



Legislation Details (With Text)

**File #:** 23-1075      **Version:** 1      **Name:** Second Amendment to Tolling Agreement (Riverside Avenue Site)

**Type:** Resolution      **Status:** Adopted

**File created:** 7/5/2023      **In control:** Economic and Housing Development

**On agenda:** 8/2/2023      **Final action:** 8/2/2023

**Title:** Dept/ Agency: Economic and Housing Development  
Action: ( ) Ratifying (X) Authorizing ( ) Amending  
Type of Service: Agreement with Government Entity  
Purpose: Authorizing Execution of a Second Amendment to the Riverside Avenue Site Tolling Agreement for the Benefit of the United States Environmental Protection Agency (“USEPA”), Which Would Toll the Statute of Limitations Period for Certain Cost Recovery Claims Incurred by the USEPA Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.  
Entity Name: United States Environmental Protection Agency  
Entity Address: U.S. Department of Justice, Environmental Enforcement Section, P.O. Box 7611, Washington D.C. 20044  
Contract Period: Tolling Statute of Limitations Uninterrupted From August 21, 2017 through February 22, 2024  
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:**

**Indexes:**

**Code sections:**

Date	Ver.	Action By	Action	Result
8/2/2023	1	Municipal Council	Adopt	Pass

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**Additional Information:**

**WHEREAS**, the purpose of this Resolution is to authorize a Second Amendment to the Riverside Avenue Site Tolling Agreement, in the form attached hereto, for the benefit of the United States Environmental Protection Agency (“USEPA”) by allowing the statute of limitations 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 a City-owned Superfund site located at Block 614, Lots 63 and 64, also known as 29 Riverside Avenue (the Property”), to be tolled through February 22, 2024; and

**WHEREAS**, information indicates that the Property has been used as an industrial park facility since at least the beginning of the twentieth century and that various industrial users have contaminated the Property over the years, some of which may have occurred during the City’s ownership of the Property at certain times commencing in or about October 1993; and

**WHEREAS**, in the 1990s, the City acquired the Property through tax foreclosure proceedings; and

**WHEREAS**, beginning in December 1999, the 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 joint and several liability under CERCLA for the Removal Costs; 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**, the USEPA has 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 statute of limitations on USEPA’s claims for the Removal Costs will arguably not begin to run until a Record of Decision (“ROD”) is issued, after the completion of the Remedial Investigation/Feasibility Study (“RI/FS”), which is currently being conducted by one of the other PRPs, at its sole cost; 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 USEPA previously requested that the City and the other PRPs execute a Riverside Avenue Site Tolling Agreement (“Tolling Agreement”) to extend any statute of limitations that could arguably apply against the USEPA’s claims for the Removal Costs through February 22, 2020; and

**WHEREAS**, the City executed the Tolling Agreement with the USEPA pursuant to Resolution 7R6-c (as), adopted by the Municipal Council on August 18, 2018; and

**WHEREAS**, the other PRPs likewise signed a Tolling Agreement with the USEPA; and

**WHEREAS**, the USEPA also previously requested that the City and the other PRPs execute a First Amendment to the Riverside Avenue Site Tolling Agreement (“First Amendment”) to toll the statute of limitations that could arguably apply against the USEPA’s claims for the Removal Costs through February 22, 2022; and

**WHEREAS**, the City executed the First Amendment with the USEPA pursuant to Resolution 7R6-a, adopted by the Municipal Council on September 2, 2020; and

**WHEREAS**, the other PRPs likewise signed a First Amendment with the USEPA; and

**WHEREAS**, the USEPA also previously requested that the City and the other PRPs execute a Second Amendment to the Riverside Avenue Site Tolling Agreement (“Second Amendment”) to toll the statute of limitations that could arguably apply against the USEPA’s claims for the Removal Costs through February 22, 2023; and

**WHEREAS**, the other PRPs signed a Second Amendment with the USEPA but the City failed to do so; and

**WHEREAS**, the USEPA has now requested that the other PRPs execute a Third Amendment to the Riverside Avenue Site Tolling Agreement (“Third Amendment”), and that the City enter into a Second Amendment (attached hereto) to toll the statute of limitations that could arguably apply against the USEPA’s claims for the Removal Costs without interruption from August 21, 2017, through February 22, 2024; and

**WHEREAS**, the City wishes to continue good faith settlement discussions with USEPA and the other PRPs in order to resolve this matter expeditiously and with finality such that the City-owned Property may be conveyed, fully remediated, and redeveloped.

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

1. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development, is authorized to enter into and execute the Second Amendment in the form attached hereto as Exhibit C.
2. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development, shall place a copy of the executed Second Amendment on file in the Office of the City Clerk.
3. No expenditure of City funds is required with the execution of the Second Amendment.
4. This Resolution shall take effect immediately.

STATEMENT

This Resolution authorizes the Mayor and/or his designee(s), the Corporation Counsel and/or the Deputy Mayor/Director of the Department of Economic and Housing Development, to execute a Second Amendment to the Riverside Avenue Site Tolling Agreement for the benefit of the United States Environmental Protection Agency (“USEPA”), which would toll the statute of limitations without interruption from August 21, 2017 through February 22, 2024 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.