



Legislation Details (With Text)

File #: 12-2443 **Version:** 1 **Name:** Settlement and Release Agreement - Berto Construction Inc., (David Warner Park)

Type: Resolution **Status:** Filed

File created: 12/27/2012 **In control:** Law

On agenda: 5/15/2013 **Final action:** 5/22/2013

Title: Dept/ Agency: Law
Action: () Ratifying (X) Authorizing () Amending
Purpose: Settlement of Pre-Litigation Demand for Payment
Docket No.: None
Claimant: Berto Construction, Inc.,
Claimant's Attorney: Frank D. Angelastro, Esq.
Attorney's Address: 420 Lafayette Street, Newark, New Jersey 07105
Settlement Amount: \$60,523.89
Funding Source: City of Newark, Department of Engineering
Additional Comments:
Vendor's Address: 625 Leesville Avenue, Rahway, New Jersey 07065
Invitation: Corporation Counsel, May 14, 2013
No Action Taken 7R7-a 051513

Sponsors:

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
5/22/2013	1	Municipal Council	Adopt	Pass
5/15/2013	1	Municipal Council	no action taken	

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WHEREAS, Resolution 7R4-d was adopted by the Newark Municipal Council on February 3, 2010 awarding Public Works Contract #10-2008, David L. Warner Playground Restoration (hereinafter, the "Project"), to Berto Construction, Inc., 625 Leesville Avenue, Rahway, New Jersey 07065, to provide playground restoration for the total amount of \$478,901.52; and

WHEREAS, a representative of the Department of Engineering authorized Berto Construction, Inc. to construct a decorative wall at a cost of \$74,945.84, over and above the \$24,000.00 contract amount for a retaining wall; and

WHEREAS, Berto Construction, Inc. presented to the City of Newark a Change Order Request for that amount, which has not been paid to date; and

WHEREAS, the City of Newark has inspected the improvements at the aforementioned playground and closed out the contract; and

WHEREAS, the Director of the Department of Engineering has confirmed that the City received the benefit of the services; however, the parties have agreed to deduct from the amount to be paid, the sum of \$24,000.00; and

WHEREAS, the Director of the Department of Finance has certified that there are adequate, appropriated monies available to pay the: a) net balance of the outstanding invoice (\$73,446.94), less the cost of the original retaining wall (\$24,000.00); and b) plus the retainage held on Contract #10-2008 (\$11,076.95); totaling \$60,523.89; and

WHEREAS, Berto Construction, Inc. has agreed to settle the demand for payment of \$60,523.89, in one lump sum in exchange for the execution of a Settlement and Release Agreement as a full and complete settlement of all of Berto Construction, Inc.'s claims, including any claims for attorney's fees; and

WHEREAS, the within Settlement and Release Agreement does not admit nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of counsel and to eliminate all risks and future litigation costs; and

WHEREAS, the City has determined that it is in the best interest of the taxpayers to avoid the cost, expense, delay and uncertainty of litigation, if this matter proceeded to litigation.

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

1. The Corporation Counsel is hereby authorized on behalf of the City of Newark to negotiate and the Director of the Department of Engineering to enter into and execute a Settlement and Release Agreement and any other documents, sufficient in form and content to Corporation Counsel and to take whatever actions are necessary to effectuate the terms of the within resolution and settlement of this matter pursuant to the terms contained in the within Resolution.
2. The Municipal Council of the City of Newark hereby authorizes the payment by check made payable to: Berto Construction, Inc., 625 Leesville Avenue, Rahway, New Jersey 07065,

in the amount of \$60,523.89 (Sixty Thousand Five Hundred Twenty-Three Dollars and Eighty-Nine Cents) (hereinafter, the "Settlement Sum") as consideration of and pursuant to the terms and conditions contained in the Settlement and Release Agreement annexed hereto.

3. In exchange for Berto Construction, Inc.'s execution of the Settlement and Release Agreement, acceptable in form to the Corporation Counsel and after passage of this Resolution and upon receipt by Corporation Counsel and the Director of Finance of any and all other documents deemed necessary, the Director of Finance of the City of Newark is hereby authorized to issue a check made payable to Berto Construction, Inc. and mailed to 625 Leesville Avenue, Rahway, New Jersey 07065.

4. The within Settlement and Resolution does not admit nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of Counsel and to eliminate all risks and future litigation costs.
5. Attached hereto is a Certification of Funds issued by the Director of Finance on behalf of the City of Newark, which states that there are available sufficient legally appropriated funds for the purposes set forth hereinabove. A copy of the Certification of Funds issued shall be filed in the Office of the City Clerk together with this Resolution by the Corporation Counsel. The certified funds shall be obtained from the following Budget Lines:

Business Unit: NWO45 Dept.: 007 Div/Proj: 07CSO Acct: 94710 Budget Ref: B2007

6. A fully executed copy of the Settlement and Release Agreement shall be filed in the Office of the City Clerk by the Corporation Counsel.

7. This Resolution shall be effective upon adoption in accordance with applicable State law.

STATEMENT

This resolution authorizes the Corporation Counsel and the Director of the Department of Engineering on behalf of the City of Newark to enter into and execute a Settlement and Release Agreement and any other documents in settlement with Berto Construction, Inc., 625 Leesville Avenue, Rahway, New Jersey 07065, through the payment of \$60,523.89 (Sixty Thousand Five Hundred Twenty-Three Dollars and Eighty-Nine Cents), relating to Contract #10-2008 David L. Warner Playground Restoration.