

IN THE MATTER OF FERNANDINA BEACH, FLORIDA

DOCKET # CBCA-7167-FEMA

Arbitration Agreement

This agreement (hereinafter referred to as the "Arbitration Agreement"), is entered into on August 31, 2021, by and between the Federal Emergency Management Agency (hereinafter referred to as "FEMA" or the "Agency"), the Florida Division of Emergency Management (the "State"), and Fernandina Beach, Florida (the "City"), collectively the "Parties", as follows:

WITNESSETH that:

WHEREAS, the City sought arbitration before the Civilian Board of Contract Appeals ("CBCA") in the matter identified as CBCA-7167-FEMA, *In the Matter of Fernandina Beach, Florida* to resolve a dispute arising out of the City's request for a Public Assistance grant under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act"), 42 U.S.C. § 5172, for costs associated with damage to Dock 1 which consists of the the fuel dock building, fuel dock, north attenuator, and south attenuator (the "Facility") at the Fernandina Harbor Marina; and

WHEREAS, FEMA, the State, and the City have agreed to resolve this arbitration matter under the terms set forth in this Arbitration Agreement.

NOW THEREFORE, in consideration of the foregoing, FEMA, the State, and the City agree to resolve CBCA-7167-FEMA as follows:

1. The recitals above are ratified, confirmed, adopted, and incorporated as though specifically set forth below.
2. This Arbitration Agreement is not a deviation from FEMA practice and policies.
3. FEMA agrees the Facility at issue in this matter is eligible for replacement under FEMA's Public Assistance Program. As such, FEMA, the City, and the Florida Division of Emergency Management agree that:
 - a. Within 14 days of the date of this agreement, the City will submit to the Florida Division of Emergency Management, documentation of its actual costs incurred to replace the Facility, including management costs incurred.
 - b. The Florida Division of Emergency Management will transmit the documentation received from the City to FEMA within 5 business days of receipt.
 - c. Within 60 days of the date of transmission by the Florida Division of Emergency Management, FEMA will make a determination with respect to the reasonableness of costs incurred to replace the Facility and obligate funding for the actual, reasonable costs incurred to replace the Facility.
 - d. Within 14 days of the date of this agreement, the City will submit to FEMA, through the Florida Division of Emergency Management, procurement and cost documentation for the actual, reasonable financing costs incurred to replace the Facility.
 - e. Within 90 days of the date the documents in subparagraph 3(d) are transmitted to FEMA by the Florida Division of Emergency Management, FEMA will issue

a determination memo if applicable and/or obligate funding in the amount of financing costs incurred by the City that meet the requirements of 2 C.F.R. §200.449.

- f. If FEMA's review of financing costs is not complete by the time that FEMA is ready to obligate replacement costs, FEMA will proceed with obligating replacement costs and separately version the financing costs.

4. The statutes, rules, regulations, policies, and procedures that relate to and govern FEMA Public Assistance grants apply to the grants that are the subject of this Arbitration Agreement and this Arbitration Agreement does not negate or otherwise set aside any statute, regulation, policy, or procedure to which a Stafford Act grant is otherwise subject.

5. The Parties agree to each bear their own attorneys' fees, costs, and expenses related to the dispute and CBCA-7167-FEMA.


6. The terms of this Arbitration Agreement are in full and final resolution and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature against FEMA based on, arising from, and by reason of any and all known and unknown injuries, foreseen and unforeseen, that the City now has or hereafter may acquire against FEMA, its agents, servants, and employees, resulting, or to result, from FEMA action that is the subject of, or in any way related to the dispute in CBCA-7167-FEMA; and, the City forever waives all rights to bring any actions, claims, demands, and causes of action of whatsoever kind and nature against FEMA related to CBCA-7167-FEMA, unless FEMA fails to adhere to the commitments made within this Arbitration Agreement. This does not preclude the City from exercising any appeal rights it may have should FEMA find the costs claimed for replacement or financing costs to be ineligible.

7. The terms of the numbered paragraphs of this Arbitration Agreement constitute the entire Arbitration Agreement of the Parties, and no statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced.

8. In consideration of the terms set forth above, the parties agree that the arbitration before the CBCA is resolved and the City hereby agrees that within three days of the execution of this Arbitration Agreement, the City will file a request to the CBCA to dismiss CBCA-7167-FEMA without prejudice.

9. This Arbitration Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have executed this Arbitration Agreement as of the date indicated below:



Keith Turi
Federal Emergency Management Agency
Assistant Administrator - Recovery Directorate
Office of Response and Recovery

8/30/2021

Date

Melissa Shirah
Recovery Bureau Chief, Florida Division of Emergency Management
State of Florida Authorized Representative

Date

Erin Greten, Esq.
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
City of Fernandina Beach Authorized Representative

Date