

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

DEKALB COUNTY, GEORGIA,
a political subdivision of the
State of Georgia,

Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

No. 2013-5074

Appeal from the United States
Court of Federal Claims
Case No. 11-CV-0761
Judge Lynn J. Bush

SETTLEMENT AGREEMENT

For the purpose of disposing of all issues in Federal Circuit No. 2013-5074 without further judicial proceedings, and without there being further adjudication of any issue of law or fact, and without constituting an admission of liability upon the part of either party, and for no other purpose, the parties mutually agree as follows:

1. On November 14, 2011, DeKalb County, Georgia filed suit in the Court of Federal Claims against the United States seeking to collect a money judgment for unpaid stormwater utility charges for the years 2005 through 2010 (the "stormwater utility charges") that had been assessed, pursuant to the DeKalb County, Georgia stormwater utility ordinance (DeKalb Code § 25-360 *et seq.*),

upon various properties located in DeKalb County, Georgia over which the United States possesses jurisdiction.

2. On February 27, 2012, the United States filed its Motion to Dismiss DeKalb County's Complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.

3. On April 30, 2012, DeKalb County filed its Response to the United States' Motion to Dismiss and moved for entry of partial summary judgment in favor of DeKalb County.

4. After a hearing, on January 28, 2013, the Court of Federal Claims issued its judgment and opinion in which it granted the United States' Motion to Dismiss and denied DeKalb County's Motion for Partial Summary Judgment.

5. On March 25, 2013, DeKalb County appealed the final judgment of the Court of Federal Claims to the United States Court of Appeals for the Federal Circuit. DeKalb County contended the Court of Federal Claims erred in concluding that the stormwater utility charges at issue are taxes from which the United States is immune and that 33 U.S.C. § 1323(c) was not a clarification of an existing waiver of sovereign immunity that requires payment of the stormwater utility charges at issue. DeKalb County did not seek review of the Court of Federal Claims' conclusion that portions of the claims for stormwater utility charges were barred by the applicable statute of limitations.

6. During the pendency of the appeal, the parties entered into negotiations designed to amicably resolve DeKalb County's claims, and DeKalb County has offered to settle this case in exchange for payment by the United States in the amount of \$150,000, inclusive of interest, with each party to bear its own costs, attorney fees, and expenses.

7. DeKalb County's offer has been accepted on behalf of the Attorney General of the United States.

8. Upon satisfaction of the terms set forth in paragraph 6 of this settlement agreement, DeKalb County agrees to join with the United States in stipulating to dismissal of this appeal pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. The stipulation shall state that each party is to bear its own costs, expenses and attorney fees.

9. Upon satisfaction of the terms set forth in paragraph 6 of this settlement agreement, DeKalb County releases, waives, and abandons all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of or related to stormwater utility charges claimed due for the period prior to January 1, 2011, or otherwise involved in this case, regardless of whether they were included in the Complaint, including but not limited to any claims for costs, expenses, interest, attorney fees, and damages of any sort. DeKalb County's claims, if any, against the United States, its political

subdivisions, its officers, agents, and employees for stormwater utility fees accruing after January 1, 2011 are not affected by this settlement agreement.

10. DeKalb County warrants and represents that no other action or suit with respect to the claims advanced in this suit is pending or will be filed in or submitted to any other court, administrative agency, or legislative body. DeKalb County further warrants and represents that it has made no assignment or transfer of all or any part of its rights arising out of or relating to the claims advanced in this suit. Should there be now or in the future any violation of these warranties and representations, any amount paid by the United States pursuant to this settlement agreement shall be refunded promptly by DeKalb County, together with interest thereon at the rate prescribed in 26 U.S.C. § 6621(a)(2), compounded daily, from the date the United States makes payment.

11. This settlement agreement is for the purpose of settling this case, and for no other. Accordingly, this settlement agreement shall not bind the parties except as necessary to effect the terms of this settlement agreement.

12. Counsel for DeKalb County represents that they have been and are duly authorized to enter into this settlement agreement on behalf of DeKalb County.

13. This document constitutes a complete integration of the settlement agreement between the parties and supersedes any and all prior oral or written representations, understandings or agreements among or between them.

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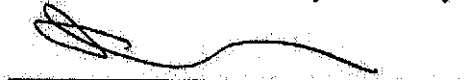
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Dated: 7-22-2013