



Legislation Text

File #: 22-1743, Version: 1

Dept/ Agency: Law

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

Purpose: Settlement of Civil Litigation

Docket No.: ESX-L-4632-20

Claimant: Kawaida Towers, L.P.

Claimant's Attorney: Genova Burns, LLC, 494 Broad Street, Newark, New Jersey 07102

Settlement Amount: \$73,390.00

Funding Source: Community and Economic Development Trust Fund, Fund 26, Account 32100, Budget Year B2022

Additional Comments:

WHEREAS, the City has entered into a redevelopment agreement with Kawaida Towers, L.P., as the proposed redeveloper for the property known as 17-21 Halsey Street, also known as Block 20 Lot 1 on the tax maps for the City of Newark ("the Property"); and

WHEREAS, the City was named as a defendant in a lawsuit filed by the prior redeveloper for the Property who was terminated by the City, which lawsuit is entitled Fairmount Senior Genesis Housing Urban Renewal Partnership, LLC et al v. The City of Newark, et al., Docket No. ESX-L-4632-20 (the "Genesis Lawsuit"); and

WHEREAS, the prior redeveloper filed an Amended Complaint in said matter that, *inter alia*, named Kawaida Towers, LP, Omni America LLC, Mid-Atlantic Investment LLC, and NAN Newark Tech World as defendants (collectively, the "Kawaida Towers Defendants"); and

WHEREAS, the prior redeveloper's claims against the Kawaida Towers Defendants were dismissed by the court but those claims remain subject to appeal; and

WHEREAS, neither the City nor the Kawaida Towers Defendants filed cross-claims against each other; and

WHEREAS, the Kawaida Towers Defendants have reiterated to the City their commitment to move forward and complete the development of the Property; and

WHEREAS, the Kawaida Towers Defendants sent the City a letter on July 28, 2021, requesting that the City indemnify the Kawaida Towers Defendants for the litigation costs incurred as a result of this litigation; and

WHEREAS, after subsequent discussions, the parties to the Genesis Lawsuit decided to pursue mediation to resolve the Genesis Lawsuit; and

WHEREAS, the Kawaida Towers Defendants have demanded indemnification from the City for

all reasonable legal fees incurred in its defense of the Genesis Lawsuit; and

WHEREAS, the Kawaida Towers Defendants sought indemnification for legal fees incurred through mediation and submitted invoices for fees and expenses through December 21, 2021 totaling \$56,713.71; and

WHEREAS, as a partial resolution of the Kawaida Towers' indemnity demand, the City agreed to pay and Kawaida Towers Defendants agreed to accept payment in the amount of Forty-Four Thousand Dollars and Zero Cents (\$44,000.00), as payment in full for the Kawaida Towers Defendants' demand for the City's indemnity obligation for those invoices for time entries through December 21, 2021; and

WHEREAS, the Kawaida Towers Defendants have now submitted an additional invoice to the City for the period following December 21, 2021 totaling Seventy-Three Thousand Three Hundred Ninety Dollars and Zero Cents (\$73,390.00), and have demanded indemnity for that invoice as a condition of signing a release in favor of the Prior Developer as part of a global settlement of this matter; and

WHEREAS, the Kawaida Towers Defendants have incurred additional fees beyond those set forth in the above invoice but have agreed to release any claim for payment of those fees as a condition of this settlement; and

WHEREAS, the parties to the Genesis Lawsuit have reached a tentative global settlement to be presented to the City Council for approval; and

WHEREAS, this settlement will resolve any claim from the Kawaida Towers Defendants arising out of the Genesis Lawsuit; and

WHEREAS the City's interests in the Genesis Lawsuit are represented by Schenck, Price, Smith & King, LLP ("Outside Counsel") which, after discussion with Corporation Counsel, the Deputy Mayor/Director of the Department of Economic Housing and Development, and the Business Administrator, advises that the proposed settlement is in the best interest of the City because it resolves legal issues which are of uncertain outcome if adjudicated and advances the City's interest in the redevelopment of the Central Avenue Properties; and

WHEREAS, the City believes this settlement to be in the vital and best interest of the City and of the Central Ward and West Ward, and that it promotes the health, safety, morals and welfare of the City's residents, as well as advances the City's interest in the redevelopment of the Central Avenue Properties.

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 Corporation Counsel, are authorized to enter into and execute the Settlement Agreement and Release attached hereto as Attachment A.
2. The Mayor, and/or his designee the Corporation Counsel, are hereby authorized to take all actions necessary and appropriate to implement this Resolution and to effectuate the

terms of the Settlement Agreement and Release, thereby fully releasing all of the Kawaida Towers Defendants' indemnification and contribution claims against the City arising from or related to the Genesis Lawsuit.

3. Upon receipt by the Corporation Counsel of all documents deemed necessary, the Director of the Department of Finance is hereby authorized and directed to issue payment in the amount of Seventy Three Thousand, Three Hundred Ninety Dollars and Zero Cents (\$73,390.00), which payment will be made payable to "Genova Burns LLC, Attorney Trust Account" and mailed to Genova Burns, LLC, 494 Broad Street, Newark, New Jersey, 07102.
4. Annexed hereto is the Certification of Funds issued by the City's Director of the Department of Finance, which states that there are available sufficient legally-appropriate funds from the Community and Economic Development Trust Fund, Fund 26, Account 32100, Budget Year B2022, in the amount of Seventy Three Thousand Three Hundred Ninety Dollars and Zero Cents (\$73,390.00).
5. A copy of the Comptroller's Certification shall be filed in the Office of the City Clerk along with this Resolution by the Corporation Counsel.
6. This Resolution shall be effective upon adoption in accordance with applicable State Law.
7. The Settlement Agreement and Release 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 the Corporation Counsel and to eliminate all risks and future litigation costs.
8. Once the Settlement Agreement is fully executed, Outside Counsel is hereby authorized to execute the Stipulation of Dismissal With Prejudice in substantially the same form as Attachment A to the Settlement Agreement.
9. The Corporation Counsel shall file a fully executed copy of the Settlement Agreement with the Acting City Clerk.

STATEMENT

This resolution authorizes the Corporation Counsel to resolve the Kawaida Towers Defendants' pending indemnification claims against the City. Under the terms of the Settlement Agreement, the Kawaida Towers Defendants agree to release all contribution and indemnification claims against the City arising from and related to the Genesis Lawsuit in exchange for payment of \$73,390.00.