



Legislation Details (With Text)

File #: 18-1217 **Version:** 1 **Name:** Tolling Agreement with USEPA
Type: Resolution **Status:** Adopted
File created: 7/24/2018 **In control:** Law
On agenda: 8/8/2018 **Final action:** 8/8/2018

Title: Dept/ Agency: Law
Action: () Ratifying (X) Authorizing () Amending
Type of Service: Agreement with Governmental Entity
Purpose: To execute a Tolling Agreement, for the benefit of the United States Environmental Protection Agency, which would toll the statute of limitations, for the recovery of certain response costs incurred by agency, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")
Entity Name: United States Environmental Protection Agency
Entity Address: United States Department of Justice, Environmental Enforcement Section, P.O. Box 7611, Washington, D.C. 20044
Contract Amount: N/A
Funding Source: N/A
Contract Period: Tolling statute of limitations until February 22, 2020
Contract Basis: () Bid () State Vendor () Prof. Ser. () EUS
() Fair & Open () No Reportable Contributions () RFP () RFQ
() Private Sale () Grant () Sub-recipient (X) n/a
Additional Information:

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
8/8/2018	1	Municipal Council	Adopt	Pass

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WHEREAS, the City is the current owner of certain property (Block 614, Lots 63 and 64) located at 29 Riverside Avenue, Newark, New Jersey (the “Property”) which is an Environmental Superfund Site; and

WHEREAS, the Property, which consists of two (2) buildings which are in significant disrepair, has been used as an industrial park since at least the beginning of the twentieth century, and through the years, various industrial users have contaminated the Property; and

WHEREAS, in the 1990s, the City acquired the Property through tax foreclosure proceedings and some contamination may have occurred during the City’s ownership of the Property beginning on or about October 1993; and

WHEREAS, on or about 1994, the City entered into a Use and Occupancy Agreement with Frey Industries Inc., a chemical warehousing and repackaging business which operated on the Property for at least seven (7) years during the City’s ownership; and

WHEREAS, beginning in December 1999, the United States Environmental Protection Agency (“USEPA”) commenced a series of removal actions to remediate various contaminants left on the Property, and incurred approximately \$4.77 million in certain cleanup costs (“Removal Costs”); and

WHEREAS, on or about April 13, 2013 the USEPA notified the City, as well other Potentially Responsible Parties (“PRPs”), of its potential liability under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) for the Removal Costs jointly and severally; and

WHEREAS, the USEPA considers the City to be a PRP under CERCLA, 42 U.S.C. §9607(a)(1), as a former “owner or operator” of the Property, and under CERCLA, 42 U.S.C. §9607(a)(1)(A), any one PRP may be held responsible for all such Removal Costs; and

WHEREAS, PPG Industrial, Inc., one of the PRPs, is currently undertaking the Remedial Investigation/Feasibility Study at its sole cost and expense pursuant to an agreement with USEPA; and

WHEREAS, on or about August 2017, the USEPA recorded a lien against the Property for the Removal Costs (the “Lien”) incurred by the United States as of the date of the Lien’s execution; and

WHEREAS, certain PRPs, including the City, have been engaging in good faith settlement negotiations with USEPA in order to resolve the outstanding Removal Costs and to lift the Lien such that the Property, which continues to be owned by the City, may be conveyed, fully remediated, and redeveloped; and

WHEREAS, the Property is currently subject to a Redevelopment Agreement, which the USEPA is desirous of seeing effectuated as this would be in line with the goal of restoring the Property to good use; and

WHEREAS, the USEPA has requested that the City and the other PRPs sign a Tolling Agreement which would extend any statute of limitations that could arguably apply against the USEPA's claims for the Removal Costs; and

WHEREAS, the statute of limitations on USEPA's claims for the Removal Costs will not begin to run until a Record of Decision ("ROD") is issued, after the completion of the Remedial Investigation/Feasibility Study, which is currently being conducted by one of the other PRPs, at its sole cost; and

WHEREAS, as part of the good faith discussions with the USEPA, the other PRPs have already signed Tolling Agreements with the USEPA extending the statute of limitations which could apply against the USEPA's claims for Removal Costs; and

WHEREAS, the purpose of this Resolution is to authorize the execution of a Tolling Agreement, in the form attached hereto, for the benefit of the USEPA by allowing the statute of limitations for the recovery of certain Removal Costs incurred by USEPA at the Property, pursuant to the CERCLA for removal activities undertaken by USEPA, to be tolled until February 22, 2020; and

WHEREAS, the law supports the liberal application of the statute of limitations in favor of the government, including where a Remedial Investigation/Feasibility Study is conducted in connection with a removal action; and

WHEREAS, the City wishes to promote the good faith settlement discussions with USEPA and the other PRPs, which parties have already executed the Tolling Agreement, in order to resolve this matter expeditiously and with finality such that the Property may be conveyed, fully remediated, and redeveloped.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK THAT:

1. The Mayor and/or his designee, the Corporation Counsel, is hereby authorized to execute the Tolling Agreement, in the form attached hereto as **Exhibit A**, which allows the statute of limitations for the recovery of certain Removal Costs incurred by USEPA at the Property, pursuant to the CERCLA for removal activities undertaken by USEPA, to be tolled until February 22, 2020.
2. The Mayor and/or his designee, the Corporation Counsel, shall place a copy of the executed Tolling Agreement on file in the Office of the City Clerk.
3. No expenditure of City funds is required with the execution of the Tolling Agreement.
4. This Resolution shall take effect immediately.

STATEMENT

This Resolution authorizes the Mayor and/or his designee, the Corporation Counsel, to execute a Tolling Agreement for the benefit of the United States Environmental Protection Agency (“USEPA”) which would toll the statute of limitations, until February 22, 2020, for the recovery of certain response costs, incurred by USEPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), for removal activities undertaken by USEPA at 29 Riverside Avenue (Block 614, Lots 63 and 64) a City-owned Environmental Superfund Site.