



Township Council

1 Municipal Plaza
Bloomfield, NJ 07003

Louise M. Palagano
Municipal Clerk

http://www.bloomfieldtwpnj.com

Meeting: 05/20/13 07:00 PM

2013 RESOLUTION WATER CHARGES AND RATES

AUTHORIZATION - BULK WATER SUPPLY

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Township of Bloomfield, County of Essex, State of New Jersey hereby authorizes the Township Administrator to sign the attached Bulk Water Supply agreement between the City of Newark and the Township of Bloomfield.

......*

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on May 20, 2013.

Bonita L. Fusco
Acting Municipal Clerk of the Township of Bloomfield

Raymond McCarthy
Mayor of the Township of Bloomfield

✓ Vote Record - Resolution 2749						
		Yes/Aye	No/Nay	Abstain	Absent	
<input checked="" type="checkbox"/> Adopted	Elias Chalet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Adopted as Amended	Nicholas Joanow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Defeated	Carlos Bernard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Withdrawn	Michael Venezia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Tabled	Peggy O'Boyle Dunigan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Approved	Bernard Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Approved by Consensus	Raymond McCarthy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Not Discussed						
<input type="checkbox"/> Tabled with No Vote						
<input type="checkbox"/> Discussed						
<input type="checkbox"/> Veto by Mayor						
<input type="checkbox"/> Approved No Vote						

APPROVED AS TO FORM AND PROCEDURE
ON BASIS OF FACTS SET FORTH
Brian J. ...
Director of Law - Township Attorney

Resolution of the City of Newark, N.J.

NO. 7R7-D

Date of Adoption AUG 07 2013

Title Page

Dept/ Agency: Law

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

Purpose: Settlement of Civil Litigation

Docket No.: ESX-L-8802-12

Claimant: City of Newark, Department of Water and Sewer Utilities

Claimant's Attorney: Clyde Otis III, First Assistant Corporation Counsel

Attorney's Address: Department of Law, Room 316, 920 Broad Street, Newark, New Jersey 07102

Settlement Amount: \$580,000.00

Funding Source: Township of Bloomfield

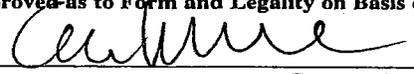
Additional Comments:

Offer of settlement by the Township of Bloomfield in satisfaction of outstanding water charges

Invitation: Corporation Counsel (date to be entered by Clerk's Office)

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified by


Corporation Counsel

Title

Council Member _____ presents the following Resolution:

08 07 30 12 3:28

Resolution of the City of Newark, N.J.

AUG 07 2013

NO. 7R7-D

Date of Adoption _____

Approved as to Form and Legality on Basis of Facts Set Forth

[Signature]
Corporation Counsel

Factual contents certified by

[Signature]
[Signature]
Asst Corp Counsel Title

Council Member

Council of the whole

presents the following Resolution:

WHEREAS, a suit was instituted in the Superior Court of New Jersey, Law Division, Essex County, captioned City of Newark v. Township of Bloomfield, Superior Court of New Jersey, Docket Number: ESX-L-8802-12, in which the City of Newark sued the Township of Bloomfield for unpaid water charges and interest thereon; and

WHEREAS, it has been determined that defendant owes certain amounts in unpaid water charges and interests thereon and a proposal has been made to resolve this litigation by payment in the total amount of \$580,000.00 (Five Hundred and Eighty Thousand Dollars); and

WHEREAS, the Corporation Counsel based upon all facts and circumstances deems it in the best interest of the City of Newark to resolve said matter by operation of the proposed 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 execute and accept the terms of the Settlement Agreement and Release, attached hereto.

2. Upon receipt by the Corporation Counsel of all documents deemed necessary, the Acting Director of the Department of Water and Sewer Utilities is hereby authorized and directed to accept payment in the amount of \$580,000.00 (Five Hundred and Eighty Thousand Dollars), which payment shall be credited to the bulk water account of the Township of Bloomfield.

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

4. This resolution shall be effective upon adoption in accordance with applicable State Law.

AUG 30 10 51 20

[Faint stamp]

7R7-D

2

STATEMENT

This resolution authorizes the Corporation Counsel on behalf of the City of Newark to enter into a Settlement Agreement and Release to settle civil litigation captioned City of Newark v. Township of Bloomfield, Superior Court of New Jersey, Docket Number: ESX-L-8802-12, in consideration of the payment by the Township of Bloomfield in the amount of \$580,000.00 (Five Hundred and Eighty Thousand Dollars), in exchange for Plaintiffs' dismissal of any and all claims against the Township of Bloomfield for unpaid water bills as of March 31, 2013 along with a complete release.

CERTIFIED TO BY ME THIS
AUG 14 2013

Do not use space below this line

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB	Council Member	AYE	NAY	NV	AB
Amador				✓	Gonzalez				✓	Sharif	✓			
Baraka	✓				Quintana	✓				Ramos, Acting President, Vice President	✓			
Crump				✓	Rice	✓								

✓ Indicates Vote

AB - Absent

NV - Not Voting

Adopted at a meeting of the Municipal Council of the City of Newark, N.J.,

[Signature]
0712415-2

President of the Council

AUG 14 2013
[Signature]
City Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”), dated this _____ day of _____, 2013, is made by the “Parties,” consisting of City of Newark (“Plaintiff”) and the Township of Bloomfield, (“Defendant”), to settle any claims which Plaintiff may have against the Defendant, its departments, divisions, agents or representatives arising out of the claim for unpaid water bills and interest thereon as more specifically alleged in the action entitled City of Newark v. Township of Bloomfield, Superior Court of New Jersey, Law Division, Docket Number: ESX-L-8802-12. The Parties agree that:

1. Definitions:

For the purpose of the Agreement, the following defined terms shall have the following meanings:

“Action” means the matter entitled City of Newark v. Township of Bloomfield Superior Court of New Jersey, Law Division, Docket Number ESX-L-8802-12.

“Claims” shall mean all claims, cross-claims, counterclaims, third-party claims, fourth-party claims, demands, suits, actions, disputes, judicial, administrative or other proceedings, or cause of action of any type (whether known or unknown, whether asserted or unasserted, whether liquidated or unliquidated, whether actual or alleged, whether past, present or future, whether suspected or unsuspected, whether arising in common law or by statute, whether at law or equity, whether based on contract, professional malpractice, wrongful termination, strict liability, trespass, nuisance, or otherwise, or whether involving property damage, loss of property, diminution in the value of property or other financial or economic harm, or any other form of injury) seeking declaratory relief, compensatory damages, punitive damages, statutory damages, injunctive relief, indemnity, contribution, subrogation, offset, attorney’s fees, expert or consultant costs, litigation costs, lien, losses, or any other form of damages, costs, expenses, or relief whatsoever, arising out of the Action, including, but not specifically limited to, the claims of unpaid bulk water charges and interest thereon up to and including all principal charges and accrued interest through March 31, 2013 (excluding principal water charges billed as of January 1, 2013 and presently outstanding).

“Parties” shall mean all parties to this Agreement, and all their predecessors, successors, assigns, affiliates, subsidiaries, parents, members, operating managers, employees, agents, attorneys, representatives, officers and/or companies or corporations owned, controlled or under their common ownership.

2. Incorporation of Definitions and Recitals.

The above definitions and recitals are incorporated herein by reference and are made part hereof as if fully set forth at length herein.

3. Compromise of Disputed Claims.

This Agreement is entered into solely to avoid the cost, expense, delay and uncertainty of litigation and is not to be construed as an admission of liability, error, omission, wrongdoing, misconduct or breach of any contractual, common law or statutory duty on the part of any party hereto. The parties to the Agreement intend that the Agreement and its terms be subject to the full protection provided by all provisions of law (whether statute, rule or common law) that protect settlements and/or settlement communication from admission or disclosure into evidence at trial.

4. Settlement of Disputed Claims

Upon the satisfaction of the following conditions:

- a. execution of this Agreement by the Defendant; and
- b. approval of the Municipal Council of this settlement; and
- c. execution of this Agreement by the Plaintiff;

the City of Newark shall, in full settlement of its Claims asserted against the Defendant in the Action, accept payment from Defendant in the total sum of Five Hundred and Eighty Thousand (\$580,000) Dollars, which payment will be made payable to "City of Newark/Water Department" and which payment will be mailed to 920 Broad Street, Room B31, Newark, NJ 07102.

5. Consideration.

For and in consideration of the agreed upon sums set forth in Paragraph 4 above, to be paid to the City of Newark, the Parties hereby forever irrevocably release and discharge each other from any and all Claims regarding bulk water sales and/or purchases which were asserted or could have been asserted in the Action.

6. Additional claims.

In further consideration of the agreed upon sums set forth in Paragraph 4 above, the Parties further agree that they will not pursue any additional Claims which they may have based on any event arising out of the Action.

7. Full and final settlement.

This Agreement constitutes full and final settlement of any and all claims the Parties have based on any event arising out of the Action.

8. Dismissal of the Action.

Plaintiff agrees to dismiss the Action by filing a Stipulation of Settlement.

9. Subsequent Discovery of Different Facts.

The Parties acknowledge that they may discover facts different from, or in addition to, those which they now believe to be true in respect to the Claims released by the terms of this Agreement. Nevertheless, the Parties hereto, and each of them, hereby agree that the release contained in this Agreement shall be and remain effective pursuant to its terms, in all respects, notwithstanding the discovery of such different or additional facts. This section does not apply to any intentional misrepresentation of fact.

10. Joint Agreement.

This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf of, any of them. Each of the Parties has read and fully reviewed each of the provisions of this Agreement. Therefore, the language of this Agreement shall not be presumptively construed in favor of or against any party.

11. Reliance upon counsel.

The Parties have relied upon the advice and representation of their counsel respecting the legal liability of the parties hereby released and the language of this Agreement.

12. Partial invalidation.

If any provision of this Agreement or any portion of this Agreement is declared null or void or unenforceable by any court having jurisdiction, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which shall remain in full force and effect.

13. Waiver of Breach.

The waiver by any of the Parties of a breach by any other of the Parties to any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

14. Sense and Circumstance.

All references made and all pronouns used herein shall be construed in the singular or plural and in such gender as the sense or circumstances require.

15. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

15. No modification.

This Agreement constitutes the full agreement of the Parties and may not be modified, altered, or changed except upon their express prior written consent.

16. Municipal Council Approval

The Plaintiff City of Newark will, in good faith, upon receipt of the executed Agreement and release, attempt to place this Agreement before the Municipal Council for approval within the next sixty (60) days.

17. Authority of Signatures.

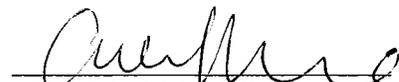
The individuals signing this Agreement and the party on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf and bind the party for whom they have signed.

18. Signatures:

CITY OF NEWARK

APPROVED AS TO FORM AND LEGALITY


CORY A. BOOKER
MAYOR

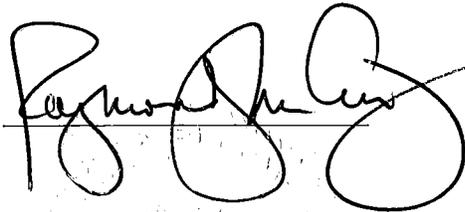

ANNA P. PERERIA
CORPORATION COUNSEL

ATTEST:

ROBERT P. MARASCO, 9/19/13
CITY CLERK

TOWNSHIP OF BLOOMFIELD

APPROVED AS TO FORM AND LEGALITY




BRIAN J. AVOLIA
TOWNSHIP ATTORNEY

ATTEST:

TOWNSHIP CLERK

Paul Lasek

From: Paul Lasek
Sent: Friday, September 14, 2012 9:53 AM
To: Robert Renna
Cc: Linda Milone; Anthony Marucci; Steve Coppola; 'Brian Aloia'

Robert,

I reviewed the draft agreement provided by Newark. Although the agreement is fashioned for East Orange I assume the bulk rate they are charging us would be the same.

Page 4 of the agreement, indicates that Bloomfield will guarantee the purchase of water in each service year in accordance to the aggregate amount set forth on Schedule A. Assuming Bloomfield maintains an average demand of 6.5 million gallons per day (MGD) our required annual allotment would be:

$$6.51 \text{ MGD} \times 365 \text{ Days} = 2,376 \text{ million gallons}$$

The bulk rate as per Schedule A is \$2,361 per million gallons.

Utilizing our assumed annual usage of 2,376 million gallons, the township, according to this agreement, is obligated to pay Newark, in one contract year:

$$2,376 \text{ million gallons} \times \$2,361 = \$5,610,993$$

Breaking this down, this equates to \$467,993 per month or \$15,372 per day.

I know the math is right, but unless I am misunderstanding the payment arrangement this equates to a rate about 10 times what we currently pay them for the month when excluding overage charges.

Very Truly Yours,

Paul D. Lasek, P.E.
Township Engineer
ext. 4130

5. **Water Service to be Provided.**

A. Bulk Customer guarantees the purchase of water during each Service Year in the aggregate amount set forth on Schedule A, referred to hereinafter as the Annual Purchase Requirement. After each Service Year, City will determine whether Bulk Customer has satisfied the Annual Purchase Requirement and, in such event same is not satisfied, the City shall invoice the Bulk Customer for the difference between the Annual Purchase Requirement and the amount actually purchased. For the initial Service Year, if the Effective Date is later than January 1, the Annual Purchase requirement will be prorated to the number of days remaining between the Effective Date and the end of the initial Service Year.

B. The water to be delivered by City will be furnished from supplies as City may now or hereafter use for the general supply to its customers.

C. In conformance with State of New Jersey established guidelines for the supply of potable water under contract, the Bulk Customer agrees to the limits set forth on Schedule A.

D. Notwithstanding the aforementioned limits, the City shall supply water to the Bulk Customer on a best-efforts basis to meet extraordinary or emergency water supply needs within the Bulk Customer's Water System to the extent that such needs may be from time to time in excess of the stated limits. It is specifically agreed that neither the Bulk Customer nor any of its customers shall have any claim or demand against City by reason of the absence of adequate water supply, production, treatment or water distribution storage reservoirs or standpipes within the Bulk Customer's Water System or any consequence which may occur therefrom. Bulk Customer does hereby release City from any such claims or demands and agrees to indemnify and defend City, and save it harmless from any and all such claims or demands which may be made by any entities now or hereafter supplied by Bulk Customer. The decision to supply water in excess of the stated limits is solely at the complete discretion of the City.

E. The Annual Contract Maximum, Maximum Monthly Volume and Maximum Daily Volume (the "Contract Maximum Limitations") set forth herein may be increased on the request by Bulk Customer and consent thereafter by City. To the extent that the Bulk Customer requests and the City consents to an increase in the Contract Maximum Limitations, the Annual Purchase Requirement will be increased accordingly so as to maintain a ratio not to exceed:

a. 2.0:1 between the Maximum Daily Volume and the Annual Purchase Requirement expressed as a daily rate of flow;

SCHEDULE A

SERVICE TO BE PROVIDED AND POINTS OF DELIVERY

SERVICE TO BE PROVIDED IN EACH SERVICE YEAR:

1. ANNUAL PURCHASE REQUIREMENT
~~1825~~ Million Gallons per Year *Assume 2,376.15 MG (6.51 MGD)*

2. ANNUAL CONTRACT MAXIMUM

2190 Million Gallons per Year¹

3. MAXIMUM MONTHLY VOLUME

232.5 Million Gallons per Month²

4. MAXIMUM DAILY VOLUME

10.0 Million Gallons per Day³

POINT OF DELIVERY

No.	Description/Location
1	Existing interconnections between the City of Newark System and the City of east Orange Board of Water Commissioners' Water System are located at 1) LaFrance Avenue in Bloomfield , NJ and 2) Holland Road in South Orange, NJ

RATES IN EFFECT AT COMMENCEMENT OF AGREEMENT

Bulk Rate-\$ 2,361.38 per Million Gallons

Retail Rate-\$2,989.30 per Million Gallons

¹ The Annual Contract Maximum is equal to the Annual Purchase Requirement multiplied by 1.2 and is expressed in units of gallons per year.

² The Maximum Monthly Volume is equal to the Annual Purchase Requirement divided by 365 days per year multiplied by 1.5 and multiplied by 31 days per month. The Maximum Monthly Volume is expressed in units of gallons per month.

³ The Maximum Daily Volume is equal to the Annual Purchase Requirement divided by 365 days per year multiplied by 2.0 and is expressed in units of gallons per day.