



Legislation Text

File #: 18-0211, Version: 1

Dept/ Agency: Economic and Housing Development

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

Type of Service: Indemnity Agreement

Purpose: Authorizing the Execution of an Indemnity Agreement with Doremus Newark, LLC, Doremus Newark II, LLC, El Sid Properties LLC, and Equity Industrial Partners from Any Claims of Bodily Injury Arising Out of the Operation of the Firing Range on the Motiva Site

Additional Information:

Entity Name: Doremus Newark, LLC, Doremus Newark II, LLC, El Sid Properties LLC, and Equity Industrial Partners

Entity Address: Doremus Newark, LLC: 20 Pickering St., Needham, MA 02492; Doremus Newark II, LLC: Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801; El Sid Properties LLC: Care of Victor Herlinsky at Sills Cummis & Gross, P.C.; and Equity Industrial Partners: 20 Pickering Street, Needham, Massachusetts 02492

(Address/Block/Lot/Ward)

740-768 Doremus Avenue/Block 5074/ Lots 5, 9, 9.01/East Ward

WHEREAS, on or about July 1, 1993, the City entered into a Lease Agreement whereby the City leased a portion of certain real property located upon Block 5074, Lots 5, 9 and 9.01 on the tax map of the City of Newark (on the southerly side of Delancey Street) (the "Leased Property") to be utilized as the City of Newark Police Department's Firearms Training Facility and shooting range (the "Firing Range") until August 31, 2008 in exchange for One Dollar and Zero Cents (\$1.00) per year plus payment of the property taxes by the City (the "Lease Agreement"); and

WHEREAS, by Deed dated May 25, 2005, and recorded with the Essex County Register in Book 6194, page 186, Doremus Newark, LLC ("Doremus") acquired a 53-acre parcel of land comprising Block 5074, Lots 5, 9 and 9.01 ("Motiva Site") from Motiva Enterprises, LLC ("Motiva"), a portion of which was expressly subject to the Lease Agreement and as such, was assigned from Motiva to Doremus in the transaction; and

WHEREAS, on or about June 15, 2009, Doremus leased 35.21 acres of the Motiva Site to Ironbound Intermodal Industries, Inc. ("Ironbound") subject to the "Rights of Newark Police Department under an unrecorded lease" ("Original Ironbound Lease"); and

WHEREAS, by agreement dated August 17, 2010, Doremus Newark II, LLC ("Doremus II"), an entity which on said date was comprised only of Doremus as the sole Member, entered into a Redevelopment Agreement with the City whereby: (i) the City would convey to Doremus II the City-owned adjacent parcel located upon Block 5074, Lot 1 (the "Central Steel Site"); (ii) Doremus II would redevelop the "Property," which was collectively defined as the Motiva Site and the Central Steel Site; and (iii) Doremus II would construct the "Project" which would comprise a 200,000 sq. ft. facility that would generate at least 200 full time jobs (the "Facility") and a new, 2.85 acre gun range to be leased

and utilized by the City for at least 99 years at \$1/year (the “New Gun Range”) (the “Redevelopment Agreement”); and

WHEREAS, the New Gun Range would be located upon an unspecified portion of the Central Steel Site, and the remainder of the Central Steel Site would be subject to the redevelopment (i.e. the Facility); and

WHEREAS, El Sid Properties, LLC (“El Sid”) was a 50% member of Doremus and thus was an indirect owner of 50% of Doremus II; and

WHEREAS, on or about June 25, 2013, the Original Ironbound Lease was replaced by a new lease agreement (the “New Ironbound Lease”); and

WHEREAS, both the Original Ironbound Lease and the New Ironbound Lease were made expressly subject to the City’s utilization of that portion of the Property which was utilized as the Firing Range; and

WHEREAS, on or about October 20, 2016, pursuant to the terms of a Confidential Settlement Agreement and Release arising out of certain litigation which was commenced in December 2013 by and between the Doremus entities and their Members (the “Settlement Agreement”), *inter alia*, Doremus assigned and transferred 100% of its interest in Doremus II to El Sid, which resulted in El Sid owning 100% of the interests in Doremus II and thus, also in the Redevelopment Agreement; and

WHEREAS, pursuant to a letter from the Department of Economic and Housing Development of the City of Newark dated October 18, 2016, a copy of which is attached hereto as **Exhibit A** (the “Transfer Letter”), *inter alia*, the City of Newark authorized, approved and consented to the transfer of Doremus’ interest in Doremus II, and thus, also in the Redevelopment Agreement, to El Sid; and

WHEREAS, Doremus, Doremus II and Equity Industrial Partners (“EIP”) acknowledge that pursuant to the Settlement Agreement, ownership interest in the Property was allocated among the parties such that the Motiva Site would continue to be owned solely by Doremus, owned 100% by EIP and/or its affiliates as a result of the terms of the Settlement Agreement, and the sole right to acquire the Central Steel Site under the Redevelopment Agreement would be assigned to El Sid; and

WHEREAS, the Firing Range currently occupies the Motiva Site, which is now owned by Doremus, an entity which no longer has any interest in the Redevelopment Agreement or the right to acquire the Central Steel Site; and

WHEREAS, the Settlement Agreement, to which the City was not a signatory and with which the City has not been provided a copy, provides for, *inter alia*, El Sid to acquire the Central Steel Site from the City for construction of the New Gun Range and Facility; and

WHEREAS, because Doremus no longer has any interest in acquiring the Central Steel Site pursuant to the terms of the Settlement Agreement, Doremus demanded that the Firing Range vacate the parcel; and

WHEREAS, moving the Firing Range to a different location is not feasible at this time and would interrupt the operation of the Firing Range to the substantial detriment of the City’s Police

Department and thus, the public; and

WHEREAS, the parties have engaged in substantial discussions in order to resolve the issue, and as a result, have arrived at the following understanding: (i) the Firing Range may continue to operate on the Motiva Site under the current circumstances and in return, the City will indemnify the owner of the Motiva Site for any claims of bodily injury arising out of the operation of the Firing Range, pursuant to the terms of the interim Indemnity Agreement attached hereto as **Exhibit B** (the "Indemnity Agreement"); (ii) the Firing Range cannot be evicted during the term of the Indemnity Agreement; and (iii) the City and El Sid shall continue to make good faith effort to amend the Redevelopment Agreement in order to address El Sid's obligation to provide the Facility and the New Gun Range; and

WHEREAS, the Indemnity Agreement is intended to be an interim agreement, governing certain obligations of the Parties until such time as the New Gun Range is delivered by El Sid and the Firing Range can be vacated from the Motiva Site.

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

1. The Mayor and/or his designee the Acting Director of the Department of Economic and Housing Development, is authorized to execute the Indemnity Agreement in the form attached hereto as **Exhibit B**.

2. The Mayor and/or his designee the Acting Director of the Department of Economic and Housing Development, shall place a copy of the executed Indemnity Agreement on file in the Office of the City Clerk.

3. This Resolution shall take effect immediately.

STATEMENT

This Resolution authorizes the execution of an Indemnity Agreement whereby the City will indemnify Doremus Newark, LLC, Doremus Newark II, LLC, El Sid Properties LLC, and Equity Industrial Partners from claims of bodily injury arising out of the operation of the Firing Range on the Motiva Site.