BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.

Reply Of Intervenors To Motion Of Jersey City To Compel Conrail To Produce Information Pursuant To 49 CFR 1152.27 (a)

In

Conrail Petition For Exempt Abandonment
Hudson County, New Jersey

STB Docket: AB-167-1189-X
And Related Proceedings
AB-55-686-X
AB-290-306-X

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DATED: January 13, 2015

REPLY OF INTERVENORS 212 MARIN BLVD. LLC, ET AL. to MOTION BY JERSEY CITY TO COMPEL CONRAIL TO PRODUCE INFORMATION FOR CITY OFFER OF FINANCIAL ASSISTANCE.

Summary Of Reply

212 Marin Blvd., LLC et al. (the "LLC Intervenors") respond to the City of Jersey City's (the "City") motion to compel Consolidated Rail Corporation ("Conrail") to "immediately" produce information described in 49 C.F.R. § 1152.27(a). The City's motion is improper in a number of respects and should be rejected by the Board at this time. The following numbered paragraphs summarize the position of the LLC Intervenors on the City's motion.

1. There is no "urgent need for service" from the "shipper" who has allegedly approached the City. In fact, there is no need for rail service whatsoever involving LLC Intervenors' properties. There is no demonstrated commercial need for rail service, let alone profitable service; there is no evidence of community support for the resumption of freight service in this area after the last train left 27 years ago; and rail service is not operationally feasible. Hence, there is no basis for an offer of financial assistance ("OFA"), much less the need to expedite one. The Board should not consider the City's motion.
2. The City's request to expedite is based upon a Declaration filed under seal as its "Exhibit D." That Declaration contains materially false statements of fact in an apparent attempt to mislead the Board. The basis for this objection by LLC Intervenors is contained in Exhibit A to this reply and is being filed under seal in order to fully explore the intentional and willful effort to mislead the Board in this matter. Based upon this, the Board should reject expedited treatment, reject the City's motion, and apply appropriate sanctions against the City, as the Board may see fit.
3. The City lacks the legal authority to pursue an OFA so the entire exercise which it claims it needs Conrail's information to pursue, and pursue expeditiously, is not within its power or authority. The City has claimed that it has the authority to pursue an OFA through the adoption of city ordinance 14.103, which it attached

to its present motion as Exhibit B. Consistent with its lack of candor to the Board, the City failed to advise that the LLC Intervenors have challenged the validity of that ordinance in an action brought in the Superior Court of New Jersey, citing numerous grounds and illegalities in its adoption. See: LLC Intervenors' Complaint, at Exhibit B to this Reply.

4. The City's failure to answer the LLC Intervenors' State Court complaint challenging the ordinance conclusively establishes that the City's proposed OFA is a sham. The City's answer to LLC Intervenors' complaint was due on December 30, 2014, a few days after the City filed the present motion, but no answer has been filed in the intervening two weeks. The LLC Intervenors have moved to enter default against the City. See Exhibit C. If the City were to oppose the entry of default on LLC Intervenors' complaint against the OFA ordinance, it would be clear that the City had intentionally ignored its obligations to file a timely answer with the Court for the sole purpose of hampering and limiting LLC Intervenors in their procedural right to reply to the City's December 23, 2014 motion. Should the City oppose the entry of default and judgment against its OFA ordinance, and seek to delay judgment on its OFA ordinance, it would demonstrate the abuse of the state court system and an effort to improperly manipulate these proceedings. In either case, the City has no credible position that it can ever produce an OFA. Therefore, the Board should not delay adjudication of these proceedings, and should not give consideration to the City's present motion. LLC Intervenors therefore respectfully seek to reserve the option of a further submission concerning those state court proceedings on the City's OFA.

5. In limiting its funding obligations in its OFA ordinance, the City has effectively excluded the possibility of a financially credible OFA. The City's OFA ordinance limits its total expenditure to $5.7 million. With $3 million of this amount committed to acquiring Intervenors' properties at a value set by their distress sale over 10 years ago, the City cannot possibly afford to acquire the larger intervening property of Conrail, construct the necessary rail facilities, and subsidize operations. The only showings made concerning financial

responsibility establish an inability to provide funding and conclusively exclude the possibility of a financially responsible OFA.

6. The City has no intention of reinstituting rail freight service on the Harsimus Branch, let alone on the Embankment itself. Notwithstanding the letters ghost-written by the Embankment Coalition for local politicians, which all uniformly state their purpose is historic preservation and open space, there are no shippers, and no need for rail freight service on the Harsimus Branch. The Board has continually acknowledged this reality. Prior decisions in this matter have repeatedly delayed, abated and put aside consideration of an OFA.[1] Yet, during five years of delay, no shipper, demand for rail freight service, or any other possible argument in favor of even considering an OFA has materialized. The only possible explanation for the City's present motion, and its request for "Expedited Treatment," is to delay the eventual resolution of these proceedings and this dispute before the Board by providing the City with additional material that the City would then use to attack both Conrail and LLC Intervenors. The City has burdened these proceedings with unsubstantiated allegations, arguments that LLC Intervenors' deeds should be voided when there is absolutely no basis or jurisdiction to do so, and unfulfilled promises that it will file motions and an OFA. None of that has happened. All of this has simply burdened the proceedings and denied LLC Intervenors a proper resolution in their favor.[2]

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[1] See order of Director of Proceedings dated May 26, 2009, (also attached as Exhibit 2 to the Complaint, Exhibit B, hereto) the Board's April 10, 2010 order holding entire Conrail petition in abeyance, and the August 11, 2014 Board order deferring setting schedule to examine issues relating to a City OFA, in this action.

[2] The delays in these proceedings include failures by both Conrail and the City to even address jurisdictional issues, leave the status of other former rail lines unaddressed and unresolved, ignore the three prior pertinent U.S. Court of Appeals decisions by saying everything has been resolved in court, segment the abandonment proceedings both in terms of railroad jurisprudence and the scope of environmental and historic review, and most importantly acknowledge that it was the City itself that sought to end all industrial use and rail service on its waterfront. The net result of the tortious course of these proceedings has been a significant imposition upon Intervenors' property rights for many years of unresolved or ill-founded motions, rulings, decisions, or just plain delay, while the City's counsel blithely quotes Charles Dickens half-way through his loquacious motion papers. [City Motion, page 10, footnote 6.]

7. Notwithstanding the impropriety of the City's motion, and the reasons why it should not be considered at this time, LLC Intervenors do not agree that Conrail should be permitted to refuse to comply with the Board's regulations concerning the conduct of its own petition. The Board can set a schedule for the order of proceedings, and had said it would do just that on August 11, 2014, if that is what is required to see this through to a conclusion. But now, five months after it promised to set a scheduling order, it has not done so. There is no reason for continued delay of these proceedings, and even less for the Board's failure to act on LLC Intervenors' Motion for Reconsideration in STB Docket FD-35825, or to resolve the many motions that remain undecided. The Board is not bound to delay these proceedings because Conrail refuses to cooperate, or because the City makes motions to take the proceedings astray. LLC Intervenors have strongly opposed all of these actions by both the City and Conrail in the hope of having the Board conduct a proceeding that is properly grounded on statutory jurisdiction. Because that has not happened, LLC Intervenors emphatically state their objection to continued delay caused by the other parties which the Board has an obligation to address, and note for the record that further delay constitutes a constitutional violation of their substantive property rights constituting a regulatory taking. See e.g. Ladd v. United States, 630 F.3d 1015 (Fed Cir. 2010); Seiber v. United States, 364 F.3d 1356 (Fed Cir. 2004); and Wyatt v. United States, 271 F.3d 1090, 1098 (Fed Cir. 2001) (regarding temporary regulatory takings due to excessive delay in decision making process). Unwarranted delay is also actionable against the Board as a fundamental denial of procedural due process. Nothing in this reply is intended as countenancing further delay by any party.

ARGUMENT

Incorporating the foregoing summary arguments, LLC Intervenors respectfully submit the following for consideration by the Board.

POINT I – City's Unsupported Pursuit of an OFA for Improper Purposes

In the May 26, 2009 order, the Director of Proceedings imposed common sense requirements on any party intending to file an OFA. That order provides:

> The OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic. Any person who intends to file an OFA in this proceeding should address one or more of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible. See Los Angeles County Metropolitan Transportation Authority —Abandonment Exemption—in Los Angeles County, CA, STB Docket No. AB-409 (Sub-No. 5X), slip op. at 2-3 (STB served June 16, 2008) (requiring this showing where traffic had not moved over the line in 2 years and carrier sought exemption from OFA procedures).

The City has appealed that order, claiming that it is somehow unprecedented for the Board to require a showing of genuineness to an OFA. If the City's pledges are sincere and there is a legitimate need to resume freight service along the Harsimus Branch, making showings of need for service, community support, and operational feasibility should present no obstacles. However, as noted, the City views an OFA as a form of federal eminent domain, under which the City can take the LLC intervenors' properties, attempt to provide rail service for two years, and then, when that effort will inevitably fail, convert the Embankment to a park. The City's motion to compel financial information from Conrail is, it is respectfully submitted, simply the next move in the City's improper invocation of the OFA process to facilitate parkland acquisition. The City's inability and refusal to address any of the Director of Proceedings' concerns further demonstrates the illegitimacy of the City's effort and provides bases for denying the motion.

No Need for Rail Freight Service

LLC Intervenors respectfully direct the Board's attention to their Petition in STB Docket FD-35825, which is now pending reconsideration since August 29, 2014 for a comprehensive demonstration that there is no rational possibility of any demand for rail freight service along the Harsimus Branch or the Jersey City waterfront, either now or in the future. Industrial uses left more than 25 years ago and cannot, and will not, return.

The realities of these facts should, and on reconsideration hopefully will, end these proceedings, and all of the City's claims to LLC Intervenors' properties under any argument of railroad law, including its arguments under New Jersey law upon the abandonment of railroad property. See: N.J.S.A. 48:12–125.1.

As to the question of whether any of this has changed by virtue of the submission the City has made in the form of a Declaration from a proposed shipper, nothing has. Further argument concerning this Declaration, which was filed under seal, is made in Exhibit A to this reply, which Exhibit is also being filed under seal.[3]

The arguments in support of this point are contained in Exhibit A to this reply by Intervenors. Without disclosing any allegedly "highly confidential" information or material, it can be said in this filing the promised industrial facility which would generate the need for rail freight service does not exist, and its construction has not been implemented as stated in the Declaration. Nor had any commitments for service been proposed or agreed-upon between the various parties. There are no plans, schedules, financing arrangements, or any other particulars whatsoever, and there is certainly no firm commitment for rail freight service. Like every other City filing concerning an OFA in this matter, the Declaration speaks with intentional and willful vagueness, uncertainty, delay and mis-information, but is characterized by the City as being absolute, positive, and more than sufficient. It is none of that and should be rejected out of hand.

No Evidence of Community Support

The City's motion highlights two factors; first, the ordinance adopted by the City Council, which is described as authorizing the OFA, and second, letters of support from local politicians. Neither the ordinance nor the letters are genuine evidence of community support. The letters are all materially the same, and in several instances identical. They are most likely ghost-written, probably by the Embankment Coalition,

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[3] Intervenors would be remiss in not pointing out that the reason for classification of the City's Exhibit D, Declaration of a purported shipper, as "highly confidential" appears to be nothing more than an improper effort to shield the City and its personnel, as well as the Declaration's author, from responsibility for its contents, and an effort to imbue it with credibility which it clearly does not deserve. Intervenors intend to challenge the document's classification as highly confidential by separate motion.

which is features prominently. The Director of Proceedings directed evidence of community support for freight service be produced. The politicians' letters, however, are clear support for parks and historic preservation, not resumption of freight service.

The City's ordinance is hardly evidence of community support.[4] While emphasizing the ordinance, the City neglected to advise this Board that the LLC Intervenors have challenged the legality of the ordinance in state court, or that, to date, the City has failed to file an answer and is now in default. LLC Intervenors believe that the City's failure to answer or otherwise plead to the judicial complaint against its OFA ordinance cannot possibly be an oversight. Has the City overlooked anything in this dispute-ever? The only thing that it has apparently overlooked is telling the Board that the LLC Intervenors had challenged the OFA ordinance in court. That "oversight" is only consistent with a lack of any rebuttal that could legitimately be made in defense of the ordinance. In other words, without anything credible to say in defense the ordinance, the alternative to say nothing may have become an option. It is simply incredible that the City's railroad counsel, Corporation Counsel, and other involved City officials never made any inquiry and simply believed that Intervenors would allow the City to proceed without challenging the OFA ordinance, especially after LLC Intervenors had so strenuously objected to its introduction and adoption. If the fact of the matter is that the City intentionally withheld filing an answer in state court, and intentionally failed to disclose Intervenors' challenge to its OFA ordinance, that would constitute an abuse of the state court proceedings, and the STB proceedings, and should not be countenanced in either forum.

There is, however, one other possible explanation for the City's failure to answer the complaint, and to proceed with the present motion without advising the Board that the underlying authority for the City to proceed with an OFA was under judicial scrutiny. That explanation is that the City simply ignored the complaint filed with the City Clerk and also served upon the City's Chief Financial Officer (also a named

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[4] The LLC Intervenors' complaint alleges the ordinance was considered in a secret, closed session of the City Council in violation of New Jersey's Open Public Meetings Act. The fact the City would consider the OFA in closed session, away from public scrutiny, is a further indication of lack of community support for resumption of long-dormant freight service.

defendant) at her city office. See attached Affidavit of Service in Exhibit C. given the importance that the City attaches to its proposed OFA, it is conceivable that the Superior Court may accept a plea of gross incompetence in handling the matter from the outset and allow the City to file an answer to the complaint. In that event, LLC Intervenors respectfully reserve their right to file a supplemental submission on this issue so as to be able to address any purported defense that the City may belatedly raise. However, given the City's plea of an urgent need for expedited rail service, this matter should have received more attention, and certainly an inquiry by counsel as to whether Intervenors had timely filed a challenge to the OFA ordinance. None of that happened. In fact, a plea of ignorance, malfeasance, and incompetence by the City can and should be considered by the Board in its determination of this matter. Certainly, it should not designate such an operator to proceed with an application to operate rail freight service, especially when the operator has no experience, no financing, no authority, and no credibility.

Whether the City's failure to defend its OFA ordinance is an act of venality or simply gross incompetence, neither characteristic argues in favor of granting its present motion. However, this sad example does suggest that the Board needs to more closely scrutinize all positions taken by the City, and take appropriate action to sanction and reject inappropriate conduct so that this matter may proceed without further unwarranted delay. The time for the Director of Proceedings to scrutinize the City's OFA posture is now.

No Authority To File An OFA. The City's Purported Enabling Legislation Is Illegal, Arbitrary, And Capricious.

Even a cursory review of the City's ordinance reveals that it is not directed at reinstituting rail freight service, and it certainly does not provide the funding to do so. Nor does it recite the need for such service. Rather it is a thinly disguised and ill-conceived pretext to burden the present abandonment proceedings with baseless arguments that the City should be allowed to seize Intervenors' properties. That is exactly the stated purpose of the ordinance. In the "Resolution [sic] Fact Sheet, Statement of Purpose (Part I)," the City's Corporation Counsel, its chief legal officer, states in pertinent part:

> This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or [sic] railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark.

The City's lack of interest in rail service, and the true purpose of its mis-characterization of the OFA process is reflected in the last sentence in Part I of this same section:

> As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.

On its face, in the absence of any credible plan for reinstituting rail freight service, the ordinance is a sham, intended to seize Intervenors' properties by using the OFA process as a form of eminent domain, but without paying constitutionally mandated just compensation for the taking of private property for public use. See: U.S. Constitution, Amendment V.[5] The City only promises "efforts to provide rail freight service" in lieu of actually doing something other than waiting two years to file a petition to discontinue service.

At this point the Board should look at what the City has put forth, make the inquiry that it previously deferred until "later," and end the charade that the City is entitled to pursue an OFA. It should certainly not continue the process by allowing the City's present motion. There is more than sufficient basis to conclude that the City continues to abuse and mis-use the OFA process. Aside from the reality that there is and will be no rail freight service on the downtown Jersey City waterfront, and has been none for the past 25 years or more since this proceeding was reactivated in 2014, the City has done nothing to position itself to make an OFA.

The Board is entitled to consider all of these factors, including the City's lack of candor in the proceedings, and its blatant mischaracterization of the OFA process as a

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[5] Any transfer of title to Intervenors' properties for less than just compensation, assuming for the sake of the argument that the STB had the power to do as the City suggests, would certainly trigger a taking and a Tucker Act claim against the United States for the full value of the properties. 28 U.S.C.A. § 1491

form of eminent domain. The City is entitled to no deference from the Board in these considerations with respect to the validity of its OFA ordinance. The Board certainly has the jurisdiction to prevent and stop abuse of its own jurisdiction and proceedings, and it is past time that it should do so with respect to the City's purported OFA.

There Is No "Financial" In The City's OFA

LLC Intervenors' complaint explains how the appropriation provided in the City's OFA ordinance cannot be used to subsidize rail freight service without serious violations of both state and federal law. The money that the City has appropriated is from the proceeds of the municipal bonds issued for the acquisition of open space, not for the subsidy for rail freight operations. (Exhibit B, Complaint, Count Three ¶¶110 to 116 and Complaint Exhibit 10). Having had ample opportunity to consider how it would provide financing, the City has chosen a source that allows no financing for the resumption of rail freight operations. The ordinance is completely devoid of any funding, or legitimate funding source, for the resumption of rail freight operations. To the contrary, whatever financial assistance is envisioned is being sought from others. Paragraph 4 of the ordinance provisions on page 3 of the document states in pertinent part as follows:

> 4. The Corporation Counsel or the Business Administrator are authorized.....
> (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage for the operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

What this says, aside from the vague, tentative language making the commitment only "to the extent practicable consistent with other public purposes", is that "interim" transload facilities may be built but will have to give way to other uses if the City acquires the property. This confirms that the City has no present intention of committing funds to the restoration of rail freight service and wants to further "limit" the need to commit any funds to an unspecified, "interim" transload facility that does not involve Intervenors' properties. The second part of the authorization, part (b), speaks to hiring consultants who will recommend possible sources for additional funding for restoration of rail service only when and if the City acquires the Harsimus Branch. In other words, there is no money for rail freight service to be found in the City's OFA ordinance. This is significant because the City has been on notice for five years that it will have to demonstrate that rail service can be restored. That restoration, obviously, would include property acquisition and the cost of reconstructing rail facilities. That reconstruction includes expensive bridges over city streets and a significant portion of elevated track, among many other things. The City is providing for none of the cost of that, and with that default in funding now documented by its own OFA Ordinance, it unabashedly seeks to move forward.

Another obvious shortfall is the $5.7 million for the acquisition of all necessary property. The City's OFA ordinance, page 3, paragraph 1, limits the price it is willing to pay to acquire all of Intervenors' properties to "the presumptive sum of $3 million for fee title…" leaving a balance of $2.7 million for the acquisition of all of Conrail's property, a much larger parcel. Because the OFA procedure is not an eminent domain statute,[6] and the City is, by its own admission, seeking fee title to all of Intervenors' properties, the City has not made a good-faith commitment to pay for the real estate interests it seeks to acquire, much less to devote those to the reinstitution of rail freight service. The complete absence of realistic financial provisions, coupled with arbitrary limitations, give further confirmation that the City's strategy before the Board for acquiring Intervenors' properties through an OFA is simply a sham. The City has had ample notice and opportunity to establish the real cost of reinstituting rail service and

[6] The STB has no authority to acquire property for the City's use as open space, much less for a "presumptive sum" well below the level of the Constitution's requirement of just compensation.

presenting such a plan to its governing body for authorization. What was adopted by the governing body, the OFA ordinance, establishes the futility of the Board entertaining any further requests by the City on its purported OFA. The Board should reject the motion and dismiss the City's notice of intention to file an OFA. This matter has been going on for over five years without any credible indication of legitimate purpose or intent on the part of the City. The charade should end.

No State Authorization

Finally, the LLC intervenors' complaint explains that the City has failed to seek or obtain the approval of the New Jersey Department of Transportation to provide funds to maintain rail service. N.J.S.A. 40:9C-1. The LLC Intervenors submit the OFA is prohibited by New Jersey law, and this Board should not engage in the process of advancing on OFA where the interested party (the City) lacks the approval to pursue rail service. (Complaint Count II, Exhibit B).

No Operational Feasibility

The City has never explained how freight service anywhere along the Harsimus Branch is operational feasible, particularly in view of the absence of tracks and other rail improvements. The City participated and encouraged the removal of those improvements in the 1990's. The Director of Proceedings fairly has imposed a requirement that anyone intending to file an OFA explain the operational feasibility. The City has not and cannot answer that question. In particular, the City has not and cannot explain operational feasibility along the LLC intervenors' Embankment parcels. Before forcing disclosures of financial information from Conrail, the Board should act on its August 11, 2014 instruction of setting a schedule to deal with OFA issues, including, first and foremost, the legitimacy of the City's efforts.

POINT II - The City Is In Conflict With The Board, Its Mission And Jurisdiction

The City has proceeded on the basis that 49 U.S.C.A. § 10904 is an eminent domain statute that can be used to acquire property from Conrail and the Intervenors for public park purposes. The Board must reject this concept without further delay. If the Board were to accept the ghost-written letters from local politicians, obviously prepared by the Embankment Coalition since they are given prominent mention in the letters, then

the Board would accept the additional premise that 49 U.S.C.A. § 10904 can be used to acquire property for non-rail uses. There is no question that those uses are the dominant purpose of the letter writing exercise. In fact, it is understandable that local officeholders would be in favor of additional open space that was desired by their constituents. What is not understandable is the Board not correcting the erroneous premise that it has the statutory authority in these circumstances to acquire fee title to former railroad property for public purposes through an OFA process. The only relevant statutory authority in abandonment proceedings is the National Trails Systems Act 16 U.S.C. 1241, which is not operative here because Conrail has clearly indicated that will not consent to a trail use provision. But even assuming a trail condition was imposed on LLC Intervenors' properties, the Board would not have the ability to acquire a fee title to the properties, just a trail easement, and the fee owner (here the LLC Intervenors) would be left with a taking claim against the United States. See: Preseault v. Interstate Commerce Commission, 494 U.S. 1 (1990). Nor does any public use condition or provision of the Board's regulations apply. In fact, the City and its litigation allies admit as much by choosing to proceed under the OFA procedures.

Nothing would prevent the City from condemning LLC Intervenors' properties once they were abandoned. There is no obstacle to the City acquiring the property, except the City's own efforts to prolong these matters. The Board is not obligated to provide the City with clear title to LLC Intervenors' properties at the expense of the United States. The Board has no role in the creation of a local park or other facility, or in the acquisition of the Embankment properties for purposes of historic preservation. No rational argument has been, or can be, made that the jurisdiction of the Board extends that far.

The sole issue concerning continuation of rail freight service along the Harsimus Branch is whether the Board can find that the legitimate needs of interstate commerce require acceptance of a rational proposal to continue rail freight service. Here there is no rational proposal. The mysterious transload facility mentioned in the City's OFA ordinance does not even appear to be located on Intervenors' properties, much less is any detail provided. It appears to be connected with the proposed shipper who has submitted the sealed Declaration. The Board has suffered the City to proceed with all sorts of motions and arguments alleging bad conduct by Conrail and the LLC

Intervenors, but has decided none of them, so that the drum beat of spurious allegations from the City continues. The present motion seeking information from Conrail for a vague proposal for a transload facility at an unspecified location does not advance a resolution of this abandonment proceeding and should be rejected out of hand by the Board.

POINT III – LLC Intervenors Seek a Proper Resolution of These Proceedings

No trains of any sort now run on the Harsimus Branch east of CP Waldo. None ever will. That overarching reality should be the lodestar guiding these proceedings. The dispute between Intervenors and the City is about the commercial real estate development of the property. LLC Intervenors seek a just and fair resolution of their property rights, on an equal footing with every other property owner similarly situated. Conrail, with the full cooperation of the City, has sold other former rail lines to other property owners and the City has permitted them to be developed. The Board cannot undo what Conrail and the City have done. But it can acknowledge the reality that there is no abiding interest of interstate commerce in any of these properties. Intervenors had presented that opportunity to the Board in STB Docket FD-35825, and the opportunity continues to be available.

The most recent motion by the City is yet another attempt to protract this matter to the detriment of Intervenors and their property interests. The City seeks some shred of advantage in some document that Conrail may have so that it may attempt to breathe life into its moribund efforts at fashioning an OFA. Alternatively, or in addition, the City likely seeks some shred of information upon which to attack Conrail. This is not proper. Having been the significant moving force in the transformation of the Jersey City waterfront from industrial uses, the City is ill suited to litigate that history before the Board long after the last train has left. If the Board feels that such an inquiry is needed, it

has the authority to undertake it, but it should not be done at the expense of Intervenors or by making then the singular focus of the inquiry.

Respectfully submitted

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DATED: January 13, 2015

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby certify that on January 13, 2015, I caused a copy of the foregoing to be served by First Class mail upon those on the below Service List.

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Embankment Preservation Coalition
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EXHIBIT A

WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
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January 13, 2015

BY OVERNIGHT DELIVERY:
Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20024

RE: CONRAIL ABANDONMENT IN HUDSON COUNTY, NJ
STB DOCKET: AB-167-1189-X and Related AB-55-686-X
and AB-290-306X; DOCUMENT TO BE FILED UNDER SEAL

Dear Ms. Brown,

Enclosed are ten copies of Exhibit A, and its related Attachments 1 through 4, all in connection with a Reply by Intervenor LLCs to a motion by Jersey City to compel Conrail to supply certain information pursuant to 49 C.F.R. 1152.27(a). We are concurrently E-Filing our Reply with its other Exhibits and noting therein that this document is being filed under seal. An appropriate Certification of Service of the sealed document is contained in the enclosed Exhibit A.

If there are any questions, please contact me. Thank you.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: Daniel E. Horgan
DANIEL E. HORGAN

AB-167-1189-X

EXHIBIT B

Daniel E. Horgan, Esq. (00947-1975)
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Attorneys for Plaintiffs

FILED
TEAM #1
NOV 07 2014
SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #15

247 MANILA AVENUE, LLC; 212 MARIN BOULEVARD; LLC; 280 ERIE STREET, LLC; 317 JERSEY AVENUE, LLC; 354 COLE STREET, LLC; 389 MONMOUTH STREET, LLC; 415 BRUNSWICK STREET, LLC; and 446 NEWARK AVENUE, LLC, Plaintiffs, vs. CITY OF JERSEY CITY and DONNA MAUER, In Her Official Capacity as Chief Financial Officer of the City of Jersey City Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY Docket Number: L-4954-14 Civil Action **COMPLAINT** **IN LIEU OF PREROGATIVE WRITS**

Plaintiffs, 247 Manila Avenue, LLC; 212 Marin Boulevard, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; and 446 Newark Avenue, LLC; eight Limited Liability Companies of the State of New Jersey, (collectively, "Plaintiffs") by way of Complaint in Lieu of Prerogative Writs against the Defendant named above say as follows:

PARTIES

1. Plaintiffs are eight New Jersey limited liability companies whose address is c/o Carmine Alampi, Esq., Carmine R. Alampi, Esq., Suite 404, 1 University Plaza, Hackensack, New Jersey 07601-6204.

2. Plaintiffs are record owners of parcels of property located within the City of Jersey City, comprising a tract commonly referred to as the "Sixth Street Embankment" or "Embankment" ("Property" or "Embankment"). Plaintiffs purchased the six segments of the Embankment and two at-grade parcels from Conrail on July 12, 2005.

3. Defendant City of Jersey City is a Municipal Corporation of the State of New Jersey that has acted by and through its officials and subordinate instrumentalities in the matters described in this Complaint having an address at 280 Grove Street, Jersey City, NJ, 07302.

4. Defendant Donna Mauer, CMFO, in her official capacity as Chief Financial Officer of the City of Jersey City has acted, has acted throughout as the Chief Financial Officer of the City of Jersey City. The Jersey City Chief Financial Officer's office is located at 280 Grove Street, Jersey City, NJ, 07302.

NATURE OF THE ACTION

5. This action is brought pursuant to N.J.S.A. 10:4-6, et seq., the Open Public Meetings Act, (also known as the "Open Public Meetings Act" or "OPMA") challenging the Ordinance 14.103 (Exhibit 1) introduced and subsequently approved by the City Council for the City of Jersey City on or about September 23, 2014, concerning what is termed an "Offer of Financial Assistance" ("OFA") authorizing several acts for the putative purpose of restarting freight rail service in the heart of downtown Jersey City over Plaintiffs' Property. This Ordinance was passed after an illegally held "executive session" by the City Council on or about September 8, 2014.

6. This action is also brought pursuant to N.J.S.A. 40:9C-1 challenging Ordinance 14.103 on the basis that the City did not receive the required approval from the New Jersey Department of Transportation ("NJDOT") for the appropriation of moneys or entry into

agreements to maintain or increase freight or mass transit services.

7. This action is also brought pursuant to Local Lands and Buildings Laws, N.J.S.A. 40A:12-1 et seq., challenging Ordinance 14.103 on the basis that a municipality may only purchase lands or construct or maintain improvements such as buildings or other capital improvements, as may be necessary to any public purpose, of which, without the approvals required pursuant to N.J.S.A. 40A:9C-1, the maintenance or increase of mass transit or freight rail service is not one.

8. This action is also brought pursuant to the Local Bond Law, N.J.S.A. 40A:2-1 et seq., challenging Ordinance 14.103 on the basis that the City may not appropriate the Bond Funds (as defined in Paragraph 25) for the purpose of the acquisition of lands for public space for the purpose of increasing or maintaining freight railroad service, especially where such freight service has not received required approvals.

9. This action is also brought pursuant to the Local Fiscal Affairs Law, N.J.S.A. 40A:5-1 et seq., as the Chief Financial Officer has improperly certified that the Bond Funds raised for the purpose of the acquisition of open space is available for the purpose of the maintenance of expansion of freight rail service or has otherwise acted to improperly encumber such funds for such purpose.

10. This action is also brought pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., as Ordinance 14.103 improperly permits the Corporation Counsel and Business Administrator to solicit and enter into agreements for services that under the Local Public Contracts Law may only be entered into by the Purchasing Agent or the City Council.

11. This action is also brought pursuant the general principle of law that an Ordinance that is arbitrary, capricious and illegal cannot withstand judicial scrutiny.

BACKGROUND

12. The present matter is but one facet of complicated and ongoing litigation with the City and other parties involving the LLCs' interests in the Embankment Property ("Embankment Litigation"), including claims by the LLCs for violation of civil rights by the City for wrongful conduct undertaken by the City and others in relation to the LLCs ownership of the Embankment that has been ongoing since 2006. ("Sixth Street Embankment Litigation"). Consideration of this background provides necessary context regarding the City's submissions in this action. Since 2006, the Plaintiffs and the City have been involved in numerous lawsuits involving the Plaintiffs' rights to the use and enjoyment of the Property, public records requests, City tax billing practices, the regulatory status of the Property, (and a myriad of other issues, such as what the Plaintiffs' maintain are the violation of their civil rights) in State and Federal courts and in Federal and State administrative tribunals, including the Surface Transportation Board ("STB").

13. Prior to 1994 a segment of railroad ran over the Property that had, once carried freight to/from the downtown Jersey City waterfront. Presently there is no freight service in the downtown Jersey City waterfront.

14. Actual freight service terminated over the Plaintiffs' Property in the 1980s, and in the 1990s Conrail and the City removed rail bridges that connected the Embankment parcels to the freight rail network after 1993, rendering freight service a current physical impossibility.

15. Beginning in 2004, the City began to express an interest in acquiring the Embankment Property.

16. Condemnation of the Property was authorized in 2004 and 2005 by Jersey City Ordinance 04-096 and 05-064, for park/open space purposes. Condemnation proceedings have never commenced. Those Ordinances did not provide for the condemnation of the Property for

the purpose of freight rail.

17. Instead of condemning the Property, since January 2006, the City has embarked on efforts to declare the Embankment Property to be a line of rail that was not properly abandoned pursuant to Federal law. The eventual purpose of this course of action, as claimed by the City, is to somehow invalidate the title to the Embankment Property so that the City can acquire the Embankment Property for the same price paid by the LLC's in 2005, rather than fair market value, including enhanced value of the Property resulting from development approvals since that time.

18. Without authorization of the City Council, on March 27, 2009, Charles Montange, Esq., the City's special outside council filed a notice of intent to file an OFA with the STB, ("Notice of Intent") in an action brought by Conrail for regulatory abandonment of the rail line that once ran over the Property.

19. An OFA permits an interested party, such as the City, to purchase a line of rail and the accompanying improvements for the purpose of maintaining freight rail service for a number of years, rather than having a line abandoned.

20. The Notice of Intent to file an OFA application included an offer to purchase the Plaintiffs' Property, as well as other property east of the Property owned by others and west of the Property owned by Conrail.

21. In the 2009 Notice of Intent to file an OFA application then Mayor Healy noted that the inclusion of passenger service was necessary because the City claimed it could not afford to rebuild the rail bridges demolished by the City and Conrail in 1994 without the inclusion of passenger service. Those bridges have never been rebuilt.

22. In response, on May 26, 2009, the STB held that in order to file a successful OFA,

the City had to demonstrate, among other criteria, a demonstrable commercial need for rail service, as manifested by support from shippers on the line or as manifested by other evidence of immediate and significant commercial need; community support for rail service; and whether rail service is operationally feasible. (Exhibit 2).

23. In reply on June 12, 2009, the City's counsel objected to the requirement that the City demonstrate actual need for rail service, or a demand and community support for such service.

24. Due to related litigation before the U.S. District Court in the District of Columbia, the STB action was placed into abeyance until 2014.

25. On July 14, 2010, the City Council passed an Ordinance authorizing the issuance of a $7.7 million bond for the purpose of purchasing the Embankment ("Bond Ordinance"). (Exhibit 3). The Bond Ordinance did not mention the restoration of freight service as one of the purposes for which the proceeds of the borrowing ("Bond Funds") would be utilized.

26. The Bond Ordinance also does not authorize the City to expend the Bond Funds for the purchase of lands "necessary to reconnect embankment to the national rail system."

27. In seeking LFB approval for the Bond Ordinance, the City noted that the purpose of the funds was to acquire open space, and for the operation of passenger rail. (Exhibit 4).

28. No mention whatsoever was made in the Bond Ordinance or to the LFB that the funds would go towards the restoration of freight rail service. Ibid.

29. The City subsequently received the Bond Funds in 2010 as a result of the issuance of pooled bond anticipation notes issued by the Hudson County Improvement Authority.

30. Nowhere in the prospectus issued by the HCIA does the City disclose that such Bond Funds would be used for freight service or to pursue an OFA.

31. Bond funds received were deposited into City account 04-215-55-887-990 ("Bond Account")(except for $553,000 which were utilized to cover the legal and other expenses of issuing the bond.) As of October 2014, despite the fact that no funds had been utilized for the purchase of any property, only approximately $6.7 million remains in the Account.

32. In applying for approval from the LFB, the City claimed that the Bond Funds would be quickly repaid by way of grants moneys the City expected to receive. The balance of the grant funds never materialized. (Ibid.). As a result, the City has refinanced the Bond Funds, most recently in August 2014, again by way of the issuance of HCIA pooled bond anticipation notes (Guaranteed Pool Notes, Series 2014-U-1 in the amount of $7,310,000) ("2014 Bond Issue").

33. In the prospectus issued by the HCIA for the 2014 Bond Issue, the City noted that the reissued bonds funds were necessary for "acquisition of real property for Park and Office Space Purposes." The City made no mention whatsoever that any of the funds will be used for the expansion of rail service (whether passenger or freight). (Exhibit 5.).

34. Prior to the issuance of the 2014 Bond Issue, on June 17, 2014, again without City Council approval, Charles Montange, Esq. filed a submission with the STB arguing that the STB's prior decision requiring that there be a demonstration for continued freight to be presented before any OFA by the City would be accepted acknowledging that reactivation of such service would require the reconstruction of the rail bridges that were removed in 1994.

35. On June 27, 2014, the Plaintiffs' petitioned the City Council regarding the OFA. It was noted that City Council approval for any OFA application had never been provided, and that resumption of freight service and/or light rail requiring the rebuilding of the removed rail bridges would cost tens of millions of dollars, and that that an OFA application without NJDOT

approval was a violation of state law.

ADOPTION OF ORDINANCE 14.103

36. On or about September 4, 2014, on the City's website, the City published an agenda for the City's regularly scheduled meeting that included Ordinance 14.103 as an item listed among the ordinances that were to be up for a vote on introduction.

37. Ordinance 14.103 in relevant part provides as follows:

a. Authorizes the filing of an OFA to purchase lands for rail or other purposes, including the Embankment, and lands "Necessary to "necessary to reconnect embankment to the national rail system" but not properties east of the Embankment;

b. Authorizes Corporation Counsel or the Business Administrator to spend up to $3 million to purchase the Plaintiffs' Property and up to $2.7 million more to purchase other property necessary to achieve a connection with the national freight rail network, utilizing funds from the Bond Account;

c. Authorizes Corporation Counsel and Business Administrator to solicit proposals and engage the services of surveyors, title insurance companies appraisers and other professionals necessary and appropriate to pursue an OFA;

d. Authorizes the Business Administrator and Corporation Counsel to solicit proposals and engage the services of surveyors, title insurance companies appraisers and other professionals necessary and appropriate to pursue and OFA;

e. In the event that an OFA is successful, the Ordinances authorized the Business

Administrator and Corporation Counsel to solicit proposals for interim freight transload services, and for the "restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes;" and

f. To otherwise act to acquire the Property if an OFA is unsuccessful. (Exhibit 1).

38. On or about September 4, 2014, a September 3, 2014 memorandum ("Special Meeting Notice") was posted on the City's website announcing a that a special meeting of the City Council would take place on September 8, 2013, at 5:00, ("Special Meeting")(Exhibit 6) despite a regularly scheduled City Council caucus meeting already scheduled to take place on September 8, 2014 at 5:30 pm.

39. The sum total of the meeting agenda set forth in the Special Meeting Notice for the Special Meeting was as follows: "Resolution authorizing a closed caucus of the Municipal Council on Monday September 8, 2014 at 5:00pm, to discuss pending litigation and matters within the attorney client privilege (Sixth Street embankment and Bright and Varick Litigation)."

40. Though the Special Meeting was held only two days prior to the general City Council Meeting to be held on Wednesday, September 10, 2014, the Special Meeting Notice failed to mention whether or not Ordinance 14.103 or an OFA, which had to do with the Embankment, would be discussed.

41. On September 5, 2014, Plaintiffs' counsel wrote to the City and the City Council placing them on notice that the Special Meeting Notice is deficient under OPMA. (Exhibit 7).

42. The Special Meeting was not cancelled. Instead, at the commencement of the Special Meeting, after the aforementioned correspondence was presented to the City Council members, as a matter of record, the City Council immediately voted to go into executive session

and exclude the public from the meeting (by adopting Resolution 14.590 which authorized the executive session).

43. Resolution 14.590 (Exhibit 8) provided a generalized description that the City Council needed to go into closed session to discuss matters within the attorney-client privilege concerning federal and state litigation including STB litigation "including but not limited to" "litigation filed by certain LLCs" in New Jersey and federal litigation filed by the City of Jersey City before the STB."

44. Resolution 14.590 did not mention that Ordinance 14.103 or an OFA would be discussed. It further noted that the minutes of the closed session would be "released to the public when the Corporation Counsel deemed that the legal interests of the city of Jersey City will not be impaired by such release."

45. The City Council then immediately proceeded to hold the closed executive session in a room other than that advertised in the Special Meeting Notice and has never (at least publicly) adjourned the Special Meeting.

46. Instead the City Council, upon opening up the doors of the room in which the executive session of the Special Meeting was being held, transitioned to and convened the previously scheduled regular caucus meeting of the City Council of September 8, 2014. The start of such regularly scheduled caucus meeting was delayed by the Special Meeting by one-hour.

47. At the regularly scheduled public caucus meeting of September 8, 2014, no discussion was had whatsoever regarding Ordinance 14.103 even though many of the other ordinances up for introduction at the September 10, 2014, City Council meeting were discussed by the City Council.

48. On September 9, 2014, Plaintiffs' counsel transmitted correspondence to the City

and the City Council again advising them that the Special Meeting Notice violated the OPMA. (Exhibit 14). They were further placed on notice that the resolution to go into closed session, Resolution 14.590, and the proceedings at the Special Meeting, all violated the OPMA. This correspondence was transmitted to the members of the City Council.

49. The correspondence also placed the City Council on notice that based on the violations of the OPMA that the introduction and adoption of Ordinance 14.103, would be void. (Ibid.)

50. The Plaintiffs' further requested an un-redacted copy the transcript and minutes of the Special Meeting along with an un-redacted copy of the recording of the Special Meeting. (Ibid.)

51. On September 10, 2014, though having received Plaintiffs' counsel's correspondence of September 5 and 9, the City Council proceeded to vote to introduce Ordinance 14.103, for second reading and adoption on September 23, 2014, without any comment or discussion.

52. On September 18, 2014, the Plaintiffs; counsel wrote to the City Corporation Counsel and the City Council, (Exhibit 9), advising them emphasizing once again that the adoption of Ordinance 14.103would be, under the circumstances, a violation of the OPMA and other law. The correspondence also provided the City Council with a copy of a September 17, 2014 correspondence from Plaintiffs' counsel to the City's Chief Financial Officer, advising the Chief Financial Officer that the Ordinance's appropriation of Bond Funds for the purpose of an OFA for freight service would be a misappropriation of Bond Funds. (Exhibit 10).

53. Nevertheless, on September 23, 2015, Ordinance 14.103 was placed up for adoption.

54. At the public comment portion of the ordinance's adoption hearing, members of the public were permitted to make comments on Ordinance 14.103.

55. Though not discussing the merits of the ordinance, upon close of public comments, members of the City Council asked Corporation Counsel as to whether the adoption of Ordinance 14.103 would be a violation of the OPMA or otherwise be a misuse of the Bond Funds. (Exhibit 11).

56. Corporation Counsel, denied that the September 8, 2014 Special Meeting violated the OPMA, and reminded the City Council that the City's outside counsel at the Special Meeting had noted that an "OFA was a form of federal imminent domain," the first public admission by the City that the issue of an OFA and Ordinance 14.103 had been discussed at the Special Meeting. (Transcript of Public Meeting, Exhibit 11).

57. Directly contradicting the express terms of the Ordinance which provided Corporation Counsel with the authority to approve any OFA, Corporation Counsel further and improperly advised the City Council that the Plaintiffs' objections regarding the use of the Bond Funds were not "ripe", because in order for the City agree to expend funds on an OFA such issue would have to come up before the City Council, again.

58. The City Council thereupon voted to adopt Ordinance 14.103, without comment. Councilman Ramchall abstained, and Councilman Boggiano voted against the ordinance, noting that the City could have purchased the Property in the past but had decided not to. Absolutely discussion of the merits of the Ordinance was held by the City Council.

59. Subsequently, in response to Plaintiffs' September 9, 2014, records request, the City provided the Plaintiffs' counsel with a heavily and improperly redacted transcript of the Special Meeting on October 6, 2014. (Exhibit 12).

60. A review of the redacted transcript establishes, contrary to the Special Meeting Notice, and Resolution 14.590, that the topic of the Special Meeting was not limited to or focused on litigation, but that instead, the central discussion at the Special Meeting were the merits of adopting Ordinance 14.103 and the adoption thereof.

61. On October 7, 2014, an un-redacted copy of the minutes of the Special Meeting was provided by the City ("Special Meeting Minutes"). The Special Meeting Minutes are bereft of any description whatsoever of the proceedings or discussions actually held at the Special Meeting. (Exhibit 13).

62. On October 14, 2014, a CD with an audio recording of the Special Meeting was provided. It is redacted in the same manner as the Special Meeting Transcript.

COUNT ONE
THE VIOLATION OF THE OPEN PUBLIC MEETINGS ACT

63. Plaintiffs repeat and restate each and every allegation contained within Paragraphs 1 through 62 as if set forth at length herein.

64. A quorum of council members was present and participated in the Special Meeting and executive session of the Special Meeting of September 8, 2014. The presence of at least five (5) members of the City Council mandates that this closed door meeting be considered a "public meeting" for the purposes of N.J.S.A. 10:4-8.

65. The Special Meeting and executive session constituted a "public meeting" within the scope, meaning and parameters of the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq.

66. The redacted transcript establishes that the focus of the discussions held behind the locked door was "public business of that body" within the meaning of NJSA 10:4-8(b), including the merits of Ordinance 14.103. (Exhibit 12).

a. Deficient Special Meeting Notice

67. The OPMA requires "[a]dequate notice" of a special meeting be provided at least 48 hours in advance of such meeting providing to the "extent known, the agenda of any []special or [] meeting, which notice shall accurately state whether formal action may or may not be taken. . ."

68. The Special Meeting Notice failed to disclose the agenda of the meeting in that it did not adequately describe the Septembe 8, 2014 Special Meeting's actual agenda other than by an oblique and compound reference to "pending litigation and matters within the attorney client privilege (Sixth Street Embankment and Bright and Varick litigation)." This description was vague and inaccurate as it did not provide any description of the particular facet of "Sixth Street Embankment litigation." (Exhibit 6). The description provided is in no manner clear, definite, or otherwise appropriately limited.

69. The Special Meeting Notice failed to disclose the true and actual agenda of the meeting in that it did not disclose that the OFA or Ordinance 14.103 would be discussed at the Special Meeting.

70. The Special Meeting Notice also failed to disclose whether or not formal action would or would not be taken.

71. The deficiencies described in Paragraphs 68 through 70 are all violations of the OPMA.

b. Formal Action and Discussion Impermissibly Held in Secret.

72. N.J.S.A. 10:4-12, provides that "Except as provided by subsection b. of this section all meetings of public bodies shall be open to the public at all times" except for meeting at which the City Council "discusses" matters listed in subsection b thereof.

73. On information and belief (given the absence of public comment or discussion by

the City Council of the Ordinance's merits or purpose, the inadequate minutes, the statements made by Corporation Counsel prior to the adoption of the Ordinance regarding the discussion held at the Special Meeting which would appear to contradict the express purposes of the Ordinance, the contents of the redacted transcript, and the dismissal of the objections provided by the Plaintiffs without deliberation) the City Council did in executive session resolve and/or agree, formally or informally, to vote to introduce and adopt Ordinance 14.103 without public discussion.

74. Upon information and belief, the City Council determined at the closed session to improperly circumscribe City Council members' public comments on Ordinance 14.103 upon its subsequent introduction and adoption.

75. Upon information and belief, the discussions at the closed caucus session formed the basis for the adoption of Ordinance 14.103 and underlay the reasons for voting upon it at the City Council Meetings held on September 10 and 23, 2014.

76. The actions described in Paragraphs 73 through 75 are all violations of the OPMA.

c. Public Improperly Excluded from the Special Meeting

77. The City Council failed to meet its statutory obligation under the OPMA by illegally excluding members of the public from a "public meeting" and discussing "public business" under the definitions of the statue without an adequate applicable exception.

78. N.J.S.A. 10:4-8(c) defines "Public business" to mean and include "all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business."

79. N.J.S.A. 10:4-12(b) (7) provides that a public body may exclude the public from

discussion of matters regarding :

> pending or anticipated litigation or contract negotiation other than in subsection b. (4) herein in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

80. N.J.S.A. 10:4-13 provides that no public body shall exclude for the public from such a discussion until the City Council:

> adopt a resolution, at a meeting to which the public shall be admitted [] Stating the general nature of the subject to be discussed....

81. Resolution 14.459 stated the subject that was to be discussed in executive session by the City Council as follows:

> matters within the attorney-client privilege, including, but not limited to the Sixth Street Embankment Litigation filed by certain LLCs known as 212 Marin Boulevard, 247 Manila Avenue, 317 Jersey Avenue, 354 Cole Street, 389 MonmouthStreet, 415BrunswickStreetand 446 Newark Avenue, litigation in New Jersey and litigation filed on behalf of the City of Jersey City before the federal Surface Transportation Board [Exhibit 8].

82. Resolution 14.459 (along with the Special Meeting Notice) notice fails to provide adequate notice why the litigation exception under N.J.S.A. 10:4-12 may be applicable.

83. Resolution 14.459 was impermissibly vague as to what facet of litigation was to be discussed, and failed to mention that Ordinance 14.103 and an OFA were also slated to be discussed. A review of the notice does not provide one iota of information as to which one of a myriad of legal issues related to pending or anticipated litigation regarding any of the cases or parties will be the subject of the closed session as described above, except by noting that such topics are within the "attorney-client privilege."

84. The deficiencies described in Paragraphs 81 through 83 are all violations of the

OPMA.

85. The City improperly invoked the attorney-client privilege for the purpose of avoiding disclosure based solely on the fact that the Embankment was discussed. The City did this aware that such a claim of privilege is improper.

86. The OPMA protects from disclosure, only items properly legitimately within the attorney-client privilege; that is, the subject under discussion must be the pending or anticipated litigation itself, i.e., the City Council must be discussing its strategy in the litigation, the position it will take, the strengths and weaknesses of that position with respect to the litigation, possible settlements of the litigation or some other facet of the litigation itself. The discussion of pursuing an OFA and resumption of long dormant freight service falls well beyond the discussion of litigation strategy.

87. Furthermore, even if there was to be a closed session for litigation discussion, the proper procedures of the OPMA would still need to be followed.

d. The Matters Discussed in the Special Meeting Were not Within the Attorney Client Privilege for Purposes of the OPMA

88. The topics discussed at the Special Meeting were not otherwise properly within an applicable exception to the OPMA requirement that public business be conducted at a public meeting.

89. On information and belief, based on a review of the redacted transcript, the City Council did not limit its discussions at the executive session of the September 8, 2014 Special Meeting to matters legitimately within the scope of litigation matters within the attorney-client privilege for purposes of the OPMA, but also discussed the adoption of Ordinance 14.103 and the pursuance of an OFA.

90. The fiscal, practical and political merits or demerits of adopting Ordinance 14.103

do not fall within any exemption of the OPMA; deliberations on an OFA concerning the re-institution of freight rail service, the financing of rail operations, the issuing bids and contracts, and funding such activities are simply not privileged under the OPMA. The discussion of pursuing an OFA and resumption of long dormant freight service falls well beyond the discussion of litigation strategy.

91. The deficiencies described in Paragraphs 88 through 90 are all violations of the OPMA.

e. City Council Failed to Draft Minutes or Otherwise Provide a Recounting of the Discussions held and Proceedings Had at the Special Meeting

92. Under the OPMA, the City Council must make the minutes of a closed meeting promptly available to the public, once the need expressed for the closed session has been eliminated. The minutes must contain sufficient facts and information to permit the public to understand and appraise the reasonableness of the public body's determination made in a non-public session. N.J.S.A. 10:4-13(b); -14.

93. Resolution 14.459 provided that minutes of the Special Meeting would only be "released to the public when the Corporation Counsel deemed that the legal interests of the City of Jersey City will not be impaired by such release."

94. The Special Meeting Minutes provide that a complete transcript of the September 8, 2014 Special Meeting would only be released upon Corporation Counsel's approval. (Exhibit 13).

95. The limitations on the disclosure of the Special Meeting's transcript and minutes described in Paragraphs 93 and 94 are each violations of the OPMA.

96. By correspondence of September 9, 2014, the City was placed on notice that

Resolution 14.459 violated the OPMA requirement that minutes of a closed executive session, even where closure is permissible, must be promptly made available to the public as full as permitted by the nature of the exemption, as required by N.J.S.A. 10:4-13. (Exhibit 14).

97. The minutes of the September 8, 2014 Special Meeting ("Special Meeting Minutes") provided to the Plaintiffs are not redacted in any manner but are instead devoid of any information as to the substantive proceedings or discussion that occurred at the Special Meeting. (Exhibit 13).

98. On information and belief, the City deliberately failed to draft minutes of the Special Meeting so as not to claim a privilege that could be challenged, while permitting the ostensible release of "minutes".

99. The actions complained of in Paragraph 97 and 98 violate the OPMA.

100. The Special Meeting Minutes, as drafted and provided, and the Special Meeting Transcript and recording, as redacted and provided, are separately and collectively violations of the OPMA.

101. To the extent that any legitimate claim of attorney-client privilege may underlie the redactions, such privilege was waived by Corporation Counsel's comments at the public hearing on the adoption of Ordinance 14.103 as to what was discussed with outside counsel at the Special Meeting pursuant to N.J.S.A. 2A:84A-29 and by other disclosures since made.

WHEREFORE, Plaintiffs demand that the Court issue an Order and Judgment against the City:

a. Declaring the actions of the City Council on September 23, 2014 in adopting Ordinance 14.103 null, void and ultra-vires.

b. Requiring the City to:

1. issue comprehensive minutes of the Special Meeting;

2. grant the Plaintiffs access to the all materials reviewed during the illegally held meeting;

3. provide un-redacted copies of any recordings, transcripts or minutes of the meeting immediately; and

4. Injunctive relief as may be available under the OPMA; and

c. Such other relief as may be available under the OMPA;

d. For costs of suit; and

e. For such other relief as this Court may deem equitable and just.

COUNT TWO

VIOLATION OF N.J.S.A. 40:9C-1

102. Plaintiffs repeat and restate each and every allegation contained within Paragraphs 1 through 101 as if set forth at length herein.

103. Ordinance 14.103 permits the City of Jersey City to purchase the Plaintiffs' Property and other properties for the purpose of restoring freight service in downtown Jersey City.

104. Ordinance 14.103 allocates $5.7 million in Bond Funds from the Bond Account for such purpose.

105. Ordinance 14.103 permits the filing of an OFA in furtherance of the purposes of restoring freight service over the Plaintiffs' Property.

106. Ordinance 14.103 permits the Corporation Counsel and the Business Administrator to solicit and enter into agreements in furtherance of the purposes of restoring freight service over the Plaintiffs' Property.

107. N.J.S.A. 40:9C-1 prohibits the entry into any agreement or the allocation of funds

for the purposes of the expansion, increase or maintenance of mass transit or railroad freight line services by a municipality unless the State of New Jersey, acting by and through the Department of Transportation, Commuter Operating Agency, ("NJDOT") or other appropriate agency, shall have agreed.

108. On September 15, 2014, the City admitted that it has never sought or received NJDOT approval for the filing of an OFA, by way of denying that any documents representing such a request or approval exist. (Exhibit 15).

109. On September 16, 2014, the NJDOT admitted that it has not received a request for NJDOT approval for the filing of an OFA from the City, or issued any such approval, by way of denying that any documents representing such a request or approval exist. (Exhibit 16).

WHEREFORE, Plaintiffs demand that the Court issue an Order and Judgment against the City:

a. Declaring the actions of the City Council on September 23, 2014 in adopting Ordinance 14.103 null, void and ultra-vires.

b. For costs of suit; and

c. For such other relief as this Court may deem equitable and just.

COUNT THREE

VIOLATION OF THE LOCAL BOND LAW

110. Plaintiffs repeat and restate each and every allegation contained within Paragraphs 1 through 109 as if set forth at length herein.

111. The Local Bond Law, N.J.S.A. 40A:2-1 et seq., ("Local Bond Law") provides that: "Any local unit, by bond ordinance, may incur indebtedness, borrow money, authorize and issue negotiable obligations for financing:....b. [for] any purpose for which it is authorized or

required by law to make an appropriation, except current expenses, as may be defined by rule and regulation of the Local Finance Board, and payment of obligations (other than those for temporary financing) . . . No local unit shall borrow money or issue its obligations for purposes authorized under this chapter except as provided in this chapter." N.J.S.A. 40A:2–3.

112. As the City has not received authorization from the NJDOT pursuant to N.J.S.A. 40:9C-1 for the expansion, increase or maintenance of mass transit or railroad freight line services, the use of Bond Funds in the Bond Account raised pursuant to the Local Bond Law, is unlawful.

113. N.J.S.A. 40A:2-39 provides that the "proceeds of the sale of obligations shall be applied only to the purposes for which such obligations are authorized . . . "

114. The Bond Funds in the Bond Account were raised for the purpose of the acquisition of park and open space not freight rail.

115. As Ordinance 14.103 allocates funds in the Bond Account for the purpose of the expansion, increase or maintenance of railroad freight line services, Ordinance 14.103 is in violation of the Local Bond Law.

116. As Ordinance 14.103 provides for the purchase of properties not authorized to be purchased by the Bond Ordinance "necessary to reconnect embankment to the national rail system," Ordinance 14.103 is in violation of the Local Bond Law.

WHEREFORE, Plaintiffs demand that the Court issue an Order and Judgment against the City:

a. Declaring the actions of the City Council on September 23, 2014 in adopting Ordinance 14.103 null, void and ultra-vires.

b. For costs of suit; and

c. For such other relief as this Court may deem equitable and just.

COUNT FOUR

VIOLATION OF THE LOCAL LANDS AND BUILDING LAW

117. Plaintiffs repeat and restate each and every allegation contained within Paragraphs 103 through 116 as if set forth at length herein.

118. As the expansion, increase or maintenance of mass transit or railroad freight line services by a municipality without the approval required under N.J.S.A. 40:9C-1 is not a legitimate public purpose, the purchase of the Properties for the expansion, increase or maintenance of railroad freight line services is also in violation of N.J.S.A. 40A:12-3, of the Local Lands and Buildings Law.

119. As the use of Bond Funds for purposes of purchasing property in violation of the Local Bond Law is not a legitimate public purpose, the purchase of the Properties for the expansion, increase or maintenance of railroad freight line services is also in violation of N.J.S.A. 40A:12-3, of the Local Lands and Buildings Law.

WHEREFORE, Plaintiffs demand that the Court issue an Order and Judgment against the City:

a. Declaring the actions of the City Council on September 23, 2014 in adopting Ordinance 14.103 null, void and ultra-vires.

b. For costs of suit; and

c. For such other relief as this Court may deem equitable and just.

COUNT FIVE

VIOLATION OF THE LOCAL FISCAL AFFAIRS LAW

120. Plaintiffs repeat and restate each and every allegation contained within Paragraphs

1 through 119 as if set forth at length herein.

121. Ordinance 14.103 states that "funds are available for costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990 [i.e. the Bond Fund]."

122. On information and belief, in furtherance of the Ordinance the Chief Financial Officer of the City of Jersey City did in fact certify and or otherwise act to encumber Bond Funds in the Bond Account for the purposes of Ordinance 14.103.

123. As Ordinance 14.103 allocates Bond Funds in the Bond Account for the purpose of the expansion, increase, or maintenance of railroad freight line services Ordinance 14.103 a purpose other than that for which the Bond Funds in the Bond Account were raised, in violation of the Local Bond Law, the Chief Financial Officer's actions are in violation of the Local Fiscal Affairs Law, N.J.S.A. 40A:5-1 et seq., and its implementing regulations N.J.A.C. 5:30-5.1 et seq..

WHEREFORE, Plaintiffs demand that the Court issue an Order and Judgment against the Jersey City City Council and Chief Financial Officer:

a. Declaring the actions of the City Council on September 23, 2014 in adopting Ordinance 14.103 null, void and ultra-vires.

b. Declaring any encumbrance of the Bond Account for the purposes of Ordinance 14.103 null, void and ultra-vires.

c. Declaring any certification of availability of Bond Funds in the Bond Account for the purposes set forth in Ordinance 14.103 null, void and ultra-vires.

d. For costs of suit; and

e. For such other relief as this Court may deem equitable and just.

COUNT SIX

VIOLATION OF THE LOCAL PUBLIC CONTRACTS LAW

124. Plaintiffs repeat and restate each and every allegation contained within Paragraphs 1 through 123 as if set forth at length herein.

125. Under the Local Public Contract Law, N.J.S.A. 40A:11-1 et seq., ("LPCL"), any contract in excess of the applicable bid threshold must be by resolution of the Governing Body, and when below the bid threshold by the purchasing agent. N.J.S.A. 40A:11-3.

126. Ordinance 14.103 impermissibly authorizes contracts for services related to the reestablishment of rail service to be sought out and awarded by the Business Administrator and/or the Corporation Counsel in violation of the LPCL.

WHEREFORE, Plaintiffs demand that the Court issue an Order and Judgment against the City:

a. Declaring the actions of the City Council on September 23, 2014 in adopting Ordinance 14.103 null, void and ultra-vires.

b. For costs of suit; and

c. For such other relief as this Court may deem equitable and just.

COUNT SEVEN

ORDINANCE 14.103 IS ARBITRARY, CAPRICIOUS AND ILLEGAL

127. Plaintiffs repeat and restate each and every allegation contained within Paragraphs 1 through 126 as if set forth at length herein.

128. Ordinance 14.103 is arbitrary, capricious and illegal as it serves no proper purpose,

129. Ordinance 14.103 attempts to accomplish its stated purposes, but it in violation of

the Local Bond Law, the LPCL, the Local Lands and Building Law, and N.J.S.A. 40:9C-1.

130. The City Council is aware that the purposes set forth in the Ordinance are not actually achievable; as noted by Corporation Counsel, despite the terms of the Ordinance that authorize Corporation Counsel to purchase the Property and otherwise enter into agreements in furtherance of freight service, Corporation Counsel stated to the City Council that no such action could take place without its further approval.

131. The City Council is aware that there is no real need or demand for the reinstitution of freight service in downtown Jersey City and that the City does not intend to actually permit such freight service to be instituted.

132. On Information and belief, based upon the defects in Ordinance 14.103 and the concealment of its purposes by discussing it only in secret, closed meetings, the true purpose of the City in passing the Ordinance is to file a "sham" OFA, not for the purpose of reinstituting freight service, but for the purpose of complicating and frustrating current STB proceedings in order to further delay actions pending against the City in State court. (See List of Cases Involving Same Parties and/or Related Issues in the Superior Court on Page 28, below.)

133. Ordinance 14.103 purports to commit the City to pursuing an OFA in a manner at odds with specific decision of the STB as to how an OFA is to be pursued in this matter. (Exhibit 2). The Ordinance does not satisfy these minimum requirements and merely engenders additional delay. Being outside STB requirements serve no legitimate proposal.

134. On information and belief, the true purpose of filing an OFA is not for the establishment of freight rail service but for the purpose of confiscating the Plaintiff's property for less than fair market value under what Corporation Counsel disclosed outside counsel described as "Federal Eminent Domain" or gaining an untoward litigation advantage in front of the STB.

135. On information and belief, these and other ulterior purposes may have been discussed at the Special Meeting in closed session on September 8, 2014.

136. The adoption of an Ordinance the purposes of which the City Council has no present intent to permit be accomplished, is arbitrary, capricious and illegal.

137. The adoption of an Ordinance for unstated purposes such as for gaining a litigation advantage by causing confusion and delay is arbitrary, capricious and illegal.

138. The adoption of an Ordinance in violation of State law is arbitrary, capricious and illegal.

WHEREFORE, Plaintiffs demand that the Court issue an Order and Judgment against the Jersey City Council:

a. Declaring the actions of the City Council on September 23, 2014 in adopting Ordinance 14.103 null, void and ultra-vires.

b. For costs of suit; and

c. For such other relief as this Court may deem equitable and just.

WATERS, McPHERSON, McNEILL, P.C.
Attorneys for Plaintiffs

By: _____
Daniel E. Horgan

Dated: November 7, 2014

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Daniel E. Horgan, Esq. and Eric D. McCullough as trial counsel.

WATERS, McPHERSON, McNEILL, P.C.
Attorneys for Plaintiffs

By: _____
Daniel E. Horgan

Dated: November 7, 2014

CERTIFICATION OF NO OTHER ACTIONS

Pursuant to R. 4:5-1(b)(2), it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief, except as disclosed herein. To the best of my belief, no other action or arbitration proceeding is pending or contemplated, except as otherwise disclosed herein. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

WATERS, McPHERSON, McNEILL, P.C.
Attorneys for Plaintiffs

By: _____
Daniel E. Horgan

Dated: November 7, 2014

List of Cases Involving Same Parties and/or Related Issues In the Superior Court

The following matters are currently pending in the Superior Court:

Stayed Cases

212 Marin Boulevard, LLC et al. v. City of Jersey City et al., docket number HUD-L-4908-05

212 Marin Boulevard, LLC et al. v. City of Jersey City et al., docket number HUD-L-4683-05

212 Marin Boulevard, LLC et al. v. Historic Preservation Commission of the City of Jersey City, docket number HUD-L-2451-08

Non-Stayed Cases

212 Marin Boulevard, LLC et al. v. the City of Jersey City et al., docket number HUD-L-6131-11

City of Jersey City v. 212 Marin Boulevard et al., docket number HUD-C-12-13; A-002207-13T1

212 Marin Boulevard, LLC et al. v. Chicago Title Co.., docket number HUD-L-5801-09

Index to Complaint Exhibits

Exhibit 1 -	Jersey City Ordinance 14.103
Exhibit 2 -	May 26, 2009, Decision of Director of Proceedings of the Surface Transportation Board, STB Docket No. AB-167 (Sub-No. 1189X)
Exhibit 3 -	Jersey City Ordinance 10-085 ("Bond Ordinance")
Exhibit 4 -	July 14, 2010Local Finance Board Resolution of, and excerpt of transcript of July 14, 2010 Local Finance Board meeting
Exhibit 5 -	Prospectus of HCIA Guaranteed Pool Notes, Series 2014-U-1 9 (excerpt)
Exhibit 6 -	September 3, 2014 Jersey City City Council Special Meeting Notice
Exhibit 7 -	September 5, 2014 Correspondence from Plaintiffs' Counsel to the City of Jersey City
Exhibit 8 -	Jersey City Resolution 14.590
Exhibit 9 -	September 18, 2014 Correspondence from Plaintiffs' Counsel to the City Council
Exhibit 10 -	September 17, 2014 Correspondence from Plaintiffs' Counsel to the Chief Financial Officer of the City of Jersey City
Exhibit 11 -	Transcript of Jersey City City Council Regular Meeting of September 23, 2014
Exhibit 12 -	Transcript of Jersey City City Council Special Meeting of September 8, 2014
Exhibit 13 -	Special Meeting Minutes
Exhibit 14 -	Correspondence of Jorge R. de Armas of September 9, 2014
Exhibit 15 -	Records Request OP2014-895 to the City of Jersey City and September 15, 2014 Response Thereto
Exhibit 16 -	Records Request #W89856 to the New Jersey Department of Transportation and September 16, 2014 Response Thereto

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City Clerk File No. Ord. 14.103

Agenda No. 3.A 1st Reading

Agenda No. 2nd Reading & Final Passage

ORDINANCE
OF
JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City ;and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for $3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstituted an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer ($3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of $1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of $23,100; and

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible pubic purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of $3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed $5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.

2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding $5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.

3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.

4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.

6. This Ordinance shall take effect at the time and in the manner as provided by law.

7. This Ordinance shall not rescind Ordinance 04-096 or 05-054 which authorized the acquisition of the Fanbankment solely for open space and a park by purchase or condemnation.

8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED: _____

APPROVED: _____
Business Administrator

Certification Required ☐
Not Required ☐

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39951 SERVICE DATE – LATE RELEASE MAY 26, 2009
DO

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN HUDSON COUNTY, NJ

STB Docket No. AB-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Decided: May 26, 2009

This decision directs Consolidated Rail Corporation (Conrail) to provide the information necessary to formulate an offer of financial assistance (OFA), as specified in 49 CFR 1152.27(a), and grants the request of the City of Jersey City (City) and CNJ Rail Corporation (CNJ) to toll the due date to submit an OFA.

Conrail, CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS) (collectively, applicants) jointly filed a verified notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuances of Service for Conrail to abandon, and for CSXT and NS to discontinue service over, an approximately 1.36-mile portion of a line of railroad known as the Harsimus Branch, between milepost 0.00, CP Waldo, and milepost 1.36, a point east of Washington Street, in Jersey City, Hudson County, NJ.[1] The notice of the exemption was served and published in the Federal Register on March 18, 2009 (74 FR 11631-32).

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[1] In City of Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and New Jersey State Assemblyman Louis M. Manzo–Petition for Declaratory Order, STB Finance Docket No. 34818 (STB served Aug. 9, 2007), the Board described the line as follows: extending between milepost 1.3 near Luis Munoz Marin Boulevard (formerly Henderson Avenue) and milepost 2.54 near Waldo Avenue, in Jersey City, NJ.

The exemption was scheduled to become effective April 17, 2009, unless stayed by the Board. On March 27, 2009, City and CNJ each filed a formal expression of intent to file an OFA to purchase the line. City and CNJ requested Conrail to provide the information required by 49 CFR 1152.27(a) and certain additional information relating to Conrail's present, prior, or future use of the line, including all valuation maps for the line, and if not depicted on the valuation maps, a listing of all deed references showing Conrail's legal interests in the line. CNJ also requested that the time period for it to submit an OFA be tolled, until 10 days after it received the data requested from Conrail.[2] On April 1, 2009, Conrail filed a reply to the notices of intent to file an OFA, requesting that the Board reject City and CNJ's notices of intent. On April 22, 2009, City replied to Conrail's April 1 filing.

By decision served on April 6, 2009 (April 6 Decision), the Board granted a request of the Embankment Preservation Coalition and extended the deadline for filing petitions to reopen, requests for trail use and public use conditions, and responses to the Environmental Assessment until May 7, 2009. By decision served on April 16, 2009 (April 16 Decision), the effective date of the exemption was stayed until the environmental review process is complete.

The stay of this proceeding during the environmental phase should not delay the exchange of information requested by City and CNJ under the OFA procedures. Conrail is directed to provide City and CNJ with the information specified in 49 CFR 1152.27(a).[3] The due date for City and CNJ to submit an OFA will be tolled until 10 days after Conrail provides the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so. Once the stay is lifted, the effective date of the exemption will be determined.[4]

The OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic.[5] Any person who intends to file an OFA in this proceeding should address one or more

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[2] On April 7, 2009, City filed a motion joining in CNJ's request to toll the time for submitting an OFA.

[3] City and CNJ are reminded that, under the Board's OFA procedures, a potential offeror is entitled only to the information specified in 49 CFR 1152.27(a).

[4] If City and CNJ submit OFAs, Conrail's April 1 filing and City's related filings will be considered together when the stay is lifted.

[5] See, e.g., Union Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA, STB Docket No. AB-33 (Sub-No. 265X) (STB served May 7, 2008); Roaring Fork Railroad Holding Authority—Abandonment Exemption—in Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X (STB served May 21, 1999), aff'd sub nom. Kulmer v. STB, 236 F.3d 1255, 1256-58

(continued...)

of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for rail service; and whether rail service is operationally feasible. See Los Angeles County Metropolitan Transportation Authority—Abandonment Exemption—in Los Angeles County, CA, STB Docket No. AB-409 (Sub-No. 5X), slip op. at 2-3 (STB served June 16, 2008) (requiring this showing where traffic had not moved over the line in 2 years and carrier sought exemption from OFA procedures).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The time period for City and CNJ to file an OFA is tolled until 10 days after Conrail provides City and CNJ with the information specified in 49 CFR 1152.27(a) and notifies the Board that it has done so.

2. The effective date of the exemption will be determined when the stay is lifted by the Board.

3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary

(...continued)
(10th Cir. 2001); The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in King County, WA, STB Docket No. AB-6 (Sub-No. 380X) (STB served Aug. 5, 1998).

3

City Clerk File No: Ord. 10-085

Agenda No. 3.D 1st Reading

Agenda No. 4.D. 2nd Reading & Final Passage

ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-085

TITLE: **AN ORDINANCE OF THE CITY OF JERSEY CITY, IN THE COUNTY OF HUDSON, NEW JERSEY, PROVIDING FOR THE ACQUISITION BY THE CITY OF REAL PROPERTY IN THE CITY AND APPROPRIATING $7,700,000, THEREFOR, AND PROVIDING FOR THE ISSUANCE OF $7,647,000 IN GENERAL IMPROVEMENT BONDS OR NOTES OF THE CITY OF JERSEY CITY TO FINANCE THE SAME.**

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY, IN THE COUNTY OF HUDSON, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) **AS FOLLOWS:**

Section 1. The improvement or purpose described in Section 3 of this bond ordinance is hereby authorized to be undertaken by the City of Jersey City, in the County of Hudson, New Jersey (the "City") as a general improvement. For the improvement or purpose described in Section 3 hereof, there is hereby appropriated the sum of $7,700,000 (including grants in the total amount of $6,600,000, consisting of (i) a grant in the amount of $1,600,000 expected to be received from the State of New Jersey, Department of Environmental Protection pursuant to the Green Acres Program, (ii) a grant in the amount of $3,500,000 expected to be received from the Port Authority of New York/New Jersey, (iii) a grant in the amount of $1,000,000 expected to be received from the Hudson County Open Space Fund, and (iv) a grant in the amount of $500,000 expected to be received from the New York/New Jersey Baykeeper) and including the sum of $53,000 as the down payment for the improvement or purpose required by the Local Bond Law. The down payment has been made available by virtue of provision in the capital improvement fund in one or more previously adopted budgets.

Section 2. In order to finance the cost of the improvement or purpose not covered by application of the down payment or otherwise provided for hereunder, negotiable bonds are hereby authorized to be issued in the principal amount of $7,647,000 pursuant to the Local Bond

Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

Section 3. The improvement hereby authorized and the purpose for which the bonds are to be issued is the acquisition by the City of real property and the improvements thereon known as the Harsimus Embankment Park and Greenway Project, including, but not limited to, approximately eight parcels of land, including two grade-level parcels and six stone embankments, identified on the tax maps of the City as Block 212, Lot M, Marin Boulevard to Manila Avenue, Block 247, Lot 50A, Manila Avenue to Erie Street, Block 280, Lot 50A, Erie Street to Jersey Avenue, Block 317.5, Lot 50A, Jersey Avenue to Coles Street, Block 354.1, Lot 50A, Coles Street to Monmouth Street, Block 389.1, Lot 50, Monmouth Street to Brunswick Street, Block 415, Lot 50 (also known as Lot 50.PL), Brunswick Street to Newark Avenue and Division Street and Block 446, Lot 18A, Newark Avenue to just west of the New Jersey Turnpike, and including all rights and interests therein and all work, materials and services necessary therefore or incidental thereto.

(b) The estimated maximum amount of bonds or notes to be issued for the improvement or purpose is as stated in Section 2 hereof.

(c) The estimated cost of the improvement or purpose is equal to the amount of the appropriation herein made therefor.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no note shall mature later than one year from its date. The notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time subject to the provisions of N.J.S.A. 40A:2-8.1. The chief financial officer is hereby authorized to sell part or all of the notes from time to time, at not less than par and accrued interest, at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this bond ordinance is made. Such report must include the amount, the

description, the interest rate and the maturity schedule of the notes sold, the price obtained and the name of the purchaser.

Section 5. The capital budget or temporary capital budget (as applicable) of the City is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. In the event of any such inconsistency and amendment, the resolution in the form promulgated by the Local Finance Board showing full detail of the amended capital budget or amended temporary capital budget (as applicable) and capital program as approved by the Director of the Division of Local Government Services is on file with the City Clerk and is available there for public inspection.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvement or purpose described in Section 3 of this bond ordinance is not a current expense. It is an improvement or purpose the City may lawfully undertake as a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) The period of usefulness of the improvement or purpose, within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is 40 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the City as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by $7,647,000, that the net debt of the City determined as provided in the Local Bond Law is increased by $7,647,000, and the obligations authorized herein will be within all debt limitation prescribed by that Law.

(d) An aggregate amount not exceeding $500,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement.

(e) The City reasonably expects to commence acquisition and/or construction of the project described in Section 3 hereof, and to advance all or a portion of the costs in respect thereof, prior to the issuance of bonds or notes hereunder. To the extent such costs are advanced,

the City further reasonably expects to reimburse such expenditures from the proceeds of the bonds or notes authorized by this bond ordinance, in an aggregate not to exceed the amount of bonds or notes authorized in Section 2 hereof.

Section 7. Any grant moneys received for the purpose described in Section 3 hereof, (including grants in the total amount of $6,600,000, consisting of (i) a grant in the amount of $1,600,000 expected to be received from the State of New Jersey, Department of Environmental Protection pursuant to the Green Acres Program, (ii) a grant in the amount of $3,500,000 expected to be received from the Port Authority of New York/New Jersey, (iii) a grant in the amount of $1,000,000 expected to be received from the Hudson County Open Space Fund, and (iv) a grant in the amount of $500,000 expected to be received from the New York/New Jersey Baykeeper), shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 8. The full faith and credit of the City is hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the City, and the City shall be obligated to levy ad valorem taxes upon all the taxable real property within the City for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 9. After passage upon first reading of this bond ordinance, the City Clerk is hereby directed to publish the full text of the bond ordinance, together with the notice set forth below entitled: "NOTICE OF PENDING BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. 40A:2-19, at least seven days prior to the date set for public hearing and further consideration for final passage (which date shall be at least ten days after introduction and first reading). The City Clerk is further directed to comply with all provisions of N.J.S.A. 40A:2-17(b) regarding postings, publications, and the provision of copies of this bond ordinance.

Section 10. After final adoption of this bond ordinance by the Municipal Council, the City Clerk is hereby directed to publish the full text of this bond ordinance, as finally adopted, together with the notice set forth below entitled: "NOTICE OF ADOPTION OF BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. 40A:2-19.

Section 11. To the extent that any previous ordinance or resolution is inconsistent herewith or contradictory hereto, said ordinance or resolution is hereby repealed or amended to the extent necessary to make it consistent herewith.

Section 12. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by Section 10 hereof and the Local Bond Law.

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. Ord. 10-085

TITLE: 3.D. JUN 2 3 2010 4.D. JUL 1 4 2010

An ordinance of the City of Jersey City, in the County of Hudson, New Jersey, providing for the acquisition by the city of real property in the city and appropriating $7,700,000, therefor, and providing for the issuance of $7,647,000 in general improvement bonds or notes of the City of Jersey City to finance the same.(Sixth Street Embankment)

RECORD OF COUNCIL VOTE ON INTRODUCTION JUN 2 3 2010 6-1-2

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN		✓		BRENNAN	✓		
DONNELLY	✓			FULOP	✓			FLOOD	ABSTAIN		
LOPEZ	✓			RICHARDSON	ABSTAIN			VEGA	✓		

✓ Indicates Vote N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING JUL 1 4 2010 9-0

Councilperson BRENNAN moved, seconded by Councilperson FULOP to close P.H.

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			FLOOD	✓		
LOPEZ	✓			RICHARDSON	✓			VEGA	✓		

✓ Indicates Vote STEPHEN GUCCIARDO GREG REMAUD FELICIA PALMER N.V.-Not Voting (Abstain)
LEDA DUIF KARIN VANOWIN SAM PESIN
CATHERINE LOMONICO ELNA MUKAIDA MAURA AIMETTE

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY

Councilperson_____ moved to amend* Ordinance, seconded by Councilperson_____ & adopted_____

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
DONNELLY				FULOP				FLOOD			
LOPEZ				RICHARDSON				VEGA			

✓ Indicates Vote KIRSTEN GREENE RICHARD WILLIAMS BOB MURGITROYD N.V.-Not Voting (Abstain)
CLAIRE PERRAULT CHRISTINE BAMBERGER ANN BARRY JOHN CROWLEY-DELMAN
IRINA BEREZNAYA JOHN HALLANAN DAVID GREENWOOD JENNIFER MEYER
MARGARET WEBER MATT HORESTA

RECORD OF FINAL COUNCIL VOTE JUL 1 4 2010 6-1-2

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN		✓		BRENNAN	✓		
DONNELLY	✓			FULOP	✓			FLOOD	ABSTAIN		
LOPEZ	✓			RICHARDSON	ABSTAIN			VEGA	✓		

✓ Indicates Vote REBECCA FERANC N.V.-Not Voting (Abstain)
ANDREW HUBSCH
BOB PERRAULT
BOB COTTER

Adopted on first reading of the Council of Jersey City, N.J. on JUN 2 3 2010

Adopted on second and final reading after hearing on JUL 1 4 2010

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on JUL 1 4 2010

Robert Byrne, City Clerk

APPROVED:

Peter M. Brennan, Council President

Date: JUL 1 4 2010

*Amendment(s):

APPROVED:

Jeramiah T. Healy, Mayor

Date JUL 2 0 2010

Date to Mayor JUL 1 4 2010

4

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

April 18, 2011

Christopher M. Walrath, Esq.
Gluck Walrath, LLP
428 River View Plaza, 2nd Floor
Trenton, New Jersey 08611

Dear Mr. Walrath:

Enclosed please find a Local Finance Board (Board) Resolution(s) reflecting the action the Board took at the meeting held on Wednesday, July 14, 2010.

If you have any questions regarding this information, please feel free to contact me at (609) 292-4537.

Sincerely,

Patricia Parkin McNamara
Executive Secretary
Local Finance Board

Enclosure

cc: Robert Byrne
Fred Tomkins
Robbi Acampora

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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Commissioner

LOCAL FINANCE BOARD
RESOLUTION

WHEREAS, the governing body of the City of Jersey City in the County of Hudson, has determined it to be in the best interest of the municipality to issue Qualified Bonds as permitted by N.J.S.A. 40A:3-1 et seq.; and

WHEREAS, the Local Finance Board required of the applicant that all future capital bonding authorizations receive Local Finance Board approval; and

WHEREAS, the municipal clerk has certified to the Local Finance Board that the governing body has passed on first reading the following Bond Ordinance entitled:

> **AN ORDINANCE OF THE CITY OF JERSEY CITY, IN THE COUNTY OF HUDSON, NEW JERSEY, PROVIDING FOR THE ACQUISITION BY THE CITY OF REAL PROPERTY IN THE CITY AND APPROPRIATING $7,700,000, THEREFOR, AND PROVIDING FOR THE ISSUANCE OF $7,647,000 IN GENERAL IMPROVEMENT BONDS OR NOTES OF THE CITY OF JERSEY CITY TO FINANCE THE SAME.**

WHEREAS, the Local Finance Board has investigated at its meeting of July 14, 2010, the application and taken into consideration the need for the expenditure of proceeds of the authorization; the ability of the municipality to supply other essential public improvements and services; the ability to pay punctually during the ensuing ten years principal and interest on the municipal debt; the reasonableness of the amounts to be expended pursuant to such bonds; and all other factors as the Local Finance Board has deemed necessary; and

NOW, THEREFORE, BE IT RESOLVED by the Local Finance Board that approval for passage of the subject ordinance is hereby granted; and

BE IT FURTHER RESOLVED that this Bond Ordinance Authorization may be included in future permanent qualified bond issues subject to prior Local Finance Board approval of the proposed permanent issues and the availability of revenues identified in the Law; and

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Local Finance Board
City of Jersey City
July 14, 2010

BE IT FURTHER RESOLVED that the City of Jersey City shall, within 30 days of the closing date of the financing that is the subject of this resolution, file with the Executive Secretary of the Local Finance Board a statement setting forth a complete accounting of the actual issuance costs incurred by the City of Jersey City in undertaking the financing which statement shall include the following: the name of the City of Jersey City; the closing date of the financing; the total amount of the financing; the name of the professionals or others who provided services to the City of Jersey City in undertaking the financing; the estimated dollar amount for each type of issuance cost as set forth in the application submitted by the City of Jersey City to the Local Finance Board with regard to the financing; and the actual dollar amount for each type of issuance cost incurred by the City of Jersey City in undertaking the financing; and

BE IT FURTHER RESOLVED that the Executive Secretary of the Local Finance Board is hereby authorized and directed to certify or endorse such documents or instruments as may be necessary, convenient, or desirable in order to carry out the purpose and provisions of the Law and this Resolution; and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

APPROVED BY:
THE LOCAL FINANCE BOARD

DATE: July 14, 2010

Patricia Parkin McN

PATRICIA PARKIN MCNAMARA
EXECUTIVE SECRETARY
LOCAL FINANCE BOARD

16098/QB-321

0001

1 NEW JERSEY DIVISION OF LOCAL GOVERNMENT SERVICES
2 MEETING OF THE LOCAL FINANCE BOARD
3 * * * *
4 Wednesday, July 14, 2010
5 Trenton, New Jersey
6 * * * *
7 BOARD MEMBERS PRESENT:
8 MARC PFEIFFER, Chairman
9 IDIDA RODRIGUEZ
10 TED LIGHT
11 FRANCIS BLEE
12 SUSAN BASS-LEVIN
13 JAMIE FOX
14 ALSO PRESENT:
15 JULIE CAVANAGH, DAG
16 PATRICIA PARKIN-MCNAMARA, Executive Secretary
17 EMMA SALAY, Deputy Executive Secretary
18 CHRISTINE ZAPICCHI

19 HELD AT:
20 101 South Broad Street
21 Trenton, New Jersey
22 REPORTED BY:
23 Molly Hallinan, RPR
24
25

0002

1 (Whereupon, the proceedings commenced at
2 approximately 9:59 a.m.)
3 CHAIRMAN PFEIFFER: Good morning,
4 everybody. I'd like to call together -- call to order
5 the meeting of -- the July 14th meeting of the Local
6 Finance Board.
7 May I have a roll call, please?
8 MS. PARKIN-MCNAMARA: Mr. Pfeiffer?
9 CHAIRMAN PFEIFFER: Yes, here.
10 MS. PARKIN-MCNAMARA: Ms. Rodriguez?
11 MS. RODRIGUEZ: Yes, here.
12 MS. PARKIN-MCNAMARA: Mr. Blee?
13 MR. BLEE: Here.
14 MS. PARKIN-MCNAMARA: Ms. Bass-Levin?
15 MS. BASS-LEVIN: Yes, here.
16 MS. PARKIN-MCNAMARA: Mr. Fox?
17 MR. FOX: Yes.
18 CHAIRMAN PFEIFFER: Absent are Ms. Kenny,
19 Mr. Turner, and Mr. Light will be joining us later.
20 Can I have the statement -- has this

21 meeting been properly advertised?
22 MS. PARKIN-MCNAMARA: Yes. The meeting
23 has been advertised through the Secretary of State,
24 the Star-Ledger and the Trenton Times.
25 CHAIRMAN PFEIFFER: Very good, thank you.
0003

CHAIRMAN PFEIFFER: Which brings us to the
17 City of Jersey City, qualified bond ordinance,
18 $7,700,000.
19 MR. WALRATH: This approval is pursuant to
20 resolutions that the Board has adopted in connection
21 with previous qualified bond approvals that require
22 the City to come back for approval for any capital
23 authorization. The ordinance that's being adopted
24 appropriates $7.7 million, authorizes bonds and notes
25 for a little over $7.6 million. The purpose of
0076
1 ordinance is to acquire property which is known in the
2 City as the 6th Street Embankment. The property will
3 be ultimately developed by the City for rapid transit
4 and light rail, open space, walking trails. There may
5 be a small parcel down the road that they'll look to
6 redevelop.
7 How this came about was there was a
8 developer who acquired the property from Conrail. It
9 was previously a freight rail, obviously a raised
10 freight rail along 6th Street in Jersey City. As a
11 result, the City stepped in and thought that Conrail
12 should have offered it to the City first. There were
13 many negotiations -- Bill Matsikoudis can go through
14 it -- and I think there was a settlement agreement.
15 The City has agreed that they would acquire it from
16 the -- from Conrail.
17 Then ultimately, the project is going to
18 be financed through the grants for $6.6 million.
19 Those grants are reimbursement-type grants. They need
20 to authorize the amount and do the ordinance for bonds
21 and notes. They're going to finance it temporarily
22 through the Hudson County Improvement Authority's
23 pooled note program, which by the way you'll hear
24 later on, that is a rollover. This is a new money
25 component to that program. Then when the grants come
0077
1 in, they will pay off the debt.

2 CHAIRMAN PFEIFFER: I want to take a note
3 here on qualified bond. In the last application I'm
4 not sure if it applies in this application at all, I'm
5 going to ask Ms. Mauer to reach out to my office soon
6 and discuss the issue of debt service coverage on your
7 qualified bonds. There's been some representations
8 the City has made that you're running out of money.
9 I'm not sure our numbers are showing that. I want to
10 have a discussion with you guys on that.
11 MR. MATSIKOUDIS: I have to add something
12 and maybe correct a couple of things that Chris said.
13 The 6th Street Embankment, first let me
14 tell you it's a historically-elevated structure that
15 used to be used for freight rail. What it represents
16 to the City is three things: First and foremost, the
17 City looks at it as the possibility of it being
18 utilized for mass transit in the future. It
19 represents one of the few right-of-ways that would
20 connect downtown Jersey City to the Hudson River
21 waterfront and Path trains, ferries and westward,
22 possibly to the Frank Lautenberg train station and
23 other areas due west.
24 Secondly, there's been a strong movement
25 in the community, which actually brought this to the
0078
1 City and got us involved in this litigation, to have
2 an elevated green space park area similar to the High
3 Line in Manhattan. In fact, the New York Times was
4 writing an article about the 6th Street Embankment
5 this coming Sunday.
6 Thirdly, the structure itself is an
7 historic landmark. It represents a tie to our past
8 where we had rail operations.
9 The grants, some of them are more
10 solidified than others. There's $1.6 million of Green
11 Acres grants that are there. We're still trying to
12 work with the Port Authority, for example, on some
13 $3.5 million worth of grants. It's not as solid, but
14 nevertheless, we think this is a good investment for
15 the City.
16 We are in mediation in this litigation
17 right now. We went back to the Supreme Court to get
18 another mediator, Chief Justice Zazzali, this time.
19 We're not quite at a settlement, but this will give us
20 the ability to either finalize a settlement or acquire
21 the property if we succeed in litigation or even go
22 through imminent domain. Either way, this will be a
23 really important asset for the City's economic

24 development into the future.
25 CHAIRMAN PFEIFFER: Board questions?
0079
1 Motion?
2 MR. BLEE: Motion.
3 MS. RODRIGUEZ: Second.
4 CHAIRMAN PFEIFFER: Roll call?
5 MS. PARKIN-MCNAMARA: Mr. Pfeiffer?
6 CHAIRMAN PFEIFFER: Yes.
7 MS. PARKIN-MCNAMARA: Ms. Rodriguez?
8 MS. RODRIGUEZ: Yes.
9 MS. PARKIN-MCNAMARA: Mr. Blee?
10 MR. BLEE: Yes.
11 MS. PARKIN-MCNAMARA: Ms. Bass-Levin?
12 MS. BASS-LEVIN: Yes.
13 MS. PARKIN-MCNAMARA: Mr. Fox?
14 MR. FOX: Yes.
15 CHAIRMAN PFEIFFER: Thank you all very
16 much.

CHAIRMAN PFEIFFER: May I have a motion to
23 adjourn?
24 MR. BLEE: Motion.
25 MR. LIGHT: So moved.
0215
1 CERTIFICATE
2
3 I, MOLLY HALLINAN, Shorthand Reporter,
4 certify that the foregoing is a true and accurate
5 transcript of the proceedings which were held at the
6 time, place, and on the date herein before set forth.
7 I further certify that I am neither
8 attorney nor counsel for, not related to or employed
9 by any of the parties to the action in which these
10 proceedings were taken; further, that I am not a
11 relative or employee of any attorney or counsel
12 employed in this case, nor am I financially interested
13 in this action.
14
15
16
17 MOLLY HALLINAN
18
19
20
21 RPR

5

New Issue - Book-Entry-Only

Rating: Moody's: MIG 1
See "CREDIT RATING" herein

In the opinion of McManimon, Scotland & Baumann, LLC, Bond Counsel to the Authority (as defined herein), pursuant to Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code") and existing statutes, regulations, administrative pronouncements and judicial decisions, and in reliance on the representations, certifications of fact, and statements of reasonable expectation made by the Authority and the Borrowers (as herein defined) and assuming continuing compliance by the Authority and the Borrowers with certain ongoing covenants described herein, interest on the Notes (as defined herein) is not included in gross income for Federal income tax purposes and is not an item of tax preference for purposes of calculating the alternative minimum tax imposed on individuals and corporations. Bond Counsel is also of the opinion that interest on the Notes held by corporate taxpayers is included in "adjusted current earnings" in calculating alternative minimum taxable income for purposes of the federal alternative minimum tax imposed on corporations. Further, in the opinion of Bond Counsel, interest on the Notes and any gain from the sale thereof are not includable as gross income under the New Jersey Gross Income Tax Act. See "TAX MATTERS" herein.

Hudson County Improvement Authority
(County of Hudson, State of New Jersey)
$37,718,000 Tax Exempt County-Guaranteed Pooled Notes, Series 2014 U-1
(Local Unit Loan Program)
consisting of
$25,274,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1A
$12,444,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1B
(Local Unit Loan Program)

Dated: Date of Delivery

Series 2014 U-1A Notes Maturity Date: July 15, 2015
Series 2014 U-1B Notes Maturity Date: January 15, 2015

Series 2014 U-1A Notes - Coupon: 1.25%	Price: 100.896%	CUSIP: 443728DS6
Series 2014 U-1B Notes - Coupon: 1.30%	Price: 100.509%	CUSIP: 443728DT4

The $37,718,000 aggregate principal amount of Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 (Local Unit Loan Program), consisting of $25,274,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1A (the "Series 2014 U-1A Notes") and $12,444,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1B (the "Series 2014 U-1B Notes" and together with the Series 2014 U-1A Notes, the "Notes") will be issued by the Hudson County Improvement Authority (the "Authority") as fully registered notes and, when issued, will be registered in the name of Cede & Co. ("Cede"), as nominee for The Depository Trust Company, New York, New York ("DTC"), an automated depository for securities and clearing house for securities transactions, which will act as securities depository for the Notes. Individual purchases will be made in book-entry form (without certificates) in the principal amount of $1,000 each or any integral multiple thereof with a minimum purchase of $5,000 required.

The principal of and interest on the Notes, calculated on a 30 day month and 360 day year basis, is payable on the Maturity Date, shown above, to the registered owners thereof at their respective addresses as they appear on the registration books of TD Bank, National Association, Cherry Hill, New Jersey, acting in the capacity as trustee, registrar and paying agent for the Notes. Provided DTC, or its nominee Cede, is the registered owner of the Notes, payments of the principal of and interest on the Notes will be made directly to DTC or its nominee, which is obligated to remit such principal and interest to DTC Participants, as defined herein. DTC Participants and Indirect Participants, as defined herein, will be responsible for remitting such payments to the beneficial owners of the Notes. See, "DESCRIPTION OF THE NOTES - The DTC Book-Entry-Only System", herein.

The Notes are not subject to redemption prior to maturity. See, "DESCRIPTION OF THE NOTES - Redemption of Notes", herein.

The Notes are being issued pursuant to: (i) the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State of New Jersey, as amended and supplemented (the "Act"); (ii) a resolution of the Authority entitled "County-Guaranteed Pooled Note Resolution" adopted on August 12, 2009, as amended (the "Note Resolution"); (iii) a certificate of the Executive Director/CFO of the Authority, entitled "Certificate of the Executive Director/CFO of the Hudson County Improvement Authority Providing for the Issuance and Sale of $37,718,000 Aggregate Principal Amount of Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 and Determining Various Matters Pertaining Thereto" dated June 18, 2014, exercising powers delegated by the Note Resolution (the "Series Certificate," and together with the Note Resolution, the "Resolution"); and (iv) all other applicable law. The Notes are being issued to provide funds to make loans to certain municipalities (the "Borrowers") located within the County of Hudson, New Jersey (the "County"), to (i) refinance certain of the outstanding bond anticipation notes or tax appeal refunding notes, as applicable, of the Borrowers issued to temporarily finance capital projects of the Borrowers; and (ii) pay certain of the costs of issuance of the Notes and the Borrower Notes (as hereinafter defined).

The Notes constitute direct and special obligations of the Authority and will be payable from and are secured by payments made on general obligation notes purchased by the Authority from the Borrowers (collectively, the "Borrowers Notes"). The Borrower Notes will be sold to the Authority pursuant to separate Borrower Note Purchase Agreements entered into between the Authority and each of the Borrowers, and the Loan Repayments (as defined herein) as required thereunder are pledged by the Authority to secure the applicable series of Borrower Notes described under "THE LOANS" herein.

The Borrower Notes shall be direct and general obligations of each of the respective Borrowers. In the opinion of bond counsel to each of the Borrowers, each respective Borrower Note is a valid and legally binding obligation of the applicable Borrower and, unless paid from other sources, is payable from *ad valorem* taxes levied upon all the taxable property within the jurisdiction of such Borrower, without limitation as to rate or amount.

As additional security for the Notes, payment of the principal of and interest on the Notes is fully, unconditionally and irrevocably guaranteed by the County pursuant to a guaranty ordinance adopted on August 13, 2009 by the County (the "County Guaranty") and, unless such Notes are paid from some other sources, is payable from *ad valorem* taxes levied upon all taxable property in the County, without limitation as to rate or amount. In the opinion of bond counsel to the County, the County's obligation to make such payments under the County Guaranty is a direct and general obligation of the County, payable, unless paid from some other sources, from the levy of *ad valorem* taxes upon all the taxable property within the jurisdiction of the County, without limitation as to rate or amount. The County Guaranty shall remain in effect until the Notes and any renewals have been paid in full.

THE AUTHORITY HAS NO POWER TO LEVY OR COLLECT TAXES. THE NOTES ARE NEITHER A DEBT NOR LIABILITY OF THE STATE OF NEW JERSEY, THE COUNTY (EXCEPT TO THE EXTENT OF THE COUNTY GUARANTY), THE BORROWERS (EXCEPT TO THE EXTENT OF THEIR RESPECTIVE BORROWER NOTES), OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF NEW JERSEY OTHER THAN THE AUTHORITY (TO THE EXTENT OF THE PLEDGED PROPERTY). THE AUTHORITY HAS NO TAXING POWER.

This cover page includes certain information for reference only and is not a summary of matters set forth herein. Investors should read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The Notes are offered for delivery when, as and if issued and delivered to the Underwriter, subject to the approval of legality thereof by McManimon, Scotland & Baumann, LLC, Roseland, New Jersey, Bond Counsel to the Authority. Certain legal matters concerning the Borrower Notes will be passed upon by bond counsel to each of the Borrowers. Certain legal matters will be passed upon for the Authority by its General Counsel, William J. Netchert, Esq., Jersey City, New Jersey, and for the County by Donato J. Battista, Esq., Jersey City, New Jersey, County Counsel, and by DeCotiis, FitzPatrick & Cole, LLP, Teaneck, New Jersey, County Bond Counsel. Certain legal matters will be passed upon by Gibbons P.C., Newark, New Jersey, as Underwriter's Counsel. It is expected that the Notes will be available for delivery to DTC on or about July 15, 2014 in New York, New York or such other place as agreed to by the Authority.

ROOSEVELT & CROSS
Incorporated

Dated: June 18, 2014

Series 2014 U-1A Notes

Borrower	Borrower Note Amount	Purpose
City of Bayonne	$4,957,000	Acquisition of Communications Equipment, Municipal Building Improvements, Taxes Due and Owing Others, Various Capital Improvements
City of Jersey City	7,310,000	Acquisition of Real Property for Park and Open Spaces Purposes.
Township of Weehawken	13,007,000	Water Tank Renovation, Municipal Building and Park Improvements, Acquisition of Woodrow Wilson School, Acquisition of Real Property for Senior/Affordable Housing and Road Improvements, Taxes Due and Owing Others
Total	$25,274,000	

Series 2014 U-1B Notes

Borrower	Borrower Note Amount	Purpose
City of Bayonne	$12,444,000	Acquisition of Easements and Various School Facility Improvements
Total	$12,444,000	

MARKET PROTECTION

The County has in the past guaranteed the payment of principal of and interest on certain debt issued by various municipalities and entities of the County. The County Guaranty is a valid and legally binding obligation of the County and, unless the principal of and interest on such debt is paid from other sources, the County is obligated to make payment from *ad valorem* taxes levied upon all the taxable property within the jurisdiction of the County, without limitation as to rate or amount for the payment of such debt. It is anticipated that within the next ninety (90) days, the County will guaranty bonds or notes of the Authority for the issue described in the succeeding paragraph. The Authority does not anticipate issuing additional notes or bonds without a County guaranty within the next ninety (90) days. Furthermore, the County anticipates issuing the following additional notes or bonds within the next ninety (90) days: $19,900,000 General Obligation Bonds, Series 2014, consisting of $15,650,000 County Vocational -Technical Schools Bonds, Series 2014 (New Jersey School Bond Reserve Act, 1980 N.J. Laws c. 72, as Amended) and $4,250,000 County College Bonds, Series 2014 (County College Bond Act, 1971 N.J. Laws c. 12, as Amended).

approval. The original defendants settlement amount is $130,000,000.00 and the total of the 3rd party defendants amount is $55,000,000.00. The potential exposure if the settlement is not approved could be significantly higher than the settlement amount however; settlement was approved for $95,000.00.

Luther Price / Estate of Martina Brown v City of Jersey City. This case alleges that City police used deadly, excessive force on decedent Martina Brown. Police responded to the Brown home after receiving a complaint by decedent's husband. Police personnel gained entry into the apartment wherein they encountered an agitated Martina Brown, who possessed a knife. Brown was unresponsive to the officers' commands to drop the knife and continually lunged towards the officers with the knife. The officers utilized pepper spray, a ballistic shield, and batons in unsuccessful attempt(s) to disarm the decedent. One police officer eventually shot Martina Brown after she slashed him in the forearm and stabbed another policed officer in the forehead above his right eye. The lawsuit, seeking damages for violation of the decedent's Civil Rights resulting in her death, has been filed in the United States District Court. The case is in discovery; interrogatories have been exchanged and answered and documents produced. Depositions of parties and witnesses completed and settlement discussions were renewed. Case could have value of $600,000.00 to $1,000,000.00 if liability is against defendants, inclusive of statutory attorney fees.

Anderson v Bryant and City of Jersey City. Auto accident case, serious personal injuries to plaintiff, a bicycle operator who alleges that she was struck by a private vehicle operated by a City police officer who had completed his tour of duty and was going to Municipal Court to testify. The City contends that the officer was not in the course of his employment. His personal auto liability insurance carrier has offered the policy limits ($50,000.00) to settle. The trial on liability resulted in finding of 35% negligence on plaintiff, 65% on defendant Bryant. The motion for reconsideration of Bryant's status as an employee was denied. Damages trial to be scheduled after plaintiff's medical treatment is concluded. Plaintiff has made no demand, but damages could exceed $500,000.00.

Rosario v City of Jersey City. Plaintiff tripped and fell on City Hall steps as a result of a maintenance defect and sustained injuries to her shoulder, neck and back. She incurred in excess of $220,000.00 in medical expense subject to an ERISA lien which must be reimbursed.

212 Marin Blvd. v City of Jersey City (Sixth Street Embankment cases). Various lawsuits, brought by several entities owning property known as the Sixth Street Embankment, alleging that the City has interfered with their development rights and violated constitutional rights. These matters have been pending for several years despite numerous attempts to achieve a settlement, the plaintiffs have been uncooperative. The City continues to defend against all of the claims. The property has an appraised value in excess of $6,000,000.00.

Felton v City of Jersey City. A City police sergeant, assigned to work with the State Police investigating gang activity in the City, was alone in his vehicle doing surveillance when he heard the sound of a handgun being "racked". In fear for his life, he fired one shot through his car window and struck the plaintiff in the face, rendering him blind. Criminal charges arising out of this incident were brought against Mr. Felton and he was recently found guilty of all criminal charges. We are awaiting completion of post-trial motions to file Summary Judgment. The potential exposure, if the defendants are found liable for wrongfully causing the plaintiff's blindness could easily exceed $1,000,000.00.

Vincent Pools v City of Jersey City. This case arises out of a cancellation of a contract by the City due to allegedly defective work performed by a plaster subcontractor at the newly constructed Lafayette Pool complex. The contractor also claimed money due for extras. At trial, the jury returned a verdict of approximately $500,000.00 against the City. The Notice of Appeal has been filed.

Realty Appraisal v City of Jersey City. Contract case; plaintiff claims $1,000,000.00 alleging breach of contract for services with the City.

In addition to the cases listed above, the City, its officers and employees are defendants in a number of lawsuits, none of which is unusual for a city of its size. These lawsuits include but are not limited to lawsuits arising out of alleged torts by the City and its employees, alleged breaches of contract and alleged violations of civil rights.

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CITY OF JERSEY CITY

OFFICE OF THE CITY CLERK

INTERDEPARTMENTAL MEMORANDUM

DATE: September 3, 2014

TO: Council President Rolando R. Lavarro, Jr., and Members of the Municipal Council

FROM: Robert Byrne, City Clerk

SUBJECT: **Special Meeting of the Municipal Council on Monday, September 8, 2014 at 5:00 p.m.**

Council President Rolando R. Lavarro, Jr., has directed me to convene a **Special Meeting of the Municipal Council on Monday, September 8, 2014 at 5:00 p.m. in the Anna Cucci Memorial Council Chambers, 280 Grove Street, Jersey City.**

The purpose of this meeting is to discuss the following:

- Resolution authorizing a closed caucus of the Municipal Council on Monday, September 8, 2014 at 5:00 p.m., to discuss pending litigation and matters within the attorney client privilege (Sixth Street Embankment and Bright and Varick litigation).

Please mark your calendar accordingly and arrange to attend this meeting.
Thank You.

c: Steven M. Fulop, Mayor
Muhammed Akil, Chief of Staff
Robert Kakoleski, Business Administrator
Jeremy Farrell, Corporation Counsel
Barry Wiegmann, Court Reporter
The Jersey Journal
The Hudson Reporter
file

1-212-838 1909

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E-MAIL
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FAX
201-863-2866

September 5, 2014

VIA ELECTRONIC MAIL

Robert Byrne, City Clerk
City of Jersey City
280 Grove Street
Jersey City, NJ 07302

Re: Deficient Sunshine Law Notice
Special Caucus Meeting of September 8, 2014

Dear Mr. Byrne:

We represent the Limited Liability Companies that own the "Sixth Street Embankment." You issued an Open Public Meetings Act notice of a planned closed-caucus (executive session) meeting of the Jersey City Council at a "special" public meeting of the Council on September 8, 2014.

We write to object to this notice as a violation of the Open Public Meetings Act N.J.S.A. 10:4-8 et seq. ("Sunshine Law") First, the notice fails to "accurately state whether formal action may or may not be taken", in violation of N.J.S.A. 10:4-8(d). Second, it does not specifically describe the agenda items other than by an oblique and compound reference to "pending litigation and matters within the attorney client privilege (Sixth Street Embankment and Bright and Varick litigation)". Third, it does not provide an adequate reason why discussion of the broad and open-ended discussion on no particular subject qualifies for a closed session (much less provide any description of the particular litigation to be discussed).

As an agenda item "the Sixth Street Embankment" is overly vague. It is certainly not clear, definite, or in any way limited. This phrase could refer to our Petition of June 27, 2014 to the City Council concerning the Embankment, ongoing Surface Transportation Board proceedings in Washington, D.C., the regulatory status of said physical structure, the litigation concerning its taxation, the procedural or substantive posture of one or more of over a dozen

lawsuits involving issues related to that embankment and its appurtenances, an OPRA claim now in litigation involving the extra-legal and formerly secret Embankment Acquisition Steering Committee, claims by our clients against the City for the payment of our client's attorneys' fees, or just about anything else.[1] Beyond doubt this description is legally unspecific and in violation of the Sunshine Law.

The Sunshine Law, N.J.S.A. 10:4-12, further requires that public meetings be held in public except in certain limited circumstances, when the Council may discuss an issue in executive session. Among those is the following exception:

> pending or anticipated litigation or contract negotiation other than in subsection b. (4) herein in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

In order to take advantage of such provision the Council must:

> adopt a resolution, at a meeting to which the public shall be admitted stating the general nature of the subject to be discussed; and ... Stating as precisely as possible, the time when and the circumstances under which the discussion conducted in closed session of the public body can be disclosed to the public.

This clearly requires notice of which case or cases in litigation, and which parties are proposed for privileged discussion. The notice fails to provide adequate notice of why any exception under N.J.S.A. 10:4-12 may be applicable for the attorney to advise the Council within the ethical scope of his or her duties. A review of the notice does not provide one iota of information as to which one of a myriad of legal issues related to pending or anticipated litigation regarding any of the cases or parties will be the subject of the closed session as described above, except by noting that such topics are within the "attorney client privilege."[2]

Recently we presented a Petition to the Council asking it to decide whether to approve an Offer of Financial Assistance ("OFA"). The deliberations on an OFA concerning instituting rail service, financing rails operations, issuing bids and contracts, and funding such activities is

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[1] Litigation regarding each of these examples has been ongoing since 2006 in over 19 cases in both state and federal judicial and administrative forums.

[2] Even this last phrase of the notice is impermissibly vague. Not every topic discussed in the presence of an attorney is protected by the privilege, except to the extent to protect legitimately privileged communications as permitted by the rules of evidence and the Rules of Professional Conduct. The City cannot circumvent the Sunshine Law merely by claiming that an attorney will be present during a discussion. The public has a right to know the legal basis for Council action.

simply not privileged. It is something that the public has a right to hear and see discussed openly. Secret advice on these matters is not privileged, even if given by an attorney. Coordination of such activities with third party litigants such as the Embankment Coalition is also not privileged, as has been improperly claimed by City attorneys. That any Council action regarding an OFA may be challenged in litigation does not permit the Council to shield the reasons for approving an OFA from public scrutiny.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

By: _____
Jorge R. de Armas

JRD:mg

cc:: President and Members of the City Council (via Municipal Clerk)
Daniel E. Horgan, Esq.

821804

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Resolution of the City of Jersey City, N.J.

City Clerk File No. Res- 14.590

Agenda No. 10.A

Approved:

TITLE: RESOLUTION AUTHORIZING A CLOSED CAUCUS OF THE MUNICIPAL COUNCIL ON MONDAY, SEPTEMBER 8, 2014 AT 5:00 P.M. TO DISCUSS PENDING LITIGATION AND MATTERS WITHIN THE ATTORNEY CLIENT PRIVILEGE (SIXTH STREET EMBANKMENT AND BRIGHT AND VARICK LITIGATION)

Council as a whole, offered and moved adoption of the following:

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:5-1 et seq. (Act), authorizes a governmental body to hold a closed session to discuss matters within the attorney client privilege; and

WHEREAS, the Act requires that a closed session shall be authorized by resolution, which shall indicate when the minutes of the closed session shall be released to the public; and

WHEREAS, the Municipal Council wishes to discuss matters within the attorney-client privilege, including, but not limited to the Sixth Street Embankment Litigation filed by certain LLCs known as 212 Marin Boulevard, 247 Manila Avenue, 317 Jersey Avenue, 354 Cole Street, 389 Monmouth Street, 415 Brunswick Street and 446 Newark Avenue, litigation in New Jersey and litigation filed on behalf of the City of Jersey City before the federal Surface Transportation Board; and

NOW, THEREFORE, BE IT RESOLVED, by the Municipal Council of the City of Jersey City that:

1. A closed caucus of the Council will be held on **Monday, September 8, 2014** at 5:00 p.m. to discuss matters within the attorney-client privilege. The meeting will take place in the Efrain Rosario Memorial Council Caucus Room, second Floor, City Hall.

2. That the minutes of this closed caucus be released to the public when the Corporation Counsel deems that the legal interests of the City of Jersey City will not be impaired by such release.

APPROVED: _____ APPROVED AS TO LEGAL FORM

APPROVED: _____ Business Administrator

_____ Corporation Counsel

Certification Required ☐

Not Required ☐

APPROVED

RECORD OF COUNCIL VOTE ON FINAL PASSAGE 9.8.14											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
GAJEWSKI				YUN				RIVERA			
RAMCHAL				OSBORNE				WATTERMAN			
BOGGIANO				COLEMAN				LAVARRO, PRES			

✓ Indicates Vote N.V.-Not Voting (Abstain)

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

_____ Rolando R. Lavarro, Jr., President of Council

_____ Robert Byrne, City Clerk

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DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

OFFICE DIRECT DIAL: 201-330-7453
CELL and VOICE MAIL:: 201-926-4402
E-MAIL dehorgan@lawwmm.com

September 18, 2014

Rolando R. Lavarro, Jr. Council President
Joyce Watterman
Daniel Rivera
Frank Gajewski
Khemraj Ramchal
Richard Boggiano
Michael Yun
Candice Osborne
Diane Coleman

RE: PROPOSED CITY ORDINANCE 14.103
OFFER OF FINANCIAL ASSISTANCE

Dear Council Members,

We have written a number of letters concerning the handling and merits of proposed Ordinance 14.103 that you have undoubtedly been told is perfectly legal and proper. The first letter was to Robert Byrne on September 9, 2014 and explained why your September 8, 2014 Caucus meeting concerning our clients' properties, the Sixth Street Embankment, violated the Open Public Meetings Act. That violation taints the entire process for this Ordinance. The letter also explains why the handling of this matter constitutes a new violation of our clients' civil rights.

Next, on September 17, 2014 we wrote to the City's Chief Financial Officer, Donna Mauer, who is responsible for the management of the City's financial affairs. In that letter we explained to Ms. Mauer what we had indicated to you in our Petition on the Offer of Financial Assistance in June, that the expenditure of funds for the operation or subsidy of any rail operations by a municipality requires the approval of the Commissioner of Transportation. Assistant Corporation Counsel confirmed this week that no such approval has been sought or received. Therefore, it would seem that you

have been advised that this law does not apply to your actions. On that assumption, we have also written to the Acting Commissioner of Transportation, Joseph Bertoni, advising him that you are considering adopting an Ordinance in violation of the law and asking him, and the Attorney General, to act.

The letter to Ms. Mauer also raises an even more serious issue, the City's possible violations of federal securities laws concerning the funds raised by the City in the municipal securities market for the acquisition of the Sixth Street Embankment. Those are the $7.7 million in bond proceeds being used to fund the expenses authorized by the Ordinance. In an effort to correct past violations we pointed out to Ms. Mauer that the Securities and Exchange Commission has a current amnesty program that the City could participate in to avoid the serious consequences of past material mis-statements in City Financial Statements and public offering statements, including action by the SEC against individual officials. That opportunity will be lost if the Ordinance is adopted and signed into law, as such an act, in our opinion, would constitute a knowing and willful violation of federal securities laws, exposing each of you to the loss of the legislative immunity from suit because the sole improper purpose of the Ordinance is to illegally seize our clients' properties. The seriousness of the securities law violations has recently been emphasized by the State Division of Local Government Services, the state's fiscal supervisor of municipal finance, in a Local Finance Notice (LFN 2014-09) that warned that a failure to act appropriately or seek amnesty for past transgressions would risk exclusion of a municipality from the municipal securities market. Such an exclusion would have disastrous consequences, depriving the City of the ability to raise money, refinance its bond and note obligations, and conceivably subjecting it to the imposition of penalties by the SEC. This is not just our opinion, it is stated in exactly that manner in LFN 2014-9. We sent a copy of our letter to Ms. Mauer to Thomas Neff, chairman of the state's Local Finance Board, and Director of the Division of Local Government Services, who is also the author of LFN2014-09.

We are providing copies of the foregoing three letters and their enclosures to you through the City Clerk, with this present letter. Copies have also been provided to Corporation Counsel.

Our request to you is that you take the time necessary to properly consider these issues and that you table proposed Ordinance 14.103 in order to determine for yourselves the merits of our submissions and concerns. If you choose to go ahead without such consideration, we believe that you will expose the City to unnecessary financial and legal risk. There is no need for haste as the dispute between our clients and the City has been ongoing and in litigation for over nine years. This Ordinance is not a "magic bullet" that will give the City title to our clients' properties.

There is another matter that we ask you to also consider. While this matter is tabled, the City could begin to engage in a meaningful process to seek a mutually satisfactory resolution. We would be willing to engage in such a process, in good faith, provided that the City Council is also willing to see that happen.

Please give these matters the careful consideration they deserve, and balance the very remote possibility of acquiring our clients' property through an OFA against the very real and material risks to the City's credit, as well as the litigation and enforcement risks attendant with the funding and other actions of the Ordinance as proposed. Thank you.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: Daniel E. Horgan

DANIEL E. HORGAN

CC: Robert Byrne, RMC, City Clerk
Jeremy Farrell, Corporation Counsel
Donna Maurer, CFO

ENCLOSURES (3), as noted

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September 9, 2014

VIA ELECTRONIC MAIL
Robert Byrne, City Clerk
City of Jersey City
280 Grove Street
Jersey City, NJ 07302

Re: Notice Non-Compliance with Sunshine Law and Civil Rights Violation
Special Caucus Meeting of September 8, 2014
Defective Introduction of Ordinance 14.103 Agenda Item 3(a)

OPRA and Common Law Request for Caucus Transcript & Recording

Dear Mr. Byrne:

We represent the Limited Liability Companies that own the "Sixth Street Embankment." On Monday September 8, 2014, the City Council convened a special meeting and executive session at 5:00pm. This executive session and meeting were in violation of the Open Public Meetings Act N.J.S.A. 10:4-8 et seq. ("Sunshine Law") as the required notice was legally insufficient and defective as explained in our September 5, 2014 correspondence to you and the Council. (A copy of that letter was provided to all Council Members at the beginning of special meeting of September 8). Nevertheless, despite receipt of this notice, the Council decided to proceed with the meeting, and approved Resolution 14.590 authorizing a closed executive session. That resolution that was itself defective for the reasons explained herein. The net effect is that the City Council has held private discussions in violation of the Sunshine Law on issues related to the LLCs interest, the Sixth Street Embankment, quite likely involving proposed Ordinance 14.103.

Request That Proposed Ordinance 14.103 be Withdrawn

Tomorrow, the City council may be introducing proposed Ordinance 14.103 for first reading. Among other things, it commits the City to expending upwards of $5.8 million of tax exempt municipal bond proceeds to operate a freight railroad through the heart of downtown. Despite the implications and magnitude of such a decision, no discussion of this ordinance was held at the Public Caucus that immediately followed the closed executive session at 6:30p.m. Though not mentioned in Resolution 14.590 (which mentioned that only topics related to litigation and within the attorney client privilege would be discussed)[1], it is quite likely that the City Council also discussed the merits of Ordinance 14.103 at the closed executive session outside the purview of the public. The LLCs and the Public have a right to know if this is the case.

Under the circumstances, the City Council has no choice but to remove proposed Ordinance 14.103 from its agenda. Any public vote or discussion on Ordinance 14.103 at tomorrow's public meeting would not cure the defects resulting from the Council's secret deliberations, and the Ordinance, if approved under these circumstances, would be void. See In re Consider Distribution of Casino Simulcasting Special Fund (Accumulated in 2005), 398 N.J. Super. 7 (App. Div. 2008).

As explained in our September 5, 2014 correspondence to you as City Clerk, the deliberations on an OFA concerning instituting rail freight service, financing rail operations, issuing bids and contracts, and funding such activities are simply not privileged under the Sunshine Law. While the adoption or failure to approve an OFA may have some bearing on ongoing litigation, the City Council cannot shield the political and fiscal ramifications of such a decision from public scrutiny.[2] The LLCs and the public at large have a right to know if the City Council will be voting on Ordinance 14.103 which imprudently commits the City spend $5.8 million to operate a freight railroad through the heart of downtown without any reasoned deliberation, and the basis upon which the Council has decided to take such action. The proposed Ordinance must stand on its own merits and withstand public scrutiny. Council members should be alarmed if told that such merits (if any) cannot be disclosed to the public because they are part

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[1] Resolution 14.590 is further defective in that does not explain what facet of litigation involving the Sixth Street Embankment was to be discussed at closed session in the same way the meeting notice was itself defective for the same reason as expressed in our September 5, 2014 correspondence. We can certainly presume that it dealt with the OFA, but also have a right to know that.

[2] Burnett v. Gloucester County Bd. of Chosen Freeholders, 409 N.J.Super. 219, 976 A.2d 444 (A.D.2009)(Under the Open Public Meetings Act (OPMA), the subject under discussion must be the pending or anticipated litigation itself, i.e., the public body must be discussing its strategy in the litigation, the position it will take, the strengths and weaknesses of that position with respect to the litigation, possible settlements of the litigation or some other facet of the litigation itself.)

of some litigation "strategy". Public expenditures and public commitments are fully public business, even if they play some role in the overall litigation with the LLCs.

Notice of Ongoing Civil Rights Violation

By way of this correspondence and the correspondence of September 5, 2014 the City Council is made aware that it has acted in violation of the Sunshine Law. Under the circumstances, if the City Council proceeds to introduce Ordinance 14.103 tomorrow, September 10, 2014, such an act would not only be in further violation of the Sunshine Law, but would also be an additional and compound violation of the LLCs Civil Rights. Tumpson v. Farina, 218 N.J. 450 (2013) (the deprivation of a substantive statutory right gives rise to claims under the New Jersey Civil Rights Act).

Further Violations of the Sunshine Law

There is one further significant problem with the conduct of the Special Meeting. The Council never left closed caucus to close the meeting. A meeting cannot be adjourned in closed session. As noted in Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J.Super. 129, 382 A.2d 413, while the City Council may deliberate certain topics in closed session, it cannot act in closed session, but must do so before the public in open session.[3] There is the very real danger that the closed (secret) caucus will now at some point be resumed, and the minutes withheld indefinitely. This, coupled with the impermissible resolution giving corporation counsel unfettered discretion to indeterminately withhold disclosure of the minutes of the closed caucus, betrays an intent on the part of the City Council to never disclose to the public the true nature of its deliberations.

Additionally, should the City Council actually introduce proposed Ordinance 14.103, there are serious substantive deficiencies that would make the adoption and signing of the ordinance improper in a number of ways, including the outright violation of state and federal laws. We will withhold those objections in the hope that the City Council will reconsider its actions subjecting City officials, including council members, to personal liability and responsibility without the benefit of legislative immunity for their actions.

[3] It is noted that the closed session commenced at 5:05p.m. and ended at 6:25p.m., to permit the public to enter to attend the previously scheduled regular caucus of the City Council. The attorneys who attended the closed caucus, John Curley, Esq., and Charles Montagne, Esq., left the caucus at approximately 6:10pm, and Mayor Fulop joined the closed caucus at approximately 5:37p.m. Something of substance had to have been discussed in the almost hour and a half caucus, and the LLCs and the public have a right to know what that entailed.

OPRA and Common Law Records Request
for Recording, Transcript and Minutes of the Caucus

Given the procedural and legal irregularities attendant to the closed session and the pending introduction of proposed Ordinance 14.103, we request a copy the minutes of the Closed Caucus meeting, if any, and of any stenographic or electronic recording of the caucus under the Open Public Records Act and our clients' Common Law Right of Access.

In response to this request the City cannot claim that the minutes are privileged under the terms of the Sunshine Law, as the Sunshine Law does not create a privilege, and in any event, the terms of the Sunshine Law were violated not only by way of the defective notice, but also by way of the defective nature of Resolution 14.590. The resolution (like the notice) was impermissibly vague as to what facet of litigation was to be discussed, and failed to mention that proposed Ordinance 14.103 was also slated to be discussed.

Moreover, Corporation Counsel cannot delay the release of this information despite Paragraph 2 of Resolution 14.590. In violation of the Sunhine Law, Resolution 14.590 leaves disclosure of information regarding the closed caucus to Corporation Counsel's discretion, and only then if he deems disclosure to be in the City's interests. This is not the rule nor the legal standard that applies. As recognized by Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 369 N.J.Super. 175, 848 A.2d 793 (A.D.2004), even where closure is permissible, minutes of the closed meeting, as full as permitted by the nature of the exemption, must be promptly made available to the public. See also Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., 212 N.J.Super. 328, 514 A.2d 1361.[4]

Based on the foregoing the LLCs and the Public have an immediate right to know the nature of the City Council's discussion prior to the introduction of proposed Ordinance 14.103, especially since the LLCs' objections to the closed session was made known to the Council, see Allan-Deane Corp. v. Bedminster Tp., 153 N.J.Super. 114, 379 A.2d 265 (A.D.1977), even if this would not be expedient to the City's interests.

Please distribute this letter to each member of the City Council, Mayor Fulop, the Corporation Counsel and the Chief Financial Officer upon receipt. Thank you.

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[4] In the event that some of the discussion in closed caucus is legitimately within the attorney-client privilege, this still would not permit the complete non-disclosure of the recording and transcript. Under such a circumstance, any transcript, recording or minutes would then only subject to redaction not non-disclosure. The LLCs have an absolute right to know the actual nature of the discussion held.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

By: _____
Jorge R. de Armas

JRD:mg

cc:: President and Members of the City Council (via Municipal Clerk)
Hon. Steven M. Fulop, Mayor (via Municipal Clerk)
Jeremy Farrel Esq. (via Municipal Clerk)
Daniel E. Horgan, Esq.

822266.2

WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
300 LIGHTING WAY
P.O. Box 1560
SECAUCUS, NEW JERSEY 07096

DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

OFFICE DIRECT DIAL: 201-330-7453
CELL and VOICE MAIL:: 201-926-4402
E-MAIL dehorgan@lawwmm.com

September 17, 2014

VIA ELECTRONIC AND REGULAR MAIL
Donna Mauer, CMFO
Chief Financial Officer
City of Jersey City
280 Grove Street
Jersey City, NJ 07302

Re: **Sixth Street Embankment**
Ordinance #14.103
Compliance with LFN-2014-9 and
Other Problems

Dear Ms. Mauer:

We are writing to you as the Chief Financial Officer of the City of Jersey City so that you may address and correct material errors and misrepresentations in various public documents, including public offering statements for municipal securities.

On September 23, 2014 the City Council will consider Ordinance #14.103 for second reading and adoption. A copy is attached. The last "Whereas" clause in that ordinance states: "WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No 04-215-55-887-990." The "Fact Sheet" appended to the ordinance indicates that it was prepared by Jeremy Farrell, Esq., the Corporation Counsel for Jersey City. The purpose of the proposed ordinance is to make an Offer of Financial Assistance ("OFA") to provide rail freight service in downtown Jersey City. We direct your attention to paragraph 4 of the Ordinance which makes it clear that costs to be incurred include subsidies for freight and possibly passenger rail operations and other private purposes. The funds in the account cited in the Ordinance cannot be used for such purposes.

Ordinance #14.103 is in Violation of N.J.S.A. 40:9C-1

The first reason why these funds cannot be used is found in N.J.S.A. 40:9C-1, which prohibits such expenditures without the express written consent of the New Jersey Department of Transportation. The NJDOT has not given such consent, nor has the City asked for it. Since there is a specific statutory prohibition on the use of the funds for the purposes stated in the ordinance, you, as CFO, are unable to certify that the funds are available for "all costs to be incurred pursuant to this ordinance". We have not yet seen your actual certification of the availability of funds in support of the Ordinance, but trust that you will not act in violation of law by providing such a certification and thereby enable adoption of the ordinance.

The Funds Derived from the Bond Offering
Are for the Express Purpose of Acquisition of Open Space and Cannot Be Utilized for Freight or Passenger Rail Purposes

The funds in the account cited in the "WHEREAS" clause cannot be used to subsidize rail/passenger freight operations because they represent proceeds of issued Bond Anticipation Notes which serve as security for Tax Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 and/or related earlier public offerings of municipal securities. The most recent offering statement for these securities is dated June 18, 2014, and relevant excerpts from the public offering are enclosed with this letter. A description of the various loans at page 4 of the prospectus indicates that the City of Jersey City has issued a note in the amount of $7,310,000 for "Acquisition of Real Property for Park and Open Spaces Purposes." This statement is materially different from the stated use of the proceeds of the note listed in paragraph 4 of the Ordinance, and elsewhere, in the Ordinance. Acquiring the rights and obligations of running a freight railroad was not considered by Bond counsel in issuing its opinion on tax exemption referred to at the top of page 1 of the prospectus. In addition to violating its promises to use the proceeds of the note in accordance with the tax exempt purposes stated in the prospectus, and in related documents, the use of the proceeds for rail freight purposes proscribed by law would be likely to put the City in default of its solemn obligations to the issuer of the securities and the investing public.

Simply stated the operation of a railroad is a purpose different from the one for which the bond proceeds were authorized to be used – the acquisition of public open space. The use of funds derived from publically offered municipal bond issues must be utilized in accordance with not only the Local Bond Law but with Federal Securities Laws. Indeed, as recently noted by the Division of Local Government Services in LFN 2014-9, municipal officials must make every effort to come into compliance with regulations and requirements regarding the issuance of bonds and the use of bond proceeds. The SEC is offering a program to permit municipalities to achieve compliance in lieu of full enforcement actions as noted in LFN 2014-9 in cases of past non-compliance with its Rule 15c2-12. A copy of LFN 2014-9 is attached to this letter.
The City Council should be made aware that it has no legally permissible choice to use money raised in the municipal securities market outside of the stated purposes for which it has been raised from the purchasers of municipal bonds; and the City may utilize public funds only for purposes authorized by law. Nor can a municipal official legally or properly vote for the disbursement of public monies in excess of appropriations or in a manner that would violate other applicable law. Here, City of Jersey City has not budgeted funds to run a railroad, nor has it received the required permission to do so, and, therefore, it cannot commit the expenditure of funds for rail subsidies and operations as proposed in the ordinance. The City will be in knowing and willful violation of its responsibilities if it misuses public park and open space bond funds as proposed and may lose the safe-harbor now offered by the SEC for past non-compliance. See: LFN 2014-9.

City Financial Statements for the years ending December 31, 2011 and December 31, 2012 are incorporated into the prospectus as Appendix D. We call your attention to Note D at page 68, which states as follows:

> **Sixth Street Embankment** - On August 31, 2010, the City issued Bond Anticipation Notes in the amount of $7,500,000 to fund costs to obtain the property known as the Sixth Street [sic] in accordance with a legal settlement of January, 2010.

There was, and is, no such settlement. In fact the City's own description of litigation in the prospectus at Appendix D, at page A-44 states exactly the opposite, as follows:

> 212 Marin Blvd. v City of Jersey City (Sixth Street Embanknent cases). Various lawsuits, brought by several entities owning property known as the Sixth Street Embankment alleging that the City has interfered with their development rights and violated constitutional rights. These matters have been pending for several years *despite numerous attempts to achieve a settlement, the plaintiffs have been uncooperative.* The City continues to defend against all of the claims. The property has an appraised value in excess of $6,000,000. [*emphasis added*]

A similar statement that the plaintiffs have been "uncooperative" in reaching a settlement appears in note "T" to the Financial Statement entitled "contingent liabilities" at page 99 of Appendix D to the Prospectus.[1] (Excerpts enclosed). These statements that our clients have been uncooperative are untrue and highly misleading in many respects; but, they are also less prominent in the prospectus than the stated purpose of the Bond Anticipation Notes, which is to acquire the property "for Park and Open Space Purposes." The prominently stated purpose of acquisition "for Park and Open Spaces Purposes" leaves the false implication that the property is available through either voluntary purchase or eminent domain, although neither is mentioned, much less discussed. Certainly the purpose of the Bond Anticipation Notes is not to fund the continuing litigation against our clients, but to a great extent, expenditures of these funds raised in the municipal securities market have been used for precisely that purpose. The use of capital funds for operational expenses, which is what these litigation expenses are, is also improper. We have discovered that this is not the only instance of improper allocation of funds for litigation expenses by the City and we intend to raise those other issues separately in the near future.

We are providing a copy of this letter to the Corporation Council, Jeremy Farrell, who proposed ordinance 14.103 so that each of you may take the necessary steps to advise the City Council against the adoption of this ordinance before its second reading on September 23, 2014. We are also providing a copy of this letter to Thomas H. Neff, as Director of the Division of Local Government Services in the New Jersey Department of Community Affairs, and in his capacity as Chairman of the Local Finance Board so that the improper expenditure of funds for litigation against our clients can be addressed. The adoption of ordinance 14.103 would be a

[1] Full prospectus available at http://emma.msrb.org/ER783439-ER609179-ER1011268.pdf.

flagrant violation of law, and we wish to avoid the impact upon the City's finances that may result from the further litigation of these matters. Please be guided accordingly.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: Daniel E. Horgan
DANIEL E. HORGAN

Encl.: Ordinance #14.103
Series 2014U-1 Prospectus (excerpts)
LFN 2014-9

cc. Thomas F. Neff, Esq.
Jeremy Farrell, Esq.

823379.1

City Clerk File No. Ord. 14.103

Agenda No. 3.A 1st Reading

Agenda No. 2nd Reading & Final Passage

ORDINANCE
OF
JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE: ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City ;and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for $3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstituted an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer ($3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of $1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of $23,100; and

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible pubic purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of $3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed $5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.

2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding $5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.

3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.

4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.

6. This Ordinance shall take effect at the time and in the manner as provided by law.

7. This Ordinance shall not rescind Ordinance 04-096 or 05-064 which authorized the acquisition of the Embankment solely for open space and a park by purchase or condemnation.

8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.
The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as open space uses, all consistent with

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

RESOLUTION FACT SHEET – NON-CONTRACTUAL

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Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part I)
This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part II)
The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as open space uses, all consistent with historic preservation, all the way from Marin to CP Waldo (roughly Waldo or Chestnut Streets). If City is allowed to file for the remedy, STB will set the terms and conditions of sale, including price, based on the price paid by the developer to Conrail for the Embankment parcels ($3 million), and appraisals for any portions remaining under Conrail ownership. City is expected to have only a brief period (expected to be approximately 10 days) to accept the terms. If the terms are accepted, City ordinarily would be required to close within 60 days. The ordinance also contains provisions to equip the City to make the OFA, and to be in a position to accept terms and to close on a transaction within time periods set by STB.

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

New Issue - Book-Entry-Only

Rating: Moody's: MIG 1
See "CREDIT RATING" herein

In the opinion of McManimon, Scotland & Baumann, LLC, Bond Counsel to the Authority (as defined herein), pursuant to Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code") and existing statutes, regulations, administrative pronouncements and judicial decisions, and in reliance on the representations, certifications of fact, and statements of reasonable expectation made by the Authority and the Borrowers (as herein defined) and assuming continuing compliance by the Authority and the Borrowers with certain ongoing covenants described herein, interest on the Notes (as defined herein) is not included in gross income for Federal income tax purposes and is not an item of tax preference for purposes of calculating the alternative minimum tax imposed on individuals and corporations. Bond Counsel is also of the opinion that interest on the Notes held by corporate taxpayers is included in "adjusted current earnings" in calculating alternative minimum taxable income for purposes of the federal alternative minimum tax imposed on corporations. Further, in the opinion of Bond Counsel, interest on the Notes and any gain from the sale thereof are not includable as gross income under the New Jersey Gross Income Tax Act. See "TAX MATTERS" herein.

Hudson County Improvement Authority
(County of Hudson, State of New Jersey)
$37,718,000 Tax Exempt County-Guaranteed Pooled Notes, Series 2014 U-1
(Local Unit Loan Program)
consisting of
$25,274,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1A
$12,444,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1B
(Local Unit Loan Program)

Dated: Date of Delivery

Series 2014 U-1A Notes Maturity Date: July 15, 2015
Series 2014 U-1B Notes Maturity Date: January 15, 2015

Series 2014 U-1A Notes - Coupon: 1.25%	Price: 100.896%	CUSIP: 443728DS6
Series 2014 U-1B Notes - Coupon: 1.30%	Price: 100.509%	CUSIP: 443728DT4

The $37,718,000 aggregate principal amount of Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 (Local Unit Loan Program), consisting of $25,274,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1A (the "Series 2014 U-1A Notes") and $12,444,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1B (the "Series 2014 U-1B Notes" and together with the Series 2014 U-1A Notes, the "Notes") will be issued by the Hudson County Improvement Authority (the "Authority") as fully registered notes and, when issued, will be registered in the name of Cede & Co. ("Cede"), as nominee for The Depository Trust Company, New York, New York ("DTC"), an automated depository for securities and clearing house for securities transactions, which will act as securities depository for the Notes. Individual purchases will be made in book-entry form (without certificates) in the principal amount of $1,000 each or any integral multiple thereof with a minimum purchase of $5,000 required.

The principal of and interest on the Notes, calculated on a 30 day month and 360 day year basis, is payable on the Maturity Date, shown above, to the registered owners thereof at their respective addresses as they appear on the registration books of JD Bank, National Association, Cherry Hill, New Jersey, acting in the capacity as trustee, registrar and paying agent for the Notes. Provided DTC, or its nominee Cede, is the registered owner of the Notes, payments of the principal of and interest on the Notes will be made directly to DTC or its nominee, which is obligated to remit such principal and interest to DTC Participants, as defined herein. DTC Participants and Indirect Participants, as defined herein, will be responsible for remitting such payments to the beneficial owners of the Notes. See, "DESCRIPTION OF THE NOTES - The DTC Book-Entry-Only System", herein.

The Notes are not subject to redemption prior to maturity. See, "DESCRIPTION OF THE NOTES - Redemption of Notes", herein.

The Notes are being issued pursuant to: (i) the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State of New Jersey, as amended and supplemented (the "Act"); (ii) a resolution of the Authority entitled "County-Guaranteed Pooled Note Resolution" adopted on August 12, 2009, as amended (the "Note Resolution"); (iii) a certificate of the Executive Director/CFO of the Authority, entitled "Certificate of the Executive Director/CFO of the Hudson County Improvement Authority Providing for the Issuance and Sale of $37,718,000 Aggregate Principal Amount of Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 and Determining Various Matters Pertaining Thereto" dated June 18, 2014, exercising powers delegated by the Note Resolution (the "Series Certificate," and together with the Note Resolution, the "Resolution"); and (iv) all other applicable law. The Notes are being issued to provide funds to make loans to certain municipalities (the "Borrowers") located within the County of Hudson, New Jersey (the "County"), to (i) refinance certain of the outstanding bond anticipation notes or tax appeal refunding notes, as applicable, of the Borrowers issued to temporarily finance capital projects of the Borrowers; and (ii) pay certain of the costs of issuance of the Notes and the Borrower Notes (as hereinafter defined).

The Notes constitute direct and special obligations of the Authority and will be payable from and are secured by payments made on general obligation notes purchased by the Authority from the Borrowers (collectively, the "Borrowers Notes"). The Borrower Notes will be sold to the Authority pursuant to separate Borrower Note Purchase Agreements entered into between the Authority and each of the Borrowers, and the Loan Repayments (as defined herein) as required thereunder are pledged by the Authority to secure the applicable series of Borrower Notes described under "THE LOANS" herein.

The Borrower Notes shall be direct and general obligations of each of the respective Borrowers. In the opinion of bond counsel to each of the Borrowers, each respective Borrower Note is a valid and legally binding obligation of the applicable Borrower and, unless paid from other sources, is payable from *ad valorem* taxes levied upon all the taxable property within the jurisdiction of such Borrower, without limitation as to rate or amount.

As additional security for the Notes, payment of the principal of and interest on the Notes is fully, unconditionally and irrevocably guaranteed by the County pursuant to a guaranty ordinance adopted on August 13, 2009 by the County (the "County Guaranty") and, unless such Notes are paid from some other sources, is payable from *ad valorem* taxes levied upon all taxable property in the County, without limitation as to rate or amount. In the opinion of bond counsel to the County, the County's obligation to make such payments under the County Guaranty is a direct and general obligation of the County, payable, unless paid from some other sources, from the levy of *ad valorem* taxes upon all the taxable property within the jurisdiction of the County, without limitation as to rate or amount. The County Guaranty shall remain in effect until the Notes and any renewals have been paid in full.

THE AUTHORITY HAS NO POWER TO LEVY OR COLLECT TAXES. THE NOTES ARE NEITHER A DEBT NOR LIABILITY OF THE STATE OF NEW JERSEY, THE COUNTY (EXCEPT TO THE EXTENT OF THE COUNTY GUARANTY), THE BORROWERS (EXCEPT TO THE EXTENT OF THEIR RESPECTIVE BORROWER NOTES), OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF NEW JERSEY OTHER THAN THE AUTHORITY (TO THE EXTENT OF THE PLEDGED PROPERTY). THE AUTHORITY HAS NO TAXING POWER.

This cover page includes certain information for reference only and is not a summary of matters set forth herein. Investors should read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The Notes are offered for delivery when, as and if issued and delivered to the Underwriter, subject to the approval of legality thereof by McManimon, Scotland & Baumann, LLC, Roseland, New Jersey, Bond Counsel to the Authority. Certain legal matters concerning the Borrower Notes will be passed upon by bond counsel to each of the Borrowers. Certain legal matters will be passed upon for the Authority by its General Counsel, William J. Netchert, Esq., Jersey City, New Jersey, and for the County by Donato J. Battista, Esq., Jersey City, New Jersey, County Counsel, and by DeCotiis, FitzPatrick & Cole, LLP, Teaneck, New Jersey, County Bond Counsel. Certain legal matters will be passed upon by Gibbons P.C., Newark, New Jersey, as Underwriter's Counsel. It is expected that the Notes will be available for delivery to DTC on or about July 15, 2014 in New York, New York or such other place as agreed to by the Authority.

ROOSEVELT & CROSS
Incorporated

Dated: June 18, 2014

Series 2014 U-1A Notes

Borrower	Borrower Note Amount	Purpose
City of Bayonne	$4,957,000	Acquisition of Communications Equipment, Municipal Building Improvements, Taxes Due and Owing Others, Various Capital Improvements
City of Jersey City	7,310,000	Acquisition of Real Property for Park and Open Spaces Purposes.
Township of Weehawken	13,007,000	Water Tank Renovation, Municipal Building and Park Improvements, Acquisition of Woodrow Wilson School, Acquisition of Real Property for Senior/Affordable Housing and Road Improvements, Taxes Due and Owing Others
Total	$25,274,000	

Series 2014 U-1B Notes

Borrower	Borrower Note Amount	Purpose
City of Bayonne	$12,444,000	Acquisition of Easements and Various School Facility Improvements
Total	$12,444,000	

MARKET PROTECTION

The County has in the past guaranteed the payment of principal of and interest on certain debt issued by various municipalities and entities of the County. The County Guaranty is a valid and legally binding obligation of the County and, unless the principal of and interest on such debt is paid from other sources, the County is obligated to make payment from *ad valorem* taxes levied upon all the taxable property within the jurisdiction of the County, without limitation as to rate or amount for the payment of such debt. It is anticipated that within the next ninety (90) days, the County will guaranty bonds or notes of the Authority for the issue described in the succeeding paragraph. The Authority does not anticipate issuing additional notes or bonds without a County guaranty within the next ninety (90) days. Furthermore, the County anticipates issuing the following additional notes or bonds within the next ninety (90) days: $19,900,000 General Obligation Bonds, Series 2014, consisting of $15,650,000 County Vocational -Technical Schools Bonds, Series 2014 (New Jersey School Bond Reserve Act, 1980 N.J. Laws c. 72, as Amended) and $4,250,000 County College Bonds, Series 2014 (County College Bond Act, 1971 N.J. Laws c. 12, as Amended).

approval. The original defendants settlement amount is $130,000,000.00 and the total of the 3rd party defendants amount is $55,000,000.00. The potential exposure if the settlement is not approved could be significantly higher than the settlement amount however; settlement was approved for $95,000.00.

Luther Price / Estate of Martina Brown v City of Jersey City. This case alleges that City police used deadly, excessive force on decedent Martina Brown. Police responded to the Brown home after receiving a complaint by decedent's husband. Police personnel gained entry into the apartment wherein they encountered an agitated Martina Brown, who possessed a knife. Brown was unresponsive to the officers' commands to drop the knife and continually lunged towards the officers with the knife. The officers utilized pepper spray, a ballistic shield, and batons in unsuccessful attempt(s) to disarm the decedent. One police officer eventually shot Martina Brown after she slashed him in the forearm and stabbed another policed officer in the forehead above his right eye. The lawsuit, seeking damages for violation of the decedent's Civil Rights resulting in her death, has been filed in the United States District Court. The case is in discovery; interrogatories have been exchanged and answered and documents produced. Depositions of parties and witnesses completed and settlement discussions were renewed. Case could have value of $600,000.00 to $1,000,000.00 if liability is against defendants, inclusive of statutory attorney fees.

Anderson v Bryant and City of Jersey City. Auto accident case, serious personal injuries to plaintiff, a bicycle operator who alleges that she was struck by a private vehicle operated by a City police officer who had completed his tour of duty and was going to Municipal Court to testify. The City contends that the officer was not in the course of his employment. His personal auto liability insurance carrier has offered the policy limits ($50,000.00) to settle. The trial on liability resulted in finding of 35% negligence on plaintiff, 65% on defendant Bryant. The motion for reconsideration of Bryant's status as an employee was denied. Damages trial to be scheduled after plaintiff's medical treatment is concluded. Plaintiff has made no demand, but damages could exceed $500,000.00.

Rosario v City of Jersey City. Plaintiff tripped and fell on City Hall steps as a result of a maintenance defect and sustained injuries to her shoulder, neck and back. She incurred in excess of $220,000.00 in medical expense subject to an ERISA lien which must be reimbursed.

212 Marin Blvd. v City of Jersey City (Sixth Street Embankment cases). Various lawsuits, brought by several entities owning property known as the Sixth Street Embankment, alleging that the City has interfered with their development rights and violated constitutional rights. These matters have been pending for several years despite numerous attempts to achieve a settlement, the plaintiffs have been uncooperative. The City continues to defend against all of the claims. The property has an appraised value in excess of $6,000,000.00.

Felton v City of Jersey City. A City police sergeant, assigned to work with the State Police investigating gang activity in the City, was alone in his vehicle doing surveillance when he heard the sound of a handgun being "racked". In fear for his life, he fired one shot through his car window and struck the plaintiff in the face, rendering him blind. Criminal charges arising out of this incident were brought against Mr. Felton and he was recently found guilty of all criminal charges. We are awaiting completion of post-trial motions to file Summary Judgment. The potential exposure, if the defendants are found liable for wrongfully causing the plaintiff's blindness could easily exceed $1,000,000.00.

Vincent Pools v City of Jersey City. This case arises out of a cancellation of a contract by the City due to allegedly defective work performed by a plaster subcontractor at the newly constructed Lafayette Pool complex. The contractor also claimed money due for extras. At trial, the jury returned a verdict of approximately $500,000.00 against the City. The Notice of Appeal has been filed.

Realty Appraisal v City of Jersey City. Contract case; plaintiff claims $1,000,000.00 alleging breach of contract for services with the City.

In addition to the cases listed above, the City, its officers and employees are defendants in a number of lawsuits, none of which is unusual for a city of its size. These lawsuits include but are not limited to lawsuits arising out of alleged torts by the City and its employees, alleged breaches of contract and alleged violations of civil rights.

NOTE D. MUNICIPAL DEBT (continued)

NOTES PAYABLE (continued)

Bond Anticipation Notes - continued

The following is a schedule of bond anticipation note activity for the year ended December 31, 2012.

ACTIVITY OF BOND ANTICIPATION NOTES

			Balance at December 31, 2011					Balance at December 31, 2012		
Ordinance	Original Issue		Interest	Maturity		New Notes	Paid by Budget		Interest	Maturity
Number	Date	Amount	Rate	Date	Amount	Issued	Appropriation	Amount	Rate	Date
PJP Landfill Acquisition										
09-097/097A	1/20/2010	$ 8,700,000	2.000%	12/31/2012	$ 8,700,000	$ -	$ -	$ 8,700,000	1.125%	12/30/2013
Newark Avenue Streetscape										
09-127/127A	1/20/2010	2,476,000	2.000%	12/31/2012	2,476,000	-	-	2,476,000	1.125%	12/30/2013
Sixth Street Embankment										
10-085/085A	8/31/2010	7,500,000	1.500%	8/31/2011	7,500,000	-	-	7,500,000	1.500%	8/7/2013
					$ 18,676,000	$ -	$ -	$ 18,676,000		

Landfill and Streetscape – On January 20, 2010, the City issued Bond Anticipation Notes in the amount of $11,176,000 to fund two separate authorizations: the acquisition of the PJP Landfill for $8,700,000 and the Newark Ave Streetscape for $2,476,000.

Sixth Street Embankment – On August 31, 2010, the City issued Bond Anticipation Notes in the amount of $7,500,000 to fund costs to obtain the property known as the Sixth Street in accordance with a legal settlement of January, 2010.

Tax Refunding Notes

The City issues tax refunding notes in order to finance tax refunds arising from successful appeals by property owners. Taxpayers are obligated to pay taxes owed to the City as they become due, or have their property subject to tax sale. However, taxpayers may appeal their property assessments and, if successful, be granted a refund, often in a year subsequent to when the taxes were paid. The Division has allowed the City to issue notes to finance such refunds. The tax refunding notes are one year notes, renewable annually for five to seven years.

NOTE T. CONTINGENT LIABILITIES (continued)

Litigation (continued)

NJDEP v Occidental Chem. v City of Jersey City et al. – This is a pollution clean-up claim regarding the Passaic River, whereas the New Jersey Department of Environmental Protection sued Occidental Chemical, which, in turn, sued the City and 83 other municipalities and entities, alleging that their actions over the years contributed to the pollution of the Passaic River. Occidental Chemical is seeking contribution for any amounts for which they may be found liable. This case has been tentatively settled, subject to judicial approval. The Jersey City share of the settlement proceeds is $95,000. The settlement of this case involves complex issues and is before the Superior Court of New Jersey for review and approval. The original defendants' settlement amount is $130,000,000 and the total of the 3rd party defendants amount is $55,000,000. The potential exposure if the settlement is not approved could be significantly higher that the settlement amount however, now that all parties have agreed to amicably resolve this case, it is reasonably expected that this litigation will be closed sometime in early 2014.

V.M. v City of Jersey City – This is an employment discrimination case in which a female police officer alleges that actions by a former police Chief were done to deny her promotion in retaliation. The plaintiff claims economic and psychological damages. Summary judgment was granted in favor of the City on the Federal claims, however the trial court order was reversed by the 3rd Circuit Court of Appeals and the matter remanded for trial. The State law claims are pending in the Superior Court of New Jersey where Summary Judgment on the remaining claims was granted. The plaintiffs took an appeal to the Superior Court, Appellate Division where the case is awaiting oral argument and disposition. There is a significant monetary exposure for economic damages and attorney fees. An adverse verdict, with statutory attorney fees, would likely exceed $500,000.

212 Marin Blvd. et. al. v City of Jersey City (Sixth Street Embankment) - Proceeding In Lieu of Prerogative Writ brought by several entities owning property in the City collectively known as the Sixth Street Embankment. The Complaint alleges that the City has unjustifiably interfered with and obstructed their right to develop the property and seeks injunctive relief and damages for alleged violations of the plaintiffs' constitutional rights and malicious prosecution. This case is currently stayed, pending proceedings ongoing in the Federal Court. The City is actively and comprehensively involved in defending other litigation involving these properties, and the issues in this case will, to some extent, be affected by the resolution in the other suits. These matters have been pending for several years despite numerous attempts to achieve a settlement, the plaintiffs have been uncooperative. The City continues to defend against all of the claims. The property has an appraised value in excess of $6,000,000.00.

new jersey
department of community affairs

LFN 2014-9

July 23, 2014

Local Finance Notice

Chris Christie, *Governor* | Kim Guadagno, *Lt. Governor* | Richard E. Constable, III, *Commissioner* | Thomas H. Neff, *Director*

Contact Information

Director's Office
V. 609.292.6613
F. 609.292.9073

Local Government Research
V. 609.292.6110
F. 609.292.9073

Financial Regulation and Assistance
V. 609.292.4806
F. 609.984.7388

Local Finance Board
V. 609.292.0479
F. 609.633.6243

Local Management Services
V. 609.292.7842
F. 609.633.6243

Authority Regulation
V. 609.984.0132
F. 609.984.7388

Mail and Delivery
101 South Broad St.
PO Box 803
Trenton, New Jersey
08625-0803
Web:
www.nj.gov/divisions/dca/dlgs
E-mail: dlgs@dca.state.nj.us

Distribution

Chief Financial Officers
Municipal Clerks
Freeholder Board Clerks
Authority Officials
Auditors

Secondary Bond Market Continuing Disclosure Commitments

This Notice is intended to give fair warning to local government officials, including Certified Municipal Finance Officers and comparable staff of authorities and other local governments, that there will be consequences for failing to have identified past noncompliance (where applicable) with continuing financial disclosure requirements related to outstanding bonds and other securities and determining by September 10, 2014 whether to take advantage of a compliance initiative offered by the Securities Exchange Commission's (SEC). While this notice is important for all local governments that have outstanding bonds, bond anticipation notes, and other securities, it is critically important where local governments anticipate a need to access financial markets in the near future - as with the need to "roll over" Bond Anticipation Notes or to issue bonds.

Continuing disclosure requirements are indirectly required pursuant to federal law. The CFO, or another local official, was generally required in one or more documents authorizing the issuance of debt (commonly called "Continuing Disclosure Agreements") to annually, or more frequently, publicly disclose certain information. Consequences of failing to live up to requirements will likely include future difficulty accessing credit markets. Consequences could include, among other things: (1) enforcement actions being brought by the SEC that will result in more severe penalties otherwise available pursuant to "the SEC's "Municipalities Continuing Disclosure Cooperation Initiative" (see below for discussion); (2) denial or deferral of applications made to the Local Finance Board or Director of the Division for various approvals; (3) actions against State licensures in the event of fraudulent attestations of compliance; and/or (4) decreased scores on future "Best Practices Questionnaires" (which will contain questions as to past compliance) that could trigger a withholding of a portion of State Aid.

It is important that you read this notice in its entirety and consult your public finance professionals so you understand your continuing disclosure obligations and what must be done to achieve compliance.

Local government access to capital is critical for advancing needed local infrastructure projects and meeting local cash flow needs. As a condition of providing access to capital in the form of debt, the financial community - at the time of buying debt and while debt remains outstanding - expects to be kept abreast of key financial information that could impact the value of securities in the secondary market. Legally, local governments have an obligation to provide certain information. They are obligated under federal law to issue certain information at the time of issuing new debt, and they are frequently contractually obligated to continue providing certain information while their debt remains outstanding.

Recently, the SEC and the financial community have focused attention on what is alleged to be a widespread failure of local government issuers across the nation to meet their continuing disclosure obligations. They maintain that local government issuers of debt frequently fail to meet their continuing disclosure obligations and misrepresent (sometimes innocently or inadvertently and other times fraudulently) their past compliance when issuing new debt.

Earlier this year, the SEC adopted a program to encouraged local government issuers to self-identify past noncompliance and improve timely continuing disclosure in the future. Their program, known as the "Municipalities Continuing Disclosure Cooperation Initiative" essentially establishes lesser enforcement actions provided local government issuers (and others) self-identify past noncompliance and agree to a plan designed to prevent future noncompliance. You can read more about this program by visiting: http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml). It is strongly recommended that local government officials proactively take steps to self-identify their own levels of compliance with Continuing Disclosure Agreements if they have outstanding debt and consult their public finance officials during this process to, among other things, determine if it is advisable to participate in the SEC's program.

The private marketplace is also taking steps to improve disclosure by more closely reviewing past compliance and, as appropriate, refraining from underwriting or buying new debt unless compliance has been achieved. It is critically important that local governments anticipating a need to access financial markets conduct a self-assessment of past continuing disclosure compliance and correct deficiencies. Failure to do so could bar, or delay, access to capital markets.

As part of your self-assessment, it is recommended that you first identify your continuing disclosure contractual obligations with respect to past issuances of debt while it remained (or remains) outstanding. These obligations generally include filing audits, budgets, and certain operating data with various depositories.

Continuing Disclosure Agreements generally specify what information must be filed and where it must be filed. It is critically important that each local government understand the commitments it has made and live up to them. However, the Division recommends, as a best practice, that local governments with continuing disclosure requirements file the following information though the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access (EMMA) website (www.emma.msrb.org) in addition to any information they had previously agreed to provide:

a) As soon as available: The issuer's Annual Financial Statement -- or a variation thereof where an Annual Financial Statement is not statutorily required; and

b) As soon as available: The Issuer's Audited Financial Statements; and

c) As soon as available: The Issuer's adopted budgets; and

d) Within 180 days of the end of the fiscal year: Annual Operating Data, consisting of:

(i) Debt Statistics

(ii) Property Tax Information and tax statistics where the issuer relies on property tax collections as a major source of revenue;

Net Assessed Valuation
Real Property Classifications
Ratio of Assessed Valuation to True Value
Percentage of Collection
Delinquent Tax and Tax Title Lien Information
Property Acquired By Tax Title Lien Liquidation
Tax Rates
Tax Levies
Largest Taxpayers

(iii) Other major revenue data and statistics where the issuer relies on revenues other than property tax collections;

Sewer and water billings;
Parking rents and collections;
Etc.

(iv) Capital Budget

(v) New Construction Permits

e) Within 10 business days of the occurrence of any material events consisting of the following:

(i) Principal and interest payment delinquencies;

(ii) Non-payment related defaults, if material;

(iii) Unscheduled draws on debt service reserves reflecting financial difficulties;

(iv) Unscheduled draws on credit enhancements reflecting financial difficulties;

(v) Substitution of credit or liquidity providers, or their failure to perform;

(vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;

(vii) Modifications to rights of security holders, if material;

(viii) Bond calls, if material, and tender offers;

(ix) Defeasances;

(x) Release, substitution, or sale of property securing repayment of the Securities, if material;

(xi) Rating changes;

(xii) Bankruptcy, insolvency, receivership or similar event of the obligated person;

(xiii) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

f) Any and all additional or other information or documents required by the specific continuing disclosure obligations of such Issuer, for any particular series of Securities outstanding.

You should also ensure that past official statements -- or similar documents issued with respect to new issuances of debt -- have accurately reported your past compliance with continuing disclosure requirements.

While not required, the Chief Financial Officer is encouraged to seek the assistance of an experienced professional to assist or undertake such self-assessment.

As a final matter, the Division will be drafting a proposed Local Finance Notice -- or other appropriate action -- to require: (1) CFOs to attest as part of budget submissions to the Division that appropriate steps are being taken to ensure compliance with continuing disclosure requirements; and (2) auditors to treat non-compliance with continuing disclosure requirements as an instance of non-compliance with prevailing laws, statutes, regulations, contracts and agreements that is required to be reported under *Government Auditing Standards.*

Approved: Thomas H. Neff, Director

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DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

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September 17, 2014

VIA OVERNIGHT DELIVERY
Joseph Bertoni, Acting Commissioner
New Jersey Department of Transportation
David J. Goldberg Transportation Complex
1035 Parkway Avenue
Trenton, NJ 08625

RE: JERSEY CITY'S FREIGHT AND PASSERNGER RAIL PROGRAM

Dear Acting Commissioner Bertoni:

In order to acquire property, which is owned by our clients, the City of Jersey City is undertaking to apply to the U.S. Surface Transportation Board through an Offer of Financial Assistance which will impose federal regulation and common carrier freight obligations upon the City for a period of at least five years pursuant to 49 USC 10904, and under the jurisdiction of the STB. It will also require, according to the City, up to a $5.7 million expenditure. This action is explicitly prohibited by New Jersey law, unless the City first receives your permission. The statutory prohibition is contained in N.J.S.A. 40:9C-1. The City of Jersey City though aware of N.J.S.A. 40:9C-1 admits that it has not even asked for the required NJDOT approval.

The underlying purpose of Jersey City appears to be to frustrate our clients' property rights and acquire the properties without resorting to paying constitutionally mandated just compensation. In doing this it appears to be ready to misuse open space bond money in possible violation of federal securities law and state financial affairs laws, as well as misrepresent the actual needs of the State's rail system to the Surface

Transportation Board in the process. We are concurrently bringing this matter to the attention of the Local Finance Board chairman, Thomas H Neff, to whom we are sending a copy of this letter.

Jersey City's tortured efforts to acquire our clients' properties have continued over the past nine years and have involved the State and its transportation laws in federal litigation. Unless Jersey City is required to comply with N.J.S.A. 40:9C-1 and seek and obtain your permission before proceeding on its current course, the State is likely to be again involved in these disputes. Therefore, we ask you to consult with the appropriate State officials, including the Attorney General, and take appropriate action before Jersey City embarks on yet another improper course of action. The State was previously represented by Deputy Attorney General, Kenneth Worton, to whom we are also sending a copy of this letter for convenience.

We respectfully request that you take appropriate action in this matter as Acting Commissioner in order to avoid further waste of public time and resources by Jersey City.

Thank you.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: Daniel E. Horgan
DANIEL E. HORGAN

Enclosure: Ordinance 14-103

cc: Thomas, F. Neff, Esq.
Kenneth M. Worton, DAG

823418

City Clerk File No. Ord. 14.103

Agenda No. 3.A 1st Reading

Agenda No. 2nd Reading & Final Passage

ORDINANCE
OF
JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE: ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City ;and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for $3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstituted an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer ($3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of $1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of $23,100; and

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible pubic purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of $3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed $5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.

2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding $5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.

3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.

4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.

6. This Ordinance shall take effect at the time and in the manner as provided by law.

7. This Ordinance shall not rescind Ordinance 04-096 or 05-064 which authorized the acquisition of the Embankment solely for open space and a park by purchase or condemnation.

8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED: _____

APPROVED: _____
Business Administrator

Certification Required ☐
Not Required ☐

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.
The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as open space uses, all consistent with

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

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Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part I)
This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

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ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part II)
The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as open space uses, all consistent with historic preservation, all the way from Marin to CP Waldo (roughly Waldo or Chestnut Streets). If City is allowed to file for the remedy, STB will set the terms and conditions of sale, including price, based on the price paid by the developer to Conrail for the Embankment parcels ($3 million), and appraisals for any portions remaining under Conrail ownership. City is expected to have only a brief period (expected to be approximately 10 days) to accept the terms. If the terms are accepted, City ordinarily would be required to close within 60 days. The ordinance also contains provisions to equip the City to make the OFA, and to be in a position to accept terms and to close on a transaction within time periods set by STB.

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

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WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
300 LIGHTING WAY
P.O. Box 1560
SECAUCUS, NEW JERSEY 07096

DANIEL E. HORGAN
MEMBER OF N.J., N.Y. & D.C. BARS

OFFICE DIRECT DIAL: 201-330-7453
CELL and VOICE MAIL:: 201-926-4402
E-MAIL dehorgan@lawwmm.com

September 17, 2014

VIA ELECTRONIC AND REGULAR MAIL
Donna Mauer, CMFO
Chief Financial Officer
City of Jersey City
280 Grove Street
Jersey City, NJ 07302

Re: Sixth Street Embankment
Ordinance #14.103
Compliance with LFN-2014-9 and
Other Problems

Dear Ms. Mauer:

We are writing to you as the Chief Financial Officer of the City of Jersey City so that you may address and correct material errors and misrepresentations in various public documents, including public offering statements for municipal securities.

On September 23, 2014 the City Council will consider Ordinance #14.103 for second reading and adoption. A copy is attached. The last "Whereas" clause in that ordinance states: "WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No 04-215-55-887-990." The "Fact Sheet" appended to the ordinance indicates that it was prepared by Jeremy Farrell, Esq., the Corporation Counsel for Jersey City. The purpose of the proposed ordinance is to make an Offer of Financial Assistance ("OFA") to provide rail freight service in downtown Jersey City. We direct your attention to paragraph 4 of the Ordinance which makes it clear that costs to be incurred include subsidies for freight and possibly passenger rail operations and other private purposes. The funds in the account cited in the Ordinance cannot be used for such purposes.

Ordinance #14.103 is in Violation of N.J.S.A. 40:9C-1

The first reason why these funds cannot be used is found in N.J.S.A. 40:9C-1, which prohibits such expenditures without the express written consent of the New Jersey Department of Transportation. The NJDOT has not given such consent, nor has the City asked for it. Since there is a specific statutory prohibition on the use of the funds for the purposes stated in the ordinance, you, as CFO, are unable to certify that the funds are available for "all costs to be incurred pursuant to this ordinance". We have not yet seen your actual certification of the availability of funds in support of the Ordinance, but trust that you will not act in violation of law by providing such a certification and thereby enable adoption of the ordinance.

The Funds Derived from the Bond Offering
Are for the Express Purpose of Acquisition of Open Space and Cannot Be Utilized for Freight or Passenger Rail Purposes

The funds in the account cited in the "WHEREAS" clause cannot be used to subsidize rail/passenger freight operations because they represent proceeds of issued Bond Anticipation Notes which serve as security for Tax Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 and/or related earlier public offerings of municipal securities. The most recent offering statement for these securities is dated June 18, 2014, and relevant excerpts from the public offering are enclosed with this letter. A description of the various loans at page 4 of the prospectus indicates that the City of Jersey City has issued a note in the amount of $7,310,000 for "Acquisition of Real Property for Park and Open Spaces Purposes." This statement is materially different from the stated use of the proceeds of the note listed in paragraph 4 of the Ordinance, and elsewhere, in the Ordinance. Acquiring the rights and obligations of running a freight railroad was not considered by Bond counsel in issuing its opinion on tax exemption referred to at the top of page 1 of the prospectus. In addition to violating its promises to use the proceeds of the note in accordance with the tax exempt purposes stated in the prospectus, and in related documents, the use of the proceeds for rail freight purposes proscribed by law would be likely to put the City in default of its solemn obligations to the issuer of the securities and the investing public.

Simply stated the operation of a railroad is a purpose different from the one for which the bond proceeds were authorized to be used – the acquisition of public open space. The use of funds derived from publically offered municipal bond issues must be utilized in accordance with not only the Local Bond Law but with Federal Securities Laws. Indeed, as recently noted by the Division of Local Government Services in LFN 2014-9, municipal officials must make every effort to come into compliance with regulations and requirements regarding the issuance of bonds and the use of bond proceeds. The SEC is offering a program to permit municipalities to achieve compliance in lieu of full enforcement actions as noted in LFN 2014-9 in cases of past non-compliance with its Rule 15c2-12. A copy of LFN 2014-9 is attached to this letter.
The City Council should be made aware that it has no legally permissible choice to use money raised in the municipal securities market outside of the stated purposes for which it has been raised from the purchasers of municipal bonds; and the City may utilize public funds only for purposes authorized by law. Nor can a municipal official legally or properly vote for the disbursement of public monies in excess of appropriations or in a manner that would violate other applicable law. Here, City of Jersey City has not budgeted funds to run a railroad, nor has it received the required permission to do so, and, therefore, it cannot commit the expenditure of funds for rail subsidies and operations as proposed in the ordinance. The City will be in knowing and willful violation of its responsibilities if it misuses public park and open space bond funds as proposed and may lose the safe-harbor now offered by the SEC for past non-compliance. See: LFN 2014-9.

City Financial Statements for the years ending December 31, 2011 and December 31, 2012 are incorporated into the prospectus as Appendix D. We call your attention to Note D at page 68, which states as follows:

> **Sixth Street Embankment** - On August 31, 2010, the City issued Bond Anticipation Notes in the amount of $7,500,000 to fund costs to obtain the property known as the Sixth Street [sic] in accordance with a legal settlement of January 2010.

There was, and is, no such settlement. In fact the City's own description of litigation in the prospectus at Appendix D, at page A-44 states exactly the opposite, as follows:

> 212 Marin Blvd. v City of Jersey City (Sixth Street Embanknent cases). Various lawsuits, brought by several entities owning property known as the Sixth Street Embankment alleging that the City has interfered with their development rights and violated constitutional rights. These matters have been pending for several years *despite numerous attempts to achieve a settlement, the plaintiffs have been uncooperative.* The City continues to defend against all of the claims. The property has an appraised value in excess of $6,000,000. [*emphasis added*]

A similar statement that the plaintiffs have been "uncooperative" in reaching a settlement appears in note "T" to the Financial Statement entitled "contingent liabilities" at page 99 of Appendix D to the Prospectus.[1] (Excerpts enclosed). These statements that our clients have been uncooperative are untrue and highly misleading in many respects; but, they are also less prominent in the prospectus than the stated purpose of the Bond Anticipation Notes, which is to acquire the property "for Park and Open Space Purposes." The prominently stated purpose of acquisition "for Park and Open Spaces Purposes" leaves the false implication that the property is available through either voluntary purchase or eminent domain, although neither is mentioned, much less discussed. Certainly the purpose of the Bond Anticipation Notes is not to fund the continuing litigation against our clients, but to a great extent, expenditures of these funds raised in the municipal securities market have been used for precisely that purpose. The use of capital funds for operational expenses, which is what these litigation expenses are, is also improper. We have discovered that this is not the only instance of improper allocation of funds for litigation expenses by the City and we intend to raise those other issues separately in the near future.

We are providing a copy of this letter to the Corporation Council, Jeremy Farrell, who proposed ordinance 14.103 so that each of you may take the necessary steps to advise the City Council against the adoption of this ordinance before its second reading on September 23, 2014. We are also providing a copy of this letter to Thomas H. Neff, as Director of the Division of Local Government Services in the New Jersey Department of Community Affairs, and in his capacity as Chairman of the Local Finance Board so that the improper expenditure of funds for litigation against our clients can be addressed. The adoption of ordinance 14.103 would be a

[1] Full prospectus available at http://emma.msrb.org/ER783439-ER609179-ER1011268.pdf.

flagrant violation of law, and we wish to avoid the impact upon the City's finances that may result from the further litigation of these matters. Please be guided accordingly.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

BY: Daniel E. Horgan
DANIEL E. HORGAN

Encl.: Ordinance #14.103
Series 2014U-1 Prospectus (excerpts)
LFN 2014-9

cc. Thomas F. Neff, Esq.
Jeremy Farrell, Esq.
823379.1

City Clerk File No. Ord. 14.103

Agenda No. 3.A 1st Reading

Agenda No. 2nd Reading & Final Passage

ORDINANCE
OF
JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE: ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City ;and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for $3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstituted an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer ($3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of $1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of $23,100; and,

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

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WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible pubic purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of $3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed $5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.

2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding $5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.

3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.

4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation; and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

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5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.

6. This Ordinance shall take effect at the time and in the manner as provided by law.

7. This Ordinance shall not rescind Ordinance 04-096 or 05-064 which authorized the acquisition of the Embankment solely for open space and a park by purchase or condemnation.

8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED: _____

APPROVED: _____
Business Administrator

Certification Required ☐
Not Required ☐

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.
The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part I)
This ordinance authorizes the relevant City departments to file for, and to pursue, a federal eminent domain remedy (49 USC 10904, called the "OFA" remedy) as administered by the federal Surface Transportation Board (STB) to acquire an unused portion of a line or railroad called the Harsimus Branch (Marin Blvd. to CP Waldo) which contains the Sixth Street Embankment, a City Historic Landmark. City has sought to acquire at least portions of this property since before Conrail in 2005 illegally sold the Embankment parcels to a developer without the required STB abandonment authorization. Conrail and the developer for years sought to prevent STB from exercising its jurisdiction. Now, an abandonment proceeding is finally pending, in which STB affords an OFA remedy. As a condition for invoking the remedy, the City must continue efforts to provide freight rail service on the line for two years before it may seek discontinuance authority.

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

RESOLUTION FACT SHEET – NON-CONTRACTUAL

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

Full Title of Ordinance/Resolution

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENTFROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

Initiator

Department/Division	Law	Law
Name/Title	Jeremy Farrell	Corporation Counsel
Phone/email	(201) 547-4667	JFarrell@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Resolution Purpose

(Part II)
The OFA remedy affords an efficient means to acquire the last underutilized transportation corridor into downtown for continued transportation (including rail) use, as well as open space uses, all consistent with historic preservation, all the way from Marin to CP Waldo (roughly Waldo or Chestnut Streets). If City is allowed to file for the remedy, STB will set the terms and conditions of sale, including price, based on the price paid by the developer to Conrail for the Embankment parcels ($3 million), and appraisals for any portions remaining under Conrail ownership. City is expected to have only a brief period (expected to be approximately 10 days) to accept the terms. If the terms are accepted, City ordinarily would be required to close within 60 days. The ordinance also contains provisions to equip the City to make the OFA, and to be in a position to accept terms and to close on a transaction within time periods set by STB.

I certify that all the facts presented herein are accurate.

Signature of Department Director **Date**

New Issue - Book-Entry-Only

Rating: Moody's: MIG 1
See "CREDIT RATING" herein

In the opinion of McManimon, Scotland & Baumann, LLC, Bond Counsel to the Authority (as defined herein), pursuant to Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code") and existing statutes, regulations, administrative pronouncements and judicial decisions, and in reliance on the representations, certifications of fact, and statements of reasonable expectation made by the Authority and the Borrowers (as herein defined) and assuming continuing compliance by the Authority and the Borrowers with certain ongoing covenants described herein, interest on the Notes (as defined herein) is not included in gross income for Federal income tax purposes and is not an item of tax preference for purposes of calculating the alternative minimum tax imposed on individuals and corporations. Bond Counsel is also of the opinion that interest on the Notes held by corporate taxpayers is included in "adjusted current earnings" in calculating alternative minimum taxable income for purposes of the federal alternative minimum tax imposed on corporations. Further, in the opinion of Bond Counsel, interest on the Notes and any gain from the sale thereof are not includable as gross income under the New Jersey Gross Income Tax Act. See "TAX MATTERS" herein.

Hudson County Improvement Authority
(County of Hudson, State of New Jersey)
$37,718,000 Tax Exempt County-Guaranteed Pooled Notes, Series 2014 U-1
(Local Unit Loan Program)
consisting of
$25,274,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1A
$12,444,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1B
(Local Unit Loan Program)

Dated: Date of Delivery

Series 2014 U-1A Notes Maturity Date: July 15, 2015
Series 2014 U-1B Notes Maturity Date: January 15, 2015

Series 2014 U-1A Notes - Coupon: 1.25%	Price: 100.896%	CUSIP: 443728DS6
Series 2014 U-1B Notes - Coupon: 1.30%	Price: 100.509%	CUSIP: 443728DT4

The $37,718,000 aggregate principal amount of Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 (Local Unit Loan Program), consisting of $25,274,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1A (the "Series 2014 U-1A Notes") and $12,444,000 Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1B (the "Series 2014 U-1B Notes" and together with the Series 2014 U-1A Notes, the "Notes") will be issued by the Hudson County Improvement Authority (the "Authority") as fully registered notes and, when issued, will be registered in the name of Cede & Co. ("Cede"), as nominee for The Depository Trust Company, New York, New York ("DTC"), an automated depository for securities and clearing house for securities transactions, which will act as securities depository for the Notes. Individual purchases will be made in book-entry form (without certificates) in the principal amount of $1,000 each or any integral multiple thereof with a minimum purchase of $5,000 required.

The principal of and interest on the Notes, calculated on a 30 day month and 360 day year basis, is payable on the Maturity Date, shown above, to the registered owners thereof at their respective addresses as they appear on the registration books of TD Bank, National Association, Cherry Hill, New Jersey, acting in the capacity as trustee, registrar and paying agent for the Notes. Provided DTC, or its nominee Cede, is the registered owner of the Notes, payments of the principal of and interest on the Notes will be made directly to DTC or its nominee, which is obligated to remit such principal and interest to DTC Participants, as defined herein. DTC Participants and Indirect Participants, as defined herein, will be responsible for remitting such payments to the beneficial owners of the Notes. See, "DESCRIPTION OF THE NOTES - The DTC Book-Entry-Only System", herein.

The Notes are not subject to redemption prior to maturity. See, "DESCRIPTION OF THE NOTES - Redemption of Notes", herein.

The Notes are being issued pursuant to: (i) the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State of New Jersey, as amended and supplemented (the "Act"); (ii) a resolution of the Authority entitled "County-Guaranteed Pooled Note Resolution" adopted on August 12, 2009, as amended (the "Note Resolution"); (iii) a certificate of the Executive Director/CFO of the Authority, entitled "Certificate of the Executive Director/CFO of the Hudson County Improvement Authority Providing for the Issuance and Sale of $37,718,000 Aggregate Principal Amount of Tax-Exempt County-Guaranteed Pooled Notes, Series 2014 U-1 and Determining Various Matters Pertaining Thereto" dated June 18, 2014, exercising powers delegated by the Note Resolution (the "Series Certificate," and together with the Note Resolution, the "Resolution"); and (iv) all other applicable law. The Notes are being issued to provide funds to make loans to certain municipalities (the "Borrowers") located within the County of Hudson, New Jersey (the "County"), to (i) refinance certain of the outstanding bond anticipation notes or tax appeal refunding notes, as applicable, of the Borrowers issued to temporarily finance capital projects of the Borrowers; and (ii) pay certain of the costs of issuance of the Notes and the Borrower Notes (as hereinafter defined).

The Notes constitute direct and special obligations of the Authority and will be payable from and are secured by payments made on general obligation notes purchased by the Authority from the Borrowers (collectively, the "Borrowers Notes"). The Borrower Notes will be sold to the Authority pursuant to separate Borrower Note Purchase Agreements entered into between the Authority and each of the Borrowers, and the Loan Repayments (as defined herein) as required thereunder are pledged by the Authority to secure the applicable series of Borrower Notes described under "THE LOANS" herein.

The Borrower Notes shall be direct and general obligations of each of the respective Borrowers. In the opinion of bond counsel to each of the Borrowers, each respective Borrower Note is a valid and legally binding obligation of the applicable Borrower and, unless paid from other sources, is payable from *ad valorem* taxes levied upon all the taxable property within the jurisdiction of such Borrower, without limitation as to rate or amount.

As additional security for the Notes, payment of the principal of and interest on the Notes is fully, unconditionally and irrevocably guaranteed by the County pursuant to a guaranty ordinance adopted on August 13, 2009 by the County (the "County Guaranty") and, unless such Notes are paid from some other sources, is payable from *ad valorem* taxes levied upon all taxable property in the County, without limitation as to rate or amount. In the opinion of bond counsel to the County, the County's obligation to make such payments under the County Guaranty is a direct and general obligation of the County, payable, unless paid from some other sources, from the levy of *ad valorem* taxes upon all the taxable property within the jurisdiction of the County, without limitation as to rate or amount. The County Guaranty shall remain in effect until the Notes and any renewals have been paid in full.

THE AUTHORITY HAS NO POWER TO LEVY OR COLLECT TAXES. THE NOTES ARE NEITHER A DEBT NOR LIABILITY OF THE STATE OF NEW JERSEY, THE COUNTY (EXCEPT TO THE EXTENT OF THE COUNTY GUARANTY), THE BORROWERS (EXCEPT TO THE EXTENT OF THEIR RESPECTIVE BORROWER NOTES), OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF NEW JERSEY OTHER THAN THE AUTHORITY (TO THE EXTENT OF THE PLEDGED PROPERTY). THE AUTHORITY HAS NO TAXING POWER.

This cover page includes certain information for reference only and is not a summary of matters set forth herein. Investors should read the entire Official Statement to obtain information essential to the making of an informed investment decision.

The Notes are offered for delivery when, as and if issued and delivered to the Underwriter, subject to the approval of legality thereof by McManimon, Scotland & Baumann, LLC, Roseland, New Jersey, Bond Counsel to the Authority. Certain legal matters concerning the Borrower Notes will be passed upon by bond counsel to each of the Borrowers. Certain legal matters will be passed upon for the Authority by its General Counsel, William J. Netchert, Esq., Jersey City, New Jersey, and for the County by Donato J. Battista, Esq., Jersey City, New Jersey, County Counsel, and by DeCotiis, FitzPatrick & Cole, LLP, Teaneck, New Jersey, County Bond Counsel. Certain legal matters will be passed upon by Gibbons P.C., Newark, New Jersey, as Underwriter's Counsel. It is expected that the Notes will be available for delivery to DTC on or about July 15, 2014 in New York, New York or such other place as agreed to by the Authority.

ROOSEVELT & CROSS
Incorporated

Dated: June 18, 2014

Series 2014 U-1A Notes

Borrower	Borrower Note Amount	Purpose
City of Bayonne	$4,957,000	Acquisition of Communications Equipment, Municipal Building Improvements, Taxes Due and Owing Others, Various Capital Improvements
City of Jersey City	7,310,000	Acquisition of Real Property for Park and Open Spaces Purposes.
Township of Weehawken	13,007,000	Water Tank Renovation, Municipal Building and Park Improvements, Acquisition of Woodrow Wilson School, Acquisition of Real Property for Senior/Affordable Housing and Road Improvements, Taxes Due and Owing Others
Total	$25,274,000	

Series 2014 U-1B Notes

Borrower	Borrower Note Amount	Purpose
City of Bayonne	$12,444,000	Acquisition of Easements and Various School Facility Improvements
Total	$12,444,000	

MARKET PROTECTION

The County has in the past guaranteed the payment of principal of and interest on certain debt issued by various municipalities and entities of the County. The County Guaranty is a valid and legally binding obligation of the County and, unless the principal of and interest on such debt is paid from other sources, the County is obligated to make payment from *ad valorem* taxes levied upon all the taxable property within the jurisdiction of the County, without limitation as to rate or amount for the payment of such debt. It is anticipated that within the next ninety (90) days, the County will guaranty bonds or notes of the Authority for the issue described in the succeeding paragraph. The Authority does not anticipate issuing additional notes or bonds without a County guaranty within the next ninety (90) days. Furthermore, the County anticipates issuing the following additional notes or bonds within the next ninety (90) days: $19,900,000 General Obligation Bonds, Series 2014, consisting of $15,650,000 County Vocational -Technical Schools Bonds, Series 2014 (New Jersey School Bond Reserve Act, 1980 N.J. Laws c. 72, as Amended) and $4,250,000 County College Bonds, Series 2014 (County College Bond Act, 1971 N.J. Laws c. 12, as Amended).

approval. The original defendants settlement amount is $130,000,000.00 and the total of the 3rd party defendants amount is $55,000,000.00. The potential exposure if the settlement is not approved could be significantly higher than the settlement amount however; settlement was approved for $95,000.00.

Luther Price / Estate of Martina Brown v City of Jersey City. This case alleges that City police used deadly, excessive force on decedent Martina Brown. Police responded to the Brown home after receiving a complaint by decedent's husband. Police personnel gained entry into the apartment wherein they encountered an agitated Martina Brown, who possessed a knife. Brown was unresponsive to the officers' commands to drop the knife and continually lunged towards the officers with the knife. The officers utilized pepper spray, a ballistic shield, and batons in unsuccessful attempt(s) to disarm the decedent. One police officer eventually shot Martina Brown after she slashed him in the forearm and stabbed another policed officer in the forehead above his right eye. The lawsuit, seeking damages for violation of the decedent's Civil Rights resulting in her death, has been filed in the United States District Court. The case is in discovery; interrogatories have been exchanged and answered and documents produced. Depositions of parties and witnesses completed and settlement discussions were renewed. Case could have value of $600,000.00 to $1,000,000.00 if liability is against defendants, inclusive of statutory attorney fees.

Anderson v Bryant and City of Jersey City. Auto accident case, serious personal injuries to plaintiff, a bicycle operator who alleges that she was struck by a private vehicle operated by a City police officer who had completed his tour of duty and was going to Municipal Court to testify. The City contends that the officer was not in the course of his employment. His personal auto liability insurance carrier has offered the policy limits ($50,000.00) to settle. The trial on liability resulted in finding of 35% negligence on plaintiff, 65% on defendant Bryant. The motion for reconsideration of Bryant's status as an employee was denied. Damages trial to be scheduled after plaintiff's medical treatment is concluded. Plaintiff has made no demand, but damages could exceed $500,000.00.

Rosario v City of Jersey City. Plaintiff tripped and fell on City Hall steps as a result of a maintenance defect and sustained injuries to her shoulder, neck and back. She incurred in excess of $220,000.00 in medical expense subject to an ERISA lien which must be reimbursed.

212 Marin Blvd. v City of Jersey City (Sixth Street Embankment cases). Various lawsuits, brought by several entities owning property known as the Sixth Street Embankment, alleging that the City has interfered with their development rights and violated constitutional rights. These matters have been pending for several years despite numerous attempts to achieve a settlement, the plaintiffs have been uncooperative. The City continues to defend against all of the claims. The property has an appraised value in excess of $6,000,000.00.

Felton v City of Jersey City. A City police sergeant, assigned to work with the State Police investigating gang activity in the City, was alone in his vehicle doing surveillance when he heard the sound of a handgun being "racked". In fear for his life, he fired one shot through his car window and struck the plaintiff in the face, rendering him blind. Criminal charges arising out of this incident were brought against Mr. Felton and he was recently found guilty of all criminal charges. We are awaiting completion of post-trial motions to file Summary Judgment. The potential exposure, if the defendants are found liable for wrongfully causing the plaintiff's blindness could easily exceed $1,000,000.00.

Vincent Pools v City of Jersey City. This case arises out of a cancellation of a contract by the City due to allegedly defective work performed by a plaster subcontractor at the newly constructed Lafayette Pool complex. The contractor also claimed money due for extras. At trial, the jury returned a verdict of approximately $500,000.00 against the City. The Notice of Appeal has been filed.

Realty Appraisal v City of Jersey City. Contract case; plaintiff claims $1,000,000.00 alleging breach of contract for services with the City.

In addition to the cases listed above, the City, its officers and employees are defendants in a number of lawsuits, none of which is unusual for a city of its size. These lawsuits include but are not limited to lawsuits arising out of alleged torts by the City and its employees, alleged breaches of contract and alleged violations of civil rights.

NOTE D. MUNICIPAL DEBT (continued)

NOTES PAYABLE (continued)

Bond Anticipation Notes - continued

The following is a schedule of bond anticipation note activity for the year ended December 31, 2012.

ACTIVITY OF BOND ANTICIPATION NOTES

Ordinance Number	Original Issue Date	Original Issue Amount	Balance at December 31, 2011 Interest Rate	Balance at December 31, 2011 Maturity Date	Balance at December 31, 2011 Amount	New Notes Issued	Paid by Budget Appropriation	Balance at December 31, 2012 Amount	Balance at December 31, 2012 Interest Rate	Balance at December 31, 2012 Maturity Date
PJP Landfill Acquisition										
09-097/097A	1/20/2010	$ 8,700,000	2.000%	12/31/2012	$ 8,700,000	$ -	$ -	$ 8,700,000	1.125%	12/30/2013
Newark Avenue Streetscape										
09-127/127A	1/20/2010	2,476,000	2.000%	12/31/2012	2,476,000	-	-	2,476,000	1.125%	12/30/2013
Sixth Street Embankment										
10-085/085A	8/31/2010	7,500,000	1.500%	8/31/2011	7,500,000	-	-	7,500,000	1.500%	8/7/2013
					$ 18,676,000	$ -	$ -	$ 18,676,000		

Landfill and Streetscape – On January 20, 2010, the City issued Bond Anticipation Notes in the amount of $11,176,000 to fund two separate authorizations: the acquisition of the PJP Landfill for $8,700,000 and the Newark Ave Streetscape for $2,476,000.

Sixth Street Embankment – On August 31, 2010, the City issued Bond Anticipation Notes in the amount of $7,500,000 to fund costs to obtain the property known as the Sixth Street in accordance with a legal settlement of January, 2010.

Tax Refunding Notes

The City issues tax refunding notes in order to finance tax refunds arising from successful appeals by property owners. Taxpayers are obligated to pay taxes owed to the City as they become due, or have their property subject to tax sale. However, taxpayers may appeal their property assessments and, if successful, be granted a refund, often in a year subsequent to when the taxes were paid. The Division has allowed the City to issue notes to finance such refunds. The tax refunding notes are one year notes, renewable annually for five to seven years.

NOTE T. CONTINGENT LIABILITIES (continued)

Litigation (continued)

NJDEP v Occidental Chem. v City of Jersey City et al. – This is a pollution clean-up claim regarding the Passaic River, whereas the New Jersey Department of Environmental Protection sued Occidental Chemical, which, in turn, sued the City and 83 other municipalities and entities, alleging that their actions over the years contributed to the pollution of the Passaic River. Occidental Chemical is seeking contribution for any amounts for which they may be found liable. This case has been tentatively settled, subject to judicial approval. The Jersey City share of the settlement proceeds is $95,000. The settlement of this case involves complex issues and is before the Superior Court of New Jersey for review and approval. The original defendants' settlement amount is $130,000,000 and the total of the 3rd party defendants amount is $55,000,000. The potential exposure if the settlement is not approved could be significantly higher that the settlement amount however, now that all parties have agreed to amicably resolve this case, it is reasonably expected that this litigation will be closed sometime in early 2014.

V.M. v City of Jersey City – This is an employment discrimination case in which a female police officer alleges that actions by a former police Chief were done to deny her promotion in retaliation. The plaintiff claims economic and psychological damages. Summary judgment was granted in favor of the City on the Federal claims, however the trial court order was reversed by the 3rd Circuit Court of Appeals and the matter remanded for trial. The State law claims are pending in the Superior Court of New Jersey where Summary Judgment on the remaining claims was granted. The plaintiffs took an appeal to the Superior Court, Appellate Division where the case is awaiting oral argument and disposition. There is a significant monetary exposure for economic damages and attorney fees. An adverse verdict, with statutory attorney fees, would likely exceed $500,000.

212 Marin Blvd. et. al. v City of Jersey City (Sixth Street Embankment) - Proceeding In Lieu of Prerogative Writ brought by several entities owning property in the City collectively known as the Sixth Street Embankment. The Complaint alleges that the City has unjustifiably interfered with and obstructed their right to develop the property and seeks injunctive relief and damages for alleged violations of the plaintiffs' constitutional rights and malicious prosecution. This case is currently stayed, pending proceedings ongoing in the Federal Court. The City is actively and comprehensively involved in defending other litigation involving these properties, and the issues in this case will, to some extent, be affected by the resolution in the other suits. These matters have been pending for several years despite numerous attempts to achieve a settlement, the plaintiffs have been uncooperative. The City continues to defend against all of the claims. The property has an appraised value in excess of $6,000,000.00.

new jersey department of community affairs

LFN 2014-9

July 23, 2014

Local Finance Notice

Chris Christie, Governor | Kim Guadagno, Lt. Governor | Richard E. Constable, III, Commissioner | Thomas H. Neff, Director

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Local Finance Board
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Local Management Services
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Authority Regulation
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Distribution

Chief Financial Officers
Municipal Clerks
Freeholder Board Clerks
Authority Officials
Auditors

Secondary Bond Market Continuing Disclosure Commitments

This Notice is intended to give fair warning to local government officials, including Certified Municipal Finance Officers and comparable staff of authorities and other local governments, that there will be consequences for failing to have identified past noncompliance (where applicable) with continuing financial disclosure requirements related to outstanding bonds and other securities and determining by September 10, 2014 whether to take advantage of a compliance initiative offered by the Securities Exchange Commission's (SEC). While this notice is important for all local governments that have outstanding bonds, bond anticipation notes, and other securities, it is critically important where local governments anticipate a need to access financial markets in the near future - as with the need to "roll over" Bond Anticipation Notes or to issue bonds.

Continuing disclosure requirements are indirectly required pursuant to federal law. The CFO, or another local official, was generally required in one or more documents authorizing the issuance of debt (commonly called "Continuing Disclosure Agreements") to annually, or more frequently, publicly disclose certain information. Consequences of failing to live up to requirements will likely include future difficulty accessing credit markets. Consequences could include, among other things: (1) enforcement actions being brought by the SEC that will result in more severe penalties otherwise available pursuant to "the SEC's "Municipalities Continuing Disclosure Cooperation Initiative" (see below for discussion); (2) denial or deferral of applications made to the Local Finance Board or Director of the Division for various approvals; (3) actions against State licensures in the event of fraudulent attestations of compliance; and/or (4) decreased scores on future "Best Practices Questionnaires" (which will contain questions as to past compliance) that could trigger a withholding of a portion of State Aid.

It is important that you read this notice in its entirety and consult your public finance professionals so you understand your continuing disclosure obligations and what must be done to achieve compliance.

Local government access to capital is critical for advancing needed local infrastructure projects and meeting local cash flow needs. As a condition of providing access to capital in the form of debt, the financial community - at the time of buying debt and while debt remains outstanding - expects to be kept abreast of key financial information that could impact the value of securities in the secondary market. Legally, local governments have an obligation to provide certain information. They are obligated under federal law to issue certain information at the time of issuing new debt, and they are frequently contractually obligated to continue providing certain information while their debt remains outstanding.

Recently, the SEC and the financial community have focused attention on what is alleged to be a widespread failure of local government issuers across the nation to meet their continuing disclosure obligations. They maintain that local government issuers of debt frequently fail to meet their continuing disclosure obligations and misrepresent (sometimes innocently or inadvertently and other times fraudulently) their past compliance when issuing new debt.

Earlier this year, the SEC adopted a program to encouraged local government issuers to self-identify past noncompliance and improve timely continuing disclosure in the future. Their program, known as the "Municipalities Continuing Disclosure Cooperation Initiative" essentially establishes lesser enforcement actions provided local government issuers (and others) self-identify past noncompliance and agree to a plan designed to prevent future noncompliance. You can read more about this program by visiting: http://www.sec.gov/divisions/enforce/municipalities-continuing-disclosure-cooperation-initiative.shtml). It is strongly recommended that local government officials proactively take steps to self-identify their own levels of compliance with Continuing Disclosure Agreements if they have outstanding debt and consult their public finance officials during this process to, among other things, determine if it is advisable to participate in the SEC's program.

The private marketplace is also taking steps to improve disclosure by more closely reviewing past compliance and, as appropriate, refraining from underwriting or buying new debt unless compliance has been achieved. It is critically important that local governments anticipating a need to access financial markets conduct a self-assessment of past continuing disclosure compliance and correct deficiencies. Failure to do so could bar, or delay, access to capital markets.

As part of your self-assessment, it is recommended that you first identify your continuing disclosure contractual obligations with respect to past issuances of debt while it remained (or remains) outstanding. These obligations generally include filing audits, budgets, and certain operating data with various depositories.

Continuing Disclosure Agreements generally specify what information must be filed and where it must be filed. It is critically important that each local government understand the commitments it has made and live up to them. However, the Division recommends, as a best practice, that local governments with continuing disclosure requirements file the following information though the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access (EMMA) website (www.emma.msrb.org) in addition to any information they had previously agreed to provide:

a) As soon as available: The issuer's Annual Financial Statement -- or a variation thereof where an Annual Financial Statement is not statutorily required; and

b) As soon as available: The Issuer's Audited Financial Statements; and

c) As soon as available: The Issuer's adopted budgets; and

d) Within 180 days of the end of the fiscal year: Annual Operating Data, consisting of:

(i) Debt Statistics

(ii) Property Tax Information and tax statistics where the issuer relies on property tax collections as a major source of revenue;

Net Assessed Valuation
Real Property Classifications
Ratio of Assessed Valuation to True Value
Percentage of Collection
Delinquent Tax and Tax Title Lien Information
Property Acquired By Tax Title Lien Liquidation
Tax Rates
Tax Levies
Largest Taxpayers

(iii) Other major revenue data and statistics where the issuer relies on revenues other than property tax collections;

Sewer and water billings;
Parking rents and collections;
Etc.

(iv) Capital Budget

(v) New Construction Permits

e) Within 10 business days of the occurrence of any material events consisting of the following:

(i) Principal and interest payment delinquencies;

(ii) Non-payment related defaults, if material;

(iii) Unscheduled draws on debt service reserves reflecting financial difficulties;

(iv) Unscheduled draws on credit enhancements reflecting financial difficulties;

(v) Substitution of credit or liquidity providers, or their failure to perform;

(vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;

(vii) Modifications to rights of security holders, if material;

(viii) Bond calls, if material, and tender offers;

(ix) Defeasances;

(x) Release, substitution, or sale of property securing repayment of the Securities, if material;

(xi) Rating changes;

(xii) Bankruptcy, insolvency, receivership or similar event of the obligated person;

(xiii) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

f) Any and all additional or other information or documents required by the specific continuing disclosure obligations of such Issuer, for any particular series of Securities outstanding.

You should also ensure that past official statements -- or similar documents issued with respect to new issuances of debt -- have accurately reported your past compliance with continuing disclosure requirements.

While not required, the Chief Financial Officer is encouraged to seek the assistance of an experienced professional to assist or undertake such self-assessment.

As a final matter, the Division will be drafting a proposed Local Finance Notice -- or other appropriate action – to require: (1) CFOs to attest as part of budget submissions to the Division that appropriate steps are being taken to ensure compliance with continuing disclosure requirements; and (2) auditors to treat non-compliance with continuing disclosure requirements as an instance of non-compliance with prevailing laws, statutes, regulations, contracts and agreements that is required to be reported under *Government Auditing Standards.*

Approved: Thomas H. Neff, Director

AB - 167 - 1189 - X

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STATE OF NEW JERSEY

CITY OF JERSEY CITY

MUNICIPAL COUNCIL

TRANSCRIPT OF

PROCEEDINGS

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City of Jersey City Municipal Council

280 Grove Street

Jersey City, New Jersey 07302

September 23, 2014

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1 Construction Code. I believe we will still realize
2 those this year. And for all the development that's
3 going on in Jersey City, it's a real opportunity
4 there, as well, for us to keep pace with development
5 that's going on and be able to, again, realize
6 additional revenues on behalf of the taxpayers in
7 Jersey City.
8 The opportunity for the salary
9 adjustments, long-time employees, I think everybody
10 on this Council joined the department hearings was
11 unanimously in favor of doing something to correct
12 the longstanding flat salaries for certain municipal
13 employees across the board and -- but I will also
14 add that the merit increases -- Councilman Yun
15 raised it last Council meeting -- that there be
16 criteria put in place that will -- that any merit
17 increases would be based on. And certainly would
18 like to see those criteria before any sort of merit
19 increases or adjustments are made to -- with those
20 monies.
21 With that, the taxpayers of Jersey
22 City will see Jersey City side 2. -- correct me, if
23 I'm wrong -- 2.71 decrease. Overall tax rate
24 effect, County and schools, will be reduced by
25 .4 percent. So there are some positives here for

1 the Jersey City taxpayers. And certainly, we can
2 certainly do more. Certainly can do better. And we
3 will.
4 So with that, I vote aye.
5 MR. BYRNE: Calendar Year 2014
6 Municipal Budget has been finally adopted as amended
7 seven-two; voting no, Council Members Boggiano and
8 Yun.
9 Council members, we have -- and
10 members of the public, we have beyond 15 Second
11 Reading Ordinances. So I'd ask that you -- when you
12 come up -- This is a public hearing on the first
13 ordinance. We'll recite the title.
14 It's item 4a, City Ordinance 14-103,
15 an ordinance authorizing the City of Jersey City to
16 file an offer of financial assistance, OFA, to
17 acquire certain property collectively known as the
18 Sixth Street Embankment from ConRail and such other
19 ConRail properties as are necessary to connect with
20 the main line in the vicinity of CP Waldo.
21 This is a public hearing on the
22 subject ordinance. Are there any members of the
23 public wishing to be heard?
24 MR. LAVARRO: Hello. I just want to
25 remind everyone just to speak directly to the

1 ordinance.
2 MS. KESSLER: My name is Annie
3 Kessler. My husband and I have lived in Downtown
4 Jersey City since 1982 and have owned our home in
5 Harsimus Cove since 1983. I am a founder, past
6 president of the Harsimus Cove Association and past
7 president of the Downtown Coalition of Neighborhood
8 Associations.
9 I have supported preservation of the
10 embankment for public use, including rail and trail,
11 since the beginning of civic activity around this
12 issue in 1998. This was even before the Embankment
13 Coalition was formed.
14 Now I support this ordinance because
15 it will allow for the preservation of the Harsimus
16 branch, the last unused rail corridor into the
17 Downtown.
18 It's my understanding that an offer
19 of financial assistance is not binding until the
20 Service Transportation Board sets the terms and the
21 City gets to consider whether or not to accept those
22 terms. This includes the price. To me it seems
23 obvious that the City should pursue this option. If
24 it turns out that the City can't meet the terms set
25 by the Service Transportation Board, you can decide

1 then not to go ahead with the financial assistance.
2 Thank you.
3 MR. BYRNE: Thank you.
4 MR. GUCCIARDO: Good evening,
5 Council.
6 MR. LAVARRO: Good evening.
7 MR. GUCCIARDO: In 2005 --
8 MR. BYRNE: Start with your name.
9 MR. GUCCIARDO: I'm so sorry. Steven
10 Gucciardo, 302 Pavonia Avenue, Jersey City.
11 In 2005 ConRail sold a rail line it
12 had no right to sell. And the LLC's bought a rail
13 line they had no right to buy. You can't sell a
14 rail line without first legally abandoning it.
15 ConRail and the LLC's asked that you discount or
16 ignore this important fact.
17 The City of Jersey City took all the
18 appropriate steps to prepare to purchase the Sixth
19 Street Embankment. It designated a municipal
20 landmark. It applied for funding. It passed
21 ordinances codifying its intentions, including
22 exercising eminent domain, if necessary. It formed
23 a committee to assist in clarifying all steps
24 necessary. All of this was done before ConRail
25 chose to sell the rail line to the LLC's.

1 Although prepared, the City could not
2 purchase the Sixth Street Embankment because ConRail
3 did not legally abandon the rail line. Instead,
4 they sold the rail line to the LLC's as if it were
5 ordinary real estate.
6 MR. LAVARRO: I'm sorry.
7 MR. GUCCIARDO: Yes, sir.
8 MR. LAVARRO: The ordinance is about
9 offer of financial assistance.
10 MR. GUCCIARDO: I'm almost there.
11 I'll be quick.
12 MR. BYRNE: Well, if everyone does
13 that, Steven -- we need people to come and speak and
14 get right to the ordinance.
15 MR. GUCCIARDO: Some of the items I
16 have mentioned are actually listed in the ordinance,
17 so I am speaking directly to issues that are in the
18 whereases of the ordinance.
19 It is not ordinary real estate. In
20 2006 the City of Jersey City asked the Federal
21 Service Transportation Board to determine the status
22 of the rail line and in 2007 asked it be ruled that
23 the Harsimus branch, including the Sixth Street
24 Embankment is a line of rail subjected to Federal
25 abandonment guidelines.

1 ConRail and the LLC's spent six years
2 challenging the line and the right to oversee its
3 abandonment, to great expense of both the City and
4 the public. While delayed in Federal Court ConRail
5 announced it filed demolition permits before the
6 Historic Preservation Commission and Zoning Board of
7 Adjustments, which, after months before those
8 boards, the permits were denied.
9 The LLC's also sued the City of
10 Jersey City Embankment Preservation Coalition, Rails
11 To Trails, City of Jersey City's attorneys.
12 And the Embankment Preservation
13 Coalition has always supported the rail/trail
14 option.
15 In 2012 the EPC supported and the
16 City passed an ordinance contingent upon settlement
17 between all parties that would have enabled rail,
18 trail, open space and development on the Harsimus
19 branch. Unfortunately, the settlement never
20 occurred.
21 I have two more paragraphs.
22 In 2013 and 2014 the Federal Courts
23 definitively ruled the Harsimus branch as, indeed, a
24 line of rail. Now we are finally back in STB, where
25 the sale of the Sixth Street Embankment should have

1 been reviewed on day one. And still the STB has
2 challenged the authority -- sorry. And still the
3 STB's authority continues to be challenged by the
4 LLC's. It is at STB that the City and the public
5 can seek relief from the illegal sale, as well as
6 pursue the historic and environmental protection
7 remedies.
8 The most powerful form of relief is
9 OFA, which is the ordinance before you, which
10 enables the City to pursue these remedies. The
11 Embankment Preservation Coalition supports OFA
12 because it enables the City to acquire the Harsimus
13 branch and to study suitable uses for it, including
14 implementation of rail, trail and open space as
15 deemed appropriate. It is the strongest most
16 practical and least expensive option. The City has
17 overwhelming public support for this option, as you
18 can see behind me. And for this option we encourage
19 you to vote yes.
20 Thank you for your time.
21 MR. BYRNE: No grand entrance, you're
22 young.
23 MR. FLEMING: Sorry Bob. Eric
24 Fleming. I represent the Harsimus Cove Association.
25 It's a neighborhood association. And Harsimus

1 branch is our northernmost border. I moved to
2 Harsimus Cove two years after I moved into Jersey
3 City.
4 MR. BYRNE: On the ordinance. Your
5 personal history is exciting, but we want you to
6 talk about this ordinance.
7 MR. FLEMING: Four years as associate
8 president and at no point have we not been in
9 complete support of the embankment being turned into
10 a park. That is my history lesson. I am going to
11 read this and go sit down. Sorry, Bob.
12 Neighborhood association in Downtown
13 Jersey City and -- that has embankment on our
14 northern border, the HCA has been enthusiastic,
15 consistent, in support of the efforts to preserve
16 the embankment for as long as I can remember.
17 The offer of financial assistance is
18 an excellent step towards preserving the embankment
19 for public use. And for that we strongly encourage
20 the City Council to pass this ordinance today.
21 Thank you.
22 MR. BYRNE: Thank you.
23 MS. PALMER: Felicia Palmer.
24 MR. BYRNE: Your last name Felicia?
25 MR. KAKOLESKI: Palmer, P-a-l-m-e-r,

209 Sixth Street.

MR. BYRNE: Palmer?

MS. PALMER: Palmer, yes.

MR. BYRNE: Got it. Please begin.

MS. PALMER: Okay. I am -- I live on Sixth Street. I live directly across from the embankment. And I am in total support of your adoption of this ordinance. I have been involved in the efforts to preserve the structure for mixed use rail coexisting with trail since the beginning of the efforts. And I'm asking the Council to say -- vote yes for the offer of financial assistance tonight. Thank you.

MR. BYRNE: Valerio Luccio.

MR. LUCCIO: Very good, Bob. You miss me?

MR. BYRNE: How are you doing, Valerio Luccio?

MR. LUCCIO: Valerio Luccio, 298 Second Street. I lived in Harsimus Cove for 16 years. During this time most exciting prospect has been embankment. The community has put a lot of effort and time achieving this. In 16 --

MR. BYRNE: You are too close and --

MR. LUCCIO: During this time we have

seen the hyaline New York City be completed to wonderful success. And now they are starting one in Queens, as well. So we're waiting here for our park. So please pass this so we can get a step further. Thank you.

MR. McNAMARA: Good evening, Council Members. My name is Vincent McNamara. Live at 131 Sherman Avenue. I am on the board of the Heights Community Coalition and the Jersey City Reservoir Preservation Alliance. The board and members vote in these wards would like the support of the City Council for Ordinance 14-103. Thank you.

MS. CROWLEY: Maureen Crowley, 253 Sixth Street. I am going to comment briefly on something probably nobody else is going to comment on, a section of the ordinance.

Forty years ago the City had to pick up the pieces of railroad bankruptcy, and we did so by focusing on residential commercial development on the waterfront. Sorry. To my knowledge all these decades planning for rail, itself, was done largely on a regional level by the County and by the North Jersey Transportation Planning Authority, of course, with City input and railroad input.

This ordinance, however, authorizes

what I think for the first time is the local planning studies for rail and other public uses of the Harsimus branch. And such local planning should spur a deeper understanding by the City and the public as to the contributions we all could make to sustainability and diversified economy, not just based on development, when it is implemented with sensitivity to other public needs. It's good not to leave that sort of planning to others, especially to the railroads. Thank you. Please vote for the ordinance.

MS. MEYER: My name is Jen Meyer. I live at 495 Monmouth Street. I just want to say that if the ordinance is passed successfully and if we can acquire the embankment with OFA, we can immediately begin work on rail with trail, even as the City does its in-depth study of what the actual implementation of the rail can and should be on the line.

Rails for trails are adjacent -- they are actually adjacent to an active rail corridor. They are safe, common and growing. And in 2013 study Rails To Trails Conservancy located 161 rails with trails in 41 states. That's 261 percent increase since 2000. So this is something that

people are doing all over the country. We should do it too. I fully support the OFA. And thank you.

MS. KOHLER: Joan Kohler.

MR. BYRNE: Whoa, whoa, whoa. You are too close.

MS. KOHLER: Sorry.

MR. BYRNE: What is your name?

MS. KOHLER: Kohler, Joan. K-o-h-l-e-r.

MR. BYRNE: Joan Kohler?

MS. KOHLER: Lifelong resident, 304-and-a-half Eighth Street. I am going to read a brief message from the Board of Trustees of the Hamilton Park Neighborhood Association.

The Board of Trustees of the Hamilton Park Neighborhood Association strongly urges the passage of City Ordinance 14-103. Our neighborhood association has long supported the efforts of the Embankment Preservation Coalition to protect this treasured tract of land from commercial development and expects to see one day converting it to public open space this neighborhood so vitally needs.

Thank you to Mayor Fulop and all the members of the City Council who have pledged to fulfill this mission. We hope this will continue

with the unanimous passage of 14-103 and all subsequent official action required to turn this plan into a living, breathing, thriving railway and park. Sincerely, Burke, executive vice president.

MR. DELMAN: Hi. Peter Delman, 263 Fifth Street. I am going to skip a bit and get right to the heart of the matter. This ordinance enables the City to efficiently pursue acquisition. Doing so is consistent with the actions of mayors and Councils since at least 2003. Please vote yes. Thank you.

MR. LEVIN: Good evening. Dan Levin, 2600 Kennedy Boulevard. Hello, Council President, Council Members. We have almost an irreplaceable asset, the Harsimus stem that runs from through the cliffs and through -- and Downtown. To acquire it today would include eminent domain, almost unbelievable costs. So railroad, historic, irreplaceable area. We need to study and plan how to use it for our future as we go make our City more sustainable, more livable and provide all the jobs we need. This is one step forward to acquiring this asset and determine how to best use it for our City. Thank you.

MS. SANDKAMP: Good evening. Marlene

Sandkamp, 91 Bright Street. Good evening, Council. Good evening, Mr. Byrne. I am the president of -- the current president of the Van Vorst Park Association. The VVPA has been a long, long-time supporter of the public acquisition of the Sixth Street Embankment, long before I was president. This offer of financial assistance is an important step in preserving this historic open space in our rapidly growing and hopefully the best midsized City in America. The VVPA hopes that you will vote yes on this ordinance. Thank you all.

MR. THOMAS: Good evening, Council. My name is Mory Thomas, M-o-r-y. I live at 662 Palisade Avenue. I am here tonight --

MR. BYRNE: How do you spell Mory? I'm sorry.

MR. THOMAS: M-o-r-y.

MR. BYRNE: Okay. Not like Povich?

MR. THOMAS: Not like Povich.

MR. BYRNE: The last name is?

MR. THOMAS: Thomas.

MR. BYRNE: Thomas. Got you.

MR. THOMAS: If you would like to talk about it, I can share a story.

Okay. I'm here tonight to represent

Jersey City Parks Coalition, member of 22 parks and open spaces across Jersey City and, in addition to that, Washington Park Association of Hudson County up in the Heights area.

As firm believers in protecting and preserving open spaces and improving transportation options in Jersey City, I support the City's offer for financial assistance to preserve the Harsimus branch rail corridor for rail, trail, open space and other public uses. Thank you.

MR. BAKIRTJY: Gerry Bakirtjy, 192 Washington Street.

MR. BYRNE: J-e-r-r-y?

MR. BAKIRTJY: G-e-r-r-y.

MR. BYRNE: G-e-r-r-y B-a-k-i-r-j-y?

MR. BAKIRTJY: T-j-y.

MR. BYRNE: T-j-y. I'm out of practice, Gerry.

MR. BAKIRTJY: I believe everything has been said. Urge you to vote in favor of it.

MR. BYRNE: Mr. Horgan.

MR. HORGAN: Good evening. My name is Daniel Horgan. I'm an attorney, and I represent the owners of the Sixth Street Embankment. I am here again on behalf of the owners of the Sixth

Street Embankment with the somewhat -- task of asking you to do what is right in the face of an ordinance that is very wrong.

You are considering an ordinance that requires the City to spend millions of dollars, 5.7, and restore freight service to the Harsimus line in Downtown Jersey City. You are about to authorize this City to make commitments to the Federal Service Transportation Board to become a common carrier of freight or light rail. You are willing to do this because you were told it's a cheap way to confiscate my client's property so there are a few people, most of them here tonight, in the most affluent ward of the City can have another park.

And you have been told my clients weren't willing to work with the City to resolve how the embankment Can be used to preserve it.

Finally, you've been told you shouldn't listen to anything I may say because there is litigation pending. Well, that's exactly why you should listen. Please listen to just a few more minutes. I will be very brief.

It seems you have listened to all the bad advice given to you by this City. You have done nothing with the petition you filed back in May --

in June, July, rather. No one has been willing to have any discussion with us. You held a Council caucus, which, in all due respect to Mr. Byrne, we think violates the Open Public Meetings Act. Now you have got that.

The citizens of the City elected you to follow the law and be transparent in what you do and to do the right thing. Here is why this ordinance is more important than what's been told.

First, the ordinance is a good thing. It's directed specifically against my clients in an effort to rob them of their property. It's wrong for the government to single out anyone and use its power to take someone's property. You can condemn it for a park, if you want; but you have to pay for it. You are not going to get it for a dollar. You are not going to get it for $3 million. That is not going to happen.

Second, you don't have permission of the State Transportation officials to appropriate and spend this money. You're ignoring the law that requires you to get that permission. Can you really ask yourself and say that's okay to do on the law because you criticize any City official that ignored the law?

Third, your minds must be closed to what you're doing. They must. Do freight trains make any sense on Sixth Street to anyone? Of course not. You didn't dream up freight trains in front of all these people. And then only later to say, Sorry, we really just wanted a park. We didn't mean that when we had 5.7 million in freight and common carrier obligations and so forth. And you are saying that to the Federal Government in a formal application.

Last, maybe most important, we wrote to you and gave you -- a copy of our letter to Donna Mauer and two other letters. Donna Mauer is the City's Chief Financial Officer. We showed you that you can't use bond money as your slush fund for lawyers, for private interest groups, some of these groups here tonight, or to violate our client's property or due process rights.

We've told you, and I'm telling you again tonight that the City has misrepresented itself in public documents and financial statements for bond offerings made in the municipal securities market. And what you're about to do with this ordinance is another securities fraud with the invested public because you can't issue tax exempt

bonds for park and then use the money for litigation or to build a freight line for paying customers. Doesn't work, Folks.

If you do this, you run a risk that the SEC or even the State of New Jersey will fine the City and ban it from issuing new bonds or refinancing the City's debt. We showed you the finance notes. This is the State of New Jersey that says this. This is the Securities and Exchange Commission. Okay. So that fight, we will get to that. That could cost the City more than any park.

The budget you adopted tonight indicates that this City is going to spend almost $60 million this year in debt service. It's going to spend two-and-a-half million dollars on maintaining its parks.

MR. LAVARRO: Sir, can you speak to the --

MR. HORGAN: Yes --

MR. LAVARRO: -- the OFA.

MR. HORGAN: -- I can because it's five more minutes -- because it's 25 as much time for debt and municipal bonds. And if you lose that ability, quite frankly, it's going to cost you much more than any park ever would, even buying this

property.

I would request that the letters to the City Council be made part of the record, together with their enclosure, Mr. Byrne, if we could arrange to do that.

And also, there is another letter which I was given a copy of tonight by Mr. Riffin, right in back of me, which was not on the communications probably because it came in late. If that could be made part of the record too, if that's possible.

MR. BYRNE: A letter by whom?

MR. HORGAN: Riffin, R-i-f-f --

MR. LAVARRO: Riffin?

MR. HORGAN: Riffin.

MR. LAVARRO: I have a copy, Robert.

MR. HORGAN: I don't know if you have it or not; but my request is that you stop, you table this. If you think you have any disagreement with what I say, make sure that I'm wrong and you're right. Because if you don't, it could cost the City dearly. Thank you.

MR. YUN: Okay. Counsel, could you please --

MR. BYRNE: Wait. Wait. We still

have a public hearing. No, we're still having the public hearing.

MR. HORGAN: Oh.

MR. BYRNE: There is a gentleman wishing to be heard.

MR. STROHMEYER: May I approach?

MR. BYRNE: Your last name.

MR. STROHMEYER: Strohmeyer. And CNJ Rail --

MR. BYRNE: You're Eric or Brian?

MR. STROHMEYER: I am Eric.

MR. BYRNE: Okay. I'll need your card, then.

MR. STROHMEYER: Members of the City Council --

MR. BYRNE: This is Eric Strohmeyer.

MR. STROHMEYER: -- my name is Eric Strohmeyer. I am the vice president, chief operating officer of a company called CNJ Rail Corporation, based here in Central New Jersey. Our firm currently manages 20-mile long short line in Colorado that runs between South Fork and just outside -- in 2009 our company was engaged in attempting to acquire another illegally -- illegally abandoned line of railroad from ConRail in the

southern portion of Jersey City.

At that time we became aware of the ongoing litigation regarding the Harsimus line. And after giving it some valuation, we filed with the Service Transportation Board in notice of intent to file an OFA. So it is not just the City that sought to do this. There was also private interest, as well.

Today I would like to speak to you for the first time to give you a little bit of some insight as to why would private rail industry have an interest in Jersey City. And the reason being informational gathering meeting that was held here at City Hall, CNJ brought a number of potential shippers and receivers of goods that are --

MR. LAVARRO: Sir, I know you said you are going to speak about how private rail has an interest in it; but if you can tie it, private rail's interest, to this particular ordinance, the offer of financial assistance. Okay?

MR. STROHMEYER: Sure. The offer of financial assistance for this particular line, we've had numerous communications with your outside counsel, Mr. Charles Montange. We had provided -- he indicated he was looking to see whether or not

there were substantive need for shipping options here in Jersey City. We responded to the request by bringing forth potential shippers who have the capability of utilizing the Harsimus line for general freight service.

We are unaware at this point if that has ever really been discussed in viable manner before the board -- or before the Council. But we did want to let you know that it is there. I can't identify the name of the shippers through protective order before the Service Transportation Board; but I did want to let the City Council know that there are shippers and receivers of goods here in Jersey City that would be inclined to use the Harsimus line, should you preserve it for freight service, which is precisely what the OFA process is to be used for. It is for the continuation of rail service.

I want to applaud the City of Jersey City for having the vision to try to save the rail corridor in question before it did get abandoned, completely decimated. It has tremendous potential as a corridor. I would not say it doesn't have potential as passenger corridor. It may have use as a freight corridor once again. And we would like you to be cognizant of the fact that shippers and

receivers in the City could be -- in fact, need access to rail and they could, in fact, use the Harsimus line.

We are in support of your OFA, and we with like you to vote yes on this.

I have had Mr. Riffin -- he is one of our senior shareholders --

MR. BYRNE: Please speak to the Council. I think they know who they are.

MR. STROHMEYER: Yeah, and Mr. Yushakov are all here from CNJ. We wanted to make sure you knew we were very much in support of this.

Mr. Riffin had some concerns that we also have, which we'd like to discuss with you briefly. I will defer to him on -- As you vote yes, we hope that you do just be aware that there are certain liabilities that come along with voting yes. With that I'll turn the floor over to Mr. Riffin.

And thank you for your time and consideration.

MR. LAVARRO: Thank you.

MR. RIFFIN: I'm James Riffin. I'm from Baltimore, Maryland. You may wonder why is someone in Baltimore appearing before you tonight.

1 It's because of what it is you're attempting to do.
2 I may or may not have some involvement in the
3 ultimate outcome because I may have some
4 involvement.
5 I want to make sure that all of you
6 fully understand what the OFA process is. It is not
7 appropriate to use the OFA process to acquire land
8 for a trail. It is not appropriate to use the OFA
9 process to acquire land for a park. There is only
10 one -- and I emphasize one -- appropriate use of the
11 OFA purpose, and that is to foster continued freight
12 rail service.
13 If you acquire land through the OFA
14 process and if you, in fact, use it for continued
15 freight rail service, then it is legally possible to
16 use a portion of whatever right you have acquired
17 for other non-freight rail purposes, such as a trail
18 or a park. So trails and parks are possible via the
19 OFA process. But what you need to be acutely aware
20 of is that if Service Transportation Board perceives
21 that your primary purpose in acquiring the Harsimus
22 line is to use it for a trail or a park or any other
23 public purpose, including Light Rail, you will be in
24 violation of the process. The board does not take
25 kindly to that.

1 There is a case; it's in Washington.
2 I believe your outside counsel was involved in that
3 case. And that case a railroad was acquired through
4 legal OFA process. It turned out after the fact it
5 was determined that the reason it was acquired was
6 not to provide continued freight rail service. It
7 was to use it for other than freight rail purposes.
8 It was opened to be conveyance of that land back to
9 the railroad. The same can happen in this case.
10 Those are my cautions. I give them
11 to you in a ten-page letter. It outlines what --
12 MR. BYRNE: Where did you send this
13 letter, sir?
14 MR. RIFFIN: I sent it to the City
15 Council's chambers. UPS tells me it arrived 11:38
16 a.m. this morning.
17 MR. BYRNE: Okay. But --
18 MR. RIFFIN: I sent copies.
19 MR. BYRNE: Mr. Horgan is adding it
20 to the record. But you didn't send it to me, as the
21 Clerk?
22 MR. RIFFIN: I didn't specifically
23 ask that the copy be delivered to the Clerk.
24 MR. BYRNE: I have been asked to add
25 something to the record that I never got custody of.

1 MR. RIFFIN: Would you like a copy?
2 May I hand you a copy right now? I have plenty of
3 copies.
4 MR. BYRNE: Sure.
5 MR. BOGGIANO: With all this
6 litigation going on, maybe this should be pulled.
7 MR. BYRNE: We are in the middle of a
8 public hearing.
9 Please continue, Mr. Riffin.
10 MR. RIFFIN: I might add, for all the
11 other persons in the audience, particularly those
12 who appeared before you in support, if they would
13 like a copy of what I have just handed to the Clerk,
14 I have extra copies with me. And after I finish, am
15 concluded, if I -- provide a copy --
16 MR. LAVARRO: Sir, if you can
17 conclude your remarks.
18 MR. RIFFIN: I do support your
19 efforts to preserve this rail corridor. I support
20 all efforts to preserve all the rail corridors.
21 Once they're lost, it's almost impossible to
22 retrieve them.
23 Approving this ordinance merely
24 authorizes the City to submit an OFA. It does not
25 mean that the OFA will, in fact, be submitted; nor

1 does it mean that you will, in fact, acquire this
2 line via the OFA. As I believe it was the first
3 speaker pointed out, it's expected the City will ask
4 the board to set terms and conditions. Once the
5 board sets terms and conditions, the City then has a
6 period of time, typically ten days, within which to
7 decide whether or not it wishes to acquire the lot
8 under those terms and conditions.
9 So all you're doing tonight is
10 permitting a process to move forward. That's a
11 good -- I'm not in total agreement with Mr. Horgan
12 regarding the use of the funds, prospective use of
13 your funds and his argument that you may be in
14 violation of some SEC regulations. I'm not a bond
15 person; I can't address that.
16 I might also point out, pursuant to
17 the board's regulations, anyone can submit an OFA,
18 anyone. If more than one OFA is submitted, the
19 railroad, ConRail, has the absolute right to pick
20 whichever offer it chooses to pick. It doesn't have
21 to be the best offer. It's whichever person they
22 choose to deal with. If the City is the only
23 offerer and the terms and conditions are settled,
24 the City has the absolute right to acquire whatever
25 they've offered to acquire, providing they meet

1 those terms and conditions.
2 If there is another offerer, the
3 railroad determines who they're going to deal with.
4 In this particular case, if the LLC's were to submit
5 their own OFA, ConRail could pick the LLCs' OFA, as
6 opposed to the City's. So just submitting it
7 doesn't -- doesn't guarantee that you will get what
8 you are attempting to acquire.
9 Nor is there any certainty at this
10 point in time that you can acquire what you want
11 under terms and conditions that you are willing to
12 live with. As I point out, if the rail service is,
13 in fact, instituted -- and it needs to be -- you
14 will have a considerable amount of truck traffic on
15 your streets. And you need to figure out how to
16 deal with that.
17 And my very last thought, I offer you
18 a suggestion. Several weeks ago Mr. Steve Hyman
19 appeared before you. He is the unitive owner of the
20 LLC's. I say "unitive" because they are actually in
21 his wife's name. During his short conversation with
22 you he made an offer. He suggested you should have
23 an informal get-together and see if you can reach
24 some sort of common ground. I have been advocating
25 that for nearly a year now. I continue to advocate

1 it. If you want certainty, you need to reach a
2 settlement.
3 Now, I'm aware --
4 MR. LAVARRO: Sir, discussion of
5 settlements are not part of the -- this ordinance.
6 MR. RIFFIN: I think it does.
7 MR. LAVARRO: Yeah, you need to speak
8 to the OFA.
9 MR. RIFFIN: In conclusion -- just
10 before I conclude, Mr. Horgan made a suggestion; and
11 it struck me as a pretty good suggestion. It
12 strikes me being rushed into making a decision
13 without being fully informed. I have no idea what
14 you know and what you don't know. I know counsel,
15 Mr. Montange, was here and he has had discussions
16 with you. I have no idea what he told you. I have
17 no idea what he did not tell you.
18 But Mr. Morgan made a suggestion.
19 You might consider tabling your vote on this
20 ordinance for a period of time in order to
21 investigate, acquire more information. If you have
22 any unanswered questions, I think that's a good
23 discussion.
24 MR. BYRNE: Okay. Thank you.
25 MR. RIFFIN: With that, at some point

1 in time, whenever you have decided that it's
2 appropriate, I do believe you should vote to
3 authorize the OFA. I'm a firm believer in making
4 informed decisions. If you are fully informed, then
5 you can make a decision; but you need to be fully
6 informed.
7 Thank you very much for your time.
8 Any questions?
9 MR. BYRNE: Thank you.
10 MR. RIFFIN: I will make myself
11 available to answer them.
12 MR. BYRNE: Thank you.
13 MR. LAVARRO: Thank you.
14 MR. BYRNE: Wait. Wait.
15 Thank you. You may -- you may remove
16 yourself.
17 MR. RIFFIN: I may leave?
18 MR. BYRNE: Yes.
19 MR. RIFFIN: Thank you.
20 MR. BYRNE: Is there anyone else
21 wishing to be heard?
22 MR. LAVARRO: Motion.
23 MS. COLEMAN: Second.
24 MR. BYRNE: We have a motion by the
25 Council President, seconded by Councilperson

1 Coleman.
2 To close the public hearing,
3 Councilperson Gajewski?
4 MR. GAJEWSKI: Aye.
5 MR. BYRNE: Ramchal?
6 MR. RAMCHAL: Aye.
7 MR. BYRNE: Boggiano?
8 MR. BOGGIANO: Aye.
9 MR. BYRNE: Yun? To close.
10 MS. COLEMAN: Just to close.
11 MR. YUN: Aye.
12 MR. BYRNE: Osborne?
13 MS. OSBORNE: Aye.
14 MR. BYRNE: Coleman?
15 MS. COLEMAN: Aye.
16 MR. BYRNE: Rivera?
17 MR. RIVERA: Aye.
18 MR. BYRNE: Watterman?
19 MS. WATTERMAN: Aye.
20 MR. BYRNE: Council President?
21 MR. LAVARRO: Aye.
22 MR. BYRNE: We have a nine-zero vote
23 for the close of the public hearing.
24 For final adoption --
25 MR. LAVARRO: Council --

MR. BYRNE: For final adoption --
MR. YUN: I think we got to make a couple of things clear. First, Corporation Counsel, they bring up the issue that September 8, our Council meeting, they claim there is a -- violate Open Public Meetings Act. Yes or no? Would you make clear?
MR. FARRELL: No.
MR. YUN: No. You sure?
MR. FARRELL: No.
MR. YUN: I like you.
MR. BYRNE: When he said, "Are you sure," you said, "No."
MR. LAVARRO: He said no because --
MR. FARRELL: Yes, I'm sure.
MR. YUN: All right.
MR. LAVARRO: We are not in violation of the Open Public Meetings Act.
MR. BYRNE: We gave sufficient notice, he said, of the meeting.
MR. FARRELL: We gave sufficient notice of topics to be discussed and the topics covered by the attorney-client privilege.
MR. YUN: Okay. We, Council, goes by based on your advice, what definition of that. So

we go with that.
Now, next one, the argument possible violation of Federal law fund. Is it true or not? Who's going to answer; BA or Corporation Counsel?
MR. FARRELL: It's not true.
MR. YUN: I'm sorry?
MR. FARRELL: It's not true.
MR. YUN: It's not true. We are not --
MR. LAVARRO: Let me see if I can cut to the chase here. Corporation Counsel, with regard to the letter and all the materials and information presented by Mr. Horgan, do you agree with their assessment in any way, shape or form?
MR. FARRELL: I do not agree.
MR. LAVARRO: Thank you.
MR. YUN: Sorry, I cannot hear you.
MR. LAVARRO: He does not agree with the contents of the letter.
MR. BYRNE: Okay.
MR. YUN: Okay.
MR. BYRNE: In the interest of moving this meeting --
MR. LAVARRO: Let's call for the votes.

MR. BYRNE: Councilperson Gajewski?
MR. GAJEWSKI: Aye.
MR. BYRNE: Councilperson Ramchal?
MR. RAMCHAL: I abstain.
MR. BYRNE: Councilperson Boggiano?
MR. BOGGIANO: It's in litigation, and it smacks of eminent domain. I know what Dan Levin said, but it's still eminent domain as far as I'm concerned. I believe the City back in 2005 or '7 had a chance to buy this and it did not.
I vote no.
MR. FARRELL: I just want to address that one issue about eminent domain. To be clear, as we were explained by our outside counsel, this is a form of Federal eminent domain. So you are absolutely right about that, but you should -- if you remember, recognizing the record, that the Federal Court at the STB was clear that this property was illegally transferred to the LLC's and needed to go through the abandonment proceeding. And if it had gone through the appropriate abandonment proceeding, we wouldn't be here.
MR. BOGGIANO: Okay. But, Jeremy, it's still in litigation.
MR. FARRELL: This is actually one of

our theories in litigation. This is asking only that we continue to pursue -- this is one of many theories in the litigation that we are pursuing. This is asking for the ability to pursue that theory. So this is one of the claims in that litigation.
MR. BYRNE: Okay. Councilperson Yun, you were voting, sir?
MR. YUN: You know, before I think, public taxpayers, they have to know how much cost will be taxpayer to all the Sixth Embankment.
MR. FARRELL: Councilman, if I could address that because it's important point. We have no way of knowing that until the STB rules and potentially subsequent courts -- as was explained, the STB is going to either negotiate and, if we can't reach resolution, the STB will set the terms for the transfer. And one of those terms will be the price. So it's impossible for us to know today what the price of the transfer is going to be. And it's one of the main reasons why the assertions made by present counsel are, let's say, under wrap; because we just don't know how much it is going to be to acquire the property or what the other terms are going to be. But once we do, should we prevail

on any of the theories -- this is only one of them -- we would have to come back to this body to then get the authority. This is just another step.

MR. YUN: Based on your -- I trust you so much. Based on your advice I vote aye.

MR. BYRNE: Councilperson Osborne?

MS. OSBORNE: Aye.

MR. BYRNE: Councilperson Coleman?

MS. COLEMAN: Aye.

MR. BYRNE: Councilperson Rivera?

MR. RIVERA: 100 percent, aye.

MR. BYRNE: Councilperson Watterman?

MS. WATTERMAN: Aye.

MR. BYRNE: Council President.

MR. LAVARRO: I'll just say -- I'll say we are informed --

MS. WATTERMAN: Yes.

MR. LAVARRO: -- and moving forward. I vote aye.

MR. BYRNE: City Ordinance 14-103 has been finally adopted seven-one-one; voting no, Councilperson Boggiano; abstaining, Councilperson Ramchal.

Item 4b, City Ordinance 14-104 an ordinance amending and supplementing Chapter 275

(Secondhand Dealers) of the Jersey City Municipal Code.

This is a public hearing on the ordinance. Are there any members of the public wishing to be heard?

MS. OSBORNE: Motion.

MR. LAVARRO: Second.

MR. BYRNE: Who made the motion? Who made the motion? Councilperson Osborne, seconded by Council President Lavarro to close the public hearing.

Councilperson Gajewski --

MR. GAJEWSKI: Aye.

MR. BYRNE: -- to close?

Councilman Ramchal?

MR. RAMCHAL: Aye.

MR. BYRNE: Boggiano?

MR. BOGGIANO: Aye.

MR. BYRNE: Yun?

MR. YUN: Aye.

MR. BYRNE: Osborne?

MS. OSBORNE: Aye.

MR. BYRNE: Coleman?

MS. COLEMAN: Aye.

MR. BYRNE: Rivera?

MR. RIVERA: Aye.

MR. BYRNE: Watterman?

MS. WATTERMAN: Aye.

MR. BYRNE: Council President?

MR. LAVARRO: Aye.

MR. BYRNE: We have a nine-zero vote to close the public hearing.

For the final adoption of City Ordinance 14-104, item 4b, Councilperson Gajewski?

MR. GAJEWSKI: Aye.

MR. BYRNE: Councilperson Ramchal?

MR. RAMCHAL: Aye.

MR. BYRNE: Boggiano?

MR. BOGGIANO: Aye.

MR. BYRNE: Yun?

MR. YUN: Aye.

MR. BYRNE: Osborne?

MS. OSBORNE: Aye.

MR. BYRNE: Coleman?

MS. COLEMAN: Aye.

MR. BYRNE: Rivera?

MR. RIVERA: Aye.

MR. BYRNE: Watterman?

MS. WATTERMAN: Aye.

MR. BYRNE: Council President?

President?

MR. LAVARRO: Aye.

MR. BYRNE: Nine-zero for the final adoption of item 4b, City Ordinance 14-104.

4c, City Ordinance 14-105, is an ordinance of the Municipal Council of the City of Jersey City adopting amendments to the Land Development Ordinance Section 345-10, Environmental Commission, for expanding the purposes of the Environmental Commission.

This is a public hearing on the ordinance. Are there any members of the public wishing to be heard?

MR. LAVARRO: Motion.

MR. RAMCHAL: Second.

MR. BYRNE: We have a motion by the Council President, seconded by Councilperson Ramchal.

To close the public hearing, Councilperson Gajewski?

MR. GAJEWSKI: Aye.

MR. BYRNE: Ramchal?

MR. RAMCHAL: Aye.

MR. BYRNE: Boggiano?

MR. BOGGIANO: Aye.

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CITY OF JERSEY CITY

MUNICIPAL COUNCIL

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8 MICHAEL YUN, Councilman Ward D

9 CANDICE OSBORNE, Councilwoman Ward E

10 DIANE F. COLEMAN, Councilwoman Ward F

11

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14 JEREMY FARRELL, ESQ., Corporation

15 Counsel

16 ROBERT KAKOLESKI, Business Administrator

17 DIANA JEFFREY, ESQ., Assistant Corporation.

18 Counsel

19 MICHAEL DOUGHERTY, ESQ., Assistant Corporation.

20 Counsel

21 ROBERT COTTER, Planning

22 JEFFREY WENGER, Planning

23 MARYANN BUCCI-CARTER, Planning

24

25 TRACEY R. SZCZUBELEK, C.C.R.

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1 A L S O P R E S E N T:

2 Charles Montange, Esq.

3 John Jack Curley, Esq.

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1 MR. BYRNE: Okay. Good afternoon,
2 Everyone. This is a closed session of the Jersey
3 City Municipal Council. It is 5:12 p.m. This
4 closed session was authorized by a resolution just
5 approved out in the Council chambers by the City
6 Council by an eight-zero vote, a resolution
7 authorizing a closed caucus of the Municipal Council
8 on Monday, September 8th, 2014 at 5 p.m. to discuss
9 pending litigations in matters within
10 attorney-client privilege, the Sixth Street
11 Embankment and Bright and Varick litigation.
12 MR. RAMCHAL: Council President.
13 MR. BYRNE: We have all nine members.
14 MR. RAMCHAL: No. Robert, Council
15 President, I would like to excuse myself from this
16 whole session because - I didn't really miss a
17 meeting because I can't sit in this because I have a
18 personal issue with this.
19 MR. LAVARRO: You are excused, but
20 you did miss a meeting.
21 MR. RAMCHAL: I am going to excuse
22 myself from this closed session.
23 MR. BYRNE: Okay. We will hang out
24 together, Chico.
25 MR. RAMCHAL: For personal reason.

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So I don't want to be in here.

MR. BYRNE: I am just going to say you recuse yourself. Okay.

MR. FARRELL: You can leave your paperwork.

MR. BYRNE: Councilperson Boggiano, you are present.

MS. COLEMAN: [redacted]

MR. BYRNE: He has a reason.

MS. COLEMAN: So do I.

MR. FARRELL: [redacted]

MS. COLEMAN: Okay. I'm going to stay.

MR. BYRNE: Councilperson Yun, you're present.

MR. YUN: Here.

MR. BYRNE: Councilperson Osborne is present, as is Councilperson Coleman, Councilperson Rivera, Councilperson Watterman, Council President.

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We also have our Business Administrator, Robert Kakoleski. We have special counsel --

Why don't you introduce yourself, Jack, to everybody.

MR. CURLEY: John Jack Curley, representing the City on the embankment State Court cases.

MR. FARRELL: You are correct; he goes by Jack.

MR. BYRNE: I know that.

Charles Montange, M-o-n-t-a-n-g?

MR. MONTANGE: E.

MR. BYRNE: E.

MR. MONTANGE: Yeah, Montange.

MR. BYRNE: And we have, for staff, Mr. Robert Cotter, Diana Jeffrey and Mike Dougherty.

D-o-u-g-h-e-r-t-y, correct?

MR. DOUGHERTY: Correct.

MR. BYRNE: Thank you. Okay. If you need me, holler or call me.

(Whereupon, Robert Byrne and Councilman Ramchal leave the closed caucus.)

MR. FARRELL: All right, guys, before we start I just want to explain -- I wanted to

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1 explain a few things, as this is our first executive
2 session.
3 The first thing is that there will be
4 minutes taken at this meeting and that at some later
5 date, when the context or the discussion that takes
6 place here today is no longer deemed to be within
7 the attorney-client privilege, the minutes will be
8 made public.
9 All the rules that govern a normal
10 meeting of this body still govern. Our Council
11 President will run the meeting. And I do encourage
12 you to ask any questions you have but to remember
13 that whatever is said here will eventually become
14 public. So all the rules of decorum and respect
15 should still apply.
16 I also want to make clear to this
17 body that we're not taking a vote on anything today;
18 but, rather, this session is for informational
19 purposes and that any actual actions will be taken
20 at the regular meeting on Wednesday.
21 MS. COLEMAN: Regarding both matters?
22 MR. FARRELL: Regarding both
23 matters -- regarding this matter. We are not
24 actually voting on anything on Bright and Varick.
25 And with that being said I want to

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1 introduce you guys to Charles Montange, who has
2 flown in for this meeting. Charles will be
3 discussing with us the posture of the case right now
4 and our options as to how to best pursue the relief
5 sought.
6 Yes.
7 MR. BOGGIANO: What law firm is he
8 from?
9 MR. FARRELL: Charles Montange is
10 from his own law firm.
11 MR. MONTANGE: Law Offices of.
12 MR. FARRELL: Charles Montange. He
13 is a solo.
14 MR. BOGGIANO: And you are from?
15 MR. CURLEY: John J. Curley, LLC on
16 Harborside Financial Center.
17 MR. FARRELL: Jack Curley is our
18 local counsel. Charles Montange is our special
19 counsel representing in railway law.
20 MR. LAVARRO: Resulting in what?
21 MR. FARRELL: Railway law.
22 MS. OSBORNE: Just so we know, we
23 share this attorney with the Embankment Preservation
24 Coalition.
25 MR. MONTANGE: And Conservancy.

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1 MR. FARRELL: With that, Charles, go
2 ahead.
3 MR. MONTANGE: Again, I am Charles
4 Montange. I have actually been representing the
5 City since 2006 in this matter. This is not the
6 first time I have been in the room; however, for
7 many of you, this is the first time you have seen or
8 heard me, so I will try to start at the very
9 beginning and try to go very quickly. And if there
10 are questions, feel free.
11 I will try to get to the heart of
12 things. They have asked me to discuss the character
13 of the things and why we are considering a
14 particular ordinance, which is a recommendation that
15 I am making for the next steps in this case.
16 First of all, I do railroad law
17 before the Service Transportation Board. Although I
18 am located in Seattle, which is 3,000 and 2,000
19 miles from you, I do this stuff across the country
20 for cities and county governments and groups that
21 are interested in main -- keeping a railroad
22 corridor intact, usually for light rail or trail but
23 sometimes even for actual freight rail or passenger
24 services. And I represent other local -- usually
25 smaller governments and lot of nonprofit groups.

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In this particular matter I was retained by the City, along with Rails To Trails Conservancy Embankment Coalition. You guys are getting a reduced rate as part of that deal.

The whole matter starts in -- well, really starts last -- well, over a century ago. The Harsimus branch, which is called the Sixth Street Embankment, was the main line for freight for Pennsylvania Railroad to get product from the middle West down to the East Coast, into the harbor for international trade. This line was -- ultimately ended up in the hands of Penn Central, and there was bankruptcy. And under a reorganization, which formed ConRail, the property was transferred to ConRail as a line of railroad.

MS. COLEMAN: As what?

MR. MONTANGE: A line of railroad.

MS. COLEMAN: Okay.

MR. MONTANGE: When I start to use this stuff, realize there is going to be jargon; and it's going to have legal significance beyond what a normal lawyer is going to call for.

So it's a line of railroad. And what happened was ConRail in the late 1960 -- 1990's ceased all use of it, tore out the bridges or

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1 suffered them to be torn out, took out the track,
2 took out the rail structure and began to look for a
3 market to sell it for non-rail purposes, all without
4 any abandonment authorization.
5 Any line of railroad that the United
6 States -- anything that's a line of railroad in the
7 United States has to receive exit permission --
8 that's a license from the Service Transportation
9 Board -- before it's dismantled and sold off. If it
10 is not done in accordance with law, federal law,
11 then the sale is unlawful or the action of doing the
12 sale and the tearing out of the material is
13 unlawful. And one can seek to have the railroad put
14 back together again.
15 So in 2005 this property -- by 2005
16 the City was interested in acquiring this property
17 for alternative public use, historic preservation,
18 park trail, open space; and there was some glimmer
19 maybe for light rail. And it was viewed by the
20 Planning Department, I think, as an underused
21 transportation corridor, the last one into Downtown,
22 maybe prudent to keep it intact for future use.
23 That's where things stood in 2005.
24 The Council at that point -- 2004, I
25 think, even started to document an ordinance of

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1 imminent domain against this line, so you take it
2 under State law. If you look at the title practice
3 manual, as the gentleman on my right did, it says if
4 you are going to acquire ConRail property, you must
5 receive -- you must ask the railroad first for proof
6 of abandonment at the Service Transportation Board
7 or proof that no abandonment authorization is
8 required.
9 He made an inquiry along those lines
10 to ConRail and got a less than affirmative response.
11 They essentially admitted no abandonment
12 authorization, and they asserted that they
13 designated the line to be a spur.
14 MS. COLEMAN: They did what?
15 MR. MONTANGE: They designated the
16 line to be a spur. They classified it as a spur.
17 That has a technical meaning in railroad law. It
18 means you don't have to have an abandonment
19 authorization. However, it's also the law that you
20 cannot just claim the line of railroad as a spur and
21 get out of it. It's like saying, "I don't have to
22 have a driver's license because I don't have to have
23 a driver's license." They can't just excuse
24 themselves from compliance by relabeling the thing.
25 Once it's a line, it's a line. They can't alter its

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1 status. It can be unused. They can even try to
2 dismantle it. But it's still a line.
3 So the manner -- while all this was
4 going on, at the same time they were kind of
5 postponing things with Mr. Curley and holding him
6 off. They sold the line to SLH Properties and, in
7 particular, eight LLC's in common control of
8 Mr. Steve Hyman?
9 At that point --
10 MS. COLEMAN: Is that mic working?
11 MR. FARRELL: These mics don't
12 amplify; they just record.
13 MR. MONTANGE: Okay. Can you hear me
14 okay?
15 MS. COLEMAN: When you get down to
16 the ending of your --
17 MR. MONTANGE: I am tapering off. I
18 will do my best. There is an air condition --
19 MR. RIVERA: Which property? You
20 said they sold it to what?
21 MR. MONTANGE: SLH Property -- eight
22 LLC's, limited liability corporations, owned by --
23 controlled by Mr. Steve Hyman.
24 MR. BOGGIANO: Isn't it true that the
25 City decided not to purchase this because the cost

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1 of the railroad was too much money?

2 MR. FARRELL: No. And let's hold off

3 on the questions because there is a lot of

4 background to get through and it's going to take

5 some time.

6 MR. MONTANGE: Yeah, you can -- maybe

7 the best way is do that and hold off your questions

8 at the end. I will try to answer any questions you

9 have, at least give my best estimate of the answer.

10 So we get the eight LLC's own it.

11 Negotiations went on at the time because the City

12 was interested in acquiring it. They authorized

13 imminent domain. Nothing happened. And finally

14 Mr. Hyman's companies began to take out stanchions

15 adjoining the embankment. And I think they were

16 applying for demo permits at the same time. And the

17 City decided it would have to pursue relief at the

18 Federal level.

19 And the Federal action -- I called up

20 the Service Transportation Board December 2005. And

21 honestly, Gang, they said they have been receiving

22 lots of cards and letters on this saying -- and they

23 were waiting for somebody to petition them for

24 relief. And they were the ones to first mention the

25 words "OFA" to me. They expected someone would try

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1 to do that. And I will get into that in a moment.
2 But suffice -- in January 2006 we
3 filed Rail -- City of Jersey City, Rails To Trails
4 Conservancy Embankment Coalition filed a motion for
5 declaratory order of Transportation Board for
6 determination this was a line of railroad. We won.
7 In 2007 -- took a long time for STB to get its order
8 out because they have no time deadlines in most
9 proceedings. In 2007 they got an order out saying
10 it was a line of railroad at one point.
11 The LLC's, told by ConRail, took an
12 appeal to the D.C. Circuit. And they argued for the
13 first time that the only tribunal that can determine
14 whether this was a line of railroad was a U.S.
15 District Court in the District of Columbia. The
16 D.C. Circuit case of first impressions said, yeah,
17 you don't have to go to this U.S. District Court.
18 This sent us in a round of
19 litigation, which, as of February 2014, we won.
20 This is a line of railroad. It just clearly is
21 because it was the Penn Central -- Pennsylvania,
22 rather, Railroad line of freight to the East Coast.
23 There was no doubt about what it was. And Mr.
24 Hyman's companies even stipulated that there was a
25 line of railroad by that time and asserted -- I

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1 don't know whether -- well, they have asserted in
2 pleadings filed in U.S. District Court ConRail
3 fraudulently misrepresented to them it was not a
4 line of railroad, but they say now clearly was a
5 line of railroad. Anyway, that's what they said in
6 court and upheld the appeals of court.
7 It's back to Transportation Board
8 now, where we should have been much earlier. But we
9 got chased around by ConRail, and the LLC's caused a
10 lot of litigation and turmoil. We are finally back
11 to where we should have been in 2006 -- where we
12 should have been before the sale was made.
13 MS. COLEMAN: Shouldn't have sold in
14 the first place.
15 MR. MONTANGE: No, shouldn't have
16 sold it in the first place. It was unlawful.
17 That's what the STB has said in orders relating to
18 things like this. The sale was unlawful. [redacted]
19 [redacted]
20 [redacted]
21 [redacted]
22 [redacted]
23 [redacted] -- I have taken you through sort of the
24 history of where we're at to now.
25 MS. OSBORNE: Just -- sorry, just to

Confidential

1 make sure I am understanding everything you say, so
2 this Transportation Board said the sale was never
3 legal because they didn't do this abandonment; and
4 that was basically upheld through the U.S. Court of
5 Appeals?
6 MR. MONTANGE: Yeah, it's a line of
7 railroad now. We won; you were right.
8 MR. FARRELL: So our options going
9 forward are?
10 MR. MONTANGE: Yeah, the options
11 going forward -- let me, before -- I have talked
12 about the Federal litigation. And I should make
13 sure you guys are aware of the whole context first.
14 And then I will give you the options and why the
15 options become very important to you because that
16 helps set this up.
17 [redacted]
18 [redacted]
19 [redacted]
20 [redacted]
21 [redacted] the LLC's,
22 sometimes joined by ConRail, were filing, I recall
23 from my vantage point, waves of State Court and
24 administrative tribunal litigation, perceived waves
25 against the City appealing this designation of the

Confidential

1 Harsimus branch, appealing the refusal to grant demo
2 permits. Finally a Federal Civil Rights --
3 MR. FARRELL: Closed session, Sue.
4 This is a closed session.
5 MR. MONTANGE: Finally a Federal
6 Civil Rights action against the City alleging an
7 unconstitutional -- basically an unconstitutional
8 deprivation of property rights and threatening
9 inverse condemnation suit against the City for an
10 alleged taking of the property.
11 And there is additional suits that
12 have been filed, including suits against individual
13 officers of City Government. And they even filed a
14 suit against me at one point and general counsel of
15 Rails To Trails Conservancy [redacted]
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21 At this point I think I can safely
22 say essentially all of the State Court proceedings
23 have been stayed pending a resolution of the Federal
24 case. So we finally got all the State stuff held in
25 abeyance pending an outcome of the Federal level.

Confidential

1 It's now back at the Service
2 Transportation Board finally, as of roughly
3 February. And then with the exhaustion -- so now
4 the STB has to consider relief. And they are
5 restarting an abandonment proceeding for ConRail.
6 So our -- what we ask at this point becomes really
7 germane.
8 [redacted]
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13 MS. COLEMAN: That's what I'm waiting
14 for.
15 MR. MONTANGE: [redacted]
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21 MS. COLEMAN: [redacted]
22 MR. MONTANGE:
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25 MS. COLEMAN:

Official

1 [redacted]

2 MR. MONTANGE: Yes.

3 MS. COLEMAN: [redacted]

4 [redacted]

5 [redacted]

6 MR. MONTANGE: Yeah.

7 MS. COLEMAN: [redacted]

8 [redacted]

9 [redacted]

10 MR. MONTANGE: [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted]

23 [redacted]

24 [redacted]

25 [redacted]

Confidential

1 [redacted]
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5 MR. FARRELL: I don't want to get too
6 bogged down with this because we have a lot to get
7 through and a lot of questions that are going to be
8 coming.
9 MR. MONTANGE: [redacted]
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18 MS. COLEMAN: [redacted]
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20 MR. MONTANGE: [redacted]
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23 MR. FARRELL: Can we just add to the
24 record Mayor Fulop has joined the meeting.
25 MR. MONTANGE: Should I start at the

1 beginning?

2 MR. FARRELL: No.

3 MR. FULOP: I haven't seen you in a

4 long time.

5 MR. MONTANGE: Anyway, that leads up

6 to the OFA. The OFA stands for offer of financial

7 assistance. [redacted]

8 [redacted]

9 [redacted] That's where OFA comes

10 from.

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

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22 [redacted]

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10 MR. FARRELL: [redacted]
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13 MR. MONTANGE: [redacted]
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19 [redacted]
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[redacted]

1 [redacted]

2 MR. FARRELL: Charles, with all that

3 being said, let's open it up to the Council for

4 questions.

5 MR. BOGGIANO: I would like to ask

6 first how much does it cost us, the taxpayers, since

7 2006?

8 MR. FARRELL: That's a really hard

9 number for us to put together. I will try to put

10 something together for you.

11 MR. BOGGIANO: I want to ask another

12 question. Who has been paying bills for this group

13 Downtown to fight this?

14 MR. FARRELL: The litigation is

15 financed primarily through the monies bonded to

16 realize the vision of a open space.

17 MR. BOGGIANO: You are telling me no

18 City money has been used?

19 MR. FULOP: No, that's City money.

20 This has gone through four -- three mayors, just to

21 put it in -- and three City Councils, Cunningham,

22 Harvey Smith, Jerry Healy. And everybody has kind

23 of found it prudent to move forward, despite these

24 same questions that have come up.

25 We were very close to a settlement

Confidential

1 three years ago --

2 MR. MONTANGE: Yeah, several times.

3 MR. FULOP: -- but -- we bonded --

4 was it two years ago or three years ago?

5 MR. MONTANGE: Two years ago.

6 MR. FULOP: [redacted]

7 [redacted]

8 [redacted]

9 [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

13 [redacted]

14 [redacted]

15 [redacted]

16 [redacted]

17 [redacted]

18 [redacted]

19 [redacted]

20 [redacted]

21 [redacted]

22 [redacted] And what I have

23 indicated, at least, is saying that whereas two

24 years ago we were ready to -- we put $7 million that

25 we bonded for that we've said -- we have won the

1 last two court cases, right? [redacted]

6 MR. FARRELL: To litigate.

7 MR. FULOP: -- in order to [redacted]

8 litigation.

9 MR. BOGGIANO: You know --

10 MR. LAVARRO: Councilperson Coleman.

11 MR. BOGGIANO: I'm not finished with

12 questions yet.

13 MR. LAVARRO: In fairness, she was

14 trying to get her questions in.

15 MS. COLEMAN: I raised my hand, and

16 you started talking. I follow the rules. Raise

17 your hand. But you finish.

18 MR. BOGGIANO: [redacted]

Confidential

1 [redacted]

2 I was also told by couple Council

3 people that when the opportunity came back in 2006,

4 the City Council did not want to buy it because it

5 was too much money at that time. Now, you know --

6 MR. FULOP: [redacted]

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13 MR. BOGGIANO: I would like to --

14 MR. LAVARRO: Which we are entitled

15 to. It's our property.

16 MR. FULOP: [redacted]

17 [redacted]

18 MR. BOGGIANO: [redacted]

19 MR. FULOP: [redacted]

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21 MR. BOGGIANO: [redacted]

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23 MR. FULOP: [redacted]

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25 MR. BOGGIANO: [redacted]

Unofficial

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5 MR. FARRELL: Guys, I think this
6 conversation is valuable; but we only have a limited
7 amount of time with our attorney, so I would love to
8 have --
9 MR. BOGGIANO: Are you part of --
10 were you from Newark Avenue?
11 MR. CURLEY: Yes.
12 MR. BOGGIANO: Jack Curley of Leviss
13 & Leviss?
14 MR. CURLEY: Yes.
15 MR. LAVARRO: Councilperson Coleman.
16 MS. COLEMAN: My question is: What
17 is the recommendation here? [redacted]
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21 MR. FULOP: [redacted]
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16 MR. FARRELL: I would add to that
17 answer that [redacted]
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21 [redacted]
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8 MR. FULOP: Bob Cotter came in front
9 of the Council probably four years ago and made a
10 very, very compelling argument [redacted]
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14 [redacted] and you
15 said -- wait a second. I want to figure --
16 MR. BOGGIANO: Just take a look.
17 MR. FULOP: Let's say that's true.
18 [redacted]
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7 MR. FARRELL: Candice has a question.
8 MR. LAVARRO: I'm sorry, Candice.
9 MS. OSBORNE: I completely agree with
10 you. We are a City. We are growing. We are not
11 getting more space. [redacted]
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19 MR. FULOP: [redacted]
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25 MR. FARRELL: [redacted]

Draft

1 [redacted]

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3 MR. LAVARRO: Councilperson Coleman,

4 then Yun.

5 MS. COLEMAN: [redacted]

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12 MR. FARRELL: Yes.

13 MR. MONTANGE: [redacted]

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22 MS. COLEMAN: All of a sudden they --

23 MR. MONTANGE: [redacted]

24 MR. FARRELL: I want to bring it in

25 kind of simpler terms. [redacted]

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8 MS. OSBORNE: [redacted]
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10 MS. WATTERMAN: [redacted]
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12 MR. FARRELL: [redacted]
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9 Those are the balances that we have
10 to decide on Wednesday. And it's for you to make
11 your choice. But I wanted to put it in the right
12 context for you.
13 MR. LAVARRO: Councilman Yun.
14 MR. YUN: First, thank you for your
15 good job, really.
16 MR. MONTANGE: I wish it had happened
17 sooner.
18 MR. YUN: [redacted]
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Unofficial

1 MR. MONTANGE: [redacted]

24 MR. FULOP: I have a question.

25 MR. MONTANGE: Yeah.

1 MR. FULOP: [redacted]
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4 MR. MONTANGE: [redacted]
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11 MR. FULOP: [redacted]
12 MR. COTTER: [redacted]
13
14 MR. FULOP: [redacted]
15 MR. COTTER: [redacted]
16 MR. KAKOLESKI:
17 MR. MONTANGE: [redacted]
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20 MR. FULOP: I see.
21 MR. MONTANGE: [redacted]
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6 (Whereupon, Mr. Byrne enters the
7 closed caucus.)
8 MR. BYRNE: I know we are still in a
9 closed session. It's filling up rather well
10 outside. I just wanted to let everyone know it's
11 about five after 6.
12 MR. FARRELL: Understood.
13 (Whereupon, Mr. Byrne leaves the
14 closed caucus.)
15 MR. FARRELL: I mean, this is the
16 more important issue for us to resolve today. So
17 are there any other really important questions for
18 counsel on this?
19 MR. BOGGIANO: [redacted]
20
21 MR. FARRELL: [redacted]
22 MR. MONTANGE: [redacted]
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25 MR. FARRELL: Those are capital

Confidential

1 costs.

2 MR. MONTANGE: [redacted]

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15 MR. NAVARRO: Candice.

16 MS. OSBORNE: Just to -- I understand

17 what you're asking, but I also to a degree feel like

18 it's not really [redacted]

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24 MR. FARRELL: So to be clear, what

25 the legislation is is to authorize the application

1 to STB. [redacted]

8 MS. WATTERMAN: But we have to be

9 ready, though.

10 MR. FARRELL: You have to be ready.

11 MR. MONTANGE: [redacted]

15 MS. OSBORNE: Gotcha.

16 MR. MONTANGE: [redacted]

21 MR. FARRELL: Anything else of real

22 importance? Because I don't want to hold up the

23 caucus meeting and we have more issue to discuss.

24 Anything else?

25 Mayor? Anything else?

President?

MR. LAVARRO: Let's move along.

MR. FARRELL: Thank you, Mr. Montange.

We are going to go right into the next topic because we only have about five minutes to do it.

MS. COLEMAN: Can I just -- we are voting for the authorization to submit the application --

MR. FARRELL: That's right.

MS. COLEMAN: -- is that what we're voting for?

MR. FULOP: It's a resolution, not an ordinance.

MR. FARRELL: It's an ordinance because there is an expense associated with it.

Mike, if you can just ask Robert Byrne to come back in.

MR. MONTANGE: And if you want to get in touch with me, these guys know my telephone number.

MS. COLEMAN: Can Chico come back in now?

MR. FARRELL: Yeah, he can come back

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in. He is with Robert.

So this one we are going to move as quickly as possible. But I want to remind the Council that we initiated this lawsuit and we just got the actual written opinion from the judge today, so we're still absorbing.

(Whereupon, Mr. Byrne and Councilman Ramchal enter the closed caucus.)

MR. BYRNE: Go right into Bright and Varick. Okay. We are now doing -- we are now having a closed caucus about Bright and Varick.

Good afternoon, Mayor.

MR. FULOP: Hey.

MR. BYRNE: We have Councilman Ramchal back in the room. At 6:07.

MR. FARRELL: I would add --

MR. BYRNE: We have Mayor Fulop. Did we have anyone besides our special guests before during my absence?

MR. FARRELL: Mayor Fulop joined, and I put it on the record.

MR. BYRNE: Besides Mr. Fulop?

MR. FARRELL: No. Now we also have the planners in the room now for this discussion.

MR. BYRNE: Sure.

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1 MR. FARRELL: Okay.

2 MR. LAVARRO: Jeff Wenger and Maryann

3 Bucci-Carter.

4 MS. JEFFREY: I will try to make this

5 quick, as quickly as I can.

6 In 2012 there is a very small parcel

7 of land on the corner of Bright and Varick in Van

8 Vorst that was being used. It was an empty lot.

9 It's still an empty lot. It was being used by the

10 school. It was -- the City sold the property to the

11 agency, the JCRA. The JCRA then designated a

12 developer for that site. And afterwards there were

13 proposed development to the redevelopment plan.

14 Prior to the proposed changes to the

15 redevelopment plan the zoning for that area was R-1,

16 which restricted -- it's a historic area. But this

17 was a tiny little parcel of land that was sort of in

18 an island in the middle of a historic district. But

19 the zoning was restricted to one and two-family

20 homes and some commercial uses.

21 The developer had a plan to build

22 what was called a "micro-unit" project. He was

23 going to build a five-story building with 85 to 87

24 units, about 350 square feet, small, almost like

25 efficiency apartments. And his vision was that

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1 recently graduated students would come there and
2 would purchase these units or rent them and live
3 there in lieu of renting two and three-bedroom
4 apartments other places in the City.
5 The changes to the redevelopment plan
6 changed -- there is some controversy about whether
7 or not -- what the zoning was after these changes to
8 the redevelopment plan, but most agree that it
9 was -- many people didn't understand that the
10 changes to the redevelopment plan would have
11 resulted in increase in density that would have
12 permitted a project of this side of of this nature.
13 In August of 2013 the developer
14 submitted his site plan. And at that point the
15 residents of Van Vorst realized that this project
16 was being proposed, and they became very upset.
17 Their concern is that a micro-unit project
18 could essentially give way and turn into an SRO with
19 transients, that it would tend to compromise or
20 jeopardize the integrity of the neighborhood. That
21 is their position.
22 A set of events occurred in which the
23 application was going through the planning process,
24 and there is a question at -- the law says, NJSA
25 40:55-46A and 10- -- .3 -- I am saying this for the

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1 record -- stipulate that once an application is
2 deemed complete it has to be -- the Planning Board
3 has to make a decision on that application within a
4 certain period of time.
5 When, if ever, this application was
6 deemed complete was at issue. What was also at
7 issue is what was the underlying density for this
8 area. The City argued that the density in the
9 redevelopment plan was ambiguous and it was not
10 possible to tell what the density was. And in
11 January of 2000 -- 2014 Anthony Cruz, in his
12 capacity as the chief zoning officer, denied the
13 application, site -- stating that the density was
14 too ambiguous and it needed to go before the Zoning
15 Board for determination whether -- as to what the
16 density was.
17 Meanwhile, the site plan -- there was
18 an e-mail in October from the planners that said the
19 site plan was substantially complete. Not complete
20 but substantially complete.
21 Thereafter, the developer submitted
22 revised architectural plans which changed the
23 address -- it changed the nature of the project. It
24 stripped the project of the amenities. And Planning
25 determined at that point that it required new agent

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1 review.

2 There was a hearing that was

3 scheduled for December 17th; but Planning said

4 because there are new architectural plans, we are

5 going to postpone the hearing until March. The

6 developer, instead of waiting to March to have a

7 hearing before the Planning Board, filed action in

8 lieu of prerogative writ.

9 MS. COLEMAN: What?

10 MR. FARRELL: A lawsuit.

11 MS. JEFFREY: Sorry. Lawsuit. It is

12 a lawsuit saying the government is not doing the

13 right thing and we want to force the government to

14 do the right thing. So the lawsuit basically said

15 Cruz had no right to refuse our application on

16 density, the density is clear; and because the

17 Planning Board didn't render a decision in December

18 and didn't hold -- our site plan is deemed

19 automatically approved.

20 The court -- the long and short of it

21 is the court agreed with the developer and ruled in

22 the developer's favor. The application was deemed

23 automatically approved.

24 [redacted]

25 [redacted]

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16 I am going through this very quickly.
17 You are nodding, so -
18 MR. FULOP: We lost. Can I say
19 anecdotally just two things on this?
20 MR. FARRELL: Yeah.
21 MR. FULOP: [redacted]
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Confidential

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5 We spent how much money on this now?
6 MR. FARRELL: The Planning Board
7 attorney has cost us about 25,000, a little bit
8 more, to pursue this matter. [redacted]
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12 MR. FULOP: So I -- this is just
13 anecdotally. Maybe you could --
14 MR. FARRELL: Hill --
15 MR. FULOP: [redacted]
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17 MR. FARRELL: [redacted]
18 MR. FULOP: [redacted]
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24 MR. FARRELL: That's correct.
25 MR. FULOP: But that doesn't change

1 the overall picture.

2 MR. FARRELL: That's right.

3 MR. FULOP: [redacted]

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21 MR. FARRELL: [redacted]

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22 MR. LAVARRO: Councilperson Coleman.
23 MS. COLEMAN: My question is: Can
24 you -- what do you, Corporate Counsel, recommend?
25 [redacted]

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4 [redacted] Are we voting on
5 something that's --
6 MR. FARRELL: No, today you are not
7 voting on anything -- sorry, Wednesday. You are not
8 voting on anything right now. This is a discussion.
9 And it was asked for because of the community people
10 that have been reaching out to these members.
11 MS. COLEMAN: Right.
12 MR. FARRELL: And people didn't know
13 exactly what happened or where we are.
14 MS. COLEMAN: So what does Corporate
15 Counsel recommend?
16 MR. FARRELL: [redacted]
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6 MR. LAVARRO: Councilperson.
7 MS. COLEMAN: My last question is:
8 The plans that we saw as a Council and discussion
9 of, Candice and I, we looked at they have a lot of
10 great amenities to go with it. Even though the
11 community didn't like the project because it was
12 micro-units, it had a lot of amenities, like study
13 room, study -- gym and things on the outside. Now,
14 from my understanding, they resubmitted something
15 and now other plans have been approved. So my
16 question is: The approved plans don't include all
17 of those things.
18 MR. FARRELL: [redacted]
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25 MS. COLEMAN: [redacted]

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1 MR. FARRELL: [redacted]
2 [redacted]
3 MS. COLEMAN: Okay.
4 MR. FARRELL: [redacted]
5 [redacted]
6 [redacted]
7 MS. COLEMAN: [redacted]
8 [redacted]
9 [redacted]
10 MR. FARRELL: In the first instance?
11 MS. COLEMAN: Yeah.
12 MR. FARRELL: Understood.
13 MR. LAVARRO: [redacted]
14 [redacted]
15 [redacted]
16 MR. FARRELL: [redacted]
17 MR. LAVARRO: [redacted]
18 MR. FARRELL: Yes.
19 MR. LAVARRO: -- if it's necessary to
20 do that.
21 MS. COLEMAN: Thanks, Rolando.
22 MS. OSBORNE: [redacted]
23 [redacted]
24 [redacted]
25 MR. FARRELL: Yeah, I did see that.

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1 [redacted]
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4 One other point I want you to
5 understand about the contract of sale too is the
6 JCRA sold the property to the developer, but the
7 developer hasn't actually paid for it yet. Those
8 deeds are being held in escrow. So there is --
9 there hasn't been a closing on that sale. [redacted]
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3 MS. COLEMAN: What was already done.
4 MR. FARRELL: [redacted]
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8 MS. WATTERMAN: [redacted]
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11 MR. FARRELL: [redacted]
12
13 Anything else?
14 MR. LAVARRO: Council --
15 MS. COLEMAN: I didn't hear.
16 MR. LAVARRO: Sorry. Frank.
17 MR. GAGEWSKI: Just a quick question.
18 What are the restrictions on discussing anything
19 that went on in closed session?
20 MR. FARRELL: That is a great
21 question. So this -- both issues were discussed in
22 closed session. It's being discussed in closed
23 session under the attorney-client privilege,
24 exception to the Open Public Meetings Act. You, as
25 members of the Board, are part of our what's called

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1 "attorney-client group." And so to protect the
2 information that was discussed here you guys have to
3 preserve that. You can't discuss this with anybody
4 outside of this group.
5 At some point in time these minutes
6 will become public, and at that point in time you
7 will be free to discuss them with anybody. If you
8 do get some questions from folks, you can answer
9 their questions; you just can't provide them any
10 information you learned about in this meeting here
11 today.
12 MR. RAMCHAL: Frank, that's why I
13 recused myself.
14 MR. LAVARRO: Which is pretty much
15 nothing.
16 MS. OSBORNE: I am just going to
17 say -- yeah, because I have learned kind of a lot
18 here today that I didn't know.
19 MS. COLEMAN: What did you say?
20 MS. OSBORNE: I learned a lot today
21 that I didn't know. I kind of know what they know
22 until I walked in here, so I'm --
23 MR. FARRELL: It's complicated.
24 MS. OSBORNE: Can't figure out how I
25 should respond other than Jeremy.

Confidential

1 MR. FARRELL: I know. Councilwoman,
2 I am going to get right to your question; but one
3 point I want to raise is tomorrow -- Wednesday, when
4 we go into Council and consider the OFA application,
5 you guys should feel free to make whatever comments
6 you feel you want to make on the record, but you
7 should preserve our attorney-client privilege in
8 this room.
9 MR. RAMCHAL: Right here.
10 MR. FARRELL: [redacted]
11 [redacted]
12 [redacted]
13 [redacted]
14 [redacted]
15 [redacted]
16 [redacted]
17 [redacted]
18 Okay?
19 MR. BOGGIANO: [redacted]
20 [redacted]
21 [redacted]
22 [redacted]
23 [redacted]
24 MR. FARRELL: [redacted]
25 [redacted]

Confidential

1 [redacted]

2

3 MS. OSBORNE: This is our attorney.

4 He is on our side. We hired him. It's not like one

5 side -- he is on our side.

6 MR. RAMCHAL: Check with you -- come

7 to you or e-mail?

8 MR. FARRELL: Call me on my cell.

9 All right. Guys, we really should

10 get to our caucus. We are half a meeting late.

11 MR. LAVARRO: What is our action,

12 Robert?

13 MR. BYRNE: We have a motion to

14 adjourn?

15 MR. RAMCHAL: Motion.

16 MS. COLEMAN: Second.

17 MR. BYRNE: Ramchal, seconded by

18 Councilwoman Coleman. By acclamation, say good

19 night.

20 (Whereupon, the proceeding is

21 concluded at 6:25 p.m.)

22

23

24

25

Confidential

1 C E R T I F I C A T E

2

3 I, TRACEY R. SZCZUBELEK, a Certified Court
4 Reporter and Notary Public of the State of New
5 Jersey, do hereby certify that the foregoing is
6 a true and accurate transcript of the
7 stenographic notes as taken by and before me, on
8 the date and place hereinbefore set forth.

9

10

11

12

13

14

15

16

17

18 Tracey R. Szczubelek, CCR.

19 TRACEY R. SZCZUBELEK, C.C.R.

20 LICENSE NO. XIO1983

21

22

23

24

25

13

The action taken by the municipal council at the Closed Caucus Meeting held on September 8, 2014 at 5:00 p.m. is listed below. The minutes, as recorded in the minute book, are available for perusal and approval. Unless council advises the City Clerk to the contrary, these minutes will be considered approved by the municipal council.

Robert Byrne, City Clerk

CITY OF JERSEY CITY

280 Grove Street
Jersey City, New Jersey 07302

Robert Byrne, R.M.C., City Clerk
Sean J. Gallagher, R.M.C., Deputy City Clerk

Rolando R. Lavarro, Jr., Council President
Daniel Rivera, Councilperson-at-Large
Joyce E. Watterman, Councilperson-at-Large
Frank Gajewski, Councilperson, Ward A
Khemraj "Chico" Ramchal, Councilperson, Ward B
Richard Boggiano, Councilperson, Ward C
Michael Yun, Councilperson, Ward D
Candice Osborne, Councilperson, Ward E
Diane Coleman, Councilperson, Ward F

Minutes of the Closed Caucus Meeting of the Municipal Council
Monday, September 8, 2014 at 5:00 p.m.

Please Note: The next caucus meeting of Council is scheduled for Monday, September 22, 2014 at **5:30 p.m.** in the Efrain Rosario Memorial Caucus Room, City Hall.

A regular meeting of Council is scheduled for **TUESDAY**, September 23, 2014 at **6:00 p.m.** in the Anna Cucci Memorial Council Chambers, City Hall. A pre-meeting caucus may be held in the Efrain Rosario Memorial Caucus Room, City Hall.

REGULAR MEETING STARTED: 5:12 p.m.

1. (a) INVOCATION:
   (b) ROLL CALL: **At 5:12 p.m. eight (8) members were present. Councilperson Ramchal: recused himself.**
   At 6:07 p.m. all nine (9) member were present.

   (c) **SALUTE TO THE FLAG:**
   (d) **STATEMENT IN COMPLIANCE WITH SUNSHINE LAW:**

City Clerk Robert Byrne stated on behalf of Rolando R. Lavarro, Jr., Council President. "In accordance with the New Jersey P.L. 1975, Chapter 231 of the Open Public Meetings Act (Sunshine Law), adequate notice of this meeting was provided by mail and/or fax to The Jersey Journal and The Jersey City Reporter. Additionally, the **annual notice** was posted on the bulletin board, first floor of City Hall and filed in the Office of the City Clerk on Wednesday, November 27, 2013, indicating the schedule of Meetings and Caucuses of the Jersey City Municipal Council for the calendar year 2014.

The Agenda of this meeting was disseminated on **Thursday, September 4, 2014 at 4:00 p.m.** to the Municipal Council, Mayor and Business Administrator of Jersey City. It was similarly disseminated to The Jersey Journal and The Jersey City Reporter.

2. **Reception Bid: None**

**CONSENT AGENDA

All items listed on the meeting calendar with asterisk (or asterisks) are considered routine by the municipal council and will be enacted by one motion (and roll call) without separate discussion of each item. If discussion is desired on any item and permitted by the council, that item will be considered separately.

Consent Agenda adopted by Ordinance J-636 and supplemented by Ordinance C-248.

Please understand that all documents listed in the consent agenda are available for public perusal at this meeting.

Attendees

1. Robert Kakoleski
2. John J. Curley
3. Charles Montange
4. Robert Cotter
5. Diana Jeffries
6. Michael Dougherty
7. Mayor Fulop

Note: The transcript of this meeting will not be released until the Corporation Counsel gives approval.

A motion to adjourn closed caucus at 6:25 p.m. was made by Councilperson Ramchal and seconded by Councilperson Coleman and Approved-9-0-.

Rolando R. Lavarro, Jr., Council President.

Renee Jackson
City Clerk's Office

Reviewed and found to be correct as to text and content.

Robert Byrne, City Clerk

Note: The meeting was stenographically as well as tape recorded.

09.08.14

14

WATERS, MCPHERSON, MCNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SECAUCUS - TRENTON - NEW YORK
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www.lawwmm.com

JORGE R. DE ARMAS
MEMBER OF N.J. & N.Y. BARS
DIRECT DIAL
201-319-5741

E-MAIL
jdearmas@lawwmm.com
FAX
201-863-2866

September 9, 2014

VIA ELECTRONIC MAIL
Robert Byrne, City Clerk
City of Jersey City
280 Grove Street
Jersey City, NJ 07302

Re: **Notice Non-Compliance with Sunshine Law and Civil Rights Violation**
Special Caucus Meeting of September 8, 2014
Defective Introduction of Ordinance 14.103 Agenda Item 3(a)

OPRA and Common Law Request for Caucus Transcript & Recording

Dear Mr. Byrne:

We represent the Limited Liability Companies that own the "Sixth Street Embankment." On Monday September 8, 2014, the City Council convened a special meeting and executive session at 5:00pm. This executive session and meeting were in violation of the Open Public Meetings Act N.J.S.A. 10:4-8 et seq. ("Sunshine Law") as the required notice was legally insufficient and defective as explained in our September 5, 2014 correspondence to you and the Council. (A copy of that letter was provided to all Council Members at the beginning of special meeting of September 8). Nevertheless, despite receipt of this notice, the Council decided to proceed with the meeting, and approved Resolution 14.590 authorizing a closed executive session. That resolution that was itself defective for the reasons explained herein. The net effect is that the City Council has held private discussions in violation of the Sunshine Law on issues related to the LLCs interest, the Sixth Street Embankment, quite likely involving proposed Ordinance 14.103.

Request That Proposed Ordinance 14.103 be Withdrawn

Tomorrow, the City council may be introducing proposed Ordinance 14.103 for first reading. Among other things, it commits the City to expending upwards of $5.8 million of tax exempt municipal bond proceeds to operate a freight railroad through the heart of downtown. Despite the implications and magnitude of such a decision, no discussion of this ordinance was held at the Public Caucus that immediately followed the closed executive session at 6:30p.m. Though not mentioned in Resolution 14.590 (which mentioned that only topics related to litigation and within the attorney client privilege would be discussed)[1], it is quite likely that the City Council also discussed the merits of Ordinance 14.103 at the closed executive session outside the purview of the public. The LLCs and the Public have a right to know if this is the case.

Under the circumstances, the City Council has no choice but to remove proposed Ordinance 14.103 from its agenda. Any public vote or discussion on Ordinance 14.103 at tomorrow's public meeting would not cure the defects resulting from the Council's secret deliberations, and the Ordinance, if approved under these circumstances, would be void. See In re Consider Distribution of Casino Simulcasting Special Fund (Accumulated in 2005), 398 N.J. Super. 7 (App. Div. 2008).

As explained in our September 5, 2014 correspondence to you as City Clerk, the deliberations on an OFA concerning instituting rail freight service, financing rail operations, issuing bids and contracts, and funding such activities are simply not privileged under the Sunshine Law. While the adoption or failure to approve an OFA may have some bearing on ongoing litigation, the City Council cannot shield the political and fiscal ramifications of such a decision from public scrutiny.[2] The LLCs and the public at large have a right to know if the City Council will be voting on Ordinance 14.103 which imprudently commits the City spend $5.8 million to operate a freight railroad through the heart of downtown without any reasoned deliberation, and the basis upon which the Council has decided to take such action. The proposed Ordinance must stand on its own merits and withstand public scrutiny. Council members should be alarmed if told that such merits (if any) cannot be disclosed to the public because they are part

---

[1] Resolution 14.590 is further defective in that does not explain what facet of litigation involving the Sixth Street Embankment was to be discussed at closed session in the same way the meeting notice was itself defective for the same reason as expressed in our September 5, 2014 correspondence. We can certainly presume that it dealt with the OFA, but also have a right to know that.

[2] Burnett v. Gloucester County Bd. of Chosen Freeholders, 409 N.J.Super. 219, 976 A.2d 444 (A.D.2009)(Under the Open Public Meetings Act (OPMA), the subject under discussion must be the pending or anticipated litigation itself, i.e., the public body must be discussing its strategy in the litigation, the position it will take, the strengths and weaknesses of that position with respect to the litigation, possible settlements of the litigation or some other facet of the litigation itself.)

of some litigation "strategy". Public expenditures and public commitments are fully public business, even if they play some role in the overall litigation with the LLCs.

Notice of Ongoing Civil Rights Violation

By way of this correspondence and the correspondence of September 5, 2014 the City Council is made aware that it has acted in violation of the Sunshine Law. Under the circumstances, if the City Council proceeds to introduce Ordinance 14.103 tomorrow, September 10, 2014, such an act would not only be in further violation of the Sunshine Law, but would also be an additional and compound violation of the LLCs Civil Rights. Tumpson v. Farina, 218 N.J. 450 (2013) (the deprivation of a substantive statutory right gives rise to claims under the New Jersey Civil Rights Act).

Further Violations of the Sunshine Law

There is one further significant problem with the conduct of the Special Meeting. The Council never left closed caucus to close the meeting. A meeting cannot be adjourned in closed session. As noted in Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J.Super. 129, 382 A.2d 413, while the City Council may deliberate certain topics in closed session, it cannot act in closed session, but must do so before the public in open session.[3] There is the very real danger that the closed (secret) caucus will now at some point be resumed, and the minutes withheld indefinitely. This, coupled with the impermissible resolution giving corporation counsel unfettered discretion to indeterminately withhold disclosure of the minutes of the closed caucus, betrays an intent on the part of the City Council to never disclose to the public the true nature of its deliberations.

Additionally, should the City Council actually introduce proposed Ordinance 14.103, there are serious substantive deficiencies that would make the adoption and signing of the ordinance improper in a number of ways, including the outright violation of state and federal laws. We will withhold those objections in the hope that the City Council will reconsider its actions subjecting City officials, including council members, to personal liability and responsibility without the benefit of legislative immunity for their actions.

---

[3] It is noted that the closed session commenced at 5:05p.m. and ended at 6:25p.m., to permit the public to enter to attend the previously scheduled regular caucus of the City Council. The attorneys who attended the closed caucus, John Curley, Esq., and Charles Montagne, Esq., left the caucus at approximately 6:10pm, and Mayor Fulop joined the closed caucus at approximately 5:37p.m. Something of substance had to have been discussed in the almost hour and a half caucus, and the LLCs and the public have a right to know what that entailed.

OPRA and Common Law Records Request for Recording, Transcript and Minutes of the Caucus

Given the procedural and legal irregularities attendant to the closed session and the pending introduction of proposed Ordinance 14.103, we request a copy the minutes of the Closed Caucus meeting, if any, and of any stenographic or electronic recording of the caucus under the Open Public Records Act and our clients' Common Law Right of Access.

In response to this request the City cannot claim that the minutes are privileged under the terms of the Sunshine Law, as the Sunshine Law does not create a privilege, and in any event, the terms of the Sunshine Law were violated not only by way of the defective notice, but also by way of the defective nature of Resolution 14.590. The resolution (like the notice) was impermissibly vague as to what facet of litigation was to be discussed, and failed to mention that proposed Ordinance 14.103 was also slated to be discussed.

Moreover, Corporation Counsel cannot delay the release of this information despite Paragraph 2 of Resolution 14.590. In violation of the Sunhine Law, Resolution 14.590 leaves disclosure of information regarding the closed caucus to Corporation Counsel's discretion, and only then if he deems disclosure to be in the City's interests. This is not the rule nor the legal standard that applies. As recognized by Hartz Mountain Industries, Inc. v. New Jersey Sports & Exposition Authority, 369 N.J.Super. 175, 848 A.2d 793 (A.D.2004), even where closure is permissible, minutes of the closed meeting, as full as permitted by the nature of the exemption, must be promptly made available to the public. See also Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional Bd. of Educ., 212 N.J.Super. 328, 514 A.2d 1361.[4]

Based on the foregoing the LLCs and the Public have an immediate right to know the nature of the City Council's discussion prior to the introduction of proposed Ordinance 14.103, especially since the LLCs' objections to the closed session was made known to the Council, see Allan-Deane Corp. v. Bedminster Tp., 153 N.J.Super. 114, 379 A.2d 265 (A.D.1977), even if this would not be expedient to the City's interests.

Please distribute this letter to each member of the City Council, Mayor Fulop, the Corporation Counsel and the Chief Financial Officer upon receipt. Thank you.

---

[4] In the event that some of the discussion in closed caucus is legitimately within the attorney-client privilege, this still would not permit the complete non-disclosure of the recording and transcript. Under such a circumstance, any transcript, recording or minutes would then only subject to redaction not non-disclosure. The LLCs have an absolute right to know the actual nature of the discussion held.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

By: _____
Jorge R. de Armas

JRD:mg

cc:: President and Members of the City Council (via Municipal Clerk)
Hon. Steven M. Fulop, Mayor (via Municipal Clerk)
Jeremy Farrel Esq. (via Municipal Clerk)
Daniel E. Horgan, Esq.

822266.2

15

OP2014-895

Robert Byrne

From: DeArmas, Jorge [jdearmas@lawwmm.com]
Sent: Friday, September 05, 2014 10:30 AM
To: Robert Byrne
Cc: Horgan, Daniel
Subject: OPRA Request - 212 Marin Boulevard LLC - Ordinance 14.103

Importance: High

Dear Mr. Byrne,

We represent 212 Marin Boulevard, LLC a property owner whose property may be affected by Ordinance 14.103 slated to be considered at next week's City Council meeting.

Pursuant to the Open Public Records Act and the Common Law Right of Access we are requesting the following record be provided to us at via e-mail to my attention the following record:

1. A complete copy of the Resolution Purpose attached to proposed City Ordinance 14.103. (due to the printing error on the online pdf as discussed)

2. Copies of all approvals by the NJDOT or other State Agency Approval for Ordinance 14.103 as required by N.J.S.A. 40:9C-1.

   (as required by N.J.S.A. 40:9C-1 authorizing the City to into an agreement for the purpose of providing funds to maintain or increase public transportation service for mass transit purposes, or for the purpose of providing funds to maintain railroad freight line services, on established or expanded routes within the City and authorizing the City to into an agreement with a transportation company or railroad service for the provision of rail service).

   a. Copies of all applications and requests for approvals to the NJDOT or other State Agency for approval for Ordinance 14.103 as required by N.J.S.A. 40:9C-1, and correspondence related thereto, including grants or denials of such requested approval.

3. Copy of the ledger and journal for account #04-215-55-887-990 from 2005 forward, the account referenced in Ordinance 14.103

4. Copy of the entire ledger and journal for the Bond approved by Ordinance 10-085 the funds will be utilized by the actions to be considered for approved under the terms of Ordinance 14.103

Each of these requests are severable. As discussed, kindly forward us material as it is made available to you, even if you are still awaiting a response on other items, given the timing of the Council's consideration of the proposed ordinance.

Please provide us a copy to my attention via e-mail to jdearmas@lawwmm.com. If you have any questions, please let me know.

Thank you again,

Jorge.

Jorge R. de Armas
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, N.J. 07096

Telephone: (201) 863-4400
Direct Dial: (201) 319-5741
Facsimile: (201) 863-2866
E-Mail: jdearmas@lawwmm.com

****

-CONFIDENTIALITY NOTICE-

THE INFORMATION CONTAINED IN THIS TRANSMISSION, AND ANY ATTACHMENT THERETO, IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE SO THAT WE CAN ARRANGE FOR THE RETURN OF THE ORIGINAL DOCUMENTS TO US AT NO COST TO YOU.

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit http://www.symanteccloud.com

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Robert Byrne

From: John McKinney
Sent: Monday, September 15, 2014 2:38 PM
To: Robert Byrne
Subject: OP2014-895

Good afternoon, Robert. After discussing the matter with Michael Dougherty and Joanne Monahan, I've been informed that we have no documents that are responsive to point #2 in OPRA2014-895.

John McKinney
Assistant Corporation Counsel
City of Jersey City
Department of Law
280 Grove Street
Jersey City, New Jersey 07302
Telephone: 201-547-5179
Fax: 201-547-5230

16

State of New Jersey
Government Records Request
Receipt

Requestor Information

Jorge R de Armas
Waters, McPherson, McNeill, P.C.
300 Lighting Way
Secaucus, NJ 07096

jdearmas@lawwmm.com
201-319-5741

Request Date: September 5, 2014
Maximum Authorized Cost: $100.00
Email

Request Number: W89856
Request Status: Denied Closed
Ready Date:

Custodian Contact Information
New Jersey Dept. of Transportation and Transportation Trust Fund Authority
Records Custodian
New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, NJ 08625-0600
NJDOT.opra@dot.state.nj.us
609-530-8045
By: Maria C Jacobi

Status of Your Request

Your request for government records (# W89856) from the New Jersey Dept. of Transportation and Transportation Trust Fund Authority has been reviewed and has been Denied Closed. Detailed information as to the availability of the documents you requested appear below and on following pages as necessary.

The cost and any balance due for this request is shown to the right. Any balance due must be paid in full prior to the release / mailing of the documents.

If you have any questions related to the disposition of this request please contact the Custodian of Records for the New Jersey Dept. of Transportation and Transportation Trust Fund Authority. The contact information is in the column to the right. Please reference your request number in any contact or correspondence.

Cost Information

Total Cost:	$0.00
Deposit:	$0.00
Total Amount Paid:	$0.00
Balance Due:	$0.00

Document Detail

Div	Doc #	Doc Name	Redaction Req	Pages	Legal Size	Electronic Media	Other Cost
.DW	-	September 16, 2014	N		N	N	

Denial: 04.Exception by State Statute (specify) --- N.J.S.A. 47:1A-1 et. seq. – The records you have requested do not exist in our files based on the information provided. Therefore, this request is denied and closed effective today. Thank you for the opportunity to be of assistance.

Your request for government records (# W89856) is as follows:

Government Records Request

Receipt

Via e-mail (to Jdearmas@lawwmm.com) on behalf of 212 Marin Boulevard, LLC, we are requesting a copy of the (1) all approvals or denials by the NJDOT under N.J.S.A. 40:9C-1 authorizing the City of Jersey City to enter into an agreement for the purpose of providing funds to maintain or increase public transportation service for mass transit purposes, or for the purpose of providing funds to maintain railroad freight line services, on established or expanded routes within the City and authorizing the City to into an agreement with a transportation company or railroad service for the provision of rail service or otherwise authorizing an agreement with a transportation company or railroad service for the provision of rail service. And (2) Copies of applications and requests for approvals to the NJDOT for such authorization, grants or denials of such requested authorization, and correspondence related thereto.And (3) any authorization to the City of Jersey City for the approval of Jersey City Ordinance 14.103

DeArmas, Jorge

From: OPRA, NJDOT <njdot.opra@dot.nj.gov>
Sent: Tuesday, September 16, 2014 10:43 AM
To: DeArmas, Jorge
Subject: OPRA Request #W89856
Attachments: W89856.pdf

Upon further review, the records you have requested do not exist in our files based on the information provided. Therefore, this request is denied and closed; and the official Closure Receipt is attached.

Thank you for the opportunity to be of assistance.

OPRA Unit
NJDOT Custodian of Records
Office of Inspector General
Phone (609) 530-8045

AB - 167 - 1189 - X

EXHIBIT C

WATERS, MCPHERSON, MCNEILL
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www.lawwmm.com

JORGE R. DE ARMAS
MEMBER OF N.J. & N.Y. BARS
DIRECT DIAL
201-319-5741

E-MAIL
jdearmas@lawwmm.com
FAX
201-863-2866

January 13, 2015

VIA HAND DELIVERY
Clerk, Superior Court of New Jersey
Hudson County – Law Division
Administration Building
595 Newark Avenue
Jersey City, NJ 07304

RECEIVED
CUSTOMER SERVICE TEAM
JAN 13 2015
SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #3

Re: 247 Manila Avenue, LLC et al. v. City of Jersey City et al.
No. HUD-L-004954-14
Our File No. 0011151-000007

Request for Entry of Default Pursuant to R. 4:43-1

Dear Sir or Madam:

In regards to the above matter, on behalf of plaintiffs 247 Manila Avenue, LLC, 212 Marin Boulevard, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC enclosed for filing please find an original and two (2) copies of a Request for Entry of Default Pursuant to R. 4:43-1 and Certification of Jorge R. de Armas in support thereof (together with proof service dated January 13, 2015), in reference to the above captioned matter.

Kindly stamp one copy "filed" and return same to our awaiting messenger. Please charge our Account No.: 140373 for the appropriate filing fee.

Thank you for your attention to this matter

Very truly yours,

Waters, McPherson, McNeill, P.C.

By _____
Jorge R. de Armas

cc: Daniel E. Horgan
838461.1

Daniel E. Horgan, Esq. (00947-1975)
Eric D. McCullough, Esq. (02417-2001)
Jorge R. de Armas, Esq. (03718-2003)
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, New Jersey 07096
Tele. (201) 863-4400
Fax. (201) 863-2866
Attorneys for Plaintiffs

RECEIVED
JAN 13 2015
MARY K. COSTELLO, P.J. Civil

247 MANILA AVENUE, LLC;
212 MARIN BOULEVARD; LLC;
280 ERIE STREET, LLC;
317 JERSEY AVENUE, LLC;
354 COLE STREET, LLC;
389 MONMOUTH STREET, LLC;
415 BRUNSWICK STREET, LLC; and
446 NEWARK AVENUE, LLC,

Plaintiffs,

vs.

CITY OF JERSEY CITY and DONNA MAUER, In Her Official Capacity as Chief Financial Officer of the City of Jersey City

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Docket Number: HUD-L-004954-14

Civil Action

CERTIFICATION OF SERVICE

RECEIVED
CUSTOMER SERVICE TEAM
JAN 13 2015
SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #3

JORGE R. DE ARMAS, ESQ., of full age, says:

1. I am an attorney at law of the State of New Jersey and a member of the law firm Waters, McPherson, McNeill, P.C., attorneys for Plaintiffs 247 Manila Avenue, LLC, 212 Marin Boulevard, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC, in the above-captioned matter.

1. I hereby certify that on the foregoing date, I cause an original and two copies of the Request for Entry of Default and accompanying Certification of Jorge R. de Armas, Esq., to be filed via messenger with the Clerk, Hudson County Superior Court, Administration Building,

595 Newark Avenue, Jersey City, NJ 07304.

2. I further certify on the foregoing date, I caused one copy of the Request for Entry of Default and accompanying Certification of Jorge R. de Armas, Esq., to be served via messenger on the following:

Trial Team #2
Superior Court of New Jersey
Hudson County Civil Division
583 Newark Avenue
Jersey City, NJ 07306

and

Honorable Mary K. Costello, J.S.C.
Superior Court of New Jersey – Law Division
Administration Building
595 Newark Avenue
Jersey City, NJ 07304

3. I further certify on the foregoing date, I caused one copy of the Request for Entry of Default and accompanying Certification of Jorge R. de Armas, Esq., to be served via ordinary mail on the following:

Defendant City of Jersey City
c/o Robert Byrne, RMC, Clerk
City of Jersey City
280 Grove Street
Jersey City NJ, 07302

City of Jersey City
280 Grove Street
Jersey City NJ, 07302

and

Defendant Donna Mauer, in her official capacity as Chief Financial Officer of the City of Jersey City
c/o Robert Byrne, RMC, Clerk
City of Jersey City
280 Grove Street
Jersey City NJ, 07302

Donna Mauer, in her official capacity as Chief Financial Officer of the City of Jersey City
280 Grove Street
Jersey City NJ, 07302

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Jorge R. de Armas, Esq.

Dated: January 13, 2015

838464.1

Daniel E. Horgan, Esq. (00947-1975)
Eric D. McCullough, Esq. (02417-2001)
Jorge R. de Armas, Esq. (03718-2003)
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, New Jersey 07096
Tele. (201) 863-4400
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Attorneys for Plaintiffs

247 MANILA AVENUE, LLC; 212 MARIN BOULEVARD; LLC; 280 ERIE STREET, LLC; 317 JERSEY AVENUE, LLC; 354 COLE STREET, LLC; 389 MONMOUTH STREET, LLC; 415 BRUNSWICK STREET, LLC; and 446 NEWARK AVENUE, LLC, Plaintiffs, vs. CITY OF JERSEY CITY and DONNA MAUER, In Her Official Capacity as Chief Financial Officer of the City of Jersey City Defendant(s)	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY Docket Number: HUD-L-004954-14 Civil Action **CERTIFICATION OF JORGE R. De ARMAS**

RECEIVED
CUSTOMER SERVICE TEAM
JAN 13 2015
SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION #3

I, Jorge R. de Armas, hereby certify as follows:

1. I am attorney at law of the State of New Jersey, and an associate of the firm of Waters, McPherson, McNeill, P.C. I am personally aware of the facts set forth in this certification based on my work as an attorney in this matter.

2. The present action was filed on November 7, 2014.

3. The Defendants City of Jersey City and Donna Mauer, in her official capacity as Chief Financial Officer of the City of Jersey City were served with summonses issued within the time required by Court Rule and in the form required by Court Rule along with copies of the Complaint, Track Assignment Notice, and Civil Case Information Statement in this action by

759882v2

process server on November 25, 2014 as set forth in the attached Affidavit of Service (Exhibit A).

4. Proof of such service by way of the filing of the Affidavit of Service (a true copy of which is attached as Exhibit A hereto) was filed with the Clerk of the Court and the Honorable Mary K. Costello, J.S.C., on December 3, 2014.

5. The time in which the defendants may have answered or otherwise moved as to the Complaint expired on December 30, 2014, and such time has not been extended.

6. Neither defendant City of Jersey City nor Donna Mauer, in her official capacity as Chief Financial Officer of the City of Jersey City have answered or otherwise moved as to the Complaint.

7. No appearance by counsel on behalf of any defendant has been made in this action.

8. The foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me or willfully false, I am subject to punishment.

By: _____
Jorge R. de Armas

Dated: January 13, 2015.

EXHIBIT A

C

WATERS, McPHERSON, McNEILL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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JORGE R. DE ARMAS
MEMBER OF N.J. & N.Y. BARS

DIRECT DIAL
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FAX
201-863-2866

December 3, 2014

VIA UPS OVERNIGHT MAIL
Trial Team #2
Superior Court of New Jersey
Hudson County Civil Division
583 Newark Avenue
Jersey City, NJ 07306

Re: 247 Manila Avenue, et al. v. City of Jersey City, et al.
Docket No.: HUD-L-4954-14
Affidavit of Service for Filing

Dear Sir/Madam:

Enclosed on behalf of Plaintiffs please find an original and two (2) copies of Plaintiffs' Affidavit of Service of the Summons, Track Assignment Notice and Complaint in the above-captioned matter as to all defendants.

Kindly file the enclosed, returning a copy marked "filed". A return envelope is provided. Please charge our Superior Court Account #140373 for all applicable filing fees.

Thanks for your attention to this matter.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

By: _____
Jorge R. de Armas

JRD/kd
Encls.
cc: Honorable Mary K. Costello, J.S.C. (w/encls.) (via UPS Overnight Mail)

833855.1

_____ Delivered a copy to him/her personally

Municipal Clerk's Office

_____ Left a copy with a competent household member over 14 years of age residing therein (indicate name and relationship at right)

X Left a copy with a person authorized to accept service, e.g., managing agent, registered agent, etc. (indicate name and official title at right)

Description of Person Accepting Service:

Sex: M Age: 40's Height: 6'0" Weight: 210 Skin Color: B Hair Color: Brown

Unserved:

( ) Defendant is unknown at the address furnished by the attorney
( ) All reasonable inquiries suggest defendant moved to an undetermined address
( ) No such street in municipality
( ) No response on: _____ Date _____ Time
_____ Date _____ Time
( ) Other: _____ Comments or Remarks: _____

Person to be served: Donna Mauer in Her Official Capacity as Chief Financial Officer of the City of Jersey City
280 Grove Street
Jersey City, NJ 07302

Papers served: Summons
Complaint
Track Assignment Notice
Civil Case Information Statement

Service Data:
Served Successfully x Not Served _____ Date: 11/25/14 Time 11:30 AM Attempts 1

Method of Service

_____ Delivered a copy to him/her personally

_____ Left a copy with a competent household member over 14 years of age

Name of Person Served and Relationship/title:
Juan Puig, Clerk
Municipal Clerk's Office

_____

residing therein (indicate name and relationship at right)

X Left a copy with a person authorized to accept service, e.g., managing agent, registered agent, etc. (indicate name and official title at right)

Description of Person Accepting Service:

Sex: M Age: 40's Height: 6'0" Weight: 210 Skin Color: Brown Hair Color: Brown

Unserved:

( ) Defendant is unknown at the address furnished by the attorney
( ) All reasonable inquiries suggest defendant moved to an undetermined address
( ) No such street in municipality
( ) No response on: _____ Date _____ Time
_____ Date _____ Time
( ) Other: _____ Comments or Remarks: _____

Person to be served: **Donna Mauer in Her Official Capacity as Chief Financial Officer of the City of Jersey City**
280 Grove Street
Jersey City, NJ 07302

Papers served:
Summons
Complaint
Track Assignment Notice
Civil Case Information Statement

Service Data:
Served Successfully x Not Served _____ Date: 11/25/14 Time 12 Noon Attempts 2

Method of Service	**Name of Person Served and Relationship/title:**
_____ Delivered a copy to him/her personally	Lorraine Cecchini Secretary
_____ Left a copy with a competent household member over 14 years of age residing therein (indicate name and relationship at right)	
X Left a copy with a person authorized to accept service, e.g., managing agent, registered	

agent, etc. (indicate name and official title at right) _____

Description of Person Accepting Service:

Sex: F Age: 40's Height: 5'4" Weight: 130 Skin Color: W Hair Color: BRUNETTE

Unserved:

( ) Defendant is unknown at the address furnished by the attorney
( ) All reasonable inquiries suggest defendant moved to an undetermined address
( ) No such street in municipality
( ) No response on: _____ Date _____ Time
_____ Date _____ Time
( ) Other: _____ Comments or Remarks: _____

Server Data:

Subscribed and Sworn to me this 2ND day of DECEMBER 2014

Dorotea Favuzzi

833302.1

DOROTEA FAVUZZI
A NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES AUGUST 13, 2015

I, MICHAEL MARONE, was at the time of service a competent adult not having a direct interest in the litigation. I declare under penalty of perjury that the foregoing is true and correct.

12/2/14
Date