



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



February 10, 2016

Ms. Gracia Szczech, Regional Administrator
Federal Emergency Management Agency
U.S. Department of Homeland Security
Region IV
3003 Chamblee-Tucker Road
Atlanta, Georgia, 30341-4112

Through: Mr. Bryan W. Koon, Director
Mr. David Pius, Appeals Officer
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Re: FEMA-1609-DR-FL - City of Pompano Beach, Florida - FIPS # 011-58050-00
First Appeal of FEMA Deobligations
Project Worksheet #1893 in the amount of \$111,082.59

Dear Ms. Szczech:

In accordance with Title 44 Code of Federal Regulations (CFR) §206.206, the City of Pompano Beach, Florida (the City) hereby submits its First Appeal of Project Worksheet (PW) 1893 from Hurricane Wilma (1609-DR-FL) for an amount totaling \$111,082.59.

This First Appeal arises from the FEMA final inspection and closeout retroactive de-obligations and disallowances for:

1. Anticipated insurance proceeds for costs that had been previously approved and confirmed as eligible, deobligation in the amount of \$66,220.42.
2. A determination that the City did not obtain and maintain accurate levels of insurance, deobligation in the amount of \$28,740.00.
3. Items determined to be ineligible per the original scope of work, disallowance in the amount of \$16,122.17.

As discussed below, the City respectfully disagrees with FEMA's decision to deobligate these eligible costs due to a combination of §705(c) of the Stafford Act, FEMA's failure to correctly apply the City's insurance policy and FEMA's oversight of several items in the originally formulated scope of work.

Background



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



Hurricane Wilma, which occurred in October 2005, caused a significant amount of windstorm damage throughout the City. The City had a responsibility to restore its facilities that were damaged, as a direct result of the storm, to pre-disaster conditions. The facility damages and repairs detailed on this PW were originally formulated, submitted and approved for reimbursement of expenditures incurred for permanent repairs to the Municipal Golf Course facility owned and operated by the City.

PW 1893 – Version 0 – April 7, 2006

The original project scope and costs were approved as eligible and obligated by FEMA on April 7, 2006. (See **Attachment #1**) This Version obligated estimated costs totaling \$193,562.73 for repairs to various buildings and ancillary items around the Municipal Golf Course property. The scope of this project included repairs to damaged elements including roofing, flashing, gutters, fencing, electrical, benches, an awning, a portable office trailer, a metal door, hurricane shutters and pavilions. The City completed and paid for the physical work and through a reimbursement request in the amount of \$193,060.00, the State of Florida Division of Emergency Management (FDEM) made payment to the City for the full amount of the reimbursement request plus additional FEMA Administrative fees in the amount of \$965.30 on April 14, 2008.

PW 1893 – Versions 1, 2 and 3 – January through June 2007

All three versions of PW 1893 were prepared to increase the Federal funding share. Version 1 increased the share from 75% to 90% on January 18, 2007. Version 2 obligated the cost share at 0% in error on June 17, 2007. Version 3 correctly increased the share from 90% to 100% on June 19, 2007. No revisions, additions or deletions to the eligible scope nor original actual and estimated costs were made.

PW 1893 – Version 4 – October 30, 2014

PW 1893 Version 4 was written for the purposes of final inspection and closeout following the completion of the work by the City. (See **Attachment #2**) The final inspection process for this project started in early 2012. Total costs for facility restoration were presented by the City during closeout for an amount totaling \$392,281.77. After the application and reduction of actual insurance proceeds in the amount of \$122,871.68, the final submitted project amount totaled to \$269,410.09, representing a total project over-run of \$75,847.36. The over-run was due in part to an increased roofing scope on the Golf Course Restaurant, increased fencing replacement around the perimeter of the property and the necessity to replace electrical work at the Golf Cart Building. The FEMA Region IV review process was indicated to have started on May 14, 2013 based on the General Comments contained in Version 4. During the review process, and almost seven months later, the FEMA insurance reviewer made the following comments on December 5, 2013:

12/05/2013 - INSURANCE CONSIDERATIONS: PRIOR REVIEW OF DAMAGES FINDS NO PREVIOUS FEMA FUNDING AT THIS LOCATION. THE APPLICANT HAS INSURANCE ON THE DAMAGED FACILITIES ("ALL REAL AND PERSONAL PROPERTY" AS STATED IN THEIR INSURANCE POLICY) - INQUIRY WAS MADE AS TO THE STATUS OF THE INSURANCE CLAIM AND THE BROKER'S REPLY STATED THAT, ALTHOUGH "ALL LOCATIONS WERE COVERED" AND THE DEDUCTIBLE ASSESSED AGAINST ALL DAMAGES PAID



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



WAS \$100,000, COVERAGE WAS NOT AFFORDED TO ANY OF THE DAMAGES IN THIS PROJECT WORKSHEET. REVIEW OF THE APPLICANT'S INSURANCE COVERAGE REVEALS THAT COVERAGE NOT INCLUDED IN COSTS ABOVE THE \$100,000 DEDUCTIBLE MIGHT HAVE BEEN AFFORDED UNDER THE APPLICANT'S MISCELLANEOUS COVERAGE OF \$1,000,000. AS OF THIS DATE, THE FILE CONTAINS NO CORRESPONDENCE FROM THE APPLICANT'S INSURANCE CARRIER (NOT THEIR BROKER OR AGENT) PROVIDING A) A LETTER OF DENIAL OF COVERAGE TO ANY SPECIFIC ITEM(S) IN THE PW; OR B) A REASON WHY THE SPECIFIC ITEM(S) ARE NOT COVERED WITH CITATION TO THE APPROPRIATE VERBIAGE FROM THE POLICY INCLUDED. AS SUCH, THE DEDUCTIBLE OF \$100,000 WAS FUNDED ON PWS 1571 AND 6886, THE FOLLOWING INSURANCE REDUCTIONS APPLY: AN ANTICIPATED INSURANCE PROCEED REDUCTION IN THE AMOUNT OF \$146,538.41 AND AN ACTUAL INSURANCE REDUCTION OF \$122,871.68. AS PER 44 CFR 206.253, SINCE DAMAGES EXCEED \$5,000.00, THE APPLICANT IS REQUIRED TO MAINTAIN INSURANCE ON THE FACILITIES AS NOTED IN THE INSURANCE INFORMATION SECTION. G. WILSON, INSURANCE REVIEWER.

Additionally, as part of this project version review process and cost over-run eligibility determination, FEMA asked for several pieces of information related to the Golf Course Restaurant roof replacement due to codes and standards, questions regarding the roof sizes and build dates for the buildings on the property. Per the reviewer comments, a request was sent to FDEM during the review process, but the request was not ever relayed to the City to provide a response. The roofing scope increase was the only additional cost presented to FEMA at the time of closeout that was questioned per the original eligible scope of work in the project.

PW 1893 Version 4 was not obligated until October 30, 2014, over 10 months after these comments were entered into the system. On December 19, 2014, the City was informed of the final project obligation, rendering a FEMA determination to deobligate the entire amount of eligible damage costs citing that the City should have received insurance proceeds from its carrier totaling \$269,410.09, over six and a half years after payment to the City for eligible work was requested and received.

The City immediately approached FEMA Region IV with a request to once again provide additional insurance information to refute the deobligations and to provide the clarification information on the restaurant roof as requested by a FEMA reviewer. The City and FEMA engaged in back and forth correspondence through FDEM between January 2015 and October 2015 resulting in a final written determination from FEMA Region IV on October 19, 2015 that it would not accommodate any changes to the project deobligations. (See **Attachment #3**)

PW 1893 – Version 5 – August 14, 2015

PW 1893 Version 5 was written by FEMA in order to re-evaluate their Version 4 insurance findings and take into consideration a memo containing additional information that was provided by the City to FEMA dated February 24, 2015. (See **Attachment #4** NEMIS Version 5 and **Attachment #5** City correspondence to FEMA's Version 4 determinations)

One important item of note is that the City was not officially notified of PW 1893 Version 5 by FDEM until December 15, 2015, which began the 60-day window for the City's current appeal.

In Version 5, FEMA reinstated all of the costs that they had deobligated in Version 4 in order to start with a clean slate and with the amount presented by the City for the closeout totaling \$392,281.77. FEMA proceeded to deduct all but \$10,860.00 of the project for the following reasons:



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



1. Disallowed Contract Costs	\$163,590.17
2. Actual Insurance Proceeds	\$122,871.68
3. Insurance Proceeds (Deductible has been met)	\$ 66,220.42
4. Non-Insurance Compliance	\$ 28,740.00

The City disagrees with \$16,122.17 of the \$163,590.17 deobligation amount listed in Item No. 1 above. FEMA disallowed contract costs related to the scope of work for which the City will present a case for eligibility.

The City agrees with the application of the actual insurance proceeds in the amount of \$122,871.68 listed in Item No. 2 above.

The City disagrees with the deobligation amounts listed in Item Nos. 3 and 4 above which total to \$94,960.42. FEMA has repeatedly concluded that there should have been additional proceeds due to the City as afforded by provisions of the insurance policy and coverages that do not apply and were interpreted by the FEMA Region IV Insurance Specialist inaccurately. FEMA has also disregarded the current insurance agreement between the City and its carrier and has no established expertise in the area of property appraisals and related insurance requirements for a governmental entity. Additionally, pertaining to Item Nos. 3 and 4, the City contends that these deobligations are unjustified as the City is protected from deobligations such as these under the provisions of §705(c) of the Stafford Act. The City is therefore seeking reimbursement the unwarranted insurance deductions taken on this project.

For the above reasons, the City believes FEMA has incorrectly reduced eligible grant assistance in the amount of \$111,082.59.

ISSUE #1 – Appeal Amount = \$94,960.42

Insurance Deobligations for Anticipated Proceeds and Non-Compliance

The Stafford Act Prohibits FEMA from Seeking Reimbursement of

Approved and Properly Expended Grants

§705(c) of the Stafford Act prohibits FEMA from deobligating any of the funds at issue.

§705(c) states:

"(c) Binding Nature of Grant Requirements- A State or local government shall not be liable for reimbursement or any other penalty of any payment made under this Act if-



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



- (1) the payment was authorized by an approved agreement specifying the costs;
- (2) the costs were reasonable; and
- (3) the purpose of the grant was accomplished."

This is precisely the case at hand. Specifically, the City is a local government entity. The PW at issue was formulated, reviewed and obligated over 10 years ago and the scope of the project was completed. The PW at issue was reviewed by multiple personnel, including FEMA insurance specialists. Thus, the PW was reviewed and approved by FEMA, which establishes that FEMA approved and determined the costs at issue to be reasonable. Finally, the purpose of the grant was accomplished by completion of the scope of work identified in the PW.

Succinctly, FEMA is now statutorily prohibited from seeking reimbursement through deobligation of funding in and project versions subsequent to accomplishment of the purpose of the grant. As FEMA is aware, the U.S. District Court for the Southern District of Florida recently determined that §705(c) of the Stafford Act " ... prohibits FEMA from deobligating funds issued by FEMA in certain instances ... even if FEMA's initial decision did not comply with FEMA policy." (*South Florida Water Management District v. FEMA*, Case No. 13-80533- CIV)

Additionally, the issue at hand does not constitute a duplication of benefits since there were no additional second or third party funds received or any reasonable anticipation of funds that could have been received that would have been applicable to the facility for the disaster at issue. The City's Risk Manager, insurance broker and insurance carrier prepared and provided multiple correspondence documents pertaining to this matter that were repeatedly disregarded by the FEMA Region IV insurance specialist.

§705(c) was clearly created with the intent to insulate state and local governments from distractions to their business of governing after FEMA had unmistakably reviewed and approved reasonable cost grant assistance and the purpose of the grant assistance was accomplished.

Thus, it is distressing to the City that many years after the purpose of the grant was accomplished and funds paid, the City is forced to engage in lengthy discussions with FEMA and engage in the appeals process over a matter which FEMA was statutorily required to raise before funds were paid and the purpose of the grant accomplished. Effectively, FEMA's current refusal to acknowledge its statutory obligation under §705(c) is now causing the City to divert substantial time and expense to a matter which the statute was specifically intended to circumvent. More importantly, it is a violation of Federal law.

Accordingly, FEMA's deobligation of the funds in the case at hand must be reversed to comply with the clear statutory requirements of the Stafford Act.



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



FEMA Should Reinstate Erroneously Applied Insurance Deductions

Regardless of the prohibitions of §705(c) of the Stafford Act, the facts of the case do not warrant the deobligations taken by FEMA subsequent to the final inspection and closeout version of this project. The FEMA insurance reviewer made the following determinations in PW 1893 Version 5 (See **Attachment #4**):

05/15/15 - APPLICANT REQUESTED RECONSIDERATION OF RIV INSURANCE REVIEWER'S INTERPRETATION AND APPLICATION OF THE CITY'S INSURANCE POLICY PROVISIONS UTILIZED IN THE CLOSING OUT OF PW1893 IN VERSION 4. THEREFORE, V5 WAS CREATED TO ADDRESS THE REQUEST FOR RECONSIDERATION. DUPLICATE INSURANCE ENTRIES, AS NOTED BY THE APPLICANT IN ITS LETTER TO THE GRANTEE, APPLIED IN V4 HAVE BEEN CORRECTED; ALL INSURANCE REDUCTIONS WERE REVERSED IN ORDER FOR SUBMITTED COSTS TO BE REVIEWED. RECONCILIATION OF APPLICANT'S PROJECTS INDICATES THAT THE 3% PER LOCATION DEDUCTIBLE HAS BEEN MET FOR INSURED COSTS AT SEVERAL SITES (PW 1571 INCLUDED A MINIMUM OF \$86,821.00 IN INSURED DAMAGES WHICH WAS FULLY FUNDED, SITE 033-01; PW 6886 WAS WRITTEN IN ITS ENTIRETY FOR SITE 011-02 AND \$87,286.43 WAS INSURED DAMAGES AS WELL AS FULLY FUNDED). ABSENCE OF COST BREAKDOWNS FOR OTHER LOCATIONS LISTED IN ADDITIONAL APPLICANT PWS HAS PROHIBITED FEMA'S ABILITY TO CALCULATE A DEDUCTIBLE OVER AND ABOVE THE \$100,000 MINIMUM; HOWEVER THE APPLICANT'S PROJECT FUNDING TO DATE FOR INSURED COSTS EXCEEDS THIS AMOUNT BY OVER \$47,000. APPLICANT ENTERED INTO A SETTLEMENT WITH THEIR CARRIER FOR DAMAGES AT THE LOCATION IN THIS PW AND AT THE WATER DISTRICT ADMIN OFFICE. DAMAGES FOR THE WATER DISTRICT ADMIN OFFICE WERE CAPTURED UNDER PW 6279. REVIEW OF ELIGIBLE COSTS SUBMITTED FOR THIS PW TOTAL \$189,092.10 FOR BUILDING DAMAGES AND \$39,600 FOR FENCING REPAIR/REPLACEMENT, TOTALING \$228,692.10 AT THIS SITE. AS INSURED COSTS TO DATE FAR EXCEED THE \$100,000 MINIMUM DEDUCTIBLE ASSESSED AND THE INSURANCE CARRIER HAS ADMITTED LIABILITY FOR DAMAGES AT THE GOLF COURSE, A REDUCTION IN THE AMOUNT OF \$189,092.10 IS BEING APPLIED FOR ROOFING DAMAGES AT THIS LOCATION. APPLICANT'S CURRENT SOV INDICATES THAT PERIMETER FENCING HAS BEEN ADDED TO THE SOV. WHILE THERE ARE \$39,600.00 IN FENCING COSTS ATTRIBUTED TO THIS PW, THE INSURED VALUES FROM 2005 WERE \$408,900 FOR BUILDING DAMAGES AND HAVE ONLY INCREASED TO \$419,760 (THE SOV READS THAT PERIMETER FENCING IS INCLUDED) AND IT IS UNCLEAR AS TO WHETHER OR NOT THIS COST IS AN INCREASE DUE TO FENCING OR AN INFLATION GUARD INCREASE. AS SUCH, A REDUCTION IN THE AMOUNT OF \$28,740.00 IS BEING APPLIED TO THIS PW FOR FAILURE TO OBTAIN AND MAINTAIN INSURANCE AS REQUIRED BY 44 CFR 206.253. INSURANCE REQUIREMENTS HAVE BEEN UPDATED ON THE INSURANCE TAB BASED ON THE COST OF ELIGIBLE DAMAGES. G. WILSON, INSURANCE REVIEWER

The City adamantly disagrees with these determinations and the resulting deobligations. This disagreement is based upon the City's viewpoint that these funds should be reinstated due to: 1) some items not being afforded coverage and/or not qualifying for reimbursement from the City's insurance carrier per the correct application of policy and deductibles; and 2) the current insurance coverages clearly meet the insurance obtain and maintain requirements of 44 CFR 206.253.

Further, the City, the broker and the insurer were in agreement, relative to their respective contractual intents, as to the existing coverages and the amounts paid. Accordingly, it is not up to FEMA, a non-party to the insurance contract, to second-guess the intent of parties to the contract at issue. Additionally, it should be pointed out that if FEMA had serious concerns about the Wilma claim or the extent of coverage, such should have been raised before obligation of the original PW, rather than waiting until after expiration of the statute of limitations for bringing such claims under the contract. Specifically, the statute of limitations expired in October 2010, five (5) years after the disaster, making it impossible to pursue any claim against the carrier and making it difficult to obtain further explanation from the carrier. Of note, even though the statute of limitations had expired, the carrier graciously agreed to evaluate the City's claim AGAIN, resulting in the same determination for the THIRD time. Specifically, that the items questioned by FEMA were NOT afforded coverage under the City's policy in place at the time. (See **Attachment #6**)



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



Discussion of FEMA Comments

The following sections provide evidence supporting the City's position relative to its disagreement with the FEMA determinations at issue. Additionally, these sections will illustrate the correct application of the City's insurance policy to both the PW at issue as well as other projects FEMA has brought to bear upon the determinations at issue.

The City's insurance broker and claims consultant, Arthur J. Gallagher (AJG), has explained the provisions of the City's insurance policy in written responses to FEMA, through the City, on multiple occasions. In response to FEMA Region IV's October 19, 2015 response to the City effectively closing the project, AJG provided a detailed breakdown and response. (See **Attachment #7**)

AJG confirmed the fact that the City has met its requirements to complete its insurance damage claim and submit continuous policy updates to FEMA throughout the project completion process. The City submitted an insurance claim to its carriers for citywide damages as a result of Hurricane Wilma and received proceeds for two of the damaged buildings at the Municipal Golf Course facility, included in the scope of this project, and the Water District Admin Building, the subject of a separate FEMA project worksheet, PW 6279.

Based upon a combination of detailed claim documents, evaluations and correspondence from the City, AJG, and the City's insurance carrier, the following are the City's responses to each issue brought forth by FEMA in Version 5 of this project.

Item No. 1 – FEMA Statement:

RECONCILIATION OF APPLICANT'S PROJECTS INDICATES THAT THE 3% PER LOCATION DEDUCTIBLE HAS BEEN MET FOR INSURED COSTS AT SEVERAL SITES (PW 1571 INCLUDED A MINIMUM OF \$86,821.00 IN INSURED DAMAGES WHICH WAS FULLY FUNDED, SITE 033-01; PW 6886 WAS WRITTEN IN ITS ENTIRETY FOR SITE 011-02 AND \$87,286.43 WAS INSURED DAMAGES AS WELL AS FULLY FUNDED).

Item No. 1 – City Response:

This statement is wholly inaccurate. The 3% deductible was only met at two individual sites which were the subject of the insurance loss payment from Wilma discussed above and not by any other individual site owned or insured by the City. FEMA has repeatedly failed to understand and take into consideration the fact that there were multiple damaged items at several locations, typically ancillary property items around the site (not buildings), that were excluded from coverage under the City's policy in place at the time of the occurrence of Hurricane Wilma.

AJG addressed the purported coverage of some items under the schedule of values or under various miscellaneous policy provisions that FEMA quoted in both Version 4 and re-iterated through the final comments in Version 5. AJG quotes policy provisions in the Manuscript All Risk Form, Item 7 which concludes "If the property is not scheduled it is not covered", period. The City's 2005-2006 insurance policy in place at the time of the occurrence of Hurricane Wilma contained windstorm coverage that was based on:



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



Schedule of Deductibles:

3% of total insured values per building at locations involved in a loss; or
\$100,000 **minimum** per occurrence, whichever is greater

Therefore, to be afforded coverage under any of the various contract provisions upon which FEMA has commented, and to be considered an "insured building, contents or personal property", the element has to have been listed on the Schedule of Values (SOV) in place at the time which was dated October 1, 2005. (See **Attachment #8** for a copy of the 2005 insurance SOV in place at the time of Wilma.)

FEMA states that PW 1571 contained Site No. 033-01 from the City's insurance schedule of values and included a minimum of \$86,821 in insured damages which was fully funded by FEMA. Contrary to FEMA's assertion, PW 1571 is for the Sand and Spurs Equestrian Park which is Site No. 028-01 for the Restroom/Office and 028-02 for the Stable. The total eligible value of this project obligated at closeout was \$113,918.67. The figure of \$86,821 was the replacement cost submitted at closeout for the metal portable covered stage. As this stage was mobile, it was not covered under Site No. 028 nor any other property Site listed on the schedule of values. According to AJG, in 2005 at the time of the event, the stage only had liability coverage under the City's insurance policy and was not covered under any policy for property damage due to any perils. Therefore, this stage is NOT considered insured damage. The City now has property coverage on the new stage.

The balance of PW 1571 obligated costs totaling \$27,097.67 (\$113,918.67 minus \$86,821.00), did not include damages to the two named insured buildings listed at the Site but was for various items around the property not afforded insurance coverage including fencing (majority of cost), electrical box (not on a building), irrigation controls, underground water lines, picnic tables and benches. The total of insurable damages did not pierce the 3% total Site No. 028 deductible of \$1,686.00.

The 3% deductible for Site No. 028 is calculated as follows:

028-01 – Insured Property/Contents = \$30,200 x 0.03 =	\$ 906
028-02 – Insured Property/Contents = \$26,000 x 0.03 =	\$ 780
Total Site Deductible =	\$1,686

FEMA further incorrectly states that PW 6886 contained Site No. 011-02 from the City's insurance schedule of values and included \$87,286.42 in insured damages that were fully funded by FEMA. Site No. 011-02 is a part of the Civic Center / Amphitheater facility. The canopy over the amphitheater was the damaged element captured on this project worksheet. The total costs to repair the canopy and two associated light fixtures amounted to \$87,286.43 which is the value stated by FEMA. Although this canopy was afforded coverage under the City's policy at the time in Site No. 011-03 (not 011-02), there were no proceeds to be paid to the City as the total of insurable damages did not pierce the 3% total Site No. 011 deductible of \$172,401.



CITY OF POMPANO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



The 3% deductible for Site No. 011 is calculated as follows:

011-01 – Insured Property/Contents = \$2,645,600 x 0.03 =	\$ 79,620
011-02 – Insured Property/Contents = \$604,500 x 0.03 =	\$ 18,135
011-03 – Insured Property/Contents = \$1,361,800 x 0.03 =	\$ 40,854
011-04 – Insured Property/Contents = \$8,200 x 0.03 =	\$ 246
011-05 – Insured Property/Contents = \$242,800 x 0.03 =	\$ 7,284
011-06 – Insured Property/Contents = \$37,200 x 0.03 =	\$ 1,116
011-07 – Insured Property/Contents = \$311,200 x 0.03 =	\$ 9,336
011-08 – Insured Property/Contents = \$222,700 x 0.03 =	\$ 6,681
011-09 – Insured Property/Contents = \$6,000 x 0.03 =	\$ 180
011-10 – Insured Property/Contents = \$128,300 x 0.03 =	\$ 3,849
011-11 – Insured Property/Contents = \$90,000 x 0.03 =	\$ 2,700
011-12 – Insured Property/Contents = \$50,000 x 0.03 =	\$ 1,500
011-13 – Insured Property/Contents = \$30,000 x 0.03 =	\$ 900
Total Site Deductible =	\$172,401

Therefore, the complete, eligible scopes of work obligated by FEMA on Wilma PWs 1571 and 6886 were not due any insurance proceeds, either actual or anticipated, from the carrier as demonstrated above and FEMA cannot apply the funds received from these two projects against any deductible paid by or proceeds processed to the City. These projects were appropriately funded by FEMA and the funds have no bearing on the City's insurance claim nor can they be used as a basis to deny funding on the project at issue.

Item No. 2 – FEMA Statement:

ABSENCE OF COST BREAKDOWNS FOR OTHER LOCATIONS LISTED IN ADDITIONAL APPLICANT PWS HAS PROHIBITED FEMA'S ABILITY TO CALCULATE A DEDUCTIBLE OVER AND ABOVE THE \$100,000 MINIMUM; HOWEVER THE APPLICANT'S PROJECT FUNDING TO DATE FOR INSURED COSTS EXCEEDS THIS AMOUNT BY OVER \$47,000.

Item No. 2 – City Response:

First and foremost, the only request for a breakdown of costs that the City received from FEMA and provided a response to was that of Wilma PW 7050. The breakdown of costs for Wilma PWs 7050, 1893, 1571 and 6886 were all provided to the insurance carrier during their final review and evaluation of the City's damage claim in September 2015. The carrier physically sent a representative out to inspect the sites to compare the damages versus covered elements resulting in the issuance of the third and final denial letter. (See **Attachment #6** for a copy of the City response letter to FEMA (through FDEM) in October 2015 which contained a copy of the claim denial by the carrier and the breakdown of costs for the four projects.)

If there were any other locations contained on a project written for the City that FEMA could not determine the cost breakdown within the Scope of Work, the City was neither notified by FEMA nor provided with any opportunity to respond to said breakdown request. Further, the City is unaware of



CITY OF POMPANO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



any remaining project that does not contain the appropriate breakdown to facilitate insurance review and commitment allocation where appropriate.

Second, in order for there to be something to calculate relative to the 'deductible over and above the \$100,000 minimum', there has to have been combined damages at an individual insured Site that pierced the 3% minimum deductible, irrespective of the \$100,000 minimum deductible that has been explained previously.

The City clearly demonstrated that in the two projects called out in Item No. 1, PW 1571 and PW 6886, the total Site deductibles were not pierced. The Site deductibles were also not pierced at any individual location on the Parks and Recreation PW 7050 nor by any other project that was prepared for the City by FEMA. As explained previously, the only insured facilities that received proceeds under the policy in place at the time of Wilma were the Municipal Golf Course and the Water District Administration Building as exhibited in **Attachment #9** which contains a copy of the loss statement and the check paid to the City. The Municipal Golf Course damage is contained in PW 1893, the subject of this appeal, and the Water District Administration Building was included in PW 6279.

The breakdown of the insurance claim loss and application of the deductible is as follows:

	<u>Loss</u>	<u>Portion of \$100k Deductible Applied</u>
Municipal Golf Course –	\$193,060 (70.188% of Claim)	\$ 70,188.32
<u>Water Dist Admin Building –</u>	<u>\$ 82,000 (29.812% of Claim)</u>	<u>\$ 29,811.68</u>
Totals	\$275,060	\$100,000.00

Third, FEMA's statement that "THE APPLICANT'S PROJECT FUNDING TO DATE FOR INSURED COSTS EXCEEDS THIS AMOUNT BY OVER \$47,000" is incorrect. Specifically, there was no basis provided for FEMA's reference to "cost". Thus, "This amount" obviously refers to the \$100,000 deductible. Accordingly, FEMA may have intended to state \$74,000 which is the approximate difference between the costs called to issue by FEMA in PW 1571 and PW 6886 discussed in Item No. 1. Also as explained above, there are not any other sites in which the total 3% Site deductibles have been pierced. Therefore, there are no funds paid to the City by FEMA that were unwarranted since no additional insurance proceeds were eligible to be processed and funded under the City's policy in place at the time.

Item No. 3 – FEMA Statement:

APPLICANT ENTERED INTO A SETTLEMENT WITH THEIR CARRIER FOR DAMAGES AT THE LOCATION IN THIS PW AND AT THE WATER DISTRICT ADMIN OFFICE. DAMAGES FOR THE WATER DISTRICT ADMIN OFFICE WERE CAPTURED UNDER PW 6279.



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



Item No. 3 – City Response:

This statement is partially false. The City did NOT enter into a settlement for the Municipal Golf Course facility. The processed claim amount for this facility was \$193,060 for repairs to the restaurant and cart barn roofs as explained above in Item No. 2 and is in the exact amount of the vendor proposal for services. The City's final inspection claim to FEMA for this work only totaled \$173,060 due to \$20,000 of this full amount processed being a construction allowance for unforeseen work that was not utilized by the vendor nor billed to the City. None of the fencing at this location was afforded coverage by the insurance policy per the insurance carrier's correspondence, which was acknowledged by FEMA in Version 5. (See **Attachment #10** for a copy of the carrier's letter of denial specifically addressing the fencing at the Golf Course facility.)

The City did enter into a partial settlement for the Water District Admin Building due to the fact they were relegated to the depreciated value of the building per the provisions of the policy in place at the time and did not receive the full claim amount that was presented. Regardless, the Water District Admin Building portion of the claim paid to the City is applicable to PW 6279 and has no bearing on the claim processed and FEMA eligible costs for the Municipal Golf Course in this project.

Item No. 4 – FEMA Statement:

REVIEW OF ELIGIBLE COSTS SUBMITTED FOR THIS PW TOTAL \$189,092.10 FOR BUILDING DAMAGES AND \$39,600 FOR FENCING REPAIR/REPLACEMENT, TOTALING \$228,692.10 AT THIS SITE. AS INSURED COSTS TO DATE FAR EXCEED THE \$100,000 MINIMUM DEDUCTIBLE ASSESSED AND THE INSURANCE CARRIER HAS ADMITTED LIABILITY FOR DAMAGES AT THE GOLF COURSE, A REDUCTION IN THE AMOUNT OF \$189,092.10 IS BEING APPLIED FOR ROOFING DAMAGES AT THIS LOCATION.

Item No. 4 – City Response:

Insured costs to date **eligible for an insurance claim to be processed** do not far exceed the \$100,000 minimum deductible by any calculations as no other damages at a single Site location, other than the two Sites identified, pierced the 3% total Site deductible to be eligible for a claim payout. Therefore, no funds paid to the City by FEMA on any other project are attributable to any portion of a deductible in order for FEMA to claim that no additional funds are due to the City in this project.

Yes, the Carrier has admitted liability for damages to the Golf Course Restaurant and Cart Barn at the Municipal Golf Course and subsequently processed a claim for which the deductible in the amount of \$70,188.32 is applicable and a payout amount of only \$122,871.68 should be deducted by FEMA. However, the balance of the reduction in the amount of 66,220.42 (\$189,092.10 minus \$122,871.68) is eligible for FEMA funding and does not represent a duplication of benefits as no deductible or portion thereof has been paid in any other project written for the City.

Thus, the only funds that FEMA should be deducting from the eligible costs on this project are the insurance proceeds in the amount of \$122,871.68.



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



Item No. 5 – FEMA Statement:

APPLICANT'S CURRENT SOV INDICATES THAT PERIMETER FENCING HAS BEEN ADDED TO THE SOV. WHILE THERE ARE \$39,600.00 IN FENCING COSTS ATTRIBUTED TO THIS PW, THE INSURED VALUES FROM 2005 WERE \$408,900 FOR BUILDING DAMAGES AND HAVE ONLY INCREASED TO \$419,760 (THE SOV READS THAT PERIMETER FENCING IS INCLUDED) AND IT IS UNCLEAR AS TO WHETHER OR NOT THIS COST IS AN INCREASE DUE TO FENCING OR AN INFLATION GUARD INCREASE. AS SUCH, A REDUCTION IN THE AMOUNT OF \$28,740.00 IS BEING APPLIED TO THIS PW FOR FAILURE TO OBTAIN AND MAINTAIN INSURANCE AS REQUIRED BY 44 CFR 206.253.

Item No. 5 – City Response:

In its December 2015 letter contained in **Attachment #7**, AJG addresses what items were covered and when they were afforded coverage. The answer is simple and lies in the past and current Schedule of Value (SOV) documents detailing out each individual location insured and what elements are insured at each location. AJG certified that independent property appraisals have been conducted to include all elements listed on the current SOV at the appropriate values. These appraisals have been reviewed by the City, the broker and the carrier and accepted as accurate and sufficient coverage for the items insured. Coverages have been added as required over time to address the costs paid by FEMA to the City and to meet the obtain and maintain obligations as required by FEMA regulation.

There are a couple of additional items which must be taken into consideration when looking at the current versus past insured values of the City's property. The Golf Course Restaurant and Clubhouse are located under the same roof. The increased value of the insurance at this specific Site from 2005 to 2015 is far greater than the total damages obligated by FEMA. When consideration for an insurance claim is made, it is the total combined Site insured value and deductible of 3% that is of significance, not any individual building or deductible line item at the site. The insured value of the Municipal Golf Course, Site No. 029, as a whole including buildings and contents has increased over 13% from 2005 to 2015 as follows:

2005 – Total Site Buildings and Equipment = \$2,827,400

2015 - Total Site Buildings and Equipment = \$3,203,010

Difference = \$ 375,610

Due to the facts that: 1) buildings depreciate over time; 2) the country, including the City of Pompano Beach, has been affected by economic changes that have caused ongoing fluctuations to both commercial and residential property values; and 3) the FEMA evaluation of property values and related insurance requirements are incorrect likely due to the fact that FEMA does not routinely engage in appraising property. The City, in fact, had property appraisals completed by licensed adjustors through its insurance broker. The total insured Site value more than covers all past damages paid out by FEMA and therefore fully satisfied FEMA's obtain and maintain insurance requirements.



ISSUE #2 – Appeal Amount = \$16,122.17

Deobligations for Disallowed Contract Costs

During the review and reconsideration of PW 1893 Version 5, FEMA determined that there were several items outside of the original scope of work that were not allowable. Notwithstanding the main provisions of §705(c) of the Stafford Act which are not applicable to the new information presented by the City during closeout, there are no provisions in the regulations that prohibit FEMA from granting additional scope or cost overruns at that time. If Congress has intended otherwise, they would have specifically excluded such under §705(c).

At the time of the final inspection and closeout conducted by both FEMA and State closeout specialists, the City presented documentation in support of its total repair costs for the Municipal Golf Course facility. Per 44CFR 206.226(f)(1), the City made every reasonable effort to 'repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.' As stated below, the City will provide evidence underscoring its position relative to its disagreement with the FEMA determinations.

Scope Item No. 1 - With respect to damaged fencing, FEMA made the following statements and deductions:

\$1,238.91 - COMET FENCE CORP - INVOICE #9364 - OUTSIDE SOW; PER INVOICE WORK IS FOR THE REMOVAL OF AN EXISTING 8' HIGH BARBWIRE FENCE, INSTALLATION OF A GATE, GATE POSTS AND TERMINAL POST BRACE AT THE BACK-FLOW PREVENTER FOR UTILITY ACCESS. (RE: PW-1893-CV4 FRR PGS. 136 & 137).

The City repaired a great deal of fencing along the northern perimeter of the property damaged as a result of Hurricane Wilma. The length of fencing damaged on this side of the property of the Golf Course was originally a 16-foot high chainlink fence placed to protect the driving and walking public from rogue golf balls flying out into the busy street. After Wilma, the fence was replaced with Federal Aviation Administration (FAA) approved 8-foot tall security fencing consisting of a 7-foot high chainlink fence with 1-foot of 3-strand barbed wire. The replacement specifications for the fence on this property were dictated by the FAA as it is a combined Golf Course and active Airport, owned and operated by the City in its entirety. The City hired one vendor through a bid process to work on the repair and replacement of this fencing. After the fencing was complete, the City was required to install a utility access gate of the same height and specifications as the rest of the fencing. The gate was not in the scope of the original vendor contract. Therefore, the City implemented its small purchase procedures and acquired Comet Fence Corp. to come in and complete the gate work.



CITY OF POMPANO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



This small gated area was within the confines of the same fencing damaged along the north perimeter of the property along Copans Road, which was captured on the FEMA PW scope of work. The small gated section was simply not recorded as an independent item from the 1,500 linear feet of damaged fence that was recorded during the initial inspection. The damage repair was presented to FEMA and the State closeout specialists during the final inspection process. The team performed a site visit to verify the information and the repairs were accepted as a reasonable cost and justified expenditure and were attributed to being an oversight by FEMA when writing up the original project damage description and scope of work. (See **Attachment #11** for copies of the supporting documentation for the repairs to the gate on the north side of the property completed by Comet Fence.)

Scope Item No. 2 - With respect to damaged fencing, FEMA made the following statements and deductions:

\$4,709.91 - COMET FENCE CORP - INVOICE #9248 - OUTSIDE SOW; APPROVED SOW (V0 LINE ITEMS 6 & 9) IS FOR THE R/R OF FENCING ALONG THE NORTH AND EAST EDGE OF THE GOLF COURSE. PER INVOICE IT APPEARS THE WORK COMPLETED IS AIRPARK FENCING ALONG WEST NE 5TH AVE (WEST). RE: PW1893-CV4 FRR PG. 141.

As mentioned previously, the City sustained a great deal of damage to the perimeter fencing at the Golf Course / Airport property. This section of fence replacement was located on the west side of the property which was not specifically identified by location in the FEMA scope of work and was simply missed.

The damage repairs were presented to FEMA and the State closeout specialists during the final inspection process. The team performed a site visit to verify the information and the repairs were accepted as a reasonable cost and justified expenditure and were attributed to being missed due to an oversight during the original site inspections and project preparation. (See **Attachment #12** for copies of the supporting documentation for the fence repairs on the west side of the property completed by Comet Fence.)

Scope Item No. 3 - With respect to electrical and roofing damage, FEMA made the following statements and deductions:

\$10,173.35 - FL ELECTRIC CONTRACTING SVC - INVOICE #5452 - OUTSIDE SOW (LINE ITEM #12); APPROVED SOW IS FOR ELECTRICAL AND ROOF "REPAIRS" TO MAINTENANCE SHED. PER CONTRACTOR BID, DATED NOV 8, 2006, IS FOR "REPLACEMENT" WORK. "...DEMO OF EXISTING ELECTRICAL AND THE INSTALLATION OF NEW WIRES, INDIVIDUAL RECEPTACLES TO RE-FEED 26 BATTERY CHARGERS AND FIVE 8' FLUORESCENT FIXTURES WITH WIRE GUARD PROTECTION." RE: PW1893-CV4 FRR PGS. 158-162.

The primary issue with this deduction is that FEMA is confusing the damages and repairs at two (2) separate buildings on the Golf Course property. As established in **Attachment #1**, when the original project worksheet was prepared on December 14, 2005, the following damages were identified:

Item No. 7

Damage Description: **Golf Cart Shed Roof > 50% damaged**

Scope of Work: **Replace Entire Roof**



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



Estimated Cost: \$19,780 to be completed by Contract
Note: Golf Cart Building is Insured Site No. 029-04 on the City's insurance SOV.

Item No. 12

Damage Description: Electrical and Roof Damage at **Maintenance Shed**
Scope of Work: Electrical and Roof Repair at Maintenance Shed
Estimated Cost: \$1,357.40 was actually completed work with Force Account records provided
Note: Maintenance Building is Insured Site No. 029-09 on the City's insurance SOV.

The Florida Electric invoice in the amount of \$10,173.35 that FEMA questioned was for electrical repairs with replacement parts on the inside of the **Golf Cart Building** (also referred to as Golf Cart Shed), not the **Maintenance Building** (also referred to as the Maintenance Shed). No additional damages or scope were identified for the Maintenance Building any time after the initial project was prepared.

As for the Golf Cart Building electrical repairs, with the large amount of roofing damage to northern end of the approximately 8,500 square foot roof, the building was not in usable or working condition during the site inspection and there was not any way to know what if any interior electrical damages existed at the time. Also, without a completely functioning secure roof, there was not any reason to use the facility electricity until it was repaired. The roofing repairs were started in September 2006 and completed in the beginning of November 2006. The City, learning of the interior electrical issues, procured an estimate for the electrical work on November 8, 2007 that consisted of replacement of electrical receptacles and light fixtures in the north end of the building, the same location as the roofing damage. The work was completed by the beginning of February 2008 and the City regained the full use of its facility back to pre-disaster condition.

The repair costs for the interior electrical work at the Cart Barn Building were presented to FEMA and the State closeout specialists during the final inspection and were accepted as a reasonable cost and justified expenditure and attributed to being unforeseen damage that was not able to be ascertained during the original site inspection. Based on the large amount of roofing damage that occurred to this building, it is not implausible that there would be associated electrical damages that would need to be repaired and this is precisely the case at hand. (See **Attachment #13** for copies of the supporting documentation for the repairs completed to the Cart Barn Building electrical completed by Florida Electric.)



CITY OF POMPAÑO BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



Conclusion

The City of Pompano Beach, Florida incurred appropriate and reasonable costs for facility repair and restoration due to Hurricane Wilma which occurred in October 2005. The City contends that the deobligations detailed in the above sections were unwarranted based upon the facts that: 1) all of the criteria for compliance with §705(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act were met, making some of the deobligations at issue prohibited by law; 2) the City has presented ample information to support reinstatement of the funds resulting from FEMA's inaccurate interpretation and application of the City's insurance policy proceeds and policy coverage provisions; and 3) the City has presented a sound case for the inclusion of the additional costs presented at closeout due to FEMA's oversight during the original project preparation.

The City recognizes the importance of its fiduciary role in the proper use and accounting of public funds received from the Federal government through FEMA, which is why we have expended a considerable amount of staff time for more than a decade to comply with FEMA requirements and interpretations. Although the City had established internal procedures for disaster planning and recovery and compliance with FEMA disaster funding guidelines prior to Hurricane Wilma, the City's enhanced commitment to this effort over the past decade has been evident in its hiring of a full time Emergency Manager and contracting with Witt O'Brien's for standby emergency and disaster recovery services. These two forces have been instrumental in the development of additional trainings and standard operating procedures for City staff with the focus of ensuring continued compliance with FEMA guidelines. The City has therefore always taken a proactive stance in this respect, rather than a reactive one. We have further developed good working relationships with FEMA Regional staff and have always afforded the highest level of cooperation when information has been requested of us, even given the extensive period of time which has lapsed post disaster. Further, the City's insurance carriers have also been heavily involved in assisting the City in complying with FEMA's regulations and with all requested communications. In addition, the City's Public Assistance grant requests have resulted in successful close-outs and audits by the State of Florida, FEMA and the Office of the Inspector General further evidencing the City's strong disaster planning and recovery infrastructure.

The City appreciates FEMA's role in supporting local governments in its emergency preparedness and post disaster recovery efforts as we fully understand the magnitude of this task. That being said the City would also appreciate FEMA's serious consideration of the City's position regarding this issue. Our insurance carrier has in essence denied any coverage of the damages in question, citing applicable sections of the City's insurance policy. FEMA's insurance reviewer has basically disagreed with our insurance carrier's position, which the City takes issue with and simply does not support FEMA's position. FEMA has therefore placed the City in a precarious position, for which we have no recourse to recover these costs other than from a successful appeal with FEMA or a successful challenge within the Stafford Act guidelines (as discussed above). It should also not be ignored that so much time has lapsed since the City incurred the damages on the applicable properties, so that statutory limitations may have precluded the City from seeking any restitution from our insurance



CITY OF POMpano BEACH, FL

Kimberly Cristiano, Emergency Manager

E: kimberly.spill-cristiano@copbfl.com | P: 954.545.7799



carrier, even though the City would not pursue that route even if statutory limitations were not to pose an immense obstacle, as the City agrees with our insurance carrier's position. While the City greatly respects FEMA, its mission and its outstanding efforts to help communities recover quickly after a disaster, we certainly would like to see reasonable time limits placed on FEMA's ability to de-obligate funds once a close out and audit has successfully concluded in addition to this appeal being granted.

In consideration of the facts outlined above and existing law discussed herein and submitted herewith, the City requests reconsideration of this issue in the City's favor, resulting in the full reimbursement of its actual and eligible expenses for non-insured damages that were deobligated in error in the amount of \$111,082.59.

Thank you for your immediate attention to this matter and in advance for your cooperation in avoiding an undue and unreasonable financial burden on the residents and taxpayers of the City of Pompano Beach and the continued exhausting of resources on this issue by both the City and FEMA. If you require any additional information, please do not hesitate contact Kimberly Cristiano at (954) 545-7799 or kimberly.spill-cristiano@copbfl.com.

Sincerely,

A handwritten signature in cursive script that reads "Kimberly Cristiano".

Kimberly Cristiano, CEM
Emergency Manager

Cc: Eddie Beecher, Risk Manager
Suzette Sibble, Finance Director