



TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Cynthia A. Everett, City Attorney

DATE: October 7, 2014

TITLE: Resolution increasing amount of fees and costs authorized to be paid to
Special Counsel for FEMA Appeal

Recommendation

It is recommended that the City Commission adopt the attached resolution amending Resolution 14-23, to increase the total amount of fees and costs authorized to be paid to the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, as Special Counsel, for the purposes of representation in a matter relating to the de-obligation of funding by FEMA.

Background

The Federal Emergency Management Agency (FEMA) previously approved and then de-obligated funding for disaster debris removal activities for Hurricane Wilma. The eligible work that was subsequently de-obligated by FEMA had previously been reviewed, approved, and closed out by FEMA on two separate occasions. Following a Department of Homeland Security Office of Inspector General (OIG) audit in September 2010, FEMA reversed its decision and de-obligated funding for various reasons, including:

- The inclusion of costs associated with work outside the scope of work as initially prepared by the FEMA project specialist
- Lack of documentation available at the time of audit, and
- Cost reasonableness

The First Appeal was submitted in contest of FEMA's decision to de-obligate the funding associated with debris removal activities and Temporary Debris Reduction Site (TDRS) operations. Despite the fact that FEMA had previously obligated all project funding and performed close-outs of the project, these activities, which were monitored in accordance with FEMA 325 requirements for FEMA PA eligibility, were deemed ineligible by OIG due to the fact that they were not considered to be a part of the Project Worksheet's (PW) approved scope of work. These de-obligations stem directly from the

inadequate preparation of the original Project Worksheet by the FEMA Project Specialist in 2006, who failed to prepare an accurate narrative for the scope of work.

The City's First Appeal, which was submitted on July 5, 2012, outlined the following proposed solution:

The City requested that FEMA and the Florida Division of Emergency Management (FDEM) reconsider the de-obligation of funding and concur with previous determinations to accept eligible costs associated with TDRS operations in the amount of \$129,233 as well as eligible debris removal activities with a cost of \$8,693,270, representing a total increase of \$8,822,503 in funding for Project Worksheet # 2932. All required supporting documentation associated with the completed work in question was included with the First Appeal. Documentation included truck certifications, load tickets, monitoring logs, invoices, proofs of payment, debris summary reports by type of work performed, and other documentation available to sufficiently support the work performed. FDEM approved our appeal and supported our position in a letter dated September 6, 2012 to FEMA.

On January 21, 2014, we received the subsequent denial letter from FEMA, which provides the following reasons for denying the appeal:

- "The appeal item, as submitted, did not provide the level of information necessary to expand upon the PW scope issue and overturn FEMA's revised eligibility determination."
- FEMA maintains that the approach [to the time and material contract reimbursement] is reasonable.

Thereafter, a second appeal was timely filed within 60 days, and in accordance with the requirements set forth by FEMA, staff drafted the appeal to include:

- Documented justification supporting our position;
- The specific monetary figures in dispute; and
- Citations of the specific federal laws, regulations, and policies that demonstrate inconsistencies in FEMA's actions.

We are currently awaiting a decision from FEMA on the second appeal, and are also responding to its additional requests for documentation.

Resource Impact

<i>Funds available as of October 1, 2014</i>					
ACCOUNT NUMBER	INDEX NAME (Program)	OBJECT CODE/ SUB-OBJECT NAME	AMENDED BUDGET (Object Code)	AVAILABLE BALANCE (Object Code)	PURCHASE AMOUNT
001-GEN010101-3119	Other General Government- Social/Cultural	Services- Materials/Legal Services	\$1,073,800	\$1,073,800	\$25,000
PURCHASE TOTAL ►					\$25,000

Strategic Connections:

This item is a *Press Play Fort Lauderdale Strategic Plan 2018 Initiative*, included within the **Public Safety Cylinder of Excellence**, specifically advancing:

- **Goal 10:** Be a City well-prepared for and responsive to all hazards.
- **Objective 1:** Provide and effectively communicate comprehensive emergency management planning and disaster recovery

This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan: We Are Ready*.

Attachments: Exhibit 1: Resolution No. 14-23
 Exhibit 2: Notification Letter from Division of Emergency Management
 Exhibit 3: Denial Letter from FEMA
 Exhibit 4: Engagement Letter
 Exhibit 5: Resume of Ernest Abbot
 Exhibit 6: Resume of Wendy Ellard
 Exhibit 7: Proposed Resolution

Prepared by: Alain E. Boileau, Assistant City Attorney
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