



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 23, 2015

CBCA 4524-FEMA

In the Matter of LORD OF THE HARVEST, INC.,
d/b/a HOPE ACADEMY

Edward C. Taylor of Daniel, Coker, Horton & Bell, P.A., Gulfport, MS, counsel for Applicant.

Robert R. Latham, Jr., Executive Director, and Allison W. Killebrew, Senior Attorney, Mississippi Emergency Management Agency, Pearl, MS, appearing for Grantee.

Charles Schexnaildre and Richard M. Exnicios, Office of the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **DRUMMOND**, **WALTERS**, and **SULLIVAN**.

Applicant, Lord of the Harvest, Inc. d/b/a Hope Academy (Hope) lost its school facility in D'Iberville, Mississippi, in 2005, as a result of Hurricane Katrina. Hope and grantee, the Mississippi Emergency Management Agency (MEMA), dispute certain determinations by the Federal Emergency Management Agency (FEMA) regarding Hope's eligibility under a Stafford Act grant in connection with the relocation of Hope's replacement school facility to a parcel of land within the Florence Gardens residential development in Gulfport, Mississippi. More particularly, they dispute eligibility determinations as to both the numbers of acres and the value of such acreage within that parcel. They also dispute the amounts allowed by FEMA for various site ancillaries in conjunction with that school replacement. Reimbursement for the construction of the replacement school structure, funded by a separate FEMA project worksheet (PW), is not at issue. For the reasons set forth below, we find in Hope's favor as to the number of acres that should be provided for the school, but allow less reimbursement per acre than Hope has

sought for the school site acreage at Florence Gardens. For site ancillaries, as is explained, the panel finds itself in agreement with the amounts FEMA has allowed, with two minor exceptions.

Background

This matter is before the Board for arbitration pursuant to the authority of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 601, 123 Stat. 115, 164, and regulation, 44 CFR 206.209 (2014). On August 29, 2005, the President issued a major disaster declaration arising from Hurricane Katrina. The applicant is within the affected area. Public assistance is available for, among other things, the repair of disaster-related damages to private non-profit facilities including, inter alia, educational facilities owned by non-profit organizations. 42 U.S.C. § 5122(11)(A) (2012); 44 CFR 206.221(e)(1). Here, FEMA is satisfied that Hope qualified as a non-profit organization. *See* 44 CFR 206.221(f). FEMA likewise is satisfied that the work required for replacement of the school facility came about as a result of the declared disaster. *See* 44 CFR 206.223(a)(1).

FEMA's Mississippi Recovery Office initially resisted Hope's claim of eligibility for relief under the Stafford Act. Nevertheless, Hope's appeals to higher FEMA authority resulted in the ultimate approval of a PW for the replacement of its 5700 square foot (SF) school building with a new structure in excess of 13,000 SF to include classrooms, offices, and an auditorium. Notwithstanding expressions of disagreement with this result, FEMA has assured the panel that it is not reneging on the agency's decision to proceed with the replacement project.¹

¹ FEMA, in its response to Hope's request for arbitration, raised arguments concerning the possibility that, if the panel provides additional relief to Hope, relocation from Hope's site at D'Iberville may no longer be cost effective. Based on the only testimony furnished during the hearing relating to this issue, that of Willis Taylor Guild, III, a highly experienced architect that Hope has engaged to design the new facility, the panel is convinced that there is no alternative to relocation. As Mr. Guild described it, elevating the site by 7.5 feet – by constructing a mound of compacted select fill in the center of the property– in order to bring the site up above the required flood zone elevation and placing the 13,000+ SF facility on that tiny site (approximately two-thirds of an acre) in such a way as to conform with other applicable codes (including, inter alia, allowing additional slope for a ramp to comply with the Americans with Disabilities Act (ADA) and adhering to the Mississippi code requirements for school construction that mandate ground level ingress and egress for kindergarten students) would render remaining at the original site an impossibility.

The instant arbitration, as indicated above, deals solely with the parties' disagreements concerning the acreage FEMA has been willing to fund at Florence Gardens, the amount to be reimbursed per acre, and the funding of a variety of site ancillaries. The arbitration record includes information and documentation furnished by Hope with its request for arbitration; the MEMA endorsement of Hope's request; FEMA's response and associated documentation; the information and documentation furnished by the parties in connection with a FEMA motion to stay proceedings, which the panel earlier denied; testimony and exhibits provided during an arbitration hearing conducted on June 8-9, 2015, at the Board's offices in Washington, DC; and documents requested by the panel furnished shortly after the hearing concluded (the electronic version of a spreadsheet prepared and presented by FEMA's consultant architect, Ms. Wolgamott, regarding her analysis of costs for the various site ancillaries; and MEMA meeting minutes for several meetings in 2014 pre-dating the May 8, 2014, purchase of the parcel at Florence Gardens).

Regarding the acreage issue, whereas the Florence Gardens parcel acquired by Hope from Florence Gardens, LLC, the development company, in May 2014 was approximately 15.9 acres, FEMA has limited its PW funding to seven acres. Hope and MEMA have asserted that the appropriate acreage for school replacement per applicable Mississippi school design guidelines² would be a total of 15.9 acres – consisting of a minimum of 15 acres plus one additional acre for every one hundred students. Pre-Katrina, Hope indicates, it had a capacity and student population of ninety students. This acreage total is specified by the guidelines for high schools, and Hope has maintained that, pre-Katrina, it furnished education to children from kindergarten through grade twelve. FEMA challenges the Mississippi school design guidelines as inapplicable, because Hope is not accredited by the Mississippi Department of Education and because the guidelines are not mandatory in any event.

Previously, after Hope's appeals to higher authority within FEMA were eventually sustained, FEMA issued a PW under which it approved funding for a 15.6 acre site on Martin Bluff Road in Gautier, Mississippi, for Hope's relocation. Donna Rodriguez, prior Board Chair of Lord of the Harvest, Inc., had purchased an option for that site several years earlier with her own money. By the time the appeals through FEMA's hierarchy were

² Although there was confusion about which guidelines specified acreage amounts, it appears that the reference of fifteen acres plus one additional acre for each one hundred students is taken from the school relocation site evaluation guidelines of the Mississippi State Board of Education, included as part of the Department's Healthy Schools website, rather than the Mississippi School Design Guidelines, a document developed in conjunction with Mississippi State University that merely provides general guidance on best practices for school design.

concluded, however, the site no longer was available and Ms. Rodriguez's option money was lost. Thereafter, Ms. Rodriguez sought an alternative site and eventually connected with Martin Goldin, Manager of Florence Gardens, LLC, the company responsible for the residential development of Florence Gardens in Gulfport, Mississippi. Florence Gardens was very interested in incorporating a school within its community, had set aside the 15.9 acre parcel in question for a school, and had been exploring the possibility of relocating another private school in Gulfport, the Westminster Academy, to that parcel, but Westminster was in serious financial difficulty and ultimately closed. Hope, though it attempted to continue in trailers after Hurricane Katrina had destroyed its building, had not been operational for several years by the time Ms. Rodriguez and Mr. Goldin connected. At Mr. Goldin's suggestion, Hope took over the Westminster facility in Gulfport, hired Westminster's teachers, and resumed its own operations at that location, pending completion of construction at the Florence Gardens site. When Hope identified and proposed the current site at Florence Gardens, FEMA changed its stance regarding acreage eligibility and allowed funding for only seven acres. The seven acres it has allowed, FEMA posits, is more than sufficient for Hope to operate. Contrary to its express finding in connection with the PW for the Gautier property that Hope was to be "considered a high school" for purposes of calculating acreage eligibility³, the current PW contests Hope's status as a high school and refuses to apply the Mississippi guidelines in terms of establishing acreage for the replacement facility.

In terms of value per acre, Hope purchased the property for \$1,468,200, by means of executing a promissory note for somewhat in excess of \$1,498,000 (the purchase price plus legal and closing costs) in favor of the Florence Gardens, LLC, on May 8, 2014. The overall per acre cost to Hope for the 15.9 acre site, therefore, was in excess of \$93,000.

Notably, prior to the closing on the Florence Gardens property, Mr. Goldin assumed the position as President and Chair of the Board of Lord of the Harvest, Inc. When the property closed, the promissory note and all of the other closing papers were executed by Mr. Goldin, both as President of the applicant, Lord of the Harvest, Inc., and as Manager of Florence Gardens, LLC. Because of the obvious appearance of a potential conflict of

³ The Project Worksheet Report for that PW reads, in part: "Eligibility costs included in the permanent relocation of the building above are shown in this land acquisition project that provides 15.6 acres of land within the boundaries of the eligible relocation site, necessary to make the relocation facility operational. . . . The damaged school which served Kindergarten through the twelfth grade had a design capacity of 90 students. For purposes of the following calculation, the school is considered a high school. The Mississippi guidelines call for 15.9 acres for the school site (15 acres plus 1 acre for each 100 students) for a high school of 90 students."

interest and to negate any inference that the purchase transaction was other than “arms’ length,” Mr. Goldin and Ms. Rodriguez determined (with MEMA’s guidance) to obtain three appraisals and to set the price based on the “lowest appraisal.” The \$1,468,200 amount paid by Hope represented the lowest of three appraisals, \$1,568,200⁴, reduced further by Mr. Goldin by another \$100,000.

The purchase proceeded, it appears, pursuant to instructions from MEMA, to assure Hope a place in the so-called “million dollar queue,” so as to allow MEMA to begin distributing funds to Hope. MEMA’s meeting minutes for meetings prior to May 8, 2014, indicate that FEMA had been given advance notice of the purchase. They also make plain that Mr. Goldin’s agreement to reduce the price of the Florence Gardens property by \$100,000 had come about as a result of FEMA complaints about the pricing of that property and the purported availability of other alternative sites at lower prices per acre. There is no evidence in MEMA’s minutes or elsewhere in the record that FEMA had ever formally approved the Florence Gardens purchase, and some testimony about a December 2014 meeting, i.e., months after the purchase was closed, where FEMA again challenged the reasonableness of the price paid. In this regard, FEMA points to the asking price per acre that Hope was planning to pay for the Martin Bluff Road site, i.e., \$36,000 per acre, and to other sites with comparable per acre costs that had been identified by the appraisal that was done in conjunction with funding the Martin Bluff Road purchase. Under the PW here in dispute, FEMA has allowed funding of \$45,000 per acre for seven acres. During the arbitration hearing, FEMA presented testimony of an appraiser, Everett E. Ladner, III, who, based on his analysis of what he considered to be appropriate comparables, concluded that the value per acre for 9.4 immediately usable acres at Florence Gardens (the 15.9 acres less some 6.5 acres of wetlands at the site) would be no more than \$40,000 per acre.

As to funding for site ancillaries, although the parties at one time were much farther apart, Hope has since reduced the amounts it is seeking substantially, through “value engineering.” Thus, as of commencement of the arbitration hearing, the parties were only approximately \$267,000 apart for site ancillary items. The items in question and the pre-hearing hard cost figures proposed by each party are displayed below. The amounts listed for Hope are based on amounts included in the schedules of values furnished by Hope’s contractor and its subcontractors and represent their dollar breakdowns of amounts bid and contained within their respective contract/subcontracts. Those shown for FEMA are figures provided by FEMA’s architect consultant, Jennifer Wolgamott, based on estimates she developed using the R.S. Means estimating tool.

⁴ The other two appraisals both estimated a value for the 15.9 acres of \$1,600,000.

Item	Hope	FEMA
Site Fencing	\$28,432.50	\$7,108.00
Sidewalks	\$18,528.00	\$4,620.00
Walkway Canopies	\$28,000.00	\$17,500.00
Erosion Control	\$10,253.00	\$4,950.00
Secondary Access Road	\$28,147.00	\$18,700.00
Vehicular & Pedestrian Bridges	\$75,600.00	\$0.00
Water Lines	\$42,000.00	\$40,000.00
Sewer Lines	\$49,860.00	\$45,000.00
Transformer Concrete Pad	\$2,500.00	\$2,000.00
Secondary Electrical Service Entrance	\$16,500.00	\$15,000.00
Storm Drainage - Small Culvert	\$20,832.00	\$37,500.00
Pavement:		
Asphalt Pavement	\$35,402.40	\$0.00
Traffic Striping	\$28,147.00	\$18,700.00
Concrete Curbs & Gutters	\$10,800.00	\$2,960.00
Granular Base Course (Limestone)	\$21,384.00	\$11,419.20
Parking/Concrete Pavement	\$0.00	\$23,660.00
Site Construction Items:		
Clearing & Grubbing	\$19,936.00	\$15,000.00
Unclassified Excavation	\$35,412.00	\$17,045.00

Item	Hope	FEMA
Select Fill Borrow Material	\$65,920.00	\$43,520.00
Rip Rap	\$256.00	\$70.00
Silt Fence	\$9,222.50	\$0.00*

* \$1400 of silt fence was included as part of the PW for Hope's school building replacement

Discussion

We address each of the contested items separately below.

Site Acreage

Under FEMA regulations, once it is determined that the extent to which a facility is damaged by a disaster exceeds fifty percent, the facility may be replaced rather than repaired. A subgrantee like Hope, under those circumstances (as was the case here) is eligible under the Stafford Act to reimbursement for the costs of replacing a facility so as to restore its functionality to the level that existed at the time of the disaster, upgraded to reflect applicable codes and standards. FEMA regulations enumerate the prerequisites for such "replacement standards." *See* 44 CFR 206.226(d). In the present instance, Hope seeks reimbursement for the entirety of the 15.9 acre site at Florence Gardens, arguing that the Mississippi State Board of Education (BOE) guidelines that specify such acreage should be found to be an applicable standard.

Hope cites to FEMA's Mississippi Recovery Office directive, entitled "Guideline #24, FEMA-1604-DR-MS, Codes and Standards for Construction of Permanently Relocated Schools" (Hope Ex. 25), which speaks to the "reconstruction standards" of 44 CFR 206.226(d) and references "codes" that "establish minimum [i.e., mandatory] thresholds for such design features as space per occupant or acreage requirements for new schools." These "minimum codes," listed in Attachment 1 to the directive, include in particular the Mississippi State BOE guidelines. Notably, Guideline #24 draws no distinction among schools, and does not differentiate public schools from private schools. Nor does it distinguish schools accredited by the Mississippi State Department of Education from those that receive their accreditation from an alternative, equally acceptable, accrediting authority, e.g., Accelerated Christian Education (ACE), as Hope had, but merely refers to "schools."

We must give deference to Guideline #24 as a contemporaneous agency interpretation of its own regulations. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). By the same token, we must disregard FEMA's post hoc attempt at the hearing to advance a contrary opinion regarding the applicability of the Mississippi State BOE guidelines, as there is no indication that FEMA ever retracted or countermanded Guideline #24.

As noted above, with respect to the PW approving funding for the purchase of the 15.6 acre Gautier property, the Mississippi Recovery Office found Hope to be a high school, applied its Guideline #24, and interpreted the Mississippi State BOE guidelines to provide for a minimum of 15.9 acres for the construction of a replacement school for Hope. Moreover, notwithstanding the skepticism voiced by FEMA representatives at the hearing, the only evidence in the record is that Hope operated in part as a high school prior to Hurricane Katrina. Though it indicates that it initially relied on Hope's representations as to its pre-Katrina operations, FEMA itself concluded that Hope had been a kindergarten through grade twelve institution, based in part on FEMA's own investigation. In his decision letter of February 22, 2010, in response to Hope's first appeal, Major P. May, the FEMA Regional Administrator (FEMA Region 4) states: "Based on the information provided in the appeal **and FEMA's research**, the Subgrantee [Hope] has met the requirements to be considered an eligible Public Assistance Applicant since it has demonstrated it is a private non-profit organization and complies with State law as certified by the State to be an educational facility that provides kindergarten through grade 12 educational curriculum."

The panel was advised that Hope's records had been destroyed by Katrina's twenty foot storm surge, which left most of the facility under at least nine feet of water. Nevertheless, the record in this proceeding contains several documents indicating that Hope graduates had gone on to prestigious colleges. Ms. Rodriguez testified that Hope had issued high school diplomas that were honored in the State of Mississippi, and that its high school students had an average (composite) ACT score of 21 (which was at the 75th percentile for Mississippi in 2005, at the time of Hurricane Katrina – per the ACT High School Profile, State Composite for Mississippi, High School Graduating Class 2005). A Coast Guard letter included in the record confirms that Hope's graduates were considered as upper tier applicants by the Coast Guard. And the record includes a similar letter of endorsement of Hope high school graduates from a local community college.

FEMA's Mr. Scott, during the hearing, recalled being provided with a breakdown of numbers of students enrolled by Hope at the time of Katrina that indicated the majority of those students were high school students (50 of the 90 students enrolled at that time). And though he stated that he was unable to obtain individual student names or other further information or to confirm that breakdown, there was no evidence presented by FEMA that contradicted Ms. Rodriguez's testimony that Hope had operated as a high school. Though the panel understands FEMA's contrary assertions, we nevertheless apply the Mississippi

State BOE guidelines, find Hope to have been a high school, and find that Hope should be provided funding for the entire 15.9 acre parcel at Florence Gardens.

Value Per Acre

We do not find in Hope's favor, however, as to the per acre value it seeks for that property. Instead, we find Hope eligible for reimbursement under the Stafford Act to significantly less than it has undertaken to pay. Mr. Goldin testified that, because the sale might otherwise be regarded as something other than "arms' length," his intent was to have Hope pay to Florence Gardens the price per acre that emerged from the "lowest appraisal." Notwithstanding the three appraisals Hope obtained, we have considerable doubt as to the reasonableness of the price paid by Hope, and of Hope's undertaking a huge debt to Florence Gardens, LLC to accomplish that payment, particularly when we see that the promissory note for the May 8, 2014, purchase was executed by Mr. Goldin himself as both Chairman of Hope's Board and President of Florence Gardens, LLC. The panel is satisfied that the Ladner appraisal offered by FEMA was done by a competent and knowledgeable appraiser (an individual with decades of experience who previously served as a member of the Mississippi Appraisal Board), and his appraisal, as the lowest appraisal, should appropriately serve as the basis for the purchase. Unlike any of the three appraisals obtained by Hope, Mr. Ladner properly expressed concern that wetlands not be treated the same as immediately usable acreage. His restricting his selection of comparable properties to ones where sales had closed, rather than including properties at their asking prices (as the other appraisers had), likewise seems to have been the better and more reasonable appraisal practice. Thus, we find the value per immediately usable acre at Florence Gardens to be \$40,000, the figure advanced by Mr. Ladner.

Though Mr. Ladner did not attribute any value per acre for the wetlands, his failure to do so was based on his impression that remediation of the wetlands acreage and mitigation of the associated risks likely would totally consume the value of the wetlands acreage. Mr. Ladner, however, did not undertake a professional analysis before forming that impression, and took care to point out to the panel other areas where he had not made analyses and for which he did not wish to venture an opinion. In contrast, Mr. Goldin did analyze the costs needed to enable Hope to make use of the wetlands and provided the panel with a total of \$21,000 per acre for that purpose. The \$21,000 figure Mr. Goldin based on an estimate of \$8000 per acre to clear and fill the wetlands as necessary and his estimate of the \$13,000 per acre (two mitigation credits at \$6500 each) that he believes would be required by the Corps

of Engineers obtain a wetlands permit.⁵ As both a developer and the principal of a wetlands mitigation firm, his estimates are worthy of the panel's reliance. The panel therefore relies on the \$21,000 figure as the appropriate deduction per acre for remediation of the wetlands – the application of which results in a net value per acre of \$19,000.

Thus, in terms of the 15.9 acre land acquisition at Florence Gardens, we award Hope an additional \$184,500. This amount is derived as follows:

9.4 immediately usable acres x \$40,000 =	\$376,000
6.5 acres of wetlands x \$19,000 =	<u>123,500</u>
Total	\$499,500
Less: amount previously allowed	<u>(315,000)</u>
Additional eligible funding	<u>\$184,500⁶</u>

Site Ancillaries

As to the sums that should be provided for site ancillary items, Hope's hearing testimony failed to furnish the panel with detailed information to support the figures it has been claiming for each of the individual items. Because Hope must bear the burden of

⁵ During the hearing, Kristin Leahy Fontenot, Deputy Director for FEMA's Office of Environmental Planning and Historic Preservation, noted that the FEMA environmental assessment (EA) of the school relocation and replacement project for Hope did not include consideration of the use of any of the wetlands (other than the 0.3 acres over which a small bridge is being constructed to permit access to the property). She also stated that if Hope intends to make use of the wetlands acreage, for additional fields or playgrounds, for example, she would recommend that another EA be performed. From the testimony of Hope's witnesses, it is clear that there are no specific, concrete plans as of yet to use the wetlands. Moreover, it is certain that, in the event such use is contemplated in the future, Hope will need to seek another permit from the Corps of Engineers and that the Corps will be doing its own EA in conjunction with the issuance of any such permit.

⁶ Although we are not awarding Hope the full amount it has been seeking for the Florence Gardens property, we certainly do not preclude the development company Mr. Goldin heads from modifying the sales price and the promissory note accordingly. We note the example raised during the hearing of another development owner donating land for the construction of a school (St. Patrick's High School) within its subdivision as demonstrating the value that Hope will bring to the long range success of Florence Gardens.

proving the reasonableness of costs claimed, we cannot accept the broad endorsement offered by Mr. Guild as to the reasonableness of amounts sought for site ancillaries. Instead, the panel finds itself in agreement, by and large, with the estimates developed by FEMA's consultant, Ms. Wolgamott. As we note below, there are a few site ancillaries where FEMA's position has changed and where there may no longer be a dispute between the parties.

In some instances, e.g., sidewalks and canopies, there were no code requirements governing quantities to be furnished, and FEMA, at Ms. Wolgamott's suggestion, has allowed what the panel would agree would be adequate amounts for those items. For parking, though the Gulfport Municipal Code does provide for school parking, Ms. Wolgamott (without challenge from Hope) stated that the forty spaces sought by Hope would have required a high school student body of at least 140 students. Her allowance of parking for 24 high school students and five faculty seems adequate to the panel.

Although Ms. Wolgamott opined that the square footage she would have allowed for the replacement structure (6700 SF) would have been substantially less than FEMA has provided, she confirmed to us that her estimates for site ancillary costs were based on the 13,000+ SF structure approved by FEMA. Ms. Wolgamott testified that her estimates were developed using the R.S. Means estimating tool. The panel accepts Ms. Wolgamott's position that R.S. Means would provide a more reasonable and reliable estimate than what Hope claims should be paid, based on numbers derived from schedules of values provided by its contractor and various subcontractors. Hope's architect conceded that, as a matter of common practice, contractor's schedules of value tend to be "front loaded," with earlier construction activities being assigned somewhat higher dollar values, in order for the contractors to provide themselves some advance funding for a construction project.

Hope had reduced the overall costs being sought for site ancillaries significantly by means of "value engineering" modifications. One of these "value engineering" modifications was to convert what had been conceived of as a pedestrian and vehicular bridge of the wetlands area at the front of the school property to strictly a vehicular bridge consisting of a box culvert topped by asphalt pavement. During her testimony, Ms. Wolgamott stated that she revised her estimates for site ancillaries in recognition of Hope's "value engineering" modifications and, instead of providing separately for a bridge, increased the amount she allowed for an item for "Site Drainage – Small Culvert" to include an estimate for the box culvert that Hope planned to furnish. She similarly increased the amount she had estimated for pavement, to provide for the pavement Hope would furnish on top of the culvert. At the hearing, Ms. Wolgamott did agree that money for a minor amount of limestone should be added to the figures previously provided for site drainage. She figured a total of 200 cubic yards at \$9 per cubic yard, or a total of \$1800 for such additional limestone. At the hearing,

Hope did not raise a challenge to Ms. Wolgamott's treatment of either the bridge or site drainage.

Another of the ancillary items claimed by Hope but not listed in the above chart, the flag pole, was actually provided for by FEMA as part of reimbursement under a separate PW for the school's contents. Furnishing the requested funding for this item (\$2000) accordingly would be duplicative.

A third site ancillary item, the secondary access road, FEMA's Mr. Scott indicated, was no longer in dispute and would be negotiated. In this regard, based on FEMA's discussions with the local fire marshal, the intention is to provide funding for an access road connecting to an existing street located adjacent to another development outside Florence Gardens and entering the school site, traversing a minor amount of wetlands. This is to be finalized based on further discussions with the fire marshal.

The panel finds that, for a fourth site ancillary item, silt fencing, the item was already covered as part of the PW for the school building (albeit at only \$1400) and that providing funding as part of the site ancillaries PW, like that for the flag pole, would be duplicative. FEMA's contentions in this regard were not rebutted by Hope.

Finally, we would allow a minor adjustment for a fifth site ancillary item, namely fencing. In addition to the amount previously agreed to by FEMA, \$7108 – which was to cover the equivalent cost of having repaired the fencing damaged at Hope's original school site, FEMA should allow for the construction of a chain link fence around the new school kindergarten playground. During the hearing, Ms. Wolgamott advised that the applicable Mississippi code for kindergarten school construction calls for such fencing, and estimated the additional cost to be \$1700. The total additional funding the panel would allow for site ancillaries, therefore, would be \$3500 – i.e., \$1800 for additional limestone and \$1700 for additional fencing.

Decision

In light of the foregoing, the panel determines that Hope is eligible for funding for the entire 15.9 acre parcel at Florence Gardens, awards Hope an additional \$184,500 of funding for the acquisition of that parcel, and awards Hope an additional \$3500 for site ancillaries.

RICHARD C. WALTERS
Board Judge

JEROME M. DRUMMOND
Board Judge

MARIAN E. SULLIVAN
Board Judge