party may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the party setting forth the request.

Given the finite resources of any jurisdiction or UNC entity, and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.

Pursuant to G.S. 166A-19.60 and as further described in Section X of this agreement all functions and activities performed under this Agreement are declared under state law to be governmental functions. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section X of this Agreement.

SECTION III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within the stricken area are deemed inadequate by Recipient. When Recipient becomes affected by an emergency and deems its resources inadequate, it may request mutual aid and assistance by communicating the request to Provider, indicating the request is made pursuant to this mutual aid agreement. All requests for mutual aid and assistance shall be transmitted by the party's *Authorized Representative* to the *Coordinator of the Local Agency* as set forth below.

A. METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE: Recipient shall set forth requests as follows:

(i) *Requests Routed Through the Recipient's Local Agency*: Recipient shall directly contact the Local Agency, in which case it shall provide the Local Agency with the information in paragraph B of this Section (Section III). The Local Agency shall then contact other parties on behalf of Recipient to coordinate the provision of mutual aid and assistance. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to Section VII of this Agreement.

In the event that the Local Agency is unable to provide assistance to or contact other parties on behalf of Recipient, Recipient may directly contact Provider's authorized representative, in coordination with the Local Agency, setting forth the information in paragraph B of this Section (Section III). All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VII of this Agreement. Provider and recipient shall be responsible for keeping Local Agencies advised of the status of response activities, in a timely manner.

(ii) *Record of Requests to be Provided:* A record of the request for assistance shall be provided by the Recipient to the Director of the Division of Emergency Management in the NC Department of Public Safety, in a timely manner.

B. REQUIRED INFORMATION: Each request for assistance shall be accompanied by the following information, in writing or by any other available means, to the extent known:

(i) *Stricken Area and Status:* A general description summarizing the condition of the community (i.e., whether the emergency is imminent, in progress, or has already occurred) and of the damage sustained to date;

(ii) *Services:* Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;

(iii) *Infrastructure Systems:* Identification of the type(s) of public infrastructure system for which assistance is needed (water and sewer, storm water systems, streets, etc.) and the type of work assistance needed;

(iv) *Aid and Assistance:* The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;

a) *Provider's Traveling Employee Needs*--Unless otherwise specified by Recipient, it is mutually understood that Recipient will provide for the basic needs of Provider's traveling employees. Recipient shall pay for all reasonable out-of-pocket costs and expenses of Provider's personnel, including, without limitation, transportation expenses for travel to and from the stricken area. Further, Recipient shall house and feed Provider's personnel at its (Recipient's) sole cost and expense. If Recipient cannot provide such food and/or housing at the emergency area, Recipient shall specify in its request for assistance that self-contained personnel are needed.

(v) *Facilities:* The need for sites, structures, or buildings outside Recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and

(vi) *Meeting Time and Place:* An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: Recipient shall be responsible for coordinating requests for state or federal assistance with its (Recipient's) Local Agency.

SECTION IV. PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by the Recipient/Local Agency, Provider's authorized representative shall assess Provider's own local situation in order to determine available personnel, equipment, and other resources. If Provider's authorized representative determines that Provider has available resources, Provider's authorized representative shall so notify the Recipient/Local Agency (whichever communicated the request). Provider shall complete a written acknowledgment, whether on the request form received from Recipient or on another form, regarding the assistance to be rendered (or a rejection of the request), and shall transmit it by the most efficient practical means to the recipient/Local Agency for a final response. Provider's acknowledgment shall contain the following information:

(i) In response to the items contained in the request, a description of the personnel, equipment, and other resources available;

(ii) The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in Section VI ("Length of Time for Aid and Assistance") of this Agreement.)

(iii) The estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Requesting Party; and

(iv) The name of the person(s) to be designated as Provider's supervisory personnel (pursuant to Section V ("Supervision and Control") of this Agreement.)

Where a request has been submitted to the Local Agency, the Local Agency shall notify Recipient's authorized representative and forward the information from Provider. The Recipient/Local Agency shall respond to Provider's written acknowledgment by executing and returning a copy of the form to Provider by the most efficient practical means, maintaining a copy for its file.

SECTION V. SUPERVISION AND CONTROL

Provider shall designate supervisory personnel amongst its employees sent to render aid and assistance to Recipient. As soon as practicable, Recipient shall assign work tasks to Provider's supervisory personnel, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's supervisory personnel and Recipient. Recipient shall provide necessary credentials to Provider's personnel authorizing them to operate on behalf of Recipient.

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

(i) Have the authority to assign work and establish work schedules for Provider's personnel. Further, direct supervision and control of Provider's personnel, equipment, and other resources shall remain with Provider's supervisory personnel. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;

(ii) Maintain daily personnel time records, material records, and a log of equipment hours;

(iii) Report work progress to Recipient at mutually agreed upon intervals.

SECTION VI. LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

Unless otherwise provided, the duration of Provider's assistance shall be for an initial period of up to seven (7) days, starting from the time of arrival. Thereafter, assistance may be extended in daily or weekly increments as the situation warrants, for a period agreed upon by the authorized representatives of Provider and Recipient.

Pursuant to Section II of this Agreement, Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own community if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of its (Provider's) intent to terminate mission, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

SECTION VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that Recipient shall pay to Provider all documented costs and expenses incurred by Provider as a result of extending aid and assistance to Recipient. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by Recipient and Provider. Recipient shall be ultimately responsible for reimbursement of all eligible expenses.

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

B. EQUIPMENT: Provider shall be reimbursed by Recipient for the use of its equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228. Provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition. At the request of Provider, fuels, miscellaneous supplies, and minor repairs may be provided by Recipient, if practical. The total equipment charges to Recipient shall be reduced by the total value of the fuels, supplies, and repairs furnished by Recipient and by the amount of any insurance proceeds received by Provider.

C. MATERIALS AND SUPPLIES: Provider shall be reimbursed for all materials and supplies furnished by it and used or damaged during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor, and supplies, which shall be included in the equipment rate established in subsection B of this section (Section VII), unless such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of Provider's personnel. Provider's personnel shall use reasonable care under the circumstances in the operation and control of all materials and supplies used by them during the period of assistance. The measure of reimbursement shall be determined in accordance with 44 C.F.R. 206.228. In the alternative, the parties may agree that Recipient will replace, with like kind and quality as determined by Provider, the materials and supplies used or damaged. If such an agreement is made, it shall be reduced to writing and transmitted to the North Carolina Division of Emergency Management.

D. RECORD KEEPING: Recipient and NC Division of Emergency Management personnel shall provide information, directions, and assistance for record keeping to Provider's personnel. Provider shall maintain records and submit invoices for reimbursement by Recipient or the NC Division of Emergency Management using the format used or required by FEMA publications, including 44 C.F.R. part 13 and applicable Office of Management and Budget (OMB) Circulars.

E. PAYMENT; OTHER MISCELLANEOUS MATTERS: The reimbursable costs and expenses with an itemized notice shall be forwarded as soon as practicable after the costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 C.F.R. part 206. Recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing by mutual agreement. This shall not preclude Provider or Recipient from assuming or donating, in whole or in part, the costs and expenses associated with any loss, damage, or use of personnel, equipment, and resources provided to Recipient.

SECTION VIII. RIGHTS AND PRIVILEGES OF PROVIDER'S EMPLOYEES

To the extent provided by G.S.166A-19.60 and this Agreement, whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily

possess if performing their duties within the geographical limits of Provider.

SECTION IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKERS' COMPENSATION POLICY

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

SECTION X. IMMUNITY

To the extent provided by G.S.166A-19.60 and all other applicable laws, all activities performed under this Agreement are considered to be governmental functions and the provisions of G.S. 166A-19.60 and all other applicable laws shall apply to actions taken pursuant to this Agreement.

SECTION XI. LIABILITY

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

B. UNC will be responsible for the conduct of its officers and employees arising out of the performance of this Agreement only to the extent permitted and limited by the laws of North Carolina, including the North Carolina Tort Claims Act, the Defense of State Employees Act, and the Excess Liability Policy administered through the North Carolina Department of Insurance, subject to the availability of appropriations and in proportion to and to the extent that such liability for damages is caused by or results from the acts of UNC, its officers, or employees.

SECTION XII. ROLE OF THE DIVISION OF EMERGENCY MANAGEMENT

Under this Agreement, the responsibilities of the NC Division of Emergency Management are: (1) to serve as the central depository for executed agreements, to maintain a current listing of entities with their authorized representatives and contact information, and to provide this listing to each of the entities on an annual basis; (2) to coordinate the provision of mutual aid and assistance to a requesting party, pursuant to the provisions of this Agreement; (3) to keep a record of all requests for assistance and acknowledgments; (4) to report on the status of ongoing emergency or disaster-related mutual aid and assistance as appropriate; and (5) if the parties so designate, to serve as the eligible entity for requesting reimbursement of eligible costs from FEMA and provide information, directions, and assistance for record keeping pursuant thereto.

SECTION XIII. AMENDMENTS

A. MANNER: This Agreement may be modified at any time upon the mutual written consent of the Recipient and Provider.

B. ADDITION OF OTHER ENTITIES: Additional entities may become parties to this Agreement upon: (1) acceptance and execution of this Agreement; and (2) sending said executed copy of the Agreement to the NC Division of Emergency Management.

SECTION XIV. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This Agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days advance written notice by a party as set forth below. Thereafter, this Agreement shall continue to be binding upon the parties in subsequent years, unless canceled by written notification served personally or by registered mail upon the Director of NC Division of Emergency Management who shall provide copies to all other parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been sent by the Director of the NC Division of Emergency Management to all other parties. A party's withdrawal from this Agreement shall not affect a party's reimbursement obligations or any other liability or obligation under the terms of this Agreement incurred hereunder. Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining parties.

SECTION XV. HEADINGS

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

SECTION XVI. SEVERABILITY; EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

In the event that parties to this Agreement have entered into other mutual aid and assistance contracts, for example pursuant to Chapter 160A of the North Carolina General Statutes, those parties agree that to the extent a request for mutual assistance is made pursuant to this agreement, those other mutual aid and assistance contracts are superseded by this Agreement.

SECTION XVII. EFFECTIVE DATE

This Agreement shall take effect upon its approval by the entity seeking to become a signatory to this Agreement and upon proper execution hereof.

IN WITNESS WHEREOF, each of the parties have caused this University of North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement to be duly executed in its name and behalf by its chief executive officer, as of the date set forth in this Agreement

THE UNIVERSITY OF NORTH CAROLINA

BY: _____

THOMAS ROSS, President
The University of North Carolina

Date: 1-7-2013

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF EMERGENCY MANAGEMENT

BY: _____

Kieran Shanahan, Secretary
Department of Public Safety

Date: 2/6/13

BY: _____

H. DOUGLAS HOELL, JR., Director
Emergency Management Division

Date: 1-21-13

BY: _____

~~CASANDRA WHITE~~ William A. Polk, Legal Counsel
Department of Public safety

Date: 1/17/2013

APPROVED AS TO PROCEDURE:

BY: _____

MARVIN L. MERVIN, Controller
Department of Public Safety

Date: 1/25/13