

FIRST AMENDMENT TO THE FEBRUARY 26, 2004
MEMORANDUM OF AGREEMENT
BETWEEN THE NEW JERSEY PINELANDS COMMISSION
AND THE SOUTH JERSEY TRANSPORTATION AUTHORITY

Dated: _____, 2019

WHEREAS, the New Jersey Pinelands Commission (the “Commission”) and the South Jersey Transportation Authority (“SJTA” or the “Authority”) (both of which are collectively referred to herein as the “Parties”) entered into a Memorandum of Agreement (“MOA”), dated February 26, 2004, which authorized the development of certain short-term development projects at the Atlantic City International Airport (“ACY”) located in Egg Harbor Township, Atlantic County, New Jersey; and

WHEREAS, the Authority is an instrumentality of the State of New Jersey exercising public and essential governmental functions and is the owner and operator of ACY; and

WHEREAS, the ACY property is comprised of approximately 2,100 acres, approximately 84 acres of which are owned by the SJTA and upon which the terminal building and associated airport support facilities are located; the other 2,000+ acres of which the Authority leases from the United States of America (the “Property”); and

WHEREAS, the Property is located within a Pinelands Regional Growth Area and a Pinelands Military and Federal Installation Area; and

WHEREAS, the impetus for the February 26, 2004 MOA was the Authority’s “Comprehensive Land Use Plan for the Atlantic City International Airport”, dated September 2003, which consisted of both short and long term development projects for the airport; and

WHEREAS, as discussed in the September 2003 Final Environmental Impact Statement (FEIS) prepared for the Property, the short-term projects identified in the “Comprehensive Land Use Plan for Atlantic City Airport” were capable of being implemented immediately or in the foreseeable future, subject to the conditions stated within the Record of Decision of the Federal Aviation Administration (FAA); and

WHEREAS, although the FEIS included long term projects for informational purposes and so the cumulative impacts of all projects contained within the “Comprehensive Land Use Plan for the Atlantic City International Airport” could be evaluated, the February 26, 2004 MOA did not address or authorize any of the long term projects; and

WHEREAS, the short-term projects approved pursuant to the February 26, 2004 MOA included the following:

- 1) Terminal Area Development
 - a. Expansion of Terminal Building and Gates including relocation of the apron and Taxiway H
 - b. Public Parking Garage
 - c. Rental Car Maintenance Facility
 - d. Airline Cargo Warehouses
 - e. General Aviation Hangars

- f. Deicing Apron
- 2) Auxiliary Area Development
 - a. Aircraft Maintenance Hangars
 - b. Air-Freight Warehouses
 - c. Full-length Parallel Taxiway west of Runway 4-22
 - d. Aircraft Parking Apron and Taxiway
 - f. Access Roadway and Parking
- 3) Hotel/Conference Center
 - a. One Three-story Building for 150 Suites
 - b. Lobby Area and Amenities
 - c. Swimming Pool and Outbuildings
 - d. Auto Parking
- 4) Runway 13-31 Instrument Landing System (ILS) Upgrades
 - a. Localizer Antenna
 - b. Glide Slope Antenna
 - c. Medium Intensity Approach Light System (MALSR)
 - d. Marker Beacons
- 5) Holding Aprons
- 6) Grassland Conservation and Management Area

WHEREAS, with the exception of the Airline Cargo Warehouses and the Deicing Apron, all of the short-term projects identified under (1) Terminal Area Development have been completed. An application for development of the Deicing Apron is pending in the Commission's offices and, because of an increase in its size as compared to what was approved in the February 26, 2004 MOA, will require an additional 5 acre offset; and

WHEREAS, approximately 20 acres remains undeveloped within the area identified for Auxiliary Development. Notably, none of the projects identified under (2) Auxiliary Area Development have been constructed. Rather, an Air Rescue Facility Building and a Solar Array were constructed within this Area; and

WHEREAS, the Runway ILS Upgrade, Holding Aprons and the Grassland Conservation Management Area have all been constructed; and

WHEREAS, the Authority has not moved forward with the short-term projects identified under (3) Hotel/Conference Center. However, it recently attended a pre-application conference with Commission staff for the construction of a Hotel/Conference Center in a different location than proposed in the February 26, 2004 MOA; and

WHEREAS, as part of its review process that resulted in the development and execution of the February 26, 2004 MOA, the Commission determined that in addition to adverse impacts to wetlands and wetland buffers, the construction of the short-term projects would result in adverse impacts to habitat

that is critical to the survival of two local populations of grassland bird species (one designated threatened and one designated endangered) and one threatened species of Lepidoptera; and

WHEREAS, as part of the FEIS, the Authority had developed mitigation measures and environmental commitments to address the environmental impacts associated with its short-term development projects; and

WHEREAS, one of the mitigation measures included was the development of a Grassland Conservation and Management Area; and

WHEREAS, as part of the measures included in the February 26, 2004 MOA, intended to provide an equivalent level of protection for the resources of the Pinelands, the Authority was required to create and enhance a 290 acre modified grass community, the Grassland Conservation and Management Area, located in the northwest quadrant of the airport; and

WHEREAS, the Authority created the required Grassland Conservation and Management Area and has continued to manage it in accordance with Paragraph III.A.6.d of the February 26, 2004 MOA; and

WHEREAS, the environmental commitments included in the FEIS were also incorporated into the February 26, 2004 MOA by Paragraph III.A.5 and designated as Attachment 3; and

WHEREAS, Paragraph 23 of Attachment 3 of the February 26, 2004 MOA prohibits activities within the Grassland Conservation and Management Area from April 15 through August 15; and

WHEREAS, Paragraph 9 of Attachment 3 of the February 26, 2004 MOA also requires all grassland management activities to adhere to the approved mowing plan that restricts mowing in the Grassland Conservation and Management Area from April 15 through August 15; and

WHEREAS, following the execution of the February 26, 2004 MOA, the FAA issued updated Advisory Circulars and CertAlerts (specifically, updates to FAA AC 150/5200-33B and CertAlert 06-07) related to potential wildlife attractants and protection of state-listed species' habitat on airports; and

WHEREAS, as a result of these updates, the Authority conducted a Wildlife Hazard Assessment for ACY, which was completed and accepted by FAA on March 2011, and which contained a recommendation for the Authority to re-examine the impact of the February 26, 2004 MOA on airport safety; and

WHEREAS, upon completion of the Wildlife Hazard Assessment, the Authority contracted with the United States Department of Agriculture, Wildlife Services, to develop a new Wildlife Hazard Management Plan for and to implement wildlife hazard management activities at ACY; and

WHEREAS, the United States Department of Agriculture, Wildlife Services, provides ongoing coordination with airport staff to report wildlife strikes and conduct an annual review and update of ACY's Wildlife Hazard Management Plan; and

WHEREAS, ACY currently operates under an FAA approved Wildlife Hazard Management Plan, dated April 2017, that identifies reevaluation of the February 26, 2004 MOA, specifically, the continued requirement to maintain the Grassland Conservation and Management Area on the ACY property, in

order to allow for management provisions to protect health and safety and continuation of safe airport operations;

WHEREAS, on or about December 2017, representatives of the Authority expressed an interest in pursuing an amendment of the February 26, 2004 MOA to relocate the Grassland Conservation and Management Area off the ACY property; and

WHEREAS, throughout 2018, representatives of the Authority and the Commission discussed the process required for the Authority to seek an amendment of the February 26, 2004 MOA and possible measures that could be proposed to replace the Grassland Conservation and Management Area as an offsetting measure for that agreement; and

WHEREAS, development of a replacement offset has been extremely challenging given the habitat requirements of one of the two grassland bird species that was impacted by the short-term projects at ACY and the lack of availability of suitable, vacant and cleared property in the vicinity of the airport; and

WHEREAS, the Authority has expressed concern that it may be fined by FAA if it is not permitted to mow the Grassland Conservation and Management Area to the FAA recommended 6-12" height prior to April 15, 2019; and

WHEREAS, the Pinelands CMP at N.J.A.C. 7:50-4.52(c)2 authorizes the Commission to enter into a Memorandum of Agreement with a governmental agency to authorize such agency to carry out specified development activities that may not be fully consistent with the provision of N.J.A.C. 7:50-5 and 6, provided such agency demonstrates and the Commission finds that variations from the standards of the Pinelands CMP are accompanied by measures that, at a minimum, afford an equivalent level of protection of the resources of the Pinelands than would be provided through strict application of the standards of the Pinelands CMP; and

WHEREAS, the removal of the Grassland Conservation and Management Area, through mowing the grasses to a height that is not consistent with the habitat requirements of local populations of the two threatened and endangered grassland bird species and the threatened species of Lepidoptera, would itself constitute a deviation from the threatened and endangered wildlife standards of the Pinelands CMP at N.J.A.C. 7:50-6.33; and

WHEREAS, removal of the Grassland Conservation and Management Area also constitutes a change to one of the offset measures that was included in the February 26, 2004 MOA and was intended to afford, at a minimum, an equivalent level of protection of the resources of the Pinelands; and

WHEREAS, such measures were required pursuant to N.J.A.C. 7:50-4.52(c)2 in order for the Commission to permit the deviations from the standards of the Pinelands CMP that were authorized by the February 26, 2004 MOA; and

WHEREAS, the Authority has been working to identify new measures that will ameliorate the loss of the Grassland Conservation and Management Area and, thereby provide a replacement offset for the February 26, 2004 MOA, but has been unable to finalize its proposal because of the dearth of available and suitable land in the vicinity of the airport to recreate grassland habitat; and

WHEREAS, the Authority has submitted documentation, including letters from the FAA, the USDA Wildlife Biologist working with the Authority to implement the Wildlife Hazard Management Plan at ACY, the Commander of the New Jersey Air National Guard stationed at ACY, to the Commission to substantiate its need to mow the Grassland Conservation and Management Area prior to April 15, 2019 in order to address safety concerns related to its presence on the airport property; and

WHEREAS, the Authority has agreed to provide a \$500,000 escrow payment to the Commission and to continue its efforts to identify and finalize additional offsetting measures to ameliorate for the loss of the Grassland Conservation and Management Area; and

WHEREAS, in addition to the Grassland Conservation and Management Area, ACY contains substantial areas of critical habitat for threatened and endangered animal species, including, but not limited to the two grassland bird species and one threatened lepidoptera for which the deviation from the threatened and endangered wildlife standard, N.J.A.C. 7:50-6.33, was provided by the February 26, 2004 MOA; and

WHEREAS, in accordance with the requirements of the Pinelands CMP, N.J.A.C. 7:50-4.52(a) and -5.1(a), no development may be carried out in the Pinelands Area unless it conforms with the requirements of the Pinelands CMP; and

WHEREAS, in order to demonstrate compliance with the threatened and endangered species standards of the Pinelands CMP, N.J.A.C. 7:50-6.33, for not only the short-term projects delineated in the February 26, 2004 MOA, but also any new development projects at ACY, the Authority acknowledges that it will need to identify and finalize new offsetting measures, acceptable to the Commission, to ameliorate past and future impacts to critical habitat for threatened and endangered species found at ACY; and

WHEREAS, until the Authority identifies and finalizes such new measures, all pending or future Pinelands development applications for ACY will be tolled and no Commission approvals for such development applications shall be granted; and

WHEREAS, once the Authority has identified and finalized additional offsetting measures, it will pursue a second amendment to the February 26, 2004 MOA, as amended by this Proposed Amendment, to incorporate such new measure; and

WHEREAS, once the Second Amendment to the February 26, 2004 MOA has been approved, the Commission will once again be in the position to approval Pineland development application for development at the ACY; and

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, the Parties agree to amend the February 26, 2004 MOA as follows:

1. Unless expressly amended herein, all provisions of the February 26, 2004, MOA shall remain in full force and effect.
2. Notwithstanding the provisions of Paragraphs III.A.5 and III.A.6.d and Paragraph 23 of Attachment 3 of the February 26, 2004 MOA to the contrary, the parties agree that the Authority may mow the GCMA to a FAA recommended height of 6-12" and maintain the grasses within the Grassland Conservation and Management Area at this height going forward.

3. The Authority agrees to place \$500,000 in escrow with the Commission.
4. The parties agree that the Grassland Conservation and Management Area will not be mowed until the Authority provides the \$500,000 escrow payment to the Pinelands Commission and receives written authorization from the Commission's Executive Director advising it that mowing may proceed.
5. In order to ensure that there continues to be adequate measures provided to afford, at a minimum, an equivalent level of protection for the resources of the Pinelands, all pending and future Pinelands development applications for ACY shall be tolled and no Commission approvals, until a Second Amendment to the February 26, 2004 MOA incorporating the new measures has been approved by the Commission.
6. The parties agree that no part of this Proposed Amendment shall release the Authority from its responsibility to obtain approvals from the FAA or other State or Federal entities that may be required prior to mowing the Grassland Conservation and Management Area.
7. The parties agree that they will continue their discussions in order to expeditiously identify and finalize additional offsetting measures to ameliorate for the loss of the Grassland Conservation and Management Area.
8. This Proposed Amendment shall take effect upon approval and signature by the authorized representatives of all parties and following the conclusion of the Governor's review in accordance with N.J.S.A. 13:18A-5(h).
9. This Proposed Amendment to the February 26, 2004 MOA shall remain in effect unless amended or terminated by written consent of both parties.
10. This Proposed Amendment, along with the February 26, 2004 MOA, constitutes the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract, or other assurance, except those set out in this Proposed Amendment, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Proposed Amendment.
11. This MOA may be executed in counterparts. All such counterparts shall constitute an original and all of which together shall constitute one and the same agreement, binding upon the parties. Faxed and electronic signatures shall constitute original signatures.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Proposed Amendment on and as of the day and year written below. This Proposed Amendment shall be executed in at least three original copies of which one is to be delivered to the South Jersey

Transportation Authority, and two of which are to be delivered to the New Jersey Pinelands Commission.

(Signatures on next page)

THE SOUTH JERSEY TRANSPORTATION AUTHORITY Witnessed:

By: _____
Stephen F. Dougherty, Executive Director
Date: _____

By: _____
Name: _____
Title: _____

New Jersey Pinelands Commission Witnessed:

By: _____
Nancy Wittenberg, Executive Director
Date: _____

By: _____
Name: _____
Title: _____

Approved as to form by:

By: _____
Kristina Miles, Deputy Attorney General
Date: _____