



Legislation Text

File #: 19-1429, Version: 1

Dept/ Agency: Law

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

Type of Service: Agreement with Governmental Entity

Purpose: To execute a Tolling Agreement, for the benefit of the United States Environmental Protection Agency, which would toll the statute of limitations for the recovery of certain response costs incurred by the USEPA, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") in connection with certain removal activities conducted at the Canfield M.C. Sons Superfund Site.

Entity Name: United States Environmental Protection Agency

Entity Address: U.S. Environmental Protection Agency, Region 2,
290 Broadway, 17th Floor, New York, New York 10007

Contract Amount: N/A

Funding Source: N/A

Contract Period: N/A

Contract Basis: () Bid () State Vendor () Prof. Ser. () EUS

() Fair & Open () No Reportable Contributions () RFP () RFQ

() Private Sale () Grant () Sub-recipient (X) n/a

Additional Information:

Tolling statute of limitations to December 21, 2020.

WHEREAS, the purpose of this Resolution is to authorize the execution of that Tolling Agreement in the form attached hereto for the benefit of the United States Environmental Protection Agency ("USEPA") by allowing the statute of limitations for the recovery of certain response costs incurred by USEPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for removal activities undertaken by USEPA at a site located at Block 406, Lot 1, in the area of 63-67 Cornerstone Lane and 52-56 Marrow Street, formerly known as 93 Wilsey Street, Block 409, Lot 22 and 196 Newark Street, Block 409, Lot 31 (the "Property"), to be tolled until December 21, 2020; and

WHEREAS, information indicates that from the late 1800s until the early 1970s, M.C. Canfield & Sons operated a lead smelting, soldering, and babbitt metal manufacturing company on the Property; and

WHEREAS, sometime in the 1970s, the City acquired the Property through tax foreclosure proceedings, thereafter transferring the Property to K. Hovnanian at Newark II as part of a larger transaction for the purpose of redevelopment in or around 1993; and

WHEREAS, K. Hovnanian redeveloped the Property into a residential condominium complex known as Society Hill or University Heights II; and

WHEREAS, beginning in July 2014, the USEPA commenced certain removal actions to

remediate the lead contamination in soils on the Property, and incurred approximately \$2.74 million dollars in certain cleanup costs (“Removal Costs”); and

WHEREAS, on or about December 19, 2018, the USEPA notified the City, as well other Potentially Responsible Parties (“PRPs”), of its potential liability under CERCLA for the Removal Costs jointly and severally; and

WHEREAS, the USEPA considers the City to be a PRP under CERCLA, 42 U.S.C. §9607(a) (1), as a former “owner or operator” of the Property, and under CERCLA, 42 U.S.C. §9607(a)(1)(A), any one PRP may be held responsible jointly and severally for all such Removal Costs; and

WHEREAS, the USEPA is beginning to engage all PRPs, including the City, in good faith settlement negotiations in order to resolve the outstanding Removal Costs without resorting to litigation; and

WHEREAS, in the interim, the USEPA has requested that the City, and the other PRPs, execute a Tolling Agreement which would extend any statute of limitations that could apply against the USEPA’s claims for the Removal Costs; and

WHEREAS, the statute of limitations on USEPA’s claims for the Removal Costs will not begin to run until a Record of Decision (“ROD”) is issued, after the completion of the Remedial Investigation/Feasibility Study, which is currently being conducted by one of the other PRPs, at its sole cost; and

WHEREAS, as a part of the good faith discussions with the USEPA, the other PRPs have already signed Tolling Agreements with the USEPA extending the statute of limitations which could apply against the USEPA’s claims for Removal Costs; and

WHEREAS, the purpose of this Resolution is to authorize the execution of a Tolling Agreement, in the form attached hereto, for the benefit of the USEPA by allowing the statute of limitations for the recovery of certain Removal Costs incurred by USEPA at the Property, pursuant to the CERCLA for removal activities undertaken by USEPA, to be tolled until December 21, 2020; and

WHEREAS, the law supports the liberal application of the statute of limitations in favor of the government including where a Remedial Investigation/Feasibility Study is conducted in connection with a removal action; and

WHEREAS, a PRP that settles its liability with USEPA is not liable for contribution claims under 42 U.S.C. §9622(h)(4); and

WHEREAS, the City wishes to promote the good faith settlement discussions with USEPA and the other PRPs, which parties have already executed the Tolling Agreement, in order to resolve this matter expeditiously and with finality such that the City is not subjected to potential litigation.

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 Corporation Counsel, is hereby authorized to execute the Tolling Agreement, in the form attached hereto as **Exhibit A**, which allows the statute of limitations for the recovery of certain Removal Costs incurred by USEPA at the Property, pursuant to the CERCLA for removal activities undertaken by USEPA, to be tolled until December 21, 2020.

2. The Mayor and/or his designee shall place a copy of the executed Tolling Agreement on file in the Office of the City Clerk.

3. No expenditure of the City funds is required with the execution of the Tolling Agreement.

4. This Resolution shall take effect immediately.

STATEMENT

This Resolution authorizes the execution of a Tolling Agreement in the form attached hereto for the benefit of the United States Environmental Protection Agency (“USEPA”) by allowing the statute of limitations for the recovery of certain response costs incurred by USEPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) for removal activities undertaken by USEPA at a superfund site located on City Block 406 Lot 1, in the area of 63-67 Cornerstone Lane and 52-56 Marrow Street (the “Property”), to be tolled until December 21, 2020.