

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Attorney’s Office for the Northern District of New York (“United States”) and the New York State Environmental Facilities Corporation (“EFC”), through their authorized representatives. Collectively, all of the above will be referred to as “the Parties.”

RECITALS

A. EFC is a public benefit corporation based in Albany, New York, that provides low-cost capital and grants, and technical assistance to municipalities, businesses, and State agencies for environmental and public health projects in New York State.

B. The Clean Water State Revolving Fund (“CWSRF”) program was established by Congress as a federal-state partnership to provide communities low-cost financing for a range of water quality infrastructure projects.

C. The New York State Department of Environmental Conservation (“DEC”) is responsible for carrying out environmental policy for the State of New York.

D. During fiscal years 2009 through 2019, which is the period covered by this Agreement (the “Relevant Period”), DEC submitted applications to the United States Environmental Protection Agency (“EPA”) for CWSRF grant funds. During each of those years, EPA awarded CWSRF grant funds to DEC.

E. EFC and DEC jointly administered New York’s CWSRF program.

F. Each grant application included a section entitled “Budget Categories” that detailed the basis for DEC’s funding request. That section included EFC’s

anticipated “indirect costs” of administering the CWSRF program during the proposed budget period.

G. Indirect costs were to include costs that shared a common objective and could not readily be identified with one project or activity. This includes some administrative expenses, including a portion of salaries and benefits incurred by EFC to compensate employees who held positions with “a beneficial or causal relationship” to the CWSRF program.

H. During the Relevant Period, (now-former) senior EFC officials caused DEC to include in its submissions to EPA requests for funding for indirect costs anticipated by EFC to pay salaries and benefits of its employees who would work in support of the CWSRF program in the proposed budget period.

I. The Executive Chamber is the Office of the Governor of the State of New York and includes immediate staff that assist the Governor in managing State government.

J. During the Relevant Period, senior Executive Chamber staff asked (now-former) senior EFC officials for EFC to pay the salaries and benefits of several individuals who the then-Governors hired to work in the Executive Chamber in positions unrelated to the CWSRF program (the “Subject Employees”). During the Relevant Period, more than one former senior EFC official agreed to this arrangement.

K. The individuals hired to work in the Executive Chamber pursuant to this arrangement were not hired specifically to work at EFC or to support the CWSRF program. For example, one individual whose salary and benefits EFC paid was hired by

the Executive Chamber to work on the former Governor's advance team while another was hired to help run the former Governor's Washington, D.C. office.

L. During the Relevant Period, prior to submitting CWSRF grant applications to EPA, EFC submitted an Indirect Cost Rate Proposal ("ICRP") to EPA. Each ICRP resulted in a Cognizant Agency Negotiation Agreement with EPA, which established the Indirect Cost Rate EFC applied to its actually incurred direct costs when requesting reimbursement of its costs for administering the CWSRF. The ICRP contains a Certificate of Indirect Costs.

M. On eight occasions during the Relevant Period, senior EFC officials signed and submitted to EPA Certificates of Indirect Costs with its ICRPs. Those Certificates of Indirect Costs represented that all indirect costs identified by EFC in the ICRP (which included the salaries and benefits of the Subject Employees) were allowable under the CWSRF grant and federal cost principles and bore a beneficial or causal relationship to the CWSRF grant.

N. While EFC identified each Subject Employee by name and title in the ICRP, it never informed EPA that those individuals worked for the Executive Chamber in positions unrelated to the CWSRF program.

O. As a result of EFC's inclusion of the Subject Employees' salaries and benefits in its ICRPs during the Relevant Period, EFC claimed \$281,227 more in indirect costs than it would have been permitted to claim had the Subject Employees' salaries and benefits not been included in the ICRPs.

P. The United States contends that it has certain civil claims against EFC under the False Claims Act, codified at 31 U.S.C. §§ 3729-3733, and the common law, as

specified below, for engaging in the conduct set forth in this Paragraph (the “Covered Conduct”):

During the Relevant Period, EFC caused DEC to submit false information to EPA in the State’s applications for CWSRF grant funding. EFC routinely provided EPA with lists of employees who it purportedly paid to work in support of the CWSRF grant, expressly certifying that there was a ‘beneficial or causal relationship’ between each salary paid and the work performed on the grant and impliedly representing that the employees actually worked at EFC. EPA relied on those employee lists and associated personnel costs in determining the rate for indirect costs that could appropriately be charged to the grants. EFC failed to disclose to EPA that the employee lists included the names of individuals who never worked at EFC – let alone on the grants – but instead served in the Executive Chamber, on the Governor’s immediate staff, in positions unrelated to improving water quality for New Yorkers.

In reliance on these false certifications that omitted material information, EPA authorized the State of New York to access \$281,227 in grant funds for ‘indirect costs’ that it would not have authorized for this purpose had EFC disclosed that the Subject Employees actually worked for the Executive Chamber and not in support of the CWSRF grants.

Q. EFC admits to the facts set forth above in Paragraphs A-O, and acknowledges that the Subject Employees who were included in certain Certificates of Indirect Costs submitted to EPA during the Relevant Period were working in positions that did not bear a beneficial or causal relationship to the CWSRF program.

R. This Agreement is neither an admission of liability by EFC nor a concession by the United States that its claims are not well founded.

S. EFC represents that, upon learning of the United States’ investigation and the general allegations set forth above, it promptly took steps to ensure that all individuals listed as EFC staff in CWSRF documentation submitted to EPA worked at

EFC in positions related to the CWSRF grants. EFC further represents that it has implemented safeguards in its internal controls to ensure the Covered Conduct will not recur in the future, and agrees to comply with all applicable federal laws, regulations and policies with respect to the matters covered by this Agreement.

T. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. EFC shall pay to the United States \$500,000, of which \$281,227 is restitution, by electronic funds transfer pursuant to written instructions to be provided no later than 10 days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases EFC from any civil or administrative monetary claims the United States has for the Covered Conduct.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals.

4. EFC waives and shall not assert any defenses EFC may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. EFC fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that EFC has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of EFC, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) EFC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment EFC makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by EFC, and EFC shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, EFC shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by EFC or any of its subsidiaries or affiliates from the United States. EFC agrees that the United States, at a minimum, shall be entitled to recoup from EFC any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The

United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine EFC's books and records and to disagree with any calculations submitted by EFC or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by EFC, or the effect of any such Unallowable Costs on the amount of such payments.

7. This Agreement is intended to be for the benefit of the Parties only.

8. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

10. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Northern District of New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

11. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

12. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

13. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

14. This Agreement is binding on EFC's successors, transferees, heirs, and assigns.

15. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

CARLA B. FREEDMAN
United States Attorney

August __, 2022

Adam J. Katz
Assistant United States Attorney

**THE NEW YORK STATE ENVIRONMENTAL
FACILITIES CORPORATION**

August 31, 2022



Christopher V. Fenlon
Hinckley, Allen & Snyder LLP

August __, 2022

Maureen A. Coleman
President and Chief Executive Officer, EFC

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CARLA B. FREEDMAN
United States Attorney

August __, 2022

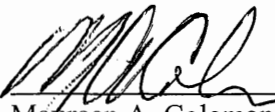
Adam J. Katz
Assistant United States Attorney

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THE UNITED STATES OF AMERICA

CARLA B. FREEDMAN
United States Attorney

September 1, 2022
~~August __, 2022~~



Adam J. Katz
Assistant United States Attorney

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August __, 2022

Christopher V. Fenlon
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Maureen A. Coleman
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