



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 16-0906, Version: 1

Dept/ Agency: Law

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

Purpose: Pre-suit Settlement of Outstanding Water Charges

Docket No.: N/A

Claimant: Fairview Preservation Urban Renewal Partnership, LLP

Claimant's Attorney: Jodi Luciani, Esq.

Attorney's Address: Inglesino, Webster, Wyciskala & Taylor, LLC.,
600 Parsippany Road, Suite 204, Parsippany, New Jersey 07054

Settlement Amount: \$415,000.00

Funding Source: Monies to be paid to the Department of Water and Sewer Utilities

Additional Comments:

Invitation: Corporation Counsel, August 2, 2016

WHEREAS, Fairview Preservation Urban Renewal Partnership, LLP (hereinafter "Fairview") was the prior owner of the property commonly referred to as 70-96 17th Avenue (a/k/a 368-408 Hunterdon Street), Newark, New Jersey 07103, designated as Block 2547, Lot 1, on the Official Tax Map of the City of Newark, New Jersey (the "Property") from January 20, 2000 through January 8, 2014; and

WHEREAS, Fairview Homes Acquisition, LLC is the current owner of the Property; and

WHEREAS, the Property is presently used as a multi-unit residential property; and

WHEREAS, the City has two (2) water meters that service the Property; and

WHEREAS, in or before 2002, the City began billing Fairview for water usage on one (1) water meter, designated as Account No. 6875 by the City Department of Water and Sewer Utilities (the "6875 Meter"); and

WHEREAS, the City contends that the second water meter was to be used as a stand-by meter; and

WHEREAS, the City designated the second meter as Account No. 6868 (the "6868 Meter"); and

WHEREAS, according to City records, on January 12, 2004, the City performed an actual read of the 6868 Meter, which displayed a meter read of 99,999,500 (the "January 12, 2004 Read"); and

WHEREAS, at some point in time subsequent thereto, the 6868 Meter was utilized as a serviceable meter, thereby allowing the Property to receive water from the City from both meters;

and

WHEREAS, on or about November 8, 2013, in connection with the sale of the Property, Fairview requested the City perform a final read of water consumption for the Property; and

WHEREAS, when performing the final read, the City claimed that, unbeknownst to the City, the 6868 Meter provided the Property with water for an unknown period of time; and

WHEREAS, since the City was not reading or billing the 6868 Meter, the City contends that it had not been providing Fairview with an accurate reading of water consumption for the Property in over ten (10) years for the disputed time period of 2002-2013 (“Disputed Time Period”); and

WHEREAS, on or about January 14, 2014, the City Department of Water and Sewer Utilities invoiced Fairview for estimated water consumption on the 6868 Meter dating back in excess of ten (10) years (the “January 14, 2014 Invoice”); and

WHEREAS, as a result of this calculation, the City asserted that the principal amount due and owing on the 6868 Meter was \$515,540.84; and

WHEREAS, since the time the January 14, 2014 Invoice was presented to Fairview, the 6868 Meter account has accumulated interest and late fees in the amount of \$193,327.82, resulting in a purported total outstanding balance of \$708,868.66 as of February 23, 2016; and

WHEREAS, a dispute arose between the City and Fairview relative to the water meters and invoices, as the reason is unknown to either party why only (1) of the meters was read and billed by the City during the Disputed Time Period; and

WHEREAS, Fairview denies owing such monies and asserts that the Department of Water and Sewer Utilities and the City would be time barred from collecting a substantial amount of these monies even if the Department was able to demonstrate that such water was consumed; and

WHEREAS, since in or about March 2014, counsel for Fairview, and counsel for the City Department of Water and Sewer Utilities, have been involved in settlement negotiations in an attempt to resolve this matter; and

WHEREAS, Fairview and the City desire to amicably resolve this matter; and

WHEREAS, the City has agreed to waive all interest and late fees, totaling \$193,327.82, due on the purported outstanding principal sum of \$515,540.84; and

WHEREAS, the City further agrees to credit the account on the 6868 Meter in the amount of \$100,540.84, resulting in a total balance of \$415,000.00 due and owing (the “Settlement Payment”), provided that Fairview pays the Settlement Payment in one lump sum within seventy-two (72) hours of approval of this Settlement Agreement by the Newark Municipal Council; and

WHEREAS, in exchange for the Settlement Payment, the City shall waive and release Fairview from any and all liability for the payment of credited principal balance, interest and late

charges; and

WHEREAS, the Parties desire to enter into the Settlement Agreement in order to avoid further expense and uncertainties of litigation, and wish to resolve and settle all disputes and claims between them; and

WHEREAS, the within Agreement neither admits 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 or the Department of Water and Sewer Utilities, its agents, officers and/or employees whatsoever or by Fairview, or any of its agents, officers, and/or employees whatsoever and is entered into based upon the recommendations of counsel and to eliminate all inherent risks and potential costs associated with litigation of this matter; and

WHEREAS, the Fairview, agreed to satisfy the Payment Obligation in a lump sum payment to the City of Four Hundred and Fifteen Thousand Dollars and Zero Cents (\$415,000.00), in exchange for the execution of a Settlement Agreement and General Release wherein the City will waive and release Fairview from all other outstanding water obligations, as well as, all liability for the payment of interest and late charges and a full and complete settlement of all of Fairview's claims, including any claims for attorney's fees; and

WHEREAS, this Agreement shall apply to any and all successors or assignees of Fairview including Fairview Homes Acquisition, LLC.

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 Fairview previous owner of property located at 70-96 17th Avenue and 368-408 Hunterdon Street, Newark, New Jersey 07103 located on Block 2547, Lot 1, 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.
5. Pursuant to the Agreement, Fairview shall pay the City the Settlement Sum of \$415,000.00 via check made payable to the City of Newark, Department of Water and Sewer Utilities no later than seventy-two (72) hours after approval of this Settlement Agreement by the Newark Municipal Council.
6. Under the Agreement, if Fairview fails to make the payment by the agreed upon date, then Fairview is responsible for the total outstanding balance including interest, late fees, and attorney costs.
7. Pursuant to the Agreement, for and in consideration of the agreed upon Settlement Sum to be paid by Fairview, 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.

8. 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.
9. 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 Fairview Preservation Urban Renewal Partnership, LLP, to resolve outstanding water and sewer charges incurred for the property commonly referred to as 70-96 17th Avenue and 368-408 Hunterdon Street, Newark, New Jersey 07103, (reflected by billing Account Numbers: 6868 and 6875) in the amount of \$415,000.00. 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.