



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 18-0732, **Version:** 1

Dept/ Agency: Law

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

Purpose: Pre-Litigation Settlement of Civil Claim

Docket No.: N/A

Claimant: Joseph Smentkowski, Inc., 160 James Avenue, Jersey City, New Jersey 07306

Claimant's Attorney: John Chiaia, Esquire

Attorney's Address: 277 Fairfield Road, Suite 120, Fairfield, New Jersey 07004

Settlement Amount: \$399,000.00

Funding Source: 2018 Budget/Department of Public Works, Division of Sanitation

Additional Comments:

This resolution and settlement agreement resolves all outstanding invoices for Joseph Smentkowski, Inc., for the recycling services it rendered from February 1, 2018 through April 30, 2018.

Invitation: Acting Corporation Counsel

WHEREAS, the City of Newark, Department of Public Works, Division of Sanitation (the "City"), was in need of Recycling Services (Curbside Pick-Up); and

WHEREAS, on December 6, 2016, the City publically bid a contract for Recycling Services (Curbside Pick-Up). Two (2) bids were received on February 2, 2017 and are currently being reviewed, but a contract has not yet been awarded; and

WHEREAS, pending the award of the above contract, Joseph Smentkowski, Inc., 160 James Avenue, Jersey City, New Jersey 07306, provided Recycling Services (Curbside Pick-Up) to the City of Newark, for the period of February 1, 2018 through April 30, 2018, in an effort to ensure and help the City meet its recycling obligations throughout the City for the health, safety and welfare of its citizens; and

WHEREAS, Joseph Smentkowski, Inc., submitted a demand for payment for the Recycling Services (Curbside Pick-Up) it had provided to the Department of Public Works, Division of Sanitation, during the period of February 1, 2018 through April 30, 2018; and

WHEREAS, Joseph Smentkowski, Inc., submitted with its demand notice invoices totaling Three Hundred Ninety-Nine Thousand Dollars and Zero Cents (\$399,000.00) (the "Claim") for services rendered from February 1, 2018 through April 30, 2018 for the Recycling Services (Curbside Pick-Up) it provided (See Demand for Payment Letter and Invoices, attached); and

WHEREAS, the Business Administrator and the Department of Public Works have confirmed that the City received the benefit of the Recycling Services (Curbside Pick-Up) from Joseph Smentkowski, Inc. for services rendered during the period of February 1, 2018 through April 30, 2018; and

WHEREAS, the Business Administrator and the Department of Public Works have confirmed that there are adequate monies available in the budget of the Department of Public Works to pay the outstanding invoices for the Recycling Services (Curbside Pick-Up) provided by Joseph Smentkowski, Inc.; and

WHEREAS, to avoid the costly expense of litigation, Joseph Smentkowski, Inc. and the Acting Corporation Counsel for the City of Newark ("Parties") desire to amicably resolve this matter; and

WHEREAS, the Parties have agreed to settle the matter for the payment by the City of Newark of Three Hundred Ninety-Nine Thousand Dollars and Zero Cents (\$399,000.00) (the "Settlement Sum"), in exchange for Joseph Smentkowski, Inc.'s execution of this Settlement Agreement and General Release as a full and complete release of the Claim, including any claims for attorney's fees; and

WHEREAS, as part of this Settlement Agreement and General Release, the City agrees to pay Joseph Smentkowski, Inc., for the Recycling Services (Curbside Pick-Up) rendered during the period of February 1, 2018 through April 30, 2018, an amount not to exceed Three Hundred Ninety-Nine Thousand Dollars and Zero Cents (\$399,000.00) within ten (10) days of the Municipal Council's approval of this resolution; and

WHEREAS, this Settlement Agreement and General Release neither admits 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, 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 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 Mayor and/or his designee, the Acting Corporation Counsel, is 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 Acting 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 the within Resolution.

2. The Municipal Council of the City of Newark authorizes the payment of a check made payable to Joseph Smentkowski, Inc., 160 James Avenue, Jersey City, New Jersey 07306, for an amount not to exceed Three Hundred Ninety-Nine Thousand Dollars and Zero Cents (\$399,000.00) as payment for the Recycling Services (Curbside Pick-Up) rendered during the period of February 1, 2018 through April 30, 2018. The check shall be mailed to Joseph Smentkowski, Inc., 160 James Avenue, Jersey City, New Jersey 07306, or wire transferred to an account in accordance with accurate information provided by the vendor, as consideration of and pursuant to the terms and conditions contained in the Settlement Agreement and Release annexed hereto. This Settlement

Sum shall be paid immediately upon receipt of all necessary documents required by the Finance Director to process payment.

3. In exchange for the execution by Joseph Smentkowski, Inc. of the Settlement Agreement and Release, acceptable in the form to the Acting Corporation Counsel and after passage of this resolution and upon receipt by the Acting Corporation Counsel and the Director of Finance of any and all other documents deemed necessary, the Director of Finance is hereby authorized to issue the check made payable to Joseph Smentkowski, Inc.

4. The 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, its agents, officers and/or employees whatsoever and is entered into based upon recommendations of the Acting Corporation Counsel and to eliminate all risks and future litigation costs.

5. Attached hereto is a Certification of Funds in the amount of Three Hundred Ninety-Nine Thousand Dollars and Zero Cents (\$399,000.00) from the Director of Finance and the line appropriation of the official budget which shall be charged is Business Unit: 011; Dept. 060; Div./Proj.: 0605; Account#: 7158; Budget: B2018.

6. The Acting Corporation Counsel shall file a copy of the Certification of Funds for the full amount of the settlement before a check is issued by the Director of Finance in the Office of the City Clerk.

7. The Acting Corporation Counsel shall file a fully executed copy of the Settlement Agreement and Release in the Office of the City Clerk.

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

STATEMENT

This resolution hereby authorizes the Acting Corporation Counsel to resolve claims, without the need for litigation, of outstanding invoices for Joseph Smentkowski, Inc., 160 James Avenue, Jersey City, New Jersey 07306, without the need and expense of civil litigation. This Resolution and Settlement Agreement resolves all outstanding invoices for Recycling Services (Curbside Pick-Up) rendered during the period of February 1, 2018 through April 30, 2018, for an amount not to exceed Three Hundred Ninety-Nine Thousand Dollars and Zero Cents (\$399,000.00). In return, Joseph Smentkowski, Inc. agrees to waive all claims against the City including attorneys' fees.