



Legislation Text

File #: 19-0827, Version: 1

Dept./ Agency: Economic and Housing Development

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

Type of Service: Indemnity Agreement

Purpose: Authorizing the execution of an Agreement to extend the Interim Indemnity Agreement from any claims of bodily injury arising out of the operation of the Firing Range on the Motiva Site

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

Entity Address: Doremus Newark, LLC, 20 Pickering Street, Needham, Massachusetts 02492; Doremus Newark II, LLC, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 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

Agreement Period:

List of Property: (if applicable)

(Address/Block/Lot/Ward)

Block 5074, Lots 5, 9, and 9.01 on the southerly side of Delancey Street, Newark, New Jersey (East Ward)

Additional Information:

The City wishes to extend the Interim Indemnity Agreement to continue to indemnify 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 until September 30, 2019.

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 \$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," defined as "collectively" the Motiva Site and the Central Steel Site; and (iii) "the Project" as defined in the Redevelopment Agreement would comprise a 200,000 square foot facility which would generate at least 200 full time jobs (the "Facility") and a new, 2.85 acre gun range to be utilized by the City for at least 99 years, at the annual rental \$1.00 per year (the "New Gun Range") (the "Redevelopment Agreement"), a copy of which is attached hereto as **Attachment A**; and

WHEREAS, the New Gun Range would be located upon an unspecified portion of the Property; and

WHEREAS, El Sid Properties, LLC ("El Sid") was a 50% member of Doremus Newark, LLC and thus was an indirect owner of 50% of Doremus Newark II, LLC; 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 Motiva Site which was utilized as the Firing Range; and

WHEREAS, the City has been advised that 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"), Doremus, *inter alia*, assigned and transferred 100% of its interest in Doremus II, together with any obligations regarding the current Firing Range and the provision of the New Gun Range, 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 City dated October 18, 2016, a copy of which is attached hereto as **Attachment B** (the "Transfer Letter"), *inter alia*, the City of Newark consented to the transfer of Doremus' interest in Doremus II, and thus, the obligations and benefits of the Redevelopment Agreement, to El Sid; and

WHEREAS, Doremus Newark, LLC, Doremus Newark I, LLC and Equity Industrial Partners ("EIP") advised the City 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, 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, and the Redevelopment Agreement contemplates the relocation of the Firing Range/construction of a New Gun Range such that the City will vacate the Motiva Site; and

WHEREAS, the City is advised that the Settlement Agreement, to which the City was not a signatory and with which the City has not been provided a copy, expressly provides for, *inter alia*, El Sid to acquire the Central Steel Site from the City to provide/construct the New Gun Range; and

WHEREAS, by Resolution 7R2-n adopted by the Municipal Council of the City of Newark on March 7, 2018, the City, Doremus, Doremus II, EIP and El Sid entered into an Interim Indemnity Agreement (the "Indemnity Agreement"), a copy of which is attached hereto as **Attachment C**, which was and continues to be intended as an interim agreement, governing certain obligations of the Parties until such time as the New Gun Range is delivered by El Sid without negatively impacting public safety; and

WHEREAS, the Parties agreed that the Indemnity Agreement would expire either upon the vacation of the Firing Range from the Motiva Site or upon the one (1) year anniversary of the full execution of the Indemnity Agreement, whichever would occur sooner; and

WHEREAS, the Indemnity Agreement was fully executed on or about May 16, 2018; and

WHEREAS, the City and El Sid are currently negotiating and finalizing a First Amendment to the Redevelopment Agreement ("First Amendment") which is intended to address: (i) the conveyance of the Central Steel Site to the Redeveloper; (ii) the overall redevelopment of the Central Steel Site and the Project; and (iii) the Redeveloper's obligation to construct the New Gun Range upon the Central Steel Site and the City's operation of the New Gun Range upon the Central Steel Site until such time as a new and improved indoor firing range is constructed elsewhere; and

WHEREAS, the parties negotiated an Amendment to Extend the Interim Indemnity Agreement ("Amendment to the Indemnity Agreement"), attached hereto as **Attachment D**, wherein EIP, as the owner of the Motiva Site where the City's Firing Range is currently located, agreed to extend the term of the Indemnity Agreement until September 30, 2019 in order to allow for the completion of the First Amendment, the City's adoption of a resolution authorizing the execution of same, and El Sid's construction of the New Gun Range; and

WHEREAS, the Parties further agree that in the event that the New Gun Range is not fully constructed by Redeveloper and operational before the Amendment to the Indemnity Agreement expires, EIP shall have sole discretion as to whether it chooses to accept rent for any additional time that the City remains on the Motiva Site; and

WHEREAS, EIP has only agreed to waive any right it may have to evict the Firing Range for the term of the Indemnity Agreement and any extensions thereof; and

WHEREAS, In the event that EIP chooses to accept rent, El Sid (i.e., the Redeveloper) shall solely be responsible to pay EIP monthly rent for the portion of the Motiva Site occupied by the Firing Range, provided that in such an event, El Sid and EIP shall execute a separate agreement delineating the terms under which rent is to be paid and which names the City as a third party beneficiary; and

WHEREAS, under the Amendment to the Indemnity Agreement, the Indemnified Parties and the City of Newark (the "Parties") agree to extend the Indemnity Agreement without waiving any of their respective rights and obligations arising out of the Indemnity Agreement, the Lease Agreement, the Redevelopment Agreement, and/or otherwise at law or in equity.

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

1. The Mayor and/or his designee(s), is authorized to execute the Amendment to Extend the Interim Indemnity Agreement whereby the City would continue to indemnify 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 located at Block 5074 on the Motiva Site (Block 5074, Lots 5, 9 and 9.01, the southerly side of Delaney Street (East Ward), in the form attached hereto as **Attachment D**.
2. The Mayor and/or his designee(s), shall place a copy of the executed Amendment to the Indemnity Agreement authorizing on file in the Office of the City Clerk.
3. This Resolution shall take effect immediately.

STATEMENT

This Resolution authorizes the execution of an Amendment to Extend the Interim Indemnity Agreement whereby the City would continue to 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, located at block 5074, Lots 5, 9 and 9.01, on the southerly side of Delancey Street, Newark, New Jersey (East Ward), until September 30, 2019, the latest.