



Legislation Details (With Text)

File #: 17-1792 Version: 1 Name: Third Amendment to the Passaic/Clay Street Agreement
Type: Resolution Status: Adopted
File created: 10/10/2017 In control: Economic and Housing Development
On agenda: 3/7/2018 Final action: 3/7/2018

Title: Dept/ Agency: Economic and Housing Development
Action: ( ) Ratifying (X) Authorizing ( ) Amending
Type of Service: Private Sale/Redevelopment
Purpose: Third Amendment to the Agreement for a Redevelopment project for residential, retail and office uses (Central Ward)
Entity Name: Passaic-Clay Urban Renewal, LLC.
Entity Address: 250 Passaic Street, Newark, New Jersey 07104
Sale Amount: \$1,130,000.00 (subject to decrease for costs & expenses)
Cost Basis: ( ) \$ PSF ( ) Negotiated ( ) N/A ( ) Other:
Assessed Amount: Unknown
Appraised Amount: \$1,130,000.00
Contract Period: No later than 270 days from the date construction has begun, subject to reasonable extensions and NJDEP approval of remedial action workplan.
Contract Basis: ( ) Bid ( ) State Vendor ( ) Prof. Ser. ( ) EUS
( ) Fair & Open ( ) No Reportable Contributions ( ) RFP ( ) RFQ
( ) Private Sale ( ) Grant ( ) Sub-recipient ( ) n/a
Additional Information:
Original Redevelopment Agreement was authorized by Resolution 7Rbw (AS) on October 2, 2002.
The First Amendment to the Redevelopment Agreement was authorized by Resolution 7Rev, adopted on September 15, 2004. The Second Amendment to the Resolution was authorized by 7Re(AS), adopted on April 25, 2006.

Sponsors: Gayle Chaneyfield Jenkins, John Sharpe James

Indexes:

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**WHEREAS**, the City by Ordinance 6S&FA February 20, 2002, adopted the Passaic Street/Clay Street Redevelopment Plan for Block 435 and Lots 5, 10, 15, and 21 (the "Property"), to facilitate redevelopment of the Property for commercial and industrial use in accordance with the Redevelopment Plan and more particularly for warehouse and distribution center use; and

**WHEREAS**, the then Mayor and then Deputy Mayor/Director of Economic and Housing Development entered into and executed as of December 31, 2002, on behalf of the City of Newark, a contract for the redevelopment and sale of Property, under the terms and conditions of the Agreement for the Sale of Land and Redevelopment of the Property by and between the City and the Redeveloper (the "Land Sale Agreement"), as attached hereto in executed form as Exhibit 2; and

**WHEREAS**, the Land Sale Agreement required the Redeveloper to use the Property to expand an existing warehouse ("the Passaic Street Distribution Center") located on property owned by the Betesh Companies (as hereinafter defined) contiguous to the Property; and

**WHEREAS**, to accommodate the period of NJDEP review, the then Mayor and Deputy Mayor/Director of the Department of Economic and Housing Development entered into and executed the First Amendment to the Land Sale Agreement as of October 2004 ("First Amendment"), authorizing (i) the approval date by the NJDEP of the latter of the Site Investigation Workplan and the Remedial Action Workplan, respectively, as the "trigger date" for the expiration of Due Diligence and submission of Preliminary Site Plan, (ii) the date of Closing (being the date tolled from the date of NJDEP approval) as the "trigger date" for completion of environmental remediation and commencement of construction, and (iii) the "completion date" of construction to be two hundred and seventy days from the date construction had begun, all as provided in the First Amendment, as attached hereto in executed form as Exhibit 3; and

**WHEREAS**, the then Mayor and the Deputy Mayor/Director of the Department of Economic and Housing Development entered into and executed the Second Amendment to the Land Sale Agreement as of April 25, 2006 ("Second Amendment"), as attached hereto in executed form as Exhibit 4, recognizing that the Redeveloper had entered a Memorandum of Agreement with NJDEP relating to the remediation of the Property; and

**WHEREAS**, on December 6, 2004, the Central Planning Board of the City adopted a new Land Use Element to its Master Plan which recommended a Special Waterfront Use district along the Passaic River which includes the Property. The Special Waterfront Use Section of the 2004 Land Use Element of the Master Plan provides, inter alia:

"This designation is applied to that portion of the Passaic River Waterfront that the City intends to redevelop as a mixed-use environment - residential, retail, entertainment and open space and recreation uses and office uses - with a particular emphasis and orientation to waterfront activities, i.e., marinas, boating, walkways along the waterfront, outdoor cafes, etc. Design principals . . . should be incorporated into the zoning

designation for this area which in addition to encouraging mixed uses and a waterfront orientation and public access, should call for a protection of view corridors, setbacks from the waterfront to provide waterfront esplanades with public access, active ground-floor uses at the water's edge, pedestrian connections to residential neighborhoods behind the waterfront, and a uniform set of design standards for public improvements, . . . . The area to be designated S-W [includes] all of the riverfront between the Passaic River and McCarter Highway stretching from the Belleville border in the north all the way to Penn Station in the downtown and then between the Passaic River and Raymond Boulevard from Penn Station into the North Ironbound neighborhood.”

(Section 5.65 of the December 6, 2004 Land Use Element of the Master Plan of the City of Newark); and

**WHEREAS**, a closing took place on the sale of the Property to the Redeveloper from the City pursuant to the Second Amendment on August 17, 2007; and

**WHEREAS**, at the closing, the City through then Deputy Mayor/Director of the Department of Economic and Housing Development, the Redeveloper was advised that the City was in the process of drafting for adoption a Waterfront Redevelopment Plan pursuant to the December, 2004 Land Use element of the Master Plan; and

**WHEREAS**, prior to the August 17, 2007 closing on the sale of the Property related companies to the Redeveloper (hereinafter Redeveloper and its related companies are sometimes referred to as the “Betesh Companies”) had acquired an assemblage of properties including the Property totaling 12+ acres all located between Clay Street on the south and East Fourth Street on the north and east of McCarter Highway on the river, all of which property was within the area recommended in the 2004 Land Use Element of the Master Plan as part of the proposed Special Waterfront Use District; and

**WHEREAS**, the Redeveloper and the City co-operated and coordinated in regard to the proposed rezoning for the Passaic River waterfront throughout the period from August, 2007 to August, 2013 when the City adopted the “Newark’s River Public Access and Redevelopment Plan” which calls for development of the Property as mixed use waterfront oriented uses by Ordinance 6PSF-i August 7, 2013, entitled Ordinance Adopting Newark’s River: Public Access & Redevelopment Plan (the “Riverfront Redevelopment Plan”) in order to accomplish the following:

- (I) Provide Appropriate Land Use Regulations to Redevelop Newark’s Riverfront,
- (II) Amend Zoning to Support Riverfront Redevelopment Including Housing, Offices, Retail, Industry, and Open Space,
- (III) Connect Existing Neighborhoods to the Riverfront Through Harmonious and Walkable Development,
- (IV) Provide Design Guidance to Protect View Corridors and Create Appropriate setbacks from the River’s Edge, and
- (V) Ensure Inclusion of Public Access to, Along, and onto the River in All Redevelopment Projects in Order to Implement the Public Trust Doctrine”; and

**WHEREAS**, the Property as well as additional properties assembled by the Betesh

Companies, are in the Lower Broadway segment of Newark's waterfront as delineated and defined by Riverfront Redevelopment Plan; and is subject to the zoning and land use regulations of the Riverfront Redevelopment Plan; and

**WHEREAS**, the Riverfront Redevelopment Plan supersedes the Passaic Street/Clay Street Redevelopment Plan (Section 3 Goals and Statutory Basis p.16 and Appendix A-G p.63 of Riverfront Redevelopment Plan); and

**WHEREAS**, neither the City nor Redeveloper desires development of the Property to be restricted to an expansion of the Passaic Street Distribution Center (warehouse use) as originally contemplated in the Land Sale Agreement but rather with any use permitted by the current zoning and compatible with the goals of Riverfront Redevelopment Plan, subject to the reasonable approval of the City of a Conceptual Site Plan; and

**WHEREAS**, on November 4, 2009 NJDEP pursuant to the Site Remediation Reform Act (SRRA, N.J.S.A. 58:10C) adopted new rules changing the regulations and procedures for obtaining Environmental Clearance for contaminated sites from those which were in effect at the time the Land Sale Agreement was entered into requiring amendments to the Land Sale Agreement to reflect the new requirements and terminology for obtaining Environmental Clearance; and

**WHEREAS**, both the City and Redeveloper are desirous of entering into a Third Amendment to the Land Sale Agreement to reflect the changes in NJDEP requirements for Environmental Clearance and the fact that the Property is now subject to the zoning, land use regulations and goals of the Riverfront Redevelopment Plan which permits the Property to be developed as a coordinated project with other properties of the Betesh Companies.

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

1. The Third Amendment to the Land Sale Agreement, in substantially the form presented to this meeting, is hereby approved attached hereto as Exhibit 1.
2. The Mayor and/or the Acting Deputy Mayor/Director of the Department of Economic and Housing Development of the City, or either of them, are hereby authorized to enter into and execute the Third Amendment to the Land Sale Agreement.
3. The Acting Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to effectuate certain business terms and conditions related to the Third Amendment to the Land Sale Agreement and may enter into any related documents which may be necessary in order to effectuate the Third Amendment to the Land Sale Agreement.
4. The executed Third Amendment to the Land Sale Agreement shall be placed on file in the Office of the City Clerk by the Acting Deputy Mayor/Director of Department of Economic and Housing Development.

### **STATEMENT**

This resolution authorizes the Mayor and/or the Acting Deputy Mayor/Director of the Department of Economic and Housing Development to execute, enter into, and approve the Third Amendment to the

Land Sale Agreement between the City of Newark and Passaic-Clay Urban Renewal, LLC, 250 Passaic Street, Newark, New Jersey 07104, to reflect the changes in NJDEP requirements for Environmental Clearance and the fact that the Property is now subject to the zoning, land use regulations and goals of the Riverfront Redevelopment Plan which permits the Property to be developed as a coordinated project with other properties of the Betesh Companies.