



Legislation Details (With Text)

File #: 16-1470 **Version:** 1 **Name:** Maggyco Incorporated - Pre-suit Settlement of Outstanding water Charges
Type: Resolution **Status:** Adopted
File created: 9/16/2016 **In control:** Law
On agenda: 11/2/2016 **Final action:** 11/2/2016

Title: Dept/ Agency: Law
Action: () Ratifying (X) Authorizing () Amending
Purpose: Pre-suit Settlement of Outstanding Water Charges
Docket No: N/A
Claimant: Maggyco Incorporated, K.C.W. Associates, LP
Claimant's Attorney: Gemma Giantomasi, Esq.
Attorney's Address: Chiesa, Shahinian & Giantomasi PC.
One Boland Drive, West Orange, New Jersey 07052
Settlement Amount: \$120,000.00
Funding Source: Monies to be paid to the Department of Water and Sewer Utilities
Additional Comments:
This proposed settlement resolves outstanding water charges and results in payment to the Department of Water and Sewer Utilities in the amount of \$120,000.00.
Invitation: Corporation Counsel, November 1, 2016

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
11/2/2016	1	Municipal Council	Adopt	Pass

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WHEREAS, Maggyco, Incorporated, K.C.W. Associates, LP (hereinafter referred to as Maggyco), is the owner of a large parcel of commercial property with commercial buildings on the property commonly referred to as: 50 Virginia Street, 23 Virginia Street, and 10-12 Virginia Street in Newark, New Jersey, located on Block 3773, Lots 3, 2, 5 and 50 on the Official Tax Maps of the City of Newark, New Jersey (collectively, the "Property"); and

WHEREAS, Maggyco has several accounts with the City of Newark, Department of Water and Sewer Utilities, for the Property which include, the following account numbers: 13772, 13778, 17150, 17152, 17158, 17159 and 17161; and

WHEREAS, both Parties have conducted a thorough search and have determined that there are no other water and sewer accounts associated with Maggyco or the Property in the City of Newark; and

WHEREAS, since the Property was commercial, in addition to its regular usage, the City charged a flat monthly fire line fee to each account for water access in the event of a fire emergency. This monthly, flat fire line fee continued on each account unless and until the City is notified to deactivate the account(s); and

WHEREAS, at some time prior to April 30, 2014, the Property became vacant and remained unoccupied for several years. The City was never contacted to deactivate or close any of the accounts. At some point prior to April 30, 2014, the Department of Water and Sewer Utilities learned that the buildings on the Property were about to be demolished; and

WHEREAS, on or about April 30, 2014, Maggyco provided the City with access to the Property to perform a final water meter reading on the accounts; and

WHEREAS, when the Department accessed the Property to perform the final water meter reading on the accounts, it learned that some of the accounts, which previously had meters, were missing meters. Due to the absence of water meters on those accounts, the City calculated final costs associated with those accounts in the form of an estimate; and

WHEREAS, the Property is currently vacant and all water and sewer service with the City has been discontinued; and

WHEREAS, the City has advised Maggyco that the total outstanding amount associated with the aforementioned accounts is \$227,756.89; and

WHEREAS, the above total outstanding amount represents the entire payment obligation of Maggyco to the City of Newark for all water and sewer charges, including interest; and

WHEREAS, Maggyco has been and is engaged in discussions with representatives of 1029 Frelinghuysen Fidelco LLC, Elizabeth Fidelco LLC, and MCN Fidelco LLC (hereinafter "Purchaser") in order to sell its interest in the Property; and

WHEREAS, Maggyco wishes to amicably resolve its outstanding payment obligations with the City in order to settle all claims associated with water and sewer services on the Property before the sale to Purchaser has been finalized; and

WHEREAS, the Purchaser, acting on behalf of Maggyco, offered to resolve all outstanding water and sewer obligations, pending as of June 25, 2014, on all accounts associated with the Property for the submission of payments to the City totaling One Hundred and Twenty Thousand Dollars and Zero Cents (\$120,000.00), as follows: \$25,000.00 due within seven (7) days of approval by Municipal Council and the balance of \$95,000.00 paid in nine (9) monthly installments of

\$10,000.00 per month and one (1) final payment in the amount of \$5,000.00 with the first payment being due on the first day of the first month following approval by the Municipal Council; and

WHEREAS, it is understood by the Parties that this payment arrangement is in exchange for the execution of a Settlement Agreement and General Release wherein the City will waive and release Maggyco from liability for the payment of interest and late charges and a full and complete settlement of all of Maggyco's claims, including any claims for attorney's fees; and

WHEREAS, on or about July 29, 2014 the City agreed to the above settlement offer; and

WHEREAS, the within settlement and release neither admits nor should it be construed as an admission of liability or a violation of any law, statute or regulation or a breach of any duty by the City, its agents, officers and/or employees whatsoever or by Maggyco, Purchaser, or any of its agents, officers and/or employees whatsoever and is entered into in good faith based upon recommendations of counsel and to eliminate all risks and potential costs; and

WHEREAS, the above settlement shall apply to any successors or assignees of Maggyco, including but not limited to the Purchaser.

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

1. The Mayor, and/or his designee, the Director of the Department of Water and Sewer Utilities, are hereby authorized on behalf of the City of Newark to execute and accept the terms of the Settlement Agreement and Release ("Agreement") between the City and Maggyco Incorporated, K.C.W. Associates, LP, owner of property located at 50 Virginia Street, 23 Virginia Street, and 10-12 Virginia Street in Newark, New Jersey, located on Block 3773, Lots 3, 2, 5 and 50 on the Official Tax Maps of the City of Newark, New Jersey.

2. The Effective Date of the Agreement shall be the date that it is adopted by the Newark Municipal Council.

3. Pursuant to the Agreement, Maggyco Incorporated shall pay the City a total of One Hundred and Twenty Thousand Dollars and Zero Cents (\$120,000.00), as follows: \$25,000.00 due within seven (7) days of approval by Municipal Council and the balance of \$95,000.00 paid in nine (9) monthly installments of \$10,000.00 per month and one (1) final payment in the amount of \$5,000.00 with the first payment being due on the first day of the first month following approval by the Municipal Council.

4. Under the Agreement, if Maggyco Incorporated fails to make the payment by the agreed upon date, then Maggyco is responsible for the total outstanding balance including interest, late fees, and attorney costs.

5. Pursuant to the Agreement, for and in consideration of the agreed upon Settlement Sum to be paid by Maggyco, the Parties irrevocably release and discharge each other from any liability for the payment of interest, late charges and penalties on the Principle Sum and all claims which were asserted or could have been asserted.

6. The Mayor, and/or his designee, or the Director of Water and Sewer Utilities shall file a fully

executed copy of the Settlement Agreement in the Office of the City Clerk.

7. This resolution shall be effective upon approval by the Municipal Council in accordance with applicable State Law.

STATEMENT

This Resolution authorizes the Mayor and/or his designee, the Director of the Department of Water and Sewer Utilities, on behalf of the City of Newark to enter into a Settlement Agreement and Release with Maggyco Incorporated, K.C.W. Associates, LP, to resolve outstanding water and sewer charges incurred for the property commonly referred to as 50 Virginia Street, 23 Virginia Street, and 10-12 Virginia Street in Newark, New Jersey, located on Block 3773, Lots 3, 2, 5 and 50 on the Official Tax Maps of the City of Newark, New Jersey, (reflected by billing account numbers: 13772, 13778, 17150, 17152, 17158, 17159, and 17161) in the amount of \$120,000.00 which will be paid to the Department in installments. In return, the Parties release and discharge each other from any liability for the payment of interest, late charges and penalties and all claims which were asserted or could have been asserted in this matter.