



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 17-1703, **Version:** 1

Dept/ Agency: Law

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

Purpose: Pre-Litigation Settlement of Civil Litigation

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: \$5,000,000.00

Funding Source: List name(s) and amount(s)

Additional Comments:

Agreement pertaining to the Remediation of Soils at the Ironbound Recreation Football Fields which establishes the obligations between CNA and the City. The City is allocating \$5 million to pay for its share of the project costs, and CNA will be responsible for the cost of carrying out and completing its remediation obligations. The City agrees to reimburse CNA for costs incurred over \$300,000.00 during the completion of work in the Final Integrated Design stage. Upon completion of CNA's remediation obligations, the City releases CNA, in part.

Invitation: Corporation Counsel, September 26, 2017

WHEREAS, in the Ironbound Section of Newark, exists a portion of property Block 2052, Lot 1, on the City of Newark tax maps, at the corner of St. Charles and Berlin Streets which is commonly referred to as "A Field" or the Ironbound Recreation Playing Field and Football Field Site. The site encompasses nine (9) acres; and

WHEREAS, "A Field" includes the Ironbound Recreation Football Fields but does not include the Ironbound Recreation Center Skating Rink, Playing Fields, Ironbound Bleachers, or the Ironbound Aquatic Center ("Ironbound Recreation Football Fields" or "Site"); and

WHEREAS, in the early 1900s Celluloid Corporation owned most if not all of Block 2052, Lot 1. In March 1941, the Celluloid Corporation merged with Celanese Corporation of America. In 1966 the company changed its name to Celanese Corporation and in February 1987 Hoechst Corporation purchased Celanese Corporation and changed the name to Hoechst Celanese Corporation, later known as HNA Holdings, Inc.; and

WHEREAS, on or before 1908 and until World War I, a cellulose nitrate plant was operated on the Site; and

WHEREAS, in or about 1942, CNA Holdings, LLC, successor to HNA Holdings, Inc., f/k/a Hoechst Celanese Corporation (collectively "CNA"), acquired the Site through a corporate merger and operated three individual manufacturing facilities on or near the Site; and

WHEREAS, in or about 1957, CNA sold the Site. Thereafter, there were several intervening owners of the Site until somewhere between September 1965 and May 1966 the City of Newark ("City") acquired the property and now owns the Site; and

WHEREAS, in the late 1960s, after the City acquired the Site, it developed a state-of-the-art football stadium, the Ironbound Recreation Football Field and Playing Fields, which closed after one season of activity due to findings of contamination and toxins on the property including PCBs; and

WHEREAS, under an October 27, 1992 Memorandum of Agreement with the New Jersey Department of Environmental Protection ("NJDEP"), the City commenced an environmental investigation of the Ironbound Recreation Football Fields; and

WHEREAS, the NJDEP requested that the City enter into a second Memorandum of Understanding, dated December 23, 1993, allowing the NJDEP to investigate and remediate the portion of the Site where the Ironbound Recreation Center Football and Playing Fields are located ("December 1993 MOU"); and

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site, or matters arising out of the Site, the City and CNA (collectively "the Parties") under a 1993 agreement, agreed to fund and manage certain investigative actions at the Site; and

WHEREAS, the City and CNA retained a mutually acceptable consultant, Weston Solutions, Inc., to conduct certain remedial investigation and remedial action work at the Site pursuant to a January 2013 Agreement; and

WHEREAS, Weston Solutions, Inc., subsequently prepared, and the Department of Environmental Protection Agency ("EPA") approved, a Self-Implementing Work Plan On-Site Cleanup and Disposal of PCB Waste for the Site, dated February 2014, which was later revised by the Self-Implementing Work Plan Addendum - Revision 1, dated August 2014, (collectively the "Self Implementing Work Plan"); and

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site, or matters arising out of the Site, the City and CNA have agreed to perform certain remedial activities at the Site required by the Self-Implementing Work Plan, the December 1993 MOU and the Site Remediation Reform Act, N.J.S.A. 58:10C-1, and all related amendments to the relevant federal and state laws, rules and regulations governing Brownfields and Contaminated Sites; and

WHEREAS, the Parties entered into an agreement in 1998 which provided that CNA would be released from liability concerning the Site upon the issuance of any notification of compliance that the December 1993 MOU had been satisfied ("1998 Agreement"); and

WHEREAS without the need for litigation, the Parties wish to clarify the terms of the release by entering into the attached Agreement Regarding the Remediation of the Soils at the Ironbound Recreation Football Fields (attached with Exhibits A through I) (herein referred to as "the Agreement") which provides that the City will provide a full release of liability for the Site, and any PCBs the City may encounter offsite while satisfying the requirements of the 1993 MOU to CNA upon completion of the remediation activities contemplated, except for claims the City may have against CNA as a result of any free product present offsite that migrates onto the Site from the neighboring Ironbound Aquatic Center Site and claims the City may have against CNA related to the continued

operation of the product recovery system on the Site; and

WHEREAS, the Parties are entering this Agreement to allocate the funding of and the responsibility for the remediation activities set forth in the Self-Implementing Workplan and to provide: (a) the installation of drainage and storm water structures to accommodate a new athletic field; (b) the installation of the athletic field and additional improvements as defined in the Final Integrated Design; (c) the retention of an LSRP to oversee the remediation activities; (d) that the Parties shall cooperate in the performance of the work; and (d) that the City will release and indemnify CNA for the Site as set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, CNA shall undertake, perform and be responsible for, at its own cost and expense (except as provided otherwise) all obligations as set forth in Paragraph 1; and shall undertake, perform and be responsible for, at its own cost and expense (except as provided otherwise) all obligations as set forth in Paragraph 1 of the Agreement; and

WHEREAS, pursuant to the Agreement the City shall undertake, perform and be responsible for, at its own cost and expense (except as provided otherwise) all obligations as set forth in Paragraph 2, of the Agreement which includes that the City shall reimburse CNA for its costs over Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) incurred by CNA during the completion of work described in the Final Integrated Design and beyond CNA's obligations under the Agreement; and

WHEREAS, pursuant to the Agreement, the Effective Date is the date that the Agreement is fully executed by the Parties; and

WHEREAS, pursuant to the Agreement, the City represents and warrants that as of the Effective Date of the Agreement, Five Million Dollars and Zero Cents (\$5,000,000.00), 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; and

WHEREAS, the City also represents, that if additional monies are needed to cover the City's share of costs, then such monies shall be taken from the East Ward's Hess Fund, provided that such funds are available; and

WHEREAS, the City has and/or will retain a consultant, in compliance with all state and local Pay to Play Law, including N.J.S.A. 19:44A-20.5, et seq., the Local Public Contracts Law, N.J.S. A. 40A:11-1. et seq. and any Memorandum of Agreement with the State of New Jersey which is mutually acceptable to both Parties to provide the services of a Licensed Site Remediation Professional ("LSRP") to oversee the soils remediation action to be performed by CNA and the City in accordance with this Agreement; and

WHEREAS, pursuant to Paragraph 3 of the Agreement, the City and CNA agree to share equally (with each Party paying 50%): all LSRP costs, costs related to the development of the Final Integrated Design, and costs associated with the removal of non-PCB contaminated stockpiled soils from the Site; and

WHEREAS, pursuant to Paragraph 4 of the Agreement, the City shall be responsible for and insure that the LSRP is retained through the procurement process in compliance with Local Pay-to-Play Law including N.J.S.A. 19:44A-20.50, et seq., and Local Public Contracts Law, N.J.S.A. 40A:11-

1. Et seq., among other things, is designed to remediate the Site, in accordance with all EPA regulations and requirements; and

WHEREAS, the Acting 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 resolve this matter, without the need and expense of litigation, as proposed in the Agreement.

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 Acting Corporation Counsel are authorized to execute the Agreement Regarding the Remediation of the Soils at the Ironbound Recreation Football Fields ("the Agreement").
2. In consideration of the mutual promises set forth in the Agreement, the City agrees that upon CNA's completion of its Remediation Obligations, as required under the Agreement, the City agrees to release CNA as set forth in Paragraph 9 of the Agreement.
3. The Mayor, the Director of the Department of Engineering, and the Acting Corporation Counsel are authorized to obtain and execute any other documents sufficient in form and content to the Acting Corporation Counsel and take whatever actions necessary to effectuate the terms of the within resolution pursuant to the terms contained in this Resolution and Agreement Regarding the Remediation of the Soils at the Ironbound Recreation Football Fields.
4. The Director of Finance and the Budget Director hereby represent that there are sufficient legally appropriated funds, in the amount of Five Million Dollars and Zero Cents (\$5,000,000.00) which are budgeted solely for the City's costs associated with this Project (Fund 045-17G-17A00-A-94710-B2017).
5. The Director of Finance is hereby authorized to establish a separate account ("the Project Account") in which Five Million Dollars and Zero Cents (\$5,000,000.00) shall be deposited to cover the City's share of projected costs under the Agreement.
6. If additional monies are needed to cover the City's share of costs pursuant to the Agreement, then such monies shall be taken from the East Ward's Hess Fund, provided that such funds are available.
7. The Director of Engineering shall file a copy of the fully executed Agreement in the Office of the City Clerk.

STATEMENT

Resolution authorizing the Mayor, the Director of the Department of Engineering and the Acting Corporation Counsel to execute the Agreement Regarding the Remediation of the Soils at the Ironbound Recreation Football Fields. The City is allocating \$5 million 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 \$300,000.00 during the

completion of work in the Final Integrated Design stage. Upon completion of CNA's remediation obligations, the City releases CNA, in part.