



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 14-2156, Version: 1

..Title

Dept/ Agency: Law

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

Purpose: Pre-Litigation Settlement

Docket No.: Pre-Litigation

Claimant: Maraziti Falcon, LLP

Claimant's Attorney: Joseph J. Maraziti, Jr.

Attorney's Address: 150 John F. Kenneday Parkway, Short Hills, New Jersey 07078

Settlement Amount: \$125,462.66

Funding Source: Community & Economic Development Trust Fund and an escrow funded by Morris Fairmount Associates, LLC in amounts sufficient to cover the Settlement Amount

Additional Comments:

Delisa Pallet Corporation v. City of Newark, Municipal Council of the City of Newark, Central Planning Board of the City of Newark and Morris Companies, Inc. and CD Development, LLC v. City of Newark and Morris Companies, Inc.; Matrix/Newark City Dock, LLC, a New Jersey Limited Liability Company v. City of Newark

Invitation: Corporation Counsel (date to be entered by Clerk's Office)

WHEREAS, the City of Newark issued a Request for Qualifications for Special Counsel concerning Redevelopment and Land Use matters on or about September 20, 2013; and

WHEREAS, the City of Newark received a total of five (5) proposals in response to its request; and

WHEREAS, Maraziti, Falcon & Healey, LLP, 150 John F. Kennedy Parkway, Short Hills, New Jersey 07078, submitted a proposal and it was found, based upon price and other factors, to be in the best interest of the City of Newark to accept the proposal for the purpose of providing legal services concerning Redevelopment/Land Use Matters; and

WHEREAS, the City of Newark intended to enter into a new contract with Maraziti, Falcon & Healey, LLP *n/k/a as Maraziti Falcon, LLP* (supporting documentation for name change included) to provide legal services concerning Redevelopment/Land Use Matters in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00), for the period of January 1, 2014 to December 31, 2014, which would have covered any existing matters that Maraziti, Falcon & Healey, LLP was handling, as well as new matters that might have arose during the contract term; and

WHEREAS, the Mayor of the City of Newark signed into law Executive Order Number MEO-07-0001 (hereinafter "Pay-to-Play Executive Order"), which requires reporting of political contributions to Newark Municipal Candidates and prohibits certain political contributions during the duration of the contracts; and

WHEREAS, the Municipal Council adopted the Contractor Pay-to-Play Reform Ordinance, 6PSF-a, August 1, 2012, which forbids the award of a contract to a Business Entity, as defined therein, which has made or solicited political contributions to Newark Municipal and County of Essex Candidates, office holders having ultimate responsibility for the award of a contract; candidate committees of the aforementioned candidates; and political or political party committees of the City of Newark or County of Essex; and continuing political committees or political action committees regularly engaged in the support of the City of Newark municipal or County of Essex elections; and certain other political party or candidate committees, in excess of certain thresholds; and

WHEREAS, in late February of 2014, the former Corporate Counsel learned that Maraziti Falcon, LLP, made a political contribution that may conflict with the City's "Pay-to-Play" ordinance or parallel State statute; and

WHEREAS, from time to time, Maraziti Falcon, LLP provided more information about the donation and maintained throughout the discussions that it did not believe the donation was a violation of the contribution restrictions and, therefore continued to perform legal services with the understanding that the matter was resolved; and

WHEREAS, upon receipt and review of a recent letter opinion provided by Maraziti Falcon, LLP to the current Corporation Counsel, indicating that the donation made was returned to the respective political campaign and, therefore the "Pay to Play" issue was resolved; and

WHEREAS, Maraziti Falcon, LLP represents that it was common historical practice for the firm to continue work that flowed from one year to the next and it was common practice for its contract to cover services starting on January 1st with a Resolution adopted well after that date; and

WHEREAS, relying on past practices, Maraziti Falcon, LLP, determined that it was reasonable to continue working on ongoing matters; and

WHEREAS, Maraziti Falcon, LLP, has submitted invoices and statements of account supporting the charges for the aforementioned services; and

WHEREAS, Maraziti Falcon, LLP understands that the authorizing Resolution was not adopted, nor was a contract executed, but maintains that despite the absence of a signed contract, the City of Newark is obligated to compensate their firm for the work undertaken on behalf of the City of Newark under the theory of *quantum meruit*; and

WHEREAS, under the theory of quantum meruit, the City would have an obligation to pay for Maraziti Falcon, LLP's services rendered and the Corporation Counsel has confirmed that the City did receive the benefit of Maraziti Falcon, LLP's services and continues to receive such services; and

WHEREAS, the Director of the Department of Economic and Housing Development that Maraziti Falcon, LLP is rendering said services, affirms the receipt of ongoing services from the Maraziti Falcon, LLP and has certified that there are adequate monies available to pay the outstanding balance due from two funding sources: (i) the Community and Economic Development Trust Fund; and (ii) the escrow account funded by Morris Fairmount Associates held by the City of Newark; and

WHEREAS, the Acting Director of the Department of Finance has further certified that the funds are available to pay Maraziti Falcon, LLP's outstanding 2014 statements and invoices; and

WHEREAS, Maraziti Falcon, LLP is involved in ongoing Redevelopment/Land Use Matters for the City of Newark; and

WHEREAS, Maraziti Falcon, LLP presented certain legal bills for payment of services, including, specifically, but not limited to the following: Statement Numbers 29651, 30023, 29924, 30024, 29130, 29326, 29410, 29597, 29652, 29772, 29904, 30025, 30212, 29598, 29773, 29131, 29327, 29411, 29599, 29653, 30213, 29132, 29328, 29412, 29600, 29654, 29905, 29925, 30026, 30214, 29133, 29134, 29329, 29774, 29906, 29926, 29135, 29330, 29414, 29601, 29331, 29416, 29775, 29104, and Invoice Numbers 30213, 30214, 30344, 30345, 30346, 31302, 31303, 31305) and a copy of same are attached hereto as Exhibit "A"; and

WHEREAS, Maraziti Falcon, LLP performed said work and is seeking compensation that is due and owing for the work performed; and

WHEREAS, under a standard of prudence, the Corporation Counsel on behalf of the City has an obligation to take appropriate corrective action to mitigate further risks of exposure to liability and, therefore, presents a Resolution and Contract to the Council to cover services provided to the City of Newark by Maraziti Falcon, LLP, from January 1, 2014 to December 2014, now that the "Pay-to-Play" issue has been determined to be null and void; and

WHEREAS, the Corporation Counsel, based upon all the facts and circumstances surrounding the matter, deems it in the best interest of the City of Newark to pay the above referenced costs in the total amount of One Hundred Twenty-Five Thousand Four Hundred Sixty-Two Dollars and Sixty-Six Cents (\$125,462.66); and

WHEREAS, although there is a total of \$125,462.66, including disbursements, in outstanding statements and invoices, of which \$63,008.96 of this amount was billed to work related to litigation and acquisition of property in the Blanchard Street Redevelopment Area; and

WHEREAS, the existing Redevelopment Agreement with Morris Fairmount Associates, LLC established an escrow that covers the work performed by Maraziti Falcon, LLP and there are sufficient funds available in the existing escrow to pay \$42,468.18 of the \$125,462.66 total amount due and owing for the work performed by Maraziti Falcon, LLP; and

WHEREAS, the City of Newark owes the balance of the \$125,462.66 that equals \$82,468.18; and

WHEREAS, the within Settlement and Release 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 of Newark 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; and

WHEREAS, for all the reasons set forth above, the City of Newark desires to settle the amount owed to Maraziti Falcon, LLP and avoid the expense of any 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 effectuate the settlement of this matter by executing the Settlement Agreement and General Release and to take such further actions as deemed necessary by her to effectuate settlement of this matter for the total amount of One Hundred Twenty-Five Thousand Four Hundred and Sixty Two Dollars and Sixty Six Cents (\$125,462.66).
2. The Municipal Council of the City of Newark hereby authorizes the payment of One Hundred Twenty-Five Thousand Four Hundred and Sixty-Two Dollars and Sixty-Six Cents (\$125,462.66) (hereinafter the "Settlement Sum") as consideration for and pursuant to the terms and conditions contained in the Settlement Agreement and Release annexed hereto for satisfaction in full of the outstanding statements and invoices set forth herein for services rendered to the City of Newark.
3. 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.
4. The Municipal Council of the City of Newark hereby further authorizes the payment to be made by two separate checks, each made payable to Maraziti Falcon, LLP.
5. In exchange for Maraziti Falcon, LLP's execution of the Settlement Agreement and Release, acceptable in form to the Corporation Counsel and after passage of this Resolution and upon receipt of all supporting documents by the Corporation Counsel, the Acting Director of Finance is hereby authorized and directed to issue:
 - a. A check in the amount of Eighty-Two Thousand Four Hundred Sixty-Eight Dollars and Eighteen Cents (\$82,468.18) made payable to Maraziti Falcon, LLP, 150 John F. Kennedy Parkway, Short Hills, New Jersey 07078; and
 - b. A check in the amount of Forty-Two Thousand Nine Hundred Ninety-Four Dollars and Forty-Seven Cents (\$42,994.47) from an existing escrow funded by Morris Fairmount Associates, LLC made payable to Maraziti Falcon, LLP, 150 John F. Kennedy Parkway, Short Hills, New Jersey 07078;
 - c. For a combined total of One Hundred Twenty-Five Thousand Four Hundred and Sixty-Two Dollars and Sixty-Six Cents (\$125,462.66) payable to Maraziti, Falcon & Healey, LLP, 150 John F. Kennedy Parkway, Short Hills, New Jersey 07078
6. Attached hereto is the Certification of Funds from the City of Newark's Director of Finance which states that there are available funds from **Fund 026, Department BS, and Object**

32100, for the purpose set forth hereinabove.

7. A fully executed copy of the Certification of Funds, Resolution, and Settlement Agreement and General Release shall be filed in the Office of the City Clerk by the Corporation Counsel.
8. This Resolution shall be effective upon adoption in accordance with applicable State law.

STATEMENT:

This resolution authorizes the Corporation Counsel, on behalf of the City of Newark, to effectuate the settlement of a demand for payment of legal services from Maraziti Falcon, LLP in the amount of One Hundred Twenty-Five Thousand Four Hundred and Sixty-Two Dollars and Sixty-Six Cents (\$125,462.66) in exchange for the execution of a Settlement Agreement and Release.