



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

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JOHN J. BARTHELMES
COMMISSIONER

April 18, 2018

The Honorable Neal M. Kurk, Chairman
Fiscal Committee of the General Court
State House
Concord, New Hampshire 03301

Approved by Fiscal Committee Date 5/18

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Requested Action

Pursuant to RSA 14:30-a, VI, the Department of Safety, Office of the Commissioner, requests authorization to accept and expend "FEMA Disaster Relief and Emergency Assistance" funds in the amount of \$247,156.00 from the Department of Homeland Security for deployment of staffing for disaster support services associated with Hurricane Harvey and Hurricane Irma. Effective upon Fiscal Committee and Governor and Council approvals through June 30, 2018. Funding source: 100% Federal Funds.

Funds will be budgeted in an account titled "Department of Safety Disasters" as follows:

02-23-23-231010-08430000 Dept. of Safety Office of the Commissioner Dept. of Safety Disasters
Revenue Source: 403098

<u>Class</u>	<u>Description</u>	<u>SFY 2018 Current Appropriation</u>	<u>Requested Action</u>	<u>Revised SFY 2018 Appropriation</u>
Income:				
000	Federal Funds	\$0.00	(\$247,156.00)	(\$247,156.00)
Expenditures:				
010-500100	Personal Service - Perm Class	0.00	25,000.00	25,000.00
018-500106	Overtime	0.00	40,000.00	40,000.00
060-500601	Benefits	0.00	12,870.00	12,870.00
072-500574	Grants - Federal	0.00	139,286.00	139,286.00
080-500710	Out of State Travel Reimb	0.00	30,000.00	30,000.00
Totals		\$0.00	\$247,156.00	\$247,156.00

Explanation

This request authorizes the Department of Safety to accept and expend FEMA's reimbursement to the State for the State's provision of emergency management and disaster response support services in accordance with the Intergovernmental Service Agreement of September 17, 2017. The United States incurred major damage from two hurricanes during the 2017 Hurricane season. Hurricane Harvey greatly affected Texas and Louisiana while Hurricane Irma devastated not only several states, but the United States territories of the Virgin Islands and Puerto Rico as a Category 5 Hurricane. Hurricane strength winds and enormous storm surges left states and territories with extensive damage to homes and infrastructures, record flooding and storm

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Page 2 of 2

surges, loss of power, loss of communications, loss of fuel, devastating impact to survivors and major cleanup efforts. Due to the magnitude of the impact of hurricanes, New Hampshire deployed staffing to provide emergency management and disaster response services. Personnel experienced in not only disaster response and management, but hurricane response in particular were needed. Five employees from the Department of Safety were deployed to areas in accordance with their expertise to assist with disaster response from September 30, 2017 through November 6, 2017. Additional staffing from municipalities and other State agencies were also deployed. Approval of this item will enable the Department of Safety to pass these reimbursements through to all participants.

Funds will be budgeted as follows:

- Class 010 These funds were used for labor costs incurred by deployed Department of Safety staffing.
- Class 018 These funds were used for labor costs incurred by deployed Department of Safety staffing.
- Class 060 These funds were used for the benefit costs associated with the above labor expenses.
- Class 072 These funds were used for municipal and other state agency staffing deployment costs.
- Class 080 These funds were used for out-of-state expenses associated with the Department of Safety staffing being deployed.

Highway Funds or General Funds will not be used should federal funds become unavailable.

Respectfully submitted,


John J. Barthelmes
Commissioner

**INTERGOVERNMENTAL SERVICE AGREEMENT
BETWEEN THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY**

AND

STATE OF NEW HAMPSHIRE

September 17, 2017

1. PARTIES.

The parties to this Intergovernmental Service Agreement (“Agreement”) are the Department of Homeland Security, Federal Emergency Management Agency (“FEMA”) and the New Hampshire Homeland Security and Emergency Management - NHHSEM (“Department”).

2. AUTHORITY. This Agreement is authorized by:

- a. Homeland Security Act of 2002, Pub. L. No. 107-296 (2002) (codified as amended at 6 U.S.C. § 101 et seq.)
- b. Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288 (1974) (codified as amended at 42 U.S.C. §§ 5121-5207) (“Stafford Act”)
- c. Department of Homeland Security Delegation of Authority No. 9001.1, Delegation to the Administrator of the Federal Emergency Management Agency (Dec. 10, 2010)
- d. New Hampshire RSA 21P:37

3. BACKGROUND

The United States incurred major damage from two hurricanes during the 2017 Hurricane season. Hurricane Harvey greatly affected Texas and Louisiana while Hurricane Irma devastated not only several states, but the United States territories of the

Virgin Islands and Puerto Rico as a Category 5 Hurricane. Hurricane strength winds and enormous storm surges left states and territories with extensive damage to homes and infrastructures, record flooding and storm surges, loss of power, loss of communications, loss of fuel, devastating impact to survivors and major cleanup efforts.

Due to the magnitude of the impact of hurricanes, FEMA requires the State to provide emergency management and disaster response services. Personnel experienced in not only disaster response and management, but hurricane response in particular are needed. The nuances of hurricane response involve the movement of resources where there is massive flooding, structural damage, and loss of fuel and power. FEMA needs these personnel to also be familiar the requirements of the federal government. A thorough knowledge of the Incident Command System and federally declared disaster experience is needed. It is highly recommended state personnel should be trained and/or qualified with the needed skill set to handle and work in such challenging and demanding situations.

4. PURPOSE

- a. The purpose of this agreement is to establish an agreement between FEMA and the Department for the provision of emergency management and disaster response support services.
- b. This Agreement sets forth the responsibilities of FEMA and the Department stating the services the Department shall perform satisfactorily in order to receive payment from FEMA.

5. SERVICES AND PERIOD OF PERFORMANCE

- a. Staffing the federal response in support of the states for the 2017 hurricane season to include Hurricanes Irma, Hurricane Harvey, and other potentially damaging hurricanes which creates unprecedented requirements for support services demonstrating a variety of capabilities.

- b. FEMA requires disaster support services fulfilling Incident Command System functions including, but not limited to:
 - i. State Incident Management Teams (IMT) that may be deployed to help establish division or branch structures within a Joint Field Office (JFO);
 - ii. Mass Care Specialists and Human Services Branch leadership to help facilitate community-specific housing solutions;
 - iii. Disaster Recovery Coordinators to help execute the Federal Disaster Recovery Coordinator position set forth under the National Disaster Recovery Framework;
 - iv. Logistics positions that may support staging, monitoring consumption rates, and controlling the movement of commodities and other resources;
 - v. Operations positions for the coordination of search and rescue and debris management operations;
 - vi. Public Assistance positions, including Engineers, which may support preliminary damage assessments;
 - vii. Generalist positions that may support Disaster Survivor Assistance Teams and Individual Assistance programs; and
 - viii. Incident support positions that may support the Regional Response Coordination Center.
- c. Coordinate recovery to affected areas to include public health services, debris removal (separation, reduction, disposal), and the Expedited Repair program, participation in the housing task force, and participation in the beach erosion task force.
- d. Provide input into the incident action plan, provide updates for the situation report, and reporting from the task forces.
- e. Location: To be determined depending on operational needs of FEMA and the affected states.

- f. Schedule: Work schedules will be a minimum of 8 hour days 5 days a week and are not to exceed 16 hours a day 7 days a week. Work schedules will be decided by field requirements.
- g. Period of Performance: Considered to be 30 days from the date of agreement, and may be extended in 30 day increments upon written agreement of the parties. The total period of performance, including all extensions, may not exceed 120 days.
- h. While Department personnel may perform as team leaders or directors for specific projects, he/she may not otherwise perform inherently federal governmental functions. Inherently governmental functions include activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States (e.g. determination of agency policy, determination of Federal program priorities for budget requests, selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment, etc.).

6. INVOICING AND PAYMENT

- a. The employee remains on the Department's payroll at their current rate of pay and benefits. FEMA will reimburse the Department for the salary (to include overtime) and benefits of each employee providing services to FEMA under this agreement. FEMA will also reimburse the travel expenses and per diem expenses of each employee providing services under this agreement in accordance with the Federal Travel Regulation and FEMA policy.
- b. The Department shall submit an original monthly itemized invoice for the previous calendar month. The Department is requested to submit invoices within the first ten (10) working days of the month. Invoices will be submitted via email to FEMA-

Disaster-Vendor-Payments@fema.dhs.gov and the assigned Contract Officer Representative (COR).

- c. Each invoice submitted will contain the following information:
 - i. The individual's name, date of service provided, hourly rate, and total hours provided per day;
 - ii. Invoice date and number;
 - iii. Agreement number;
 - iv. Name, title, and phone number of person to notify in event of defective invoice;
 - v. Taxpayer identification Number (TIN).
 - vi. Electronic funds transfer information
- d. OMB Circular A-87. The Department, by execution of this Agreement, certifies that the pricing established under this Agreement is in compliance with Office of Management and Budget (OMB) Circular A-87 and includes only allowable costs of performance under this Agreement.
- e. ~~Not to Exceed Total Cost:~~ The Department shall not exceed a total of \$247,156.50 without written modification by a FEMA Contracting Officer.
- f. FEMA shall review the invoice and make payment within 30 days of receipt. Payment will be made by electronic funds transfer.

7. LIABILITY PROVISIONS

The Department and the United States each agree to be responsible for the negligent or wrongful acts or omissions of their respective employees arising under this agreement. The parties agree -- subject to any limitations imposed by law, rule, or regulation -- to cooperate in good faith to resolve any claims promptly and, whenever appropriate, without litigation. For all claims or suits arising under this agreement, each party's

designated legal representatives will, within (7) calendar days of receipt, provide each other's designated legal representatives copies of any documents memorializing such claims. Nothing in this Agreement shall be construed as a waiver of any sovereign immunity of the United States. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b), 2671-2680 provides the exclusive monetary damages remedy for allegedly wrongful or negligent acts or omissions by federal employees within the scope of their employment.

The Parties agree that the Department, as well as any individual working for the Department, is a State employee and is not an employee of FEMA or the US Government for any purpose. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between FEMA and Department, or any individual working for the Department.

8. FINANCIAL RECORDS

- a. Retention of Records. All Agreement and financial records including, but not limited to, supporting documents, statistical records, and other records, pertinent contracts, or subordinate agreements under this Agreement shall be retained by the Department for three (3) years after the expiration of the Agreement for purposes of federal examinations and audit. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three (3) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later.
- b. Access to Records. FEMA and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers or other records of the Department or its sub-contractors, which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period, but shall last as long as the records are retained.

- c. Delinquent Debt Collection. FEMA will hold the Department accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the federal government. FEMA shall apply interest, penalties, and administrative costs to a delinquent debt owed to the federal government by the Department pursuant to the Debt Collection Improvement Act of 1982, as amended.

9. LABOR STANDARD AND WAGE DETERMINATION

- a. The Service Contract Act, 41 U.S.C. § 351 et seq., Title 29, Part 4 Labor Standards for Federal Service Contracts, is hereby incorporated into this Agreement as Attachment 1. These standards and provisions are included in every contract over \$2,500, or in an indefinite amount, that is entered into by the United States, the principal purpose of which is to furnish services through the use of service employees.

10. DISPUTES

- a. The FEMA Contracting Officer and the authorized signatory of the Department, subject will settle disputes, questions and concerns arising from this Agreement. Settlement of disputes shall be memorialized in a written modification between the FEMA Contracting Officer and authorized signatory of the Department. In the event a dispute is not able to be resolved between the Department and the Contracting Officer, the Contracting Officer will make a decision.
- b. If the Department does not agree with the Contracting Officer's decision, the matter may be appealed to the FEMA Head of the Contracting Activity (HCA) for resolution. The FEMA HCA may employ all methods available to resolve the dispute including alternative dispute resolution techniques.
- c. The Department shall proceed diligently with performance of this Agreement pending final resolution of any dispute.

11. SECURITY REQUIREMENTS

The Department shall submit to the FEMA Contracting Officer a roster of names of all employees who will be engaged in services set forth in paragraph 5. The roster shall contain the following information about each individual:

- a. Name (last, first, and middle initial), including aliases
- b. Status (type of employment)
- c. Home address
- d. Phone number
- e. Citizenship
- f. Email address

For Department personnel to access FEMA Information Technology Resources, temporary badging or access to Government facilities personnel will be required to complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer or designated COR.

The Contracting Officer may require the Department to prohibit individuals from working on this agreement if the government deems their participation is contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, security concerns, or unauthorized use of government property.

12. CONTRACTOR OFFICER'S REPRESENTATIVE

- a. The FEMA Contracting Officer may designate Government personnel to act as the Contracting Officer's Representative (COR) to perform functions under the Agreement such as review or inspection and acceptance of services. The Contracting Officer will provide a written notice of such designation to the Department.

- b. The FEMA Contracting Officer cannot authorize the COR or any other representative to sign documents, such as Agreement modifications, that require the signature of the FEMA Contracting Officer.

13. STOP WORK ORDER

- a. The FEMA Contracting Officer may, at any time, by written order to the Department, require the Department to stop all, or any part, of the work called for by this Agreement for a period of 90 days after the order is delivered to the Department, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued. Upon receipt of the order, the Department shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- b. Within a period of 90 days after a stop-work order is delivered to the Department, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—
 - i. Cancel the stop-work order; or
 - ii. Terminate the Agreement.

14. TERMINATION

- a. The terms of this Agreement, as modified with the mutual written consent of the parties, will remain in effect 30 days from date of agreement.
- b. The parties may extend this Agreement by mutual written agreement as defined in Section 5 c of this Agreement
- c. Any party, upon one -day written notice to the other party, may terminate this Agreement.

15. EFFECTIVE DATE.

This Agreement takes effect on the date when both parties have signed the Agreement.

16. MODIFICATION

- a. The FEMA Contracting Officer may at any time, by written order, and without notice to the Department, make changes within the general scope of this Agreement in any one or more of the following:
 - i. Reduction in the quantity of services to be provided; and
 - ii. Place of performance of the services.
- b. The parties may modify all other terms of this Agreement upon the mutual written consent of each party.

17. OTHER PROVISIONS

- a. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the federal government, FEMA, DHS, or State of New Hampshire. If a term of this Agreement is inconsistent with such authority, then that term shall be invalid but the remaining terms and conditions of this Agreement shall remain in full force and effect.
- b. Nothing in this Agreement is intended to create any right or benefit, substantive or procedural, enforceable by law or equity, by the parties or by persons who are not a party to this Agreement against the parties, their officers or employees, or any other person.

18. POINTS OF CONTACT

a. The FEMA points of contact for this Agreement are as follows:

FEMA Contracting Officer: Sam Ansani

Email: Sam.ansani@fema.dhs.gov

Phone: 202-646-3578

b. The Department point of contact for this Agreement is as follows:

Director of NH Homeland Security & Emergency Management – Perry E. Plummer

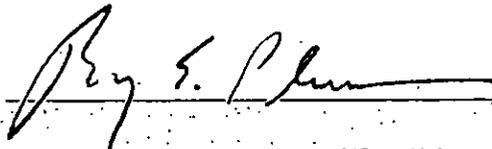
Email: perry.plummer@dos.nh.gov

Phone: 603-419-0255

SAM ANSANI

Digitally signed by SAM ANSANI
DN: c=US, o=U.S. Government, ou=Department of Homeland Security, ou=FEMA,
ou=People, cn=SAM ANSANI, 0.9.2342.19200300.100.1.1=0309138081.FEMA
Date: 2017.09.17 15:39:34 -05'00'

Sam Ansani, FEMA Contracting Officer



Perry E. Plummer, NHHSEM Director