



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 20-0185, Version: 1

Dept/ Agency: Law

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

Purpose: Settlement of Civil Litigation and First Amendment to Litigation Agreement

Docket No.: 2:11-cv-02057-KM-JBC, Virginia Street Fidelco, LLC, City of Newark, et al. v. Orbis Products Corporation, et al. (City of Newark is a Co-Plaintiff)

Defendants:

- 1) Estate of Robert L. Amaducci, William R. Amaducci and Flaroma, Inc.; and
- 2) Estate of Louis Amaducci; and
- 3) Estate of Elena Duke Benedict

Defendants' Attorneys:

- 1) John M. Scagnelli, Esq., Scarinci & Hollenbeck, 1100 Valley Brook Avenue, Lyndhurst, New Jersey 07071; and
- 2) Frank E. Derby, Esquire, Post Office Box 162, Blawenburg, New Jersey 08504; and
- 3) Larry Ross, Esquire, Bressler, Amery & Ross, 325 Columbia Turnpike, Florham Park, New Jersey 07932-1213

Settlement Amount: \$450,000.00

Funding Source: Settlement amount to be paid by Defendants, collectively

Additional Comments:

The settlement amount will be paid to Virginia Street Fidelco, LLC, to defray costs of remediating and investigating contamination.

The City will control the use of funds for agreed upon limited purposes.

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

WHEREAS, on or about July 3, 2008, the City and Virginia Street Fidelco, LLC, 225 Milburn Avenue, Suite 202, Milburn, New Jersey 07041 ("Fidelco" or "Redeveloper") executed a Redevelopment Agreement (the "Redevelopment Agreement") providing for the conveyance, remediation and redevelopment of certain City-owned real property known as 41-63 McClellan Street and 55 Virginia Street, Newark, New Jersey, designated as Block 3773, Lots 15, 41, 43 and 53, on the Tax Map of the City (hereinafter collectively the "Property" or "Site"), as authorized by Resolution 7Rcz(AS) adopted by the Municipal Council of the City on June 20, 2001; and

WHEREAS, on July 3, 2008, McClellan Street Urban Renewal, LLC ("McClellan") and Fidelco, executed, an Assignment and Assumption Agreement whereby McClellan assigned its rights and obligations under the Redevelopment Agreement to Fidelco; and

WHEREAS, the Redevelopment Agreement required Fidelco, LLC, to remediate the Property, the contamination of which was caused by the historic industrial operations which had occurred on the Site (the "Underlying Contamination"); and

WHEREAS, the companies that conducted manufacturing operations on the Site included: Orbis Products Corporation; Norda, Inc.; International, Inc.; Adron, Inc.; Quest International, Inc.;

Indopco, Inc. and; National Starch, with the shareholders of said companies including Louis Amaducci, Robert L. Amaducci, William R. Amaducci, Flaroma, Inc., and Elena Duke Benedict (collectively, the “Defendants”); and

WHEREAS, on or about October 26, 2010, the City entered into an Agreement (the “Litigation Agreement”), as authorized by Resolution (7R7-b(S)), in which the City agreed to join Fidelco, as co-plaintiff, in litigation proceedings to recover all or part of the costs anticipated to be incurred in connection with the environmental remediation of the Property (the “Environmental Claims”); and

WHEREAS, on or about April 14, 2011, Fidelco and the City filed a lawsuit in the United States District Court for the District of New Jersey, captioned as *Virginia Street Fidelco, LLC et al. v. Orbis Products Corporation et al.*, Docket No. 2:11-cv-02057-KM-JBC (the “Lawsuit”) against the Defendants, which included the Estates of certain deceased shareholders; and

WHEREAS, the Litigation Agreement, appended hereto as Attachment A, provided that the City and Fidelco (referred to as “Co-Plaintiffs”) would cooperate in pursuing any and all parties responsible for the Underlying Contamination on the Property; and

WHEREAS, during the course of the Lawsuit, and unrelated to the Lawsuit, unknown third parties illegally dumped piles of materials that may comprise construction and demolition debris (“Debris”) upon the Property which further impaired the remediation of the Site; and

WHEREAS, in an effort to avoid the exorbitant costs of a trial, the outcome of which cannot be guaranteed, Co-Plaintiffs and Defendants engaged in settlement negotiations; and

WHEREAS, subject to Municipal Council approval, Co-Plaintiffs agreed to release the Environmental Claims against the Defendants in exchange for Defendants’ agreement to collectively pay a sum of \$450,000.00 (Four Hundred Fifty Thousand Dollars and Zero Cents) (the “Settlement Proceeds”) to Co-Plaintiffs to defray the costs of remediating the Underlying Contamination; and

WHEREAS, subject to Municipal Council approval, Co-Plaintiffs agreed to release the Environmental Claims against Defendant Estate of Elena Duke Benedict (the “Estate”) in exchange for the Estate’s agreement to consent to the Co-Plaintiffs filing of a claim in the amount of \$15,000.00 against the Estate in the proceeding pending in Surrogate’s Court, Westchester County, New York State, and any proceeds of which are also referred to and included in the term “Settlement Proceeds” hereunder; and

WHEREAS, during the course of the Lawsuit, a Default Judgment was entered against the Defendant Adron, Inc. and as a condition to settlement, subject to Municipal Council approval, Defendants have agreed to vacate the Default Judgment that was entered against Adron, Inc.; and

WHEREAS, dated on or about December 20, 2019, the City and Redeveloper negotiated an amendment of the Litigation Agreement (the “Amendment” or the “First Amendment”), the form of which is appended hereto as Attachment B; and

WHEREAS, the Amendment provides that the Settlement Proceeds will be payable to Fidelco for utilization only for the following limited purposes: (1) agreed upon professional fees; (2) the characterization and disposal of the Debris, or (3) the investigation or remediation of the Underlying

Contamination, upon written approval by the Director of the Department of Economic and Housing Development; and

WHEREAS, the City's interests in the Lawsuit are represented by Maraziti Falcon, LLC ("Outside Counsel") which, after discussion with Corporation Counsel, advises that the proposed settlement of the Lawsuit is in the best interest of the City because it resolves legal issues which are of uncertain outcome if adjudicated and advances the City's interest in the redevelopment of the Property since the City will be acquiring funds to utilize in conjunction with the Redeveloper to remediate the Site and investigate and remove the Debris upon the Property; and

WHEREAS, Corporation Counsel and Outside Counsel desire to resolve this matter by executing the attached Settlement Agreement and Release (attached hereto as Attachment C); and

WHEREAS, the Corporation Counsel also seeks to approve the attached First Amendment to the October 2010 Agreement between the City of Newark and Virginia Street Fidelco, LLC and authorize its execution which is appended (attached hereto as Attachment B); and

WHEREAS, the Corporation Counsel and Outside Counsel have reviewed and considered both the terms of the proposed Settlement Agreement and Release and the First Amendment to the October 2010 Agreement between the City of Newark and Virginia Street Fidelco, LLC, and has determined that the resolution of the Lawsuit on these terms is in the public interest.

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, are authorized to enter into and execute the Settlement Agreement and Release attached hereto as Attachment C.
2. The Mayor and/or his designee, the Corporation Counsel, are authorized to enter into and execute the First Amendment of the October 2010 Agreement between the City of Newark and Virginia Street Fidelco, LLC ("First Amendment"), regarding certain environmental cost recovery litigation attached hereto as Attachment B.
3. The Mayor, and/or his designee the Corporation Counsel, are hereby authorized to take all actions necessary and appropriate to implement this Resolution and to effectuate the terms of the Settlement Agreement and Release, thereby fully releasing all of the City's Environmental Claims against the Defendants.
4. The Mayor, and/or his staff, and consultants of the City are hereby authorized to take all necessary and appropriate actions to effectuate the terms of the First Amendment.
5. The Director of the Department of Economic and Housing Development, or her designee, are hereby authorized to approve proposed Expenditures of the Settlement Proceeds, in accordance with the First Amendment, in her reasonable discretion.
6. The Corporation Counsel shall file a fully executed copy of the Settlement Agreement and the First Amendment with the City Clerk.

7. Once the Settlement Agreement and First Amendment are fully executed, Outside Counsel is hereby authorized to execute the Stipulation of Dismissal with Prejudice in substantially the same form as Attachment A attached to the Settlement Agreement.
8. Outside Counsel is hereby authorized to execute the Order Vacating Default Against Adron, Inc. in substantially the same form as Attachment B attached to the Settlement Agreement.
9. This resolution shall take effect immediately.

STATEMENT

This resolution authorizes the Corporation Counsel to resolve pending litigation *Virginia Street Fidelco, LLC, et al. v Orbis Products Corporation, et al.*, Docket no. 2:11-cv-02057-km-jbc, where the City of Newark is a co-Plaintiff, by: (1) executing a Settlement Agreement and General Release between the City of Newark, Virginia Street Fidelco, LLC and the other Defendants; and (2) executing the First Amendment to an October 2010 Agreement between the City of Newark and Virginia Street Fidelco, LLC regarding certain environmental cost recovery litigation. Under the terms of the Settlement Agreement, the City and Virginia Street Fidelco, LLC agree to release their environmental claims against the Defendants in exchange for Defendants' agreeing to collectively pay \$450,000.00 to Fidelco to defray the costs of remediating the underlying contamination of real property commonly known as 41-63 McClellan Street and 55 Virginia Street.