



Legislation Text

File #: 14-2051, Version: 1

Dept/ Agency: Law

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

Purpose: Settlement of Civil Litigation

Docket No.: A-4258-13T2 and ESX-L-006649-12

Claimant: Newark Watershed Conservation and Development Corporation

Claimant's Attorney: Eric T. Kanefsky, Esq. of Calcagni & Kanefsky, the New Jersey Office of Harris, O'Brien, St. Laurent & Chaudhry LLP

Attorney's Address: One Newark Center, 1085 Raymond Boulevard., Newark, New Jersey 07102

Settlement Amount: \$337,500.00 (Three Hundred Thirty Seven Thousand Five Hundred Dollars and Zero Cents)

Funding Source: Insurance Commission Trust Fund

Additional Comments:

Invitation: Corporation Counsel, December 2, 2014

WHEREAS, a Settlement Agreement is proposed by and between the **CITY OF NEWARK** ("City") and **NEWARK WATERSHED CONSERVATION AND DEVELOPMENT CORPORATION** ("**NWCDC**") (collectively, the "**Parties**"); and

WHEREAS, the NWCDC is a separate, independent entity initially created to manage the City's watershed properties and later, to operate the Pequannock Water Treatment Plant pursuant to a Memorandum of Understanding; and

WHEREAS, on June 20, 2012, the Newark Municipal Council (the "Council") passed a Resolution requesting that the former Administration advise the Council of its plan to address management of the watershed at the expiration of the contract term on June 30, 2012; and

WHEREAS, on September 11, 2012, the City granted the NWCDC a six (6) month extension of the contract to continue operating the Pequannock Water Treatment Plant; and

WHEREAS, on October 1, 2012, an Executive Order was issued declaring a state of emergency; and thereafter the NWCDC's contract was extended; and

WHEREAS, on September 6, 2012 the City through the Corporation Counsel and/or her designee, ("Outside Counsel") filed an Order to Show Cause and Verified Complaint in Lieu of Prerogative Writ, seeking to prohibit the Council from adopting the "Save Our Water Ordinance"; and

WHEREAS, as set forth in the Stipulation of Settlement and Dismissal ("Stipulation"), a detailed litigation ensued which resulted in the Essex County Superior Court, Law Division entering two Consent Orders, the first dated February 22, 2013, issuing a stay and requiring by the City, the NWCDC and the Petitioners (collectively the "Parties") to mediate and the second dated June 5, 2013, which (1) addressed the Orders to Show Cause filed by both the City and NWCDC; (2)

resulted in the appointment of Provisional Trustees to the Board of the NWCDC (“Provisional Trustees”) to dissolve the NWCDC; and (3) allowed the City to intervene and file its Complaint; and

WHEREAS, on January 29, 2014, the Provisional Trustees filed an Application for a Ruling and Other Relief with the Superior Court, seeking to compel the City of Newark to provide additional funding for the NWCDC’s liabilities and dissolution expenses and to compel the City of Newark to pay the fees and expenses of the Provisional Trustees; and

WHEREAS, the Superior Court granted the relief sought by the NWCDC in that Application and the City appealed the Superior Court’s Order; and

WHEREAS, the NWCDC filed a cross-appeal in the Appellate Division, under Docket No.: A-4258-13T2; and

WHEREAS, prior to ruling on the interlocutory appeals, the Appellate Division required the Parties to engage in mediation utilizing the Honorable Philip S. Carchman (Ret.) as Mediator; and

WHEREAS, through the mediation, the Parties have reached an agreement to resolve all of their outstanding litigation and disputes brought in this matter and create a mutually acceptable framework whereby the NWCDC can be dissolved and wound down by the Provisional Trustees consistent with the discharge of any fiduciary duties owed to the NWCDC and otherwise satisfy the Superior Court’s Order appointing them; and

WHEREAS, the City seeks to resolve disputed claims and limit any further expenses related to the administration of the NWCDC, including any potential financial exposure from continuing litigation over the NWCDC’s efforts to compel the City to provide additional funding for the NWCDC’s liabilities and dissolution expenses and to compel the City to pay the fees and expenses of the Provisional Trustees; and

WHEREAS, the NWCDC, by and through the Provisional Trustees, intends to pursue affirmative legal actions to recoup and recover any assets of the NWCDC, ultimately for, among other purposes, the benefit of the City, and obtain recoveries on claims asserted for the benefit of creditors of the NWCDC; and

WHEREAS, the Committee of Petitioners seek to resolve its counter-claim against the NWCDC and ensure that any assets of the NWCDC that are recovered pursuant to affirmative legal actions are returned to the City; and

WHEREAS, the Parties desire to settle this matter requires entering into a Stipulation of Settlement and Dismissal, which is subject to approval by the Superior Court; and

WHEREAS, the Corporation Counsel based upon all of the facts and circumstances deems it is in the best interest of the City to resolve this matter pursuant to the terms of the proposed Stipulation of Settlement and Dismissal.

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

1. The recitals previously set forth are incorporated as if set fully forth herein.
2. The Stipulation of Settlement and Dismissal relating the litigation is hereby approved in the form attached hereto.
3. The Corporation Counsel is hereby authorized on behalf of the City of Newark to accept the terms of the Stipulation of Settlement and Dismissal and take all actions necessary to execute it and satisfy the City's obligations thereunder to the extent legally permitted to do so.
4. Upon receipt by the Corporation Counsel and/or Outside Counsel of the fully executed Stipulation of Settlement and Dismissal and all supporting documents, the Acting Director of Finance is hereby authorized and directed to issue checks in the amounts as follows:
 - i. An amount not to exceed \$112,500.00 (One Hundred Twelve Thousand Five Hundred Dollars and Zero Cents) for the costs and expenses associated with retaining any expert witness needed in connection with anticipated litigation commenced by NWCDC [pursuant to Paragraph 11, subsection (i) of the Stipulation against any individuals or entities to recoup or recover assets wasted, diverted or lost because of the actions of such individuals or entities and for malpractice and claims covered by the Directors and Officers Insurance Policy (Expert Payment"). The Experts have not yet been determined and will be determined if and when anticipated litigation commences.
 - ii. \$225,000.00 (Two Hundred Twenty-Five Thousand Dollars and Zero Cents) made payable to the Provisional Trustees pursuant to a schedule setting forth the amounts to be paid to each Trustee.
 - iii. Half of the Trustee Payment, or \$112,500.00 (One Hundred Twelve Thousand, Five Hundred Dollars and Zero Cents), shall be paid prior to the end of the fourth quarter of 2014. The check shall be made payable to Harris, O'Brien, St. Laurent & Chaudhry LLP.
 - iv. The balance of the Trustee Payment, or \$112,500.00 (One Hundred Twelve Thousand, Five Hundred Dollars and Zero Cents), shall be paid by the end of the first quarter of 2015. The check shall be made payable to Harris, O'Brien, St. Laurent & Chaudhry LLP.
5. This resolution shall be effective upon adoption in accordance with applicable State Law.

STATEMENT

This resolution hereby authorizes a Stipulation of Settlement and Dismissal in the litigation to be entered into by and among the City of Newark, the Newark Watershed Conservation and Development Corporation and the Committee of Petitioners to fully and finally resolve their respective claims and continuing obligations stemming from litigation bearing Docket No. A-4258-13T2 and Docket No ESX-L-006649-12