



Legislation Details (With Text)

File #: 18-1069 **Version:** 1 **Name:** Proposed Resolution Authorizing the Execution of the USEPA Agreement
Type: Resolution **Status:** Held in Council
File created: 6/28/2018 **In control:** Economic and Housing Development
On agenda: 9/11/2018 **Final action:** 9/19/2018

Title: Dept/ Agency: Economic and Housing Development
Action: () Ratifying (X) Authorizing () Amending
Type of Service: Private Sale/Redevelopment
Purpose: Authorizing execution of a Release and Waiver of Lien Agreement with United States Environmental Protection Agency (USEPA)
Entity Name: United States Environmental Protection Agency
Entity Address: 290 Broadway, New York, New York 10007
Sale Amount: Not Applicable
Cost Basis: () PSF () Negotiated (X) N/A () Other:
Assessed Amount: Not Applicable
Appraised Amount: Not Applicable
Contract Period: Not Applicable
Contract Basis: () Bid () State Vendor () Prof. Ser. () EUS
() Fair & Open () No Reportable Contributions () RFP () RFQ
() Private Sale () Grant () Sub-recipient (X) n/a
List of Property:
(Address/Block/Lot/Ward)
646-696 Frelinghuysen Avenue/Block 3782/Lot 109/South Ward
Additional Information:
This legislation is related to Legistar 18-1068, which is the Interim Redevelopment Agreement, and 7R2-c, adopted on April 4, 2018, which is the Original Redevelopment Agreement.
Deferred 7R2-f (s) 091118

Sponsors:

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
9/19/2018	1	Municipal Council	Returned to Administration	Pass
9/11/2018	1	Municipal Council	Defer	Pass

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WHEREAS, the purpose of this resolution is to approve the execution of a Release and Waiver of Lien Agreement with the United States Environmental Protection Agency in order to resolve certain liens on the City-owned property located upon Block 3782, Lot 109, on the Tax Map of the City of Newark, more commonly known as 646-696 Frelinghuysen Avenue, Rear (the "Property") in order to allow for the sale and redevelopment of the Property; and

WHEREAS, as a result of certain tax foreclosure proceedings in or around 1996, the City acquired the Property which was, at that time, heavily contaminated due to on-site industrial operations dating back to 1931; and

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the "Act"), authorizes municipalities to participate in the redevelopment and improvement of areas that are in need of redevelopment or rehabilitation; and

WHEREAS, on July 14, 2004, the Frelinghuysen Avenue Airport Support Zone Redevelopment Plan (the "Redevelopment Plan") covering the Property, as that term is defined herein, was adopted by Ordinance 6S&Fk July 14, 2004; and

WHEREAS, in order to stimulate the reinvigoration of the City, by Resolution 7Rdo (AS) adopted by the Municipal Council on June 15, 2005, the entire City of Newark was designated as an area in need of rehabilitation pursuant to the Act; and

WHEREAS, pursuant to N.J.S.A. 40A: 12A-8(f), the City is authorized to arrange or contract with redevelopers for the planning, re-planning, construction or undertaking of any redevelopment project; and

WHEREAS, in its efforts to advance the sale and redevelopment of the Property, the City discovered that both the New Jersey Department of Environmental Protection ("NJDEP") and the United States Environmental Protection Agency ("USEPA") had recorded substantial liens against the Property, as further set forth herein, representing costs each agency had incurred in connection with certain environmental remediation activities which were taken and continue to be taken upon the Property; and

WHEREAS, the Property is a federal Superfund Site which has been identified on the National Priorities List (identified as #NJD980755623 and known as the White Chemical Corporation Superfund Site), and has been remediated in part by certain responsible parties, and since around 1991, continues to be further remediated by the USEPA in accordance with the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., at a cost of approximately \$46,013,000.18, with future groundwater remediation costs estimated to be

approximately \$25,000,000.00 (the "USEPA Remediation"), the total remediation costs likely comprising over \$70,000,000.00, for which amount a lien upon the Property has been asserted pursuant to the Notice of Federal Lien ("USEPA Lien") received by the City; and

WHEREAS, the City has determined that the Property is not needed for any public use and that the redevelopment of the Property, both on an interim basis and permanently, as further set forth herein, will contribute to the reinvigoration of the City and as such, the City has completed negotiations with 3J's Development Group, LLC ("Redeveloper") and has, by Resolution 7R2c adopted on April 4, 2018, authorized the execution and implementation of a Redevelopment Agreement providing for the sale of the Property for the amount of \$2,900,000.00, which amount is subject to certain credits up to \$500,000.00, (the "Purchase Price") and the following redevelopment of the Property: initially, as a secure parking facility for commercial vehicles and upon the completion of the USEPA Remediation, as an industrial warehouse, or for such other purposes as may be approved by the City and consistent with the Deed Notice which has been recorded upon the Property in connection with the USEPA Remediation; and

WHEREAS, the City believes that the redevelopment of the Property, both on an interim basis and permanently, is in the vital and best interests of the City and that it promotes the health, safety, morals and welfare of the City's residents and as such, the City wishes to resolve the USEPA Lien and the NJDEP lien, which lien exceeds \$837,000.00 (the "NJDEP Lien"), in order to allow for the conveyance and redevelopment of the Property pursuant to the terms of the Redevelopment Agreement as well as an Interim Redevelopment Agreement which is to be considered in conjunction herewith; and

WHEREAS, the City has negotiated a resolution of the USEPA Lien and it continues to negotiate a resolution of the NJDEP Lien at this time; and

WHEREAS, while the Parties work towards satisfying the Conditions Precedent in the Redevelopment Agreement, the Redeveloper has proposed to clean up the debris that has accumulated from illegal dumping upon the Property, install a fence around the Property in order to discourage further dumping, generally secure the Property, and utilize the site on an interim basis for employee and truck parking to support its nearby local business operations (the "Interim Project"), which such interim use the USEPA supports, all as further set forth in the Interim Redevelopment Agreement which is to be considered by the Municipal Council simultaneously with the proposed USEPA Agreement herewith; and

WHEREAS, satisfactory resolutions of the NJDEP Lien and the USEPA Lien are express conditions precedent to any obligation under the Redevelopment Agreement for the sale and permanent redevelopment of the Property; and

WHEREAS, the City wishes to enter into the Agreement for Release and Waiver of Lien in the form attached hereto as **Exhibit A** with USEPA and Redeveloper which provides, *inter alia*, for the payment of \$1,450,000.00 (plus 50% of any monies received by the City for the Property in excess of \$2,900,000.00) to USEPA (the "Payment") from the Purchase Price in exchange for a release and waiver of the USEPA Lien; and

WHEREAS, pursuant to the terms of the USEPA Agreement, the Payment to be made by the City which would settle the EPA Lien is contingent upon and would be simultaneous with the sale of the Property to the Redeveloper; and

WHEREAS, once both Liens are resolved, the City may convey the Property to the Redeveloper in accordance with the terms of the Redevelopment Agreement and while the resolution of the DEP Lien continues to be negotiated, it is intended that the Redeveloper would implement the Interim Project in order to secure the Property, pursuant to the terms of the Interim Redevelopment Agreement.

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 Economic and Housing Development, are hereby authorized to enter into and execute an Agreement for Release and Waiver of Lien in the form attached hereto with USEPA and the Redeveloper.

2. The Director of the Department of Economic and Housing Development is hereby authorized to effectuate certain business terms and conditions related to the Property and may enter into any related documents which may be appropriate and necessary in order to effectuate the USEPA Agreement, all in forms which shall be subject to the approval of the City of Newark's Corporation Counsel.

3. A Certification of Funds from the Director of Finance is consistent with N.J.A.C. 5:30-5.4 stating that upon the sale of the Property, there will be sufficient and available funds to make the payment in accordance with the terms of the USEPA Agreement, from account code lines, Business Unit NW026, Dept. BS, Account # 32100, Budget Ref. B2018, is attached hereto.

4. The Director of the Department of Economic and Housing Development and the Director of Finance are hereby authorized to direct the Payment to be made to the EPA in accordance with the terms of the USEPA Agreement upon and in conjunction with the sale of the Property to Redeveloper pursuant to the Redevelopment Agreement.

5. The Director of the Department of Economic and Housing Development shall place a copy of the executed USEPA Agreement and all such other executed documents and agreements authorized by this resolution on file in the Office of the City Clerk.

6. This resolution shall take effect immediately.

STATEMENT

This Resolution authorizes the Mayor and/or his designee, the Director of the Department of Economic and Housing Development, to execute a Release and Waiver of Lien Agreement with the United States Environmental Protection Agency in order to resolve certain liens on the City-owned property located upon Block 3782, Lot 109 on the Tax Map of the City of Newark, more commonly known as 646-696 Frelinghuysen Avenue (the "Property"), in order to allow for the sale and redevelopment of the Property, in the form attached hereto.

<u>ADDRESS</u>	<u>WARD</u>	<u>BLOCK</u>	<u>LOT</u>	<u>SF</u>
646-696 Frelinghuysen Avenue, Rear	South	3782	109	Approx. 217,800

