



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 13-0574, Version: 2

Dept/ Agency: Law

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

Purpose: Amendment to Settlement of Pre-Suit Demand for Payment Resolution 7R7-b December 5, 2012 and Settlement of a Demand for Payment for Services Rendered for the period October 2012 through March 4, 2013

Docket No.: None - Pre-suit Settlement

Claimant: Axion of New Jersey, LLC, One Gateway Center, Newark, New Jersey, 07102

Claimant's Attorney: Daniel Gammerman, Esq.

Attorney's Address: 6800 Jericho Turnpike, Suite 110W, Syosset, New York, 11791

Settlement Amount: \$505,705.30

Funding Source: City of Newark Budget, Department of Child and Family Well Being

Additional Comments:

Invitation: Corporation Counsel, April 2, 2013

Failed 7R7-c (as) 040313

No Action Taken 7R7-a (s) 040913

WHEREAS, the **City of Newark**, 920 Broad Street, Newark, New Jersey 07102 was in need of Temporary Staffing in varied positions relating to health and social service delivery and engaged **Axion of New Jersey LLC**, One Gateway Center, Newark, New Jersey 07102 by Emergency Contract Award (E18-2010), for the term of October 1, 2010 through September 30, 2011; and

WHEREAS, services continued to be requested and provided subsequent to termination of the aforementioned contract; and

WHEREAS, the Municipal Council approved the settlement of the demand for payment of past due invoices in Resolution 7R7-b December 5, 2012, for the amount of \$368,113.35; and

WHEREAS, for various reasons, certain of the invoices totaling \$4,261.00 (Four Thousand Two Hundred Sixty-One Dollars) (Invoice #112145, dated October 31, 2012 in the amount of \$896.00 (Eight Hundred Ninety Six Dollars ; Invoice #111845, dated October 26, 2012, in the amount of \$1,125.00 (One Thousand One Hundred Twenty Five Dollars); and Invoice #112123, dated October 31, 2012 in the amount of \$2,240.00 (Two Thousand Two Hundred Forty Dollars)) were not paid; and

WHEREAS, in order to accomplish the foregoing, the Department of Child and Family Well-Being seeks to amend Resolution #7R7-b December 5, 2012, by reducing the settlement amount authorized therein by \$4,261.00 (Four Thousand Two Hundred Sixty One Dollars), so that the authorized settlement amount is amended from \$368,113.35 (Three Hundred Sixty Eight Thousand, One Hundred Thirteen Dollars And Thirty Five Cents) to \$363,852.35 (Three Hundred Sixty Three Thousand, Eight Hundred Fifty Two Dollars and Thirty Five Cents); and

WHEREAS, the Resolutions authorizing new contracts for temporary services were not

adopted until March 4, 2013; and

WHEREAS, Axion of New Jersey LLC, has continued to provide Temporary Staffing from the expiration of the Settlement Agreement until the adoption of contract; and

WHEREAS, Axion of New Jersey, LLC, has demanded payment of outstanding monies due for services rendered, which monies have not been paid because there is no currently approved contract, emergency or otherwise; and

WHEREAS, the City of Newark, Department of Child and Family Well-Being, acknowledges having received the Temporary Staffing services from **Axion of New Jersey LLC**; and

WHEREAS, the parties have agreed to settle the matter for the payment by the City of Newark of the sum of **\$505,705.30 (Five Hundred Five Thousand Seven Hundred Five Dollars and Thirty Cents)** in one lump sum, in exchange for the execution of a Settlement Agreement and General Release as a full and complete settlement of all of **Axion of New Jersey LLC's** claims, including any claims for attorney's fees for services provided through and including March 4, 2013; and

WHEREAS, the within settlement and release does not admit nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the **City of Newark**, its agents, officers and/or employees whatsoever and is entered into to resolve this matter and prevent the incurring of additional costs and fees; and

WHEREAS, the **City of Newark** has determined that it is in the best interest of the taxpayers to settle and avoid the cost, expense, delay and uncertainty of litigation; and

WHEREAS, the Director of the Department of Finance has certified that there are adequate, appropriated monies available to pay the settlement.

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 negotiate and execute a Settlement Agreement and Release and any other documents, sufficient in form and content to the Corporation Counsel and to take whatever actions are necessary to effectuate the terms of the within resolution and settlement of this matter pursuant to the terms contained in this Resolution.
2. The Municipal Council of the City of Newark hereby authorizes the amendment of Resolution #7R7-b December 5, 2012 and the Settlement Agreement approved therein, by reducing the settlement amount from \$368,113.35 to \$363,852.35.
3. The Municipal Council of the City of Newark hereby authorizes the payment for the benefit of **Axion of New Jersey LLC**, in the amount of **\$505,705.30 (Five Hundred Five Thousand Seven Hundred Five Dollars and Thirty Cents)**, by ACH wire transfer to Wells Fargo Bank, N.A., San Francisco, CA ABA#121000248, Beneficiary: Wells Fargo Credit-Texas Office, Acct# 4121418198, as consideration of and pursuant to the terms and conditions contained in the Settlement Agreement and Release annexed hereto.

4. In exchange for the execution by **Axion of New Jersey LLC.**, of the Settlement Agreement and Release, acceptable in form to the Corporation Counsel and after passage of this resolution and upon receipt by the Corporation Counsel and the Director of Finance of any and all other documents deemed necessary, the Director of Finance of the City of Newark is hereby authorized to make the payment for the benefit of **Axion of New Jersey LLC.**

5. The within settlement and resolution does not admit nor should it be construed as an admission of liability or violation of any law, statute or regulation or a breach of any duty by the City of Newark, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of counsel and to eliminate all risks and future litigation costs.

6. Attached hereto is the decreasing certification of funds to reflect the amendment to Resolution 7R7-b December 5, 2012, in the amount of \$4,261.00.

7. Also attached hereto is a certification of funds issued by the Director of Finance, City of Newark, which states that there are available sufficient, legally appropriated funds of **\$505,705.30 (Five Hundred Five Thousand Seven Hundred Five Dollars and Thirty Cents)**, for the purposes set forth hereinabove. A copy of the certification of funds issued shall be filed in the Office of the City Clerk together with this Resolution by the Corporation Counsel.

8. A fully executed copy of the Settlement Agreement and Release shall be filed in the Office of the City Clerk by the Corporation Counsel.

9. This Resolution shall be effective upon adoption in accordance with applicable State law.

STATEMENT

This resolution authorizes the settlement of a demand for payment from **Axion of New Jersey LLC**, One Gateway Center, Newark, New Jersey 07102, for Temporary Staffing, through the payment of the lump sum of **\$505,705.30 (Five Hundred Five Thousand Seven Hundred Five Dollars and Thirty Cents)**, in exchange for the execution of a Settlement Agreement and Release and further authorizes the amendment to Resolution 7R7-b December 5, 2012 and the Settlement Agreement approved therein, to decrease the settlement amount from \$368,113.35 to 363,852.35.