



Legislation Details (With Text)

File #: 18-1168 **Version:** 1 **Name:** Resolution: Settlement of Civil Litigation ESX-C-149-11
Type: Resolution **Status:** Adopted
File created: 7/13/2018 **In control:** Law
On agenda: 7/24/2018 **Final action:** 8/8/2018
Title: Dept/ Agency: Law
Action: () Ratifying (X) Authorizing () Amending
Purpose: Settlement of Civil Litigation
Docket No.: ESX-C-149-11
Claimant: City of Newark
Claimant's Attorney: City of Newark, Department of Law
Attorney's Address: 920 Broad Street, Room 316, Newark, New Jersey 07102
Settlement Amount: \$5.6 million payable to the City of Newark: \$1 million payable by December 31, 2018 and the remainder payable in installments over eight (8) years
Funding Source: N/A
Additional Comments:
Settlement of civil action brought by the Village of South Orange and the City of Newark against the East Orange Water Commission for, among other things, outstanding sewer payments.
Execution of the Settlement Agreement and General Release and entering into a Sewage Agreement with the City of East Orange resolves the outstanding matters in the litigation.
Invitation: Corporation Counsel
Deferred 7R6-a (s) 072418

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
8/8/2018	1	Municipal Council	Adopt	Pass
7/24/2018	1	Municipal Council	Defer	Pass

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WHEREAS, Newark owns, and its Department of Water and Sewer Utilities is responsible for, among other things, the operation of the City's sewer and wastewater collection system; and

WHEREAS, the East Orange Water Commission or the East Orange Board of Water Commissioners (the "EOBWC") is a municipal utility which provides water services to approximately 80,000 customers and users in the City of East Orange; and

WHEREAS, as part of its duties, the EOBWC is also responsible for the collection and disposal of the sewage and/or wastewater (collectively referred to hereinafter as "wastewater") that is generated by its customers and users; and

WHEREAS, the wastewater generated by EOBWC's customers is a natural, gravitational flow directly into Newark's Wastewater Collection System, through existing interconnections, trunk lines and pipes which ultimately lead to the Passaic Valley Sewage Commission (the "PVSC") - one of the largest wastewater treatment plants in the United States -- for treatment at its Newark Bay Treatment Plant; and

WHEREAS, as part of resolving this litigation, EOBWC has entered into an agreement with PVSC wherein PVSC will design, construct, install, maintain and monitor sewage flow meters at the major interconnections of East Orange sewer flow in Newark; and

WHEREAS, EOBWC wastewater is conveyed through Newark pipes and interconnections to PVSC and for close to 100 years, Newark has only charged EOWC for the treatment of its sewage and wastewater; Newark has never charged or collected any fees for the wear and tear, maintenance and/or repair of these pipes, trunk lines and interconnections (the "Newark Wastewater Collection System"); and

WHEREAS, Plaintiff, City of Newark along with the Township of South Orange Village brought an action, Township of South Orange Village and City of Newark v. East Orange Water Commission, Superior Court of New Jersey, Chancery Division, Docket Number: ESX-C-149-11 against EOBWC related to claims for, among other things, unpaid and unaccounted for sewer bills; and

WHEREAS, in order to resolve the issues remaining in the litigation as it pertains to the City of Newark, the Parties wish to enter into the following agreements: (1) execution of a Settlement Agreement and General Release, which will resolve the outstanding unpaid and unaccounted sewer bills with payment by EOBWC to the City in the total sum of Five Million, Six Hundred Thousand Dollars and Zero Cents (\$5,600,00.00) in nine (9) installment payments (the "Settlement Sum"); and (2) a Sewage Agreement, which will specify the terms and conditions under which Newark will continue to permit EOBWC wastewater to flow through Newark's Wastewater Collection System; and

WHEREAS, the City of East Orange, at its June 19, 2018 meeting of its' Board of Water Commissioners adopted, in substance, both the Settlement Agreement and General Release and the Sewer Agreement; and

WHEREAS, the Corporation Counsel, based upon all facts and circumstances presented, deems it is in the best interest of the City of Newark to resolve said matter by execution of the Settlement Agreement and General Release, payment by EOBWC to the City of Newark of the

Settlement Sum, and entering into the Sewage Agreement.

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 execute and accept the terms of the Settlement Agreement and General Release, attached hereto.
2. The Corporation Counsel and 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 Sewage Agreement between the City of Newark and the City of East Orange.
3. By December 31, 2018, the East Orange Board of Water Commissioners shall pay the City of Newark One Million Dollars and Zero Cents (\$1,000,000.00). EOBWC represents that the funds for this first payment have been or will be appropriated and available for payment.
 - a. EOBWC shall pay the remaining eight (8) payments in equal installments of Five Hundred Seventy-Five Thousand Dollars and Zero Cents (\$575,000.00), which installments shall be paid and received in full by June 30th of each year beginning in 2019 and ending in June 30, 2026. The City shall receive the payments no later than June 30th of each year.
 - b. EOBWC's failure to make any installment payment in full or by the agreed upon date shall cause the City to assess interest in the amount of 10% for payments less than sixty (60) days past due. For payments over sixty (60) days past due, the City is entitled to, and EOBWC agrees to pay, in one lump sum, the full remaining settlement amount, with 10% interest, compounded monthly, with payment due thirty (30) days from the City's demand thereof.

STATEMENT

This resolution hereby authorizes the Corporation Counsel, on behalf of the City of Newark, to resolve litigation captioned Township of South Orange Village and City of Newark v. East Orange Water Commission, Superior Court of New Jersey, Chancery Division, Docket Number: ESX-C-149-11 by: (1) entering into a Settlement Agreement and General Release for outstanding unpaid and unaccounted sewer bills with payment by the East Orange Board of Water Commissioners to the City in the total sum of Five Million, Six Hundred Thousand Dollars and Zero Cents (\$5,600,00.00), in exchange for the City's dismissal of any and all claims, and; (2) authorizing the Corporation Counsel and the Director of the Department of Water and Sewer Utilities to execute and accept the terms of the Sewage Agreement between the City of Newark and the City of East Orange.