

SETTLEMENT AGREEMENT

By and through their respective counsel, Defendant United States Housing and Urban Development (“HUD” or “Defendant”) and Plaintiffs Citizens for Responsibility and Ethics in Washington (“CREW”) and Freedom From Religion Foundation, Inc. (“FFRF”) (collectively, “Plaintiffs” and with HUD, collectively, the “Parties”) hereby agree to settle and compromise the civil action captioned, *Citizens for Responsibility & Ethics in Washington v. U.S. Department of Housing & Urban Development*, Civ. A. No. 18-0114 (CJN) (D.D.C.), which has been consolidated with a similarly-styled lawsuit, Civ. A. No. No. 18-2737 (KBJ) (D.D.C.) (the “Civil Actions”), under the terms and conditions set forth in this Settlement Agreement (the “Agreement”).

1. Defendant shall pay CREW a lump sum of FOURTEEN THOUSAND FOUR HUNDRED DOLLARS (\$14,400) and shall pay FFRF a lump sum of THREE THOUSAND FOUR HUNDRED DOLLARS (\$3,400) for attorney fees and other litigation costs reasonably incurred in connection with the Civil Actions (the “Settlement Payment”). The Settlement Payment shall be made by an electronic funds transfer as specified in instructions provided to Defendant’s undersigned counsel by Plaintiffs in writing. Defendant will effectuate the payment promptly after the receipt of such instructions by Defendant’s counsel.

2. Defendant also will provide, through its Office of General Counsel, two sessions of in person mandatory Fee Waiver Training for the Freedom of Information Act (“FOIA”) office at HUD’s Headquarters consistent with the outline attached hereto as Exhibit “A.” Defendant will provide a draft of the training plan to counsel for Plaintiffs for their review by May 15, 2020, or as soon thereafter as may be feasible in light of current operational limitations resulting from the COVID-19 pandemic, and counsel for Plaintiffs will provide any comments for HUD’s consideration within two weeks of receiving HUD’s draft. To the extent there are any

disagreements as to the training plan the parties will meet and confer in good faith for a period not to exceed 14 days to attempt to resolve those disagreements. Plaintiffs acknowledge that HUD retains ultimate and sole discretion in formulating a final version of the training plan. Subject to modifications as may be necessary based on HUD's operational needs and limitations, the training materials will be finalized within 10 days of the expiration of the meet and confer period, with the training sessions occurring in July and August 2020, or as soon thereafter as may be feasible in light of current operational limitations resulting from the COVID-19 pandemic.

3. Subject to modifications as may be necessary based on HUD's operational needs and limitations, HUD will issue updated Fee Waiver Guidance on or around August 30, 2020, addressing the subject matters identified on Exhibit B hereto. While the guidance is updated, HUD will continue to reference and rely on Department of Justice Office of Information Policy FOIA guidance in conjunction with HUD guidance.

4. Plaintiffs and Plaintiffs' counsel agree and consent to Defendant's counsel filing the Stipulation of Dismissal attached hereto as Exhibit C bearing Plaintiffs' counsels' printed signature (designated "By Permission") with the Court, and such filing shall constitute a dismissal of the Civil Actions with prejudice pursuant Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

5. Plaintiffs hereby fully and forever release and discharge the Defendant, the United States, and their present or former officials, employees, and agents, in their official and individual capacities, from any and all rights or claims arising from the allegations in the Complaint filed in the Civil Actions, including all claims for attorney fees and other litigation costs that have been, or could have been, made in the Civil Actions. Without limiting the generality of the foregoing, this release encompasses, resolves, and satisfies all claims, including all claims for attorney fees and other litigation costs, in connection with all facets of this FOIA matter, from the initial

submission of Plaintiffs' records requests through and including any litigation, as well as any other proceedings involving claims that were or could have been raised in the Civil Actions. Plaintiff agrees to forever release and discharge any claims for further disclosure of the records or the portions of records sought in the FOIA requests that are the subject of the Civil Actions.

6. This Agreement has been entered into by Plaintiffs and Defendant solely for the purposes of compromising disputed claims without protracted legal proceedings and avoiding the expense and risk of such litigation. Therefore, this Agreement is not intended and shall not be deemed an admission by any Party of the merit or lack of merit of an opposing Party's claims or defenses. Without limiting the generality of the foregoing, this Agreement does not constitute, and shall not be construed as, an admission of liability or fault on the part of the Defendant or the United States or their present or former officials, employees or agents, or as an admission of any contested fact alleged by Plaintiff in connection with the Civil Actions or otherwise. This Agreement may not be used as evidence or otherwise in any civil or administrative action or proceeding against Defendant or the United States or any of their present or former officials, employees or agents, either in their official or individual capacities, except for proceedings necessary to implement or enforce the terms hereof.

7. This Agreement contains the entire agreement between the Parties hereto and supersedes all previous agreements, whether written or oral, between the Parties relating to the subject matter hereof. No promise or inducement has been made except as set forth herein, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise given any force or effect in connection herewith.

8. The terms of this Agreement may not be modified or amended, and no provision hereof shall be deemed waived, except by a written instrument signed by the party to be charged with the modification, amendment, or waiver, or by such party's counsel.

9. The Parties acknowledge that the preparation of this Agreement was collaborative in nature, and so agree that any presumption or rule that an agreement is construed against its drafter shall not apply to the interpretation of this Agreement or any term or provision hereof.

10. Each Party agrees to take such actions and to execute such additional documents as may be necessary or appropriate to fully effectuate and implement the terms of this Agreement.

11. The Parties understand and agree that this Agreement, including all the terms and conditions of the compromise settlement herein and any additional agreements or undertakings relating thereto, may be made public in its entirety.

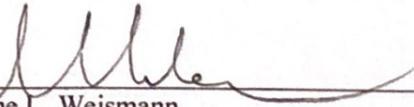
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

13. This Agreement shall be governed by the laws of the United States and the District of Columbia without regard to the choice of law rules utilized in that jurisdiction.

14. Upon execution of this Agreement by all Parties hereto, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, administrators, successors, and assigns.

15. Each signatory to this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement on behalf of the persons or entities indicated below, and

has done so freely and voluntarily, without any degree of duress or compulsion. This Agreement is effective when signed by all parties hereto.


Anne L. Weismann
Citizens for Responsibility and Ethics in
Washington
1101 K Street, NW
Suite 201
Washington, DC 20005

And

Patrick C. Elliott 4-22-2020
Patrick C. Elliott
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Counsel for the Defendant

Exhibit A

OUTLINE OF TRAINING

The first session will cover the basic terms, definitions, case law review and reviewing examples.

The second session will be a review of what was taught in the first session and then hands-on exercises where the FOIA analysts are given a variety of examples and asked to review and process the fee waiver request. A short 10 question exam will be given to FOIA analysts to evaluate their understanding of processing fee waivers. If a FOIA analyst does not score at least an 80% on the test, they will have another one-on-one training session.

The fee waiver training will include the following:

- Three Categories of Requesters
 - Commercial Use
 - “Preferred Status”:
 - Representative of the News Media
 - Educational
 - Noncommercial Scientific Institution
 - All others

Commercial Use

- Define & Discuss
- Provide Examples

“Preferred Status”

- **Representative of the News Media**
 - Define & Discuss
 - Key Elements for Determination - Look at requester’s overall activities. (Gathering, Using and Disseminating)
 - Review Case Law
 - Cause of Action v. FTC, 799 F.3d 1108 (D.C. Cir. 2015)
 - Provide Examples
- **Educational**
 - Define & Discuss
 - Provide Examples

- **Noncommercial Scientific Institution**
 - Define & Discuss
 - Provide Examples

All Others

- Define & Discuss
 - 26 CFR. Sec. 15.106(k)
 - Specific areas addressed include:
 - 1) Examples of requests that concern operations or activities of the Federal Government under 26 CFR Sec. 15.106(k)(i)
 - 2) Examples of disclosures that would be meaningfully informative about government operations and likely contribute to an increased public understanding of those operations under (ii)
 - 3) Examples of what constitutes a “reasonably broad audience” under (iii)
 - 4) Examples of when the public’s understanding of the subject in question would be enhanced under (iv)
- Provide illustrative examples

Exhibit B

Update Guidance on Fee Waivers

- Develop and update agency specific FOIA guidance on fee waivers
 - Three Categories of Requesters
 - Commercial Use
 - “Preferred Status”:
 - Representative of the News Media
 - Educational
 - Noncommercial Scientific Institution
 - All others –
 - Must meet all Standards
 - Operations or activities of the Federal Government under 26 CFR Sec. 15.106(k)(i)
 - Likely contribute to an increased public understanding of those operations under (ii)
 - The degree to which 'understanding' of government activities will be advanced by seeing the information; and
 - the extent of the 'public' that the information is likely to reach."
 - “reasonably broad audience” under (iii)
 - public’s understanding of the subject in question would be enhanced under (iv)

Update Fee Waiver Guidance on FOIA Website

- Update the FOIA website for requesters so they know what showing they need to make to meet the fee waiver requirements

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS)
IN WASHINGTON, et al.)
)
Plaintiffs,)
)
v.)
)
UNITED STATES HOUSING AND URBAN)
DEVELOPMENT,)
)
Defendant.)

Case No. 18-cv-0114 (CJN)
(Consolidated with 18-2737)

STIPULATION OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties to this action hereby stipulate to dismiss this action with prejudice pursuant to the parties’ settlement agreement executed in connection with this matter.

Respectfully submitted,

TIMOTHY J. SHEA
D.C. Bar #437437
United States Attorney

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D.C. BAR # 924092
Civil Chief

By: _____
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