



Legislation Text

File #: 23-1565, Version: 1

Dept./ Agency: Law

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

Purpose: Pre-Litigation Settlement

Docket No.: Not Applicable

Claimant: Cardinal Health 110, LLC, 7000 Cardinal Place, Dublin, Ohio 43017

Claimant's Attorney: Not Applicable

Attorney's Address: Not Applicable

Settlement Amount: \$701,427.31 (\$38,142.59 in dispute for a potential total of \$739,569.90)

Funding Source: 2023 Budget/Department of Health and Community Wellness/Business Unit NW026, Account# 46545, Budget Ref: B2023

Additional Comments:

This Settlement Agreement resolves all outstanding invoices for Cardinal Health 110, LLC, for providing pharmaceuticals and vaccines to residents in City of Newark.

WHEREAS, the City's Department of Health and Community Wellness (DHCW) provides primary medical and mental health services to all Newark residents; and

WHEREAS, in order for DHCW to provide proper medical services, it must have the ability to provide the residents with pharmaceuticals and vaccines; and

WHEREAS, the Federally Qualified Health Center used a contracted vendor Cardinal Health 110, LLC, 7000 Cardinal Place, Dublin, OH 43017 ("Cardinal") for the purchase of pharmaceuticals and vaccines; and

WHEREAS, the Cardinal contract terminated on September 30, 2021; and

WHEREAS, the City continued using Cardinal, for the purchase of pharmaceuticals and vaccines from October 1, 2021 through August 31, 2023; and

WHEREAS, Cardinal, submitted invoices for pharmaceuticals and vaccines to the DHCW for an amount not to exceed Seven Hundred Thirty-Nine Thousand Five Hundred Sixty-Nine Dollars and Ninety Cents (\$739,569.90) (the "Claim") to cover the period in which it did not have a contract and it was still providing products; and

WHEREAS, Cardinal and the City have agreed to settle this fee less Thirty-Eight Thousand One Hundred Forty-Two Dollars and Fifty-Nine Cents (\$38,142.59) (the "disputed amount") on the condition of an investigation from the City's financial institution for a payment made to Cardinal in this amount in which it claims it has not yet received; and

WHEREAS, the City contends that it sent Cardinal the disputed amount almost three (3) years

ago and the check was mailed to Cardinal and deposited; and

WHEREAS, the Cardinal contends that it has not received the disputed amount, and informed the City once the demand for the settlement amount was given; and

WHEREAS, the Parties agreed that they will settle for the demand amount less the amount in dispute, until there is a resolution for the amount in dispute; and

WHEREAS, the Director of the DHCW confirmed that the City received the benefit of products without a contract and is requesting the outstanding bills be paid by a settlement (Memorandum to Corporation Counsel, attached hereto and made a part of); and

WHEREAS, to avoid the costly expense of litigation, Cardinal and the City's Corporation Counsel (the "Parties") desire to amicably resolve this matter prior to the commencement of any litigation and have agreed to settle the matter of payment by the City in the amount of Seven Hundred One Thousand Four Hundred Twenty-Seven Dollars and Thirty-One Cents (\$701,427.31) (the "Settlement Sum"), in exchange for Cardinal's execution of this Settlement Agreement and General Release, as a full and complete release of the Claim condition to resolving the amount in dispute, including any claims for attorney's fees.

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

1. The Mayor of the City of Newark and/or his designee, the Corporation Counsel are hereby authorized on behalf of the City of Newark, to enter into, execute and accept the terms of the Settlement Agreement and Release (the "Agreement") between the City and Cardinal Health 110, LLC, 7000 Cardinal Place, Dublin, OH 43017, ("Cardinal").

2. Pursuant to the Settlement Agreement and Release, the City shall pay Cardinal, the settlement sum of Seven Hundred One Thousand Four Hundred Twenty-Seven Dollars and Thirty-One Cents (\$701,427.31) to be paid, via check made payable to: Cardinal Health 110, LLC, for providing pharmaceuticals and vaccines.

3. Attached hereto is a Certification of Funds - Business Unit NW026, Account# 46545, Budget Ref: B2023, which encumbers the funds for the purpose set forth hereinabove. The Director of the Department of Finance is hereby authorized and directed to issue a check in the amount of Seven Hundred One Thousand Four Hundred Twenty-Seven Dollars and Thirty-One Cents (\$701,427.31), made payable to: Cardinal Health 110, LLC, 7000 Cardinal Place, Dublin, OH 43017 upon receipt by the Corporation Counsel of all settlement documents deemed necessary.

4. This settlement is made with the full knowledge that there is an amount in dispute of Thirty-Eight Thousand One Hundred Forty-Two Dollars and Fifty-Nine Cents (\$38,142.59) (the "disputed amount"), and that Cardinal is agreeing to settle for the Settlement Amount with the condition that if it is determined by the City's financial institution's investigation that the City remitted payment to Cardinal Health 110, LLC, in the manner specified by Cardinal Health 110, LLC and/or in a manner that was the normal course of business and it has received payment previously in the same way. And if through no fault of the City's, either an employee of Cardinal Health 110, LLC and/or an outside entity intercepted said disputed amount and embezzled the payment or committed any form

of theft, the City will not be obligated to remit the disputed amount. Cardinal Health 110, LLC, shall be responsible to seeking reimbursement from said person and/or entity that committed the criminal act in question.

5. Cardinal acknowledges that if the City's financial institution determines that it did not receive payment of the disputed amount, that it will seek payment from the City's financial Institute.

6. The Municipal Council authorizes the Mayor of the City of Newark and/or his designee, the Corporation Counsel to settle the disputed amount of less Thirty-Eight Thousand One Hundred Forty-Two Dollars and Fifty-Nine Cents (\$38,142.59), if it is determined that the City is legally responsible to remit payment.

7. The Resolution and Settlement 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 the Corporation Counsel and to eliminate all risks and future litigation costs.

STATEMENT

This Resolution authorizes the Mayor of the City of Newark, and/or his designee, the Corporation Counsel to avoid potential litigation and resolve this matter by entering into and executing this Settlement Agreement and Release with Cardinal Health 110, LLC, 7000 Cardinal Place, Dublin, OH 43017, in return for a full Settlement Agreement and Release by Cardinal Health 110 LLC., in the amount of \$701,427.31, on the condition that the disputed amount of \$38,142.59 is resolved after a full investigation.