



Legislation Details (With Text)

File #: 20-0554 **Version:** 1 **Name:** Resolution: First Amendment to the Tolling Agreement - Riverside Avenue Site

Type: Resolution **Status:** Adopted

File created: 5/5/2020 **In control:** Law

On agenda: 9/2/2020 **Final action:** 9/2/2020

Title: Dept/ Agency: Law
Action: ☐ Ratifying ☒ Authorizing ☒ Amending
Type of Service: Agreement with Governmental Entity
Purpose: To authorize the execution of a First Amendment to the Riverside Avenue Site Tolling Agreement for the benefit of the United States Environmental Protection Agency, which would toll the statute of limitations period for certain cost recovery claims incurred by the agency pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").
Entity Name: United States Environmental Protection Agency
Entity Address: U.S. Department of Justice, Environmental Enforcement Section, P.O. Box 7611, Washington, D.C. 20044
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 ☐ n/a
Additional Information:
First Amendment to Tolling Agreement tolling statute of limitations until February 22, 2022.

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
9/2/2020	1	Municipal Council	Adopt	Pass

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Additional Information:

First Amendment to Tolling Agreement tolling statute of limitations until February 22, 2022.

WHEREAS, the purpose of this resolution is to authorize the execution of the First Amendment to the Riverside Avenue Site 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 City-owned superfund site located at Block 614, Lots 63 and 64, also known as 29 Riverside Avenue (the "Property"), to be tolled until February 22, 2022; and

WHEREAS, information indicates the Property has been used as an industrial park facility since at least the beginning of the twentieth century and that various industrial users contaminated the Property over the years, some of which may have occurred during the City's ownership of the Property at certain times commencing in or about October 1993; and

WHEREAS, in the 1990s, the City acquired the Property through tax foreclosure proceedings; and

WHEREAS, beginning in December 1999, the USEPA commenced a series of removal actions to remediate various contaminants left on the Property, and incurring approximately \$4.77 million in certain cleanup costs ("Removal Costs"); and

WHEREAS, on or about April 13, 2013 the USEPA noticed the City, as well other Potentially Responsible Parties ("PRPs"), of its potential joint and several liability under CERCLA for the Removal Costs; 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 for all such Removal Costs; and

WHEREAS, the USEPA has recorded a lien against the Property for the Removal Costs (the "Lien") incurred by the United States as of the date of Lien's execution; and

WHEREAS, certain PRPs, including the City, have been engaging in good faith settlement negotiations with USEPA in order to resolve the outstanding Removal Costs and lift the Lien such that the Property, which continues to be owned by the City, may be conveyed, fully remediated, and redeveloped; and

WHEREAS, the Property is currently subject to a Redevelopment Agreement; and

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

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

WHEREAS, the USEPA previously requested that the City and the other PRPs execute a

Tolling Agreement which would extend any statute of limitations that could arguably apply against USEPA's claims for Removal Costs until February 22, 2020; and

WHEREAS, the City executed the Tolling Agreement with the USEPA pursuant to Resolution 7R6-c(AS), adopted by the Municipal Council on August 8, 2018, attached hereto as Exhibit A; and

WHEREAS, the other PRPs likewise signed a Tolling Agreement with USEPA; and

WHEREAS, USEPA now requests that the City and the other PRPs enter into and execute a First Amendment to the Riverside Avenue Site Tolling Agreement ("First Amendment") so as to further extend any statute of limitations that could arguably apply against the USEPA's claims until February 22, 2022; and

WHEREAS, the City wishes to continue the good faith settlement discussions with USEPA and the other PRPs in order to resolve this matter expeditiously and with finality such that the City-owned Property may be conveyed, fully remediated, and redeveloped.

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

1. The Mayor and/or his designee, the Corporation Counsel is authorized to enter into and execute the First Amendment in the form attached hereto as Exhibit B.
2. The Mayor and/or his designee, the Corporation Counsel shall place a copy of the executed First Amendment on file in the Office of the City Clerk.
3. This resolution shall take effect immediately.

STATEMENT

Resolution authorizing the Mayor or his designee, the Corporation Counsel, to enter into and execute a First Amendment to the Riverside Avenue Site Tolling Agreement, which would toll the statute of limitations for the recovery of certain response costs incurred by the United States Environmental Protection Agency ("USEPA") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for removal activities undertaken by USEPA at a City-owned Environmental Superfund Site located on Block 614, Lots 63 and 64, also known as 29 Riverside Avenue until February 22, 2022.