

SETTLEMENT AGREEMENT

Parties

1. The parties to this Settlement Agreement are the City of Lake Worth Beach, Florida (the “City”) and the Federal Emergency Management Administration and its Administrator, in her official capacity (collectively, “FEMA”).

Background

2. Through this Settlement Agreement, the parties to *City of Lake Worth Beach, Florida v. FEMA*, No. 21-10755 (11th Cir.), agree to settle the matter in accordance with the terms and conditions set forth in this Settlement Agreement.

3. The City brought this case against FEMA in the Southern District of Florida (No. 9:19-cv-81140), challenging FEMA’s denial of the City’s administrative appeals of FEMA’s decisions to deobligate certain funds that the City had received through the FEMA Public Assistance program. The only administrative appeals relevant to the City’s claims in this litigation, and the only ones affected by this Settlement Agreement, are the appeals that the City submitted to the Florida Division of Emergency Management (“FDEM”) through letters dated February 7, 2012 and July 12, 2013.

4. On July 23, 2018, FEMA’s Regional Administrator for Region IV denied the City’s administrative appeals on timeliness grounds. The City appealed the Regional Administrator’s decision through the administrative appeal process, and on October 18, 2019, FEMA’s Acting Director for the Public Assistance Division issued a decision that (1) upheld the Regional Administrator’s timeliness-based denial; and (2) resolved the City’s request for reinstatement of a portion of the deobligated funds under section 705(a) of the Stafford Act, as amended by section 1216(c) of the Disaster Recovery Reform Act of 2018. As to the second issue, the Acting Director granted the City a portion of the relief it had requested.

5. On January 4, 2021, the district court granted FEMA’s motion to dismiss the City’s complaint. The district court also dismissed the claims of two other cities whose cases had been consolidated with the City’s. Those other cases were *City of Pembroke Pines, Florida* (No. 0:19-cv-62056) and *City of Deerfield Beach, Florida v. FEMA* (No. 0:19-cv-62032).

6. On March 4, 2021, the City filed a notice of appeal to the United States Court of Appeals for the Eleventh Circuit. The City of Pembroke Pines, Florida and the City of Deerfield Beach, Florida are not parties to the Eleventh Circuit appeal and are not parties to this Settlement Agreement.

Terms and Conditions

7. The City agrees that, within seven days after the effective date of this Settlement Agreement, the City will file a motion to dismiss its pending appeal, *City of Lake Worth Beach, Florida v. FEMA*, No. 21-10755 (11th Cir.). The City agrees to file the motion to dismiss that is attached to this Settlement Agreement as Exhibit A.

8. FEMA agrees that, after the Eleventh Circuit issues an order dismissing the appeal:

- a. FEMA's Regional Administrator for Region IV will consider the administrative appeals that the City initially submitted to FDEM through letters dated February 7, 2012 and July 12, 2013, including any subsequent submissions by the City made in response to Region IV's Requests for Information related to the merits of the administrative appeals.
- b. FEMA will address the substantive issues raised by these administrative appeals; FEMA will not, however, revisit the substantive issues already resolved in FEMA's October 18, 2019 second appeal decision regarding section 705(a) of the Stafford Act, as amended by section 1216(c) of the Disaster Recovery Reform Act of 2018. FEMA will not deny relief on the basis that the City's previously submitted first appeals were allegedly untimely due to late submission by either the City or FDEM.
- c. Within 90 days following the Eleventh Circuit's order dismissing the appeal, the Regional Administrator will notify FDEM and the City in writing of the disposition of the City's previously submitted first appeals or of the need for additional information. A request by the Regional Administrator for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator will notify FDEM and the City in writing of the disposition of the City's previously submitted first appeals.
- d. The Regional Administrator's decision will be appealable to FEMA's Assistant Administrator for the Recovery Directorate, pursuant to the procedures and timelines set forth in 44 C.F.R. § 206.206. References in 44 C.F.R. § 206.206 to the Assistant Administrator for the Disaster Assistance Directorate are understood to refer to the Assistant Administrator for the Recovery Directorate, the current title for the relevant position.

9. **Attorney's Fees and Costs.** Each party agrees to bear its own fees and costs for both the Eleventh Circuit appeal and the proceedings in the Southern District of Florida.

10. **No precedential effect.** The terms of this Settlement Agreement do not establish any precedent. The City understands and agrees that this Settlement Agreement shall not be used by it as a basis to seek or justify similar terms in any subsequent cases or administrative proceedings.

11. **No admissions.** This Settlement Agreement is not, and shall not be construed as, an admission of liability, fault, or wrongdoing by the United States, its agencies, components, agents, servants, or employees. This Settlement Agreement has been agreed to by the City and FEMA to compromise disputed claims and to avoid the delay, expense, and risk of

further litigation. Except in a proceeding alleging a breach of the terms of this Settlement Agreement, no warranty, representation, term, or provision of this Settlement Agreement may be offered or received into evidence or referred to or be the basis for any civil, criminal, or administrative action or proceeding against the United States or any of its agencies, components, agents, servants, or employees.

12. **Rule of construction.** This Settlement Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

13. **Statement of understanding.** The City and FEMA each acknowledge that they have read and fully understand all of the provisions contained in this Settlement Agreement. Both parties each further acknowledge and affirm that they are able to understand this Settlement Agreement in its entirety, and that the Settlement Agreement is executed by both of them hereto knowingly and voluntarily, of their own free act and deed. The City further acknowledges that it has discussed this Settlement Agreement with its counsel, who has explained the Settlement Agreement and the attached exhibits, and that the City understands all of the terms and conditions of this Settlement Agreement.

14. **Integration.** This Settlement Agreement constitutes the entire agreement and understanding between the parties. No statement, remark, agreement, or understanding, oral or written, which is not contained in this Settlement Agreement, shall be recognized or enforced. This Settlement Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the parties, nor shall any provision hereof be waived other than by a written waiver, signed by the parties.

15. **Severability.** The terms and provisions of this Settlement Agreement are fully severable. If any term or provision of this Settlement Agreement is determined by a court or administrative body to be unlawful, invalid, or otherwise unenforceable, this Settlement Agreement shall be construed as if the severed term or provision had never comprised part of this Settlement Agreement. The remaining terms and provisions of the Settlement Agreement shall remain in full force and effect and will not be affected by the severed term or provision or by its severance.

16. **Defense of the agreement.** The parties shall defend this Settlement Agreement and any of its exhibits against any challenges made to them in any proceeding.

17. **Full authority to sign.** Each person signing this Settlement Agreement represents and warrants that he or she has full authority to execute it on behalf of himself or herself, or on behalf of the party or entity on whose behalf he or she signs. The City represents and warrants that it is the sole and lawful owner of all rights, title and interests in and to every claim and other matter that it purports to release herein, and that it has not heretofore assigned or transferred, or purported or attempted to assign or transfer, to any person or entity any claims or other matters herein released. This Settlement Agreement shall be binding upon and inure to the benefit of the City, FEMA, and any of their respective heirs, successors, assigns, and personal representatives,

including any person, entity, department, or agency succeeding to the interests or obligations of any party hereto, or having an interest herein.

18. **Execution.** This Settlement Agreement, which may be signed in counterparts, takes effect on the latest date on which it is signed by any of the parties or their counsel. This Settlement Agreement may be executed by electronic signatures.

FOR THE CITY OF LAKE WORTH BEACH, FLORIDA

Mayor Betty Resch
City of Lake Worth Beach, Florida
7 North Dixie Highway
Lake Worth Beach, FL 33460

Date: _____

FOR THE FEDERAL EMERGENCY MANAGEMENT AGENCY

KEVIN SOTER Digitally signed by KEVIN SOTER
Date: 2021.08.16 09:00:13 -07'00'

Kevin B. Soter
Attorney, Appellate Staff
Civil Division, United States Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Date: 08/16/2021

MICHAEL K CAMERON Digitally signed by MICHAEL K CAMERON
Date: 2021.08.16 13:30:28 -04'00'

Michael Cameron
Principal Deputy Chief Counsel
Office of Chief Counsel
Federal Emergency Management Agency
500 C St., SW
Washington, DC 20472-2808

Date: 08/16/2021

Exhibit A

No. 21-10755

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CITY OF LAKE WORTH BEACH, FLORIDA,

Plaintiff-Appellant,

v.

FEDERAL EMERGENCY MANAGEMENT AGENCY and DEANNE
CRISWELL, in her official capacity,

Defendants-Appellees.¹

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 9:19-CV-81140-AHS

UNOPPOSED MOTION TO DISMISS APPEAL

Michelle F. Zaltsberg, Esq.
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Attorneys for Plaintiff-Appellant

¹ This caption reflects substitution of the FEMA Administrator pursuant to Fed. R. App. P. 43(c)(2).

**City of Lake Worth Beach v. Federal Emergency Management Agency, et al.
Case No. 21-10755**

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. 26.1 and 11th Circ. R. 26.1-1, Plaintiff-Appellant, the City of Lake Worth Beach, Florida submits the following list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the underlying case or appeal:

Abbott, Ernest B., counsel for Plaintiff-Appellant.

Altman, Roy K., United States District Judge, Southern District of Florida.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., counsel for Plaintiff-Appellant.

Bornstein, Mike, city-manager for Plaintiff-Appellant.

Boynton, Brian M., Acting Assistant Attorney General.

Cheek, Christopher E., counsel for Defendants-Appellees.

City of Lake Worth Beach, Florida, Plaintiff-Appellant.

Criswell, Deanne, Defendant-Appellee, in her official capacity as FEMA Administrator.

DeBorja, Ramoncito J., counsel for Defendants-Appellees.

Ellard, Wendy Huff, counsel for Plaintiff-Appellant.

Fajardo Orshan, Ariana, former United States Attorney, Southern District of Florida.

Federal Emergency Management Agency, Defendant-Appellee.

Fenton, Jr., Robert J., Senior Official Performing the Duties of FEMA Administrator.

Gaynor, Peter, former administrator of Defendant-Appellee.

Goddeau, Christy, L., counsel for Plaintiff-Appellant.

Gonzalez, Juan Antonio, Acting United States Attorney, Southern District of Florida.

Hunt, Patrick M., United States Magistrate Judge, Southern District of Florida.

Matthewman, William, United States Magistrate Judge, Southern District of Florida.

Pierson, Brock, counsel for Defendants-Appellees.

Reinhart, Bruce E., United States Magistrate Judge, Southern District of Florida.

Resch, Betty, Mayor of Plaintiff-Appellant.

Ruiz II, Rodolfo A., United States District Judge, Southern District of Florida.

Seltzer, Barry S., United States Magistrate Judge, Southern District of Florida.

Sevier, Adrian, counsel for Defendants-Appellees.

Singhal, Anuraag Hari, United States District Court Judge, Southern District of Florida.

Smachetti, Emily M., counsel for Defendants-Appellees.

Smith, Rodney, United States District Judge, Southern District of Florida.

Soter, Kevin B., appellate counsel for Defendants-Appellees.

Stern, Mark B., appellate counsel for Defendants-Appellees.

Torcivia, Donlon, Goddeau & Rubin, P.A., counsel for Plaintiff-Appellant.

Torcivia, Glen J., counsel for Plaintiff-Appellant.

Valle, Alicia O., United States Magistrate Judge, Southern District of Florida.

Zaltsberg, Michelle F., counsel for Plaintiff-Appellant.

CORPORATE DISCLOSURE STATEMENT

Not applicable.

UNOPPOSED MOTION TO DISMISS APPEAL

Plaintiff-Appellant, the City of Lake Worth Beach, Florida, by and through undersigned counsel and pursuant to Fed. R. App. P. 42(b), hereby moves to dismiss this appeal and all parties and claims therein, with each party bearing its own fees and costs. Counsel for the Defendants-Appellees has authorized us to state that they do not oppose this motion.

Respectfully submitted,

/s/ Michelle F. Zaltsberg _____

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*Special Counsel to City of Lake Worth
Beach, Florida*