



Legislation Details (With Text)

File #: 19-0249 **Version:** 1 **Name:** First Amendment to Settlement Agreement
Celanese v. City of Newark - Pre-Suit Litigation
Settlement

Type: Resolution **Status:** Adopted

File created: 2/7/2019 **In control:** Law

On agenda: **Final action:** 3/6/2019

Title: Dept/ Agency: Law
 Action: (X) Ratifying (X) Authorizing () Amending
 Purpose: First Amendment to the Settlement Agreement regarding the remediation of soils at the Ironbound Recreation Football Fields
 Docket No.:N/A
 Claimant: CNA Holdings, LLC., successor to HNA Holdings, Inc., f/k/a Hoechst Celanese Corporation
 Claimant's Attorney: John A. King, Esq., Assistant General Counsel
 Attorney's Address: Celanese Corporation, 222 W. Las Colinas Boulevard, Suite 900N, Irving, Texas 75039
 Settlement Amount: \$1,668,000.00
 Funding Source: Various CDBG funds - see attached list with funding codes
 Additional Comments:
 Settlement Agreement and Release was approved by the Municipal Council on September 26, 2017 7R6-b(s/as)
 First Amendment to the Agreement regarding the remediation of soils at the Ironbound Recreation Football Fields.
 Amending Agreement increases costs associated with the remediation obligations and redevelopment of the fields to include improvements to the bleachers and installation of a press box; additional costs associated with the removal of all soils belonging to or contaminated by the soil stockpiles located on the site at the time the original Agreement was entered on September 26, 2017; and to reimburse CNA for any and all costs over \$100,000.00 incurred by CNA during the completion of work described in the Final Integrated Design and Appendix A.
 Invitation: Corporation Counsel

Sponsors: Augusto Amador, Carlos M. Gonzalez

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
3/6/2019	1	Municipal Council	Adopt	Pass

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Invitation: Corporation Counsel

WHEREAS, on September 26, 2017, the Newark Municipal Council approved the Settlement Agreement and Release regarding an area in the Ironbound Section of Newark, commonly referred to as “A Field” or the Ironbound Recreation Playing Field and Football Field Site; and

WHEREAS, the Newark Municipal Council approved the Settlement Agreement and Release between the Parties on September 26, 2017 regarding the Remediation of Soils at the Ironbound Recreation Football Fields (“the Agreement”) which allocated the funding of and responsibility for specific tasks associated with the remediation and redevelopment of the Site; and

WHEREAS, the Parties wish to amend the Agreement to include limited, one-time, improvements to the Bleachers and Press Box (“Bleachers”) adjacent to the Site as described in Appendix A to this First Amendment (“Appendix A”)

WHEREAS, the Parties wish to amend the Agreement to reallocate the costs associated with the handling, characterization, disposal, and/or reuse of soil stockpiles present on the site at the time of the Agreement; and

WHEREAS, the Parties wish to amend the Agreement to adjust the reimbursement schedule for the costs associated with the redevelopment of the Site; and

WHEREAS, the Parties are entering this First Amendment to memorialize the changes to the Agreement set forth below pursuant to the provisions in Paragraph 13 of the Agreement; and

WHEREAS, the Parties wish to amend the Agreement as follows:

1. **BLEACHERS RENOVATIONS.** The following is effectively added to the Agreement in Section 1 CNA’s OBLIGATIONS as Paragraph j to accommodate additional improvements to the Bleachers:

j. In addition to the obligations above, CNA shall also perform additional work described in Appendix A, as directed by the City and subject to timely reimbursement from the City as described in paragraphs 2(e) and (i).

2. **SOIL STOCKPILES.** The following is effectively added to the Agreement in Section 3 ALLOCATION OF OTHER COSTS as Paragraph b to address the soil stockpiles and will replace Paragraph 3(a)(iii), which is hereby nullified and struck from the Agreement:

b. The City will pay 80% and Celanese will pay 20% of any and all costs associated with the removal of all soils belonging to or contaminated by the soil stockpiles located on the Site at the time the Agreement was entered (September 26, 2017).

3. **REIMBURSEMENT OF PROJECT COSTS.** Paragraph 2I will be revised as follows:

e. The City shall reimburse CNA for any and all costs over \$100,000.00 incurred by CNA during the completion of work described in the Final Integrated Design and Appendix A beyond CNA's obligations in paragraphs 1(a) through I above, pursuant to the terms of paragraph 2(i) below; and

WHEREAS, pursuant to the First Amendment, the City represents and warrants that as of the effective date of this First Amendment, One Million, Six Hundred Sixty-Eight Thousand Dollars and Zero Cents, (\$1,668,000.00) has been or will be deposited in a separate account ("Project Account") which shall be used solely to pay the City's share of projected costs associated with the above mentioned amendments; and

WHEREAS, the Corporation Counsel, after consultation with the Business Administrator and the Director of the Department of Engineering, and based upon all facts and circumstances, deems it is in the best interests of the City of Newark to amend the Agreement, without the need and expense of litigation.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. The Mayor, the Director of the Department of Engineering and the Corporation Counsel are authorized to execute the First Amendment to the Agreement Regarding the Remediation of the Soils at the Ironbound Recreation Football Fields ("the Agreement") that was approved by the Municipal Council on September 26, 2017.
2. The Mayor, the Director of the Department of Engineering, and the Corporation Counsel are authorized to obtain and execute any other documents sufficient in form and content to the Corporation Counsel and take whatever actions necessary to effectuate the terms of the within resolution pursuant to the terms contained in this Resolution, Agreement Regarding the Remediation of the Soils at the Ironbound Recreation Football Fields and the First Amendment to the Agreement.
3. This First Amendment to the Agreement is ratified from the date of adoption by the Municipal Council to September 26, 2017 the date that the Agreement was approved.
4. The Director of Finance and the Budget Director hereby represent that there are sufficient legally appropriated funds, in the amount of One Million, Six Hundred Sixty-Eight Thousand Dollars and Zero Cents (\$1,668,000.00) which are budgeted solely for the City's costs associated with this Project (See attachment with Funding Codes and available amounts).
5. The Director of Finance is hereby authorized to establish a separate account ("the Project Account") in which One Million, Six Hundred Sixty-Eight Thousand Dollars and Zero Cents (\$1,668,000.00) shall be deposited to cover the City's share of projected costs under the First Amendment of the Agreement.

6. The Director of Engineering shall file a copy of the fully executed First Amendment to the Agreement in the Office of the City Clerk.

STATEMENT

Resolution ratifying and authorizing the Mayor, the Director of the Department of Engineering and the Corporation Counsel to execute the First Amendment to the Agreement Regarding the Remediation of the Soils at the Ironbound Recreation Football Fields. The City is allocating \$1,668,000.00 to pay for its share of the project costs, and CNA Holdings LLC, successor to HNA Holdings, Inc., f/k/a Hoechst Celanese Corporation, will be responsible for the cost of carrying out and completing its remediation obligations. The City agrees to reimburse CNA for costs incurred over \$100,000.00 during the completion of work in the Final Integrated Design stage. Upon completion of CNA's remediation obligations, the City releases CNA, in part.