

Borough of Fair Lawn



May 10, 2022

RESOLUTION NO. 184-2022

EXECUTIVE CLOSED SESSION – May 10, 2022

WHEREAS, N.J.S.A.10:4-12b allows a public body to enter into a closed session during a public meeting; and

WHEREAS, upon conclusion of the closed session, the Borough Council will return to open public session; and

WHEREAS, the Borough of Fair Lawn has deemed it necessary to enter into a closed session, excluding the public, to discuss matters that are exempt from disclosure pursuant to law for the following reason(s):

- A matter which, by express provision of federal law, State statute, or rule of court shall be rendered confidential;
- A matter in which the release of information would impair a right to receive funds from the Government of the United States;
- Disclosure of material that would constitute an unwarranted invasion of individual privacy pursuant to N.J.S.A. 10:4-12b(3);
- Collective bargaining agreements, including proposed terms and conditions and negotiations;
- A matter involving the purchase, lease, or acquisition of real property with public funds, the setting of banking rates, or investment of public funds;
- Tactics and techniques utilized in protecting the safety and property of the public;
- ✘ Pending or anticipated litigation or contract negotiation, other than collective bargaining agreements, in which the public body is or may become a party, or matters falling within the attorney-client privilege;
- Personnel matters pursuant to N.J.S.A. 10:4-12b(8);
- Deliberations of a public body occurring after a public hearing,

NOW, THEREFORE, BE IT RESOLVED that the Borough Council will go into closed session for the foregoing reason(s) as permitted by N.J.S.A. 10:4-12b, and

BE IT FURTHER RESOLVED that the discussion in closed session may be made public when the need for confidentiality no longer exists as when disclosure of the discussion will not detrimentally affect any right, interest or duty of the Borough with respect to such discussion; and

BE IT FURTHER RESOLVED that the Borough Council shall now enter into closed session from which the public is hereby excluded for the purpose of discussing the aforesaid matter(s).

	Motion	Second	Aye	Nay	Abstain	Absent
Reinitz	X		X			
Rottenstrich			X			
Krause		X	X			
Cutrone			X			
Peluso			X			

The within Resolution was duly adopted by the Borough Council at their meeting of May 10, 2022.



Nicholas Magarelli
Acting Municipal Clerk

Borough of Fair Lawn



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	Motion	Second	Aye	Nay	Abstain	Absent
Reinitz		X	X			
Rottenstrich			X			
Krause			X			
Cutrone	X		X			
Peluso			X			

The within Resolution was duly adopted by the Borough Council at their meeting of May 10, 2022.



Nicholas Magarelli
Acting Municipal Clerk

Borough of Fair Lawn



May 10, 2022

RESOLUTION NO. 186-2022

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT WITH PACER PARTNERS FOR REQUESTED RE-ZONING OF CLARIANT PROPERTY

WHEREAS, Pacer Partners ("Pacer") has made a request to the Borough of Fair Lawn (the "Borough") for the re-zoning of property (the "Request") located at 14-00 3rd Street, also known as Block 5729, Lot 2, commonly referred to as the Clariant Site (the "Property"); and

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.*, as amended and supplemented ("MLUL"), provides a process for municipalities to re-zone properties and to require the posting of an escrow deposit to cover professional costs incurred by the municipality for services provided pursuant to the MLUL; and

WHEREAS, the Borough has and will incur certain costs including professional consultants such as attorneys, planners and engineers and any other costs which the Borough deems are related to the Request (the "Professional Costs"); and

WHEREAS, the Pacer has been requested to pay for the Professional Costs through the deposit of \$10,000.00 in an escrow fund to be administered by the Borough (the "Escrowed Funds") in accordance with the MLUL; and

WHEREAS, the Borough and Pacer have agreed to the terms and conditions of an escrow agreement requiring the Escrowed Funds and payment of the Borough's Professional Costs; and

WHEREAS, Pacer has submitted its signature on the escrow agreement and provided a check to the Borough in the amount of \$10,000 for the Escrowed Funds.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Fair Lawn, in the County of Bergen and State of New Jersey as follows:

- 1) That the references and definitions used in the recitals above be and are hereby included as a part of this Resolution; and
- 2) That it hereby approves an escrow agreement with Pacer Partners in a form substantially consistent with that attached hereto and made part of this Resolution; and

BE IT FURTHER RESOLVED that the Borough Council authorizes the Mayor and Municipal Clerk to execute any documents, including the escrow agreement, subject to the review and approval of such documents by the Borough Attorney; and

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

	Motion	Second	Aye	Nay	Abstain	Absent
Reinitz		X	X			
Rottenstrich			X			
Krause			X			
Cutrone	X		X			
Peluso			X			

The within Resolution was duly adopted by the Borough Council at their meeting of May 10, 2022.



Nicholas Magarelli
Acting Municipal Clerk

EXHIBIT A
ESCROW AGREEMENT

This **ESCROW AGREEMENT** made this ___ day of May 2022, by and among the BOROUGH OF FAIR LAWN, a body corporate and politic of the State of New Jersey with offices at 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey 07410 (the "Borough") and PACER PARTNERS, 7 East Ridgewood Avenue, 2nd Floor, Ridgewood, New Jersey 07450 (hereinafter referred to as the "Pacer") (collectively, the "Parties").

WITNESSETH

WHEREAS, Pacer has made a request to the Borough for the re-zoning of property (the "Request") located at 14-00 3rd Street, also known as Block 5729, Lot 2, commonly referred to as the Clariant Site (the "Property"); and

WHEREAS, the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., as amended and supplemented ("MLUL"), provides a process for municipalities to re-zone properties and to require the posting of an escrow deposit to cover professional costs incurred by the municipality for services provided pursuant to the MLUL; and

WHEREAS, the Borough has and will incur certain costs including professional consultants such as attorneys, planners and engineers and any other costs which the Borough deems are related to the Request (the "Professional Costs"); and

WHEREAS, the Pacer has been requested to pay for the Professional Costs through the deposit of \$10,000.00 in an escrow fund to be administered by the Borough (the "Escrowed Funds") in accordance with the MLUL; and

NOW, THEREFORE, in consideration of the mutual promises and covenants, and other good and valuable consideration, the parties hereto agree as follows:

1. The Borough agrees to serve as Escrow Agent as set forth in this Escrow Agreement.

2. Escrow Agent shall deposit the Escrowed Funds in a separate interest-bearing account maintained by Escrow Agent. Interest earned shall accrue to the party entitled to the Escrowed Funds. The custodian of the account shall be the Treasurer. When charges for Professional Costs are received by the custodian of the Escrowed Funds, the amounts shall be transferred to the general fund of the Borough for approval and disbursements. Use of the Escrowed Funds shall be subject to the same standards set forth in *N.J.S.A. 40:55D-53.2* with respect to escrows under the Municipal Land Use Law.

3. The parties acknowledge that additional Escrowed Funds may be required at any time until the re-zoning requested has been fully approved and effective or the parties agree to no longer pursue the re-zoning. The Borough shall request the additional Escrowed Funds in writing. The Pacer shall be required to pay such additional Escrowed Funds within fifteen (15) days of the Borough's written request.

4. The Professional Costs shall be charged in accordance with any professional service contracts authorized and approved by the Borough. All payments for Professional Costs shall be pursuant to charges from any professionals which state the hours spent, the hourly rate and the expenses incurred.

5. Upon the re-zoning requested having been fully approved and effective or the parties agree to no longer pursue the re-zoning, the Escrow Agent shall render a written final accounting to the Pacer on the uses of the Escrowed Funds. In the event the Pacer desires an accounting of the expenses or fees paid for Professional Costs prior to such time, it may request such in writing to Escrow Agent.

6. Upon termination of this Escrow Agreement, any Escrowed Funds not expended shall be returned to the Pacer by the Escrow Agent.

7. Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Escrow Agreement.

8. This Escrow Agreement shall be governed by and construed in accordance with the local substantive and procedural laws of the State of New Jersey. The parties agree that any action instituted regarding this Escrow Agreement shall be filed in Bergen County, New Jersey. Each party hereby consents to the jurisdiction and venue of any such court selected by the Escrow Agent for an interpleader action or for other purposes. The parties hereto irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to it at its address specified in this Escrow Agreement. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The parties hereto waive any objection to venue in such state and any objection to an action or proceeding in such state on the basis of forum non conveniens.

9. This Escrow Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, successors and assigns. This Escrow Agreement may be amended, modified, superseded, waived or cancelled only by a written instrument executed by all the parties hereto.

10. The failure of a party to insist upon strict adherence to any term of this Escrow Agreement on any occasion shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of this Escrow Agreement. Any waiver must be in writing signed by the party to be charged.

11. This Escrow Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which, when taken together, shall be deemed one and the same instrument.

12. Any notices, demands and communications between the Borough and the Pacer shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of deliver is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as any party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

ESCROW AGENT

Treasurer/CFO
Borough of Fair Lawn
8-01 Fair Lawn Avenue
Fair Lawn, New Jersey 07410

PACER:

Pacer Partners
7 East Ridgewood Avenue, 2nd Floor
Ridgewood, New Jersey 07450

IN WITNESS WHEREOF the parties have hereunto executed this Agreement as of the day and year first above written.

FILE COPY - No Signature Required

PACER PARTNERS

By: _____

Name: _____

BOROUGH OF FAIR LAWN

By: _____
Nicholas Magarelli
Municipal Clerk

By: _____
Kurt Peluso
Mayor