



## Legislation Text

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File #: 18-0316, Version: 1

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**Dept/ Agency:** Law

**Action:** ( ) Ratifying (X) Authorizing ( ) Amending

**Purpose:** Settlement of Civil Litigation

**Docket No.:** ESX-L-5283-15

**Claimant:** Penn Ave Urban Renewal, LLC.

**Claimant's Attorney:** Timothy J. Dehaut, Esq.

**Attorney's Address:** Giordano, Halleran & Ciesla, P.C. 125 Half Mile Road, Suite 300, Red Bank, New Jersey 07701-6777

**Settlement Amount:** \$550,000.00

**Funding Source:** Department of Water and Sewer Utilities Budget

**Additional Comments:**

The Settlement Amount will be paid in three (3) equal installments from 2018 through 2020.

**Invitation:** Acting Corporation Counsel

**WHEREAS**, Penn Ave Urban Renewal, LLC, is the current owner of certain parcel of real property commonly referred to as: 717-733 Pennsylvania Avenue in Elizabeth, New Jersey, located on Block 11, Lot 1247 (and formerly Lots 1247, 1247A, 1248, 1248A) on the Official Tax Maps of the City of Elizabeth, New Jersey (collectively, the "Property"); and

**WHEREAS**, in the 1960's there occurred a state of emergency due to an acute water shortage throughout New Jersey; and

**WHEREAS**, the cities of Newark and Elizabeth came together at the direction of the then Governor of the State to construct a forty-eight inch (48") pipeline which would help to ensure adequate water supply for New Jersey residents; and

**WHEREAS**, on August 11, 1965, the City of Newark and the City of Elizabeth entered into an agreement for the construction of the forty-eight inch (48") water main (the "Pipe"); and

**WHEREAS**, construction commenced and was completed, preventing the water shortage from becoming a State disaster; and

**WHEREAS**, after entering into a purchase and sale agreement in 2011, and obtaining land use approval from the City of Elizabeth for a one hundred (100) unit residential apartment building (the "Proposed Building"), Penn Ave obtained title to the Property on or about April 25, 2013; specifically, Lot 1247 was conveyed by MEM Reality, LLC to Penn Ave Urban Renewal, LLC and Lots 1247A, 1248, 1248A were conveyed by Bruce and Karen Simon to Penn Ave Urban Renewal, LLC; and

**WHEREAS**, in or about the early summer of 2013, Penn Ave began constructing the Proposed Building and during that construction encountered a portion of the Pipe located on the Property within

the footprint of the Proposed Building; and

**WHEREAS**, Penn Ave Urban Renewal, LLC, eventually discovered that Pipe was owned by the City of Newark; and

**WHEREAS**, during the negotiations of the 1965 Agreement between the City of Elizabeth and City of Newark no easement with a metes and bounds description was prepared between the City of Newark and the then Property owner for the portion of the Pipe located under the Property; and

**WHEREAS**, as a result there is no easement of record for the Pipe on the Property for the benefit of Newark, it was necessary for Newark to obtain from Penn Ave Urban Renewal, LLC, a permanent non-exclusive easement for the Pipe located on the Property; and

**WHEREAS**, the Parties entered into negotiations regarding the relocation and easement for the portion of the Pipe located on Penn Ave's Urban Renewal, LLC, Property and affecting the construction of the Proposed Building; and

**WHEREAS**, during the process of negotiations, there was a breakdown in the negotiations between the Parties; and

**WHEREAS**, Penn Ave Urban Renewal, LLC, filed suit against Newark entitled "Penn Ave Urban Renewal, LLC v. City of Newark et al.", Docket No. ESX-L-5283-15 (the "Litigation"), and venued in the Superior Court of New Jersey, Law Division, Essex County (the "Court"); and

**WHEREAS**, after the filing of the Litigation, settlement discussions were conducted in the course of Court-ordered mediation; and

**WHEREAS**, on or about November 17, 2017, the Parties reached a settlement during the course of that mediation, complying with Willingboro Mall Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242 (2013), resolving between the Parties any and all issues in dispute in the Litigation upon the following terms and conditions: (a) the settlement was contingent on the City of Newark's Municipal Council approval the settlement by February 15, 2018; and (b) the Litigation shall be stayed until February 28, 2018, and contingent upon execution of this Settlement Agreement and approval by the City of Newark's Acting Corporation Counsel, the Litigation will be dismissed; (c) subject to the foregoing contingencies, Penn Ave Urban Renewal, LLC, shall grant to the City of Newark a permanent non-exclusive easement for the Pipe on the Property upon the terms and conditions of this Settlement Agreement; and (d) subject to the foregoing contingencies, the City of Newark shall pay Penn Ave Urban Renewal, LLC, a total amount of Five Hundred and Fifty Thousand Dollars and Zero Cents (\$550,000.00), in three equal yearly installments of \$183,333.33 beginning on March 31, 2018 and in accordance with the terms and conditions of this Settlement Agreement;

**WHEREAS**, by agreement on consent, the Parties extended the February 15, 2018 approval date to March 7, 2018 and further agreed on consent to stay the litigation until March 7, 2018; 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 Penn Ave Urban Renewal, LLC, 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 of continued Litigation and dispute;

**WHEREAS**, the above total outstanding amount represents the entire payment obligation of the City of Newark to Penn Ave Urban Renewal, LLC, including interest; and

**WHEREAS**, the parties wish to amicably resolve and settle all claims associated with the utility easement and relocation; and

**WHEREAS**, the above settlement shall apply to any successors or assignees of Penn Ave Urban Renewal, LLC, 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 (“Agreement”) between the City and Penn Ave Urban Renewal, LLC owner of property located at 717-733 Pennsylvania Avenue in Elizabeth, New Jersey, located on Block 11, Lot 1247 (formerly Lots 1247, 1247A, 1248, 1248A) on the Official Tax Maps of the City of Elizabeth, 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, City of Newark shall pay Penn Ave Urban Renewal, LLC the Settlement Sum of \$550,000.00, to be paid over a three (3) year period, via check made payable to Penn Ave Urban Renewal, LLC, in accordance with the following schedule:
  - i. \$188,333.33 on or before March 31, 2018;
  - ii. \$188,333.33 on or before March 1, 2019;
  - iii. \$188,333.33 on or before March 1, 2020.
4. The Mayor, and/or his designee, or the Director of the Department of Water and Sewer Utilities shall file a fully executed copy of the resolution and Settlement Agreement in the Office of the City Clerk.
5. 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 with Penn Ave Urban Renewal, LLC, to resolve outstanding utility easement and relocation dispute incurred for

the property commonly referred to as 717-733 Pennsylvania Avenue in Elizabeth, New Jersey, located on Block 11, Lot 1247 (formerly Lots 1247, 1247A, 1248, 1248A) on the Official Tax Maps of the City of Elizabeth, New Jersey, in the amount of \$550,000.00 which will be paid in three equal installments over three (3) years.